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FOR ~~DISCUSSION ONLY~~ APPROVAL

## Uniform Electronic Estate Planning Documents Act

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Uniform Law Commission

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~~May 17~~ June 16, 2022

## Uniform Electronic Estate Planning Documents Act

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**Uniform Electronic Estate Planning Documents Act**

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1 **Electronic Estate Planning Documents Act**

2 **Prefatory Note**

3 Times are changing. Reliance on traditional paper documents is waning. Many areas of  
4 the law have already embraced the transition from written to electronic documents which are  
5 electronically signed. For example, virtually all states have enacted the Uniform Electronic  
6 Transactions Act (UETA) and the electronic filing of pleadings and appellate briefs is widely  
7 accepted.

8  
9 Left out of this transition were non-transactional documents relating to estate planning  
10 which hung on to the requirement of paper documents with actual pen-to-paper (wet) signatures.  
11 Recently, however, this trend has reversed with at least ten states embracing electronic wills  
12 either through the adoption of the Uniform Electronic Wills Act or through their own unique  
13 statutes. Regrettably, other estate planning documents have been left behind in this transition.  
14 Why is this?

15  
16 A primary reason is the failure of state laws to expressly authorize these documents to be  
17 in electronic form and electronically signed. For example, UETA provides that when both parties  
18 to a transaction agree, a record or signature cannot be “denied legal effect or enforceability solely  
19 because it is in electronic form.” UETA § 7(a). However, UETA does not expressly authorize the  
20 electronic signing of estate planning documents. UETA § 3(a) limits UETA’s application to  
21 “transaction[s],” defined in UETA § 2(16) as “actions occurring *between two or more persons*  
22 relating to the conduct of business, commercial, or governmental affairs.” (emphasis added).  
23 Accordingly, unilateral documents such as trusts and powers of attorney are not directly within  
24 UETA’s scope. This conclusion is bolstered by Comment 1 to UETA § 3 which states:

25  
26 The scope of this Act is inherently limited by the fact that it only applies to  
27 transactions related to business, commercial (including consumer) and governmental  
28 matters. Consequently, transactions with no relation to business, commercial or  
29 governmental transactions would not be subject to this Act. Unilaterally generated  
30 electronic records and signatures which are not part of a transaction also are not covered  
31 by this Act.  
32

33 UETA does not “prohibit” the electronic signing of estate planning documents. However,  
34 its failure to include them within its scope leaves such electronically signed documents  
35 vulnerable to attack. As a result, the underlying state laws governing estate planning documents  
36 must be amended. Absent such amendment, parties to unilateral estate planning documents could  
37 not be certain that electronically signed originals would be valid.  
38

39 The Uniform Electronic Wills Act (2019) (UEWA) solves this problem with respect to  
40 testamentary documents such as wills, codicils, and testamentary trusts. The [Uniform](#) Electronic  
41 Estate Planning Documents Act (~~EEPDA~~[UEEPDA](#)), solves this problem for all other estate  
42 planning documents such as powers of attorney and trusts. For states that have yet to adopt the  
43 UEWA or their own electronic will statute, Article 3 of the ~~EEPDA~~[UEEPDA](#) provides the state  
44 with the opportunity to adopt the UEWA.

1 ~~EEPDA~~UEEPDA is designed to authorize estate planning documents to be in electronic  
2 form and electronically signed. There is no intent to change the requirements for the validity of  
3 these documents imposed by state law in any other manner. ~~EEPDA~~UEEPDA is modeled after  
4 UETA so that it will cleanly interface with existing laws.  
5

1 Uniform Electronic Estate Planning Documents Act

2 [Article] 1

3 **General Provisions and Definitions**

4 **Section 101. Title**

5 This [ act] may be cited as the Uniform Electronic Estate Planning Documents Act.

6 **Section 102. Definitions**

7 In this [act]:

8 (1) “Electronic” means relating to technology having electrical, digital, magnetic,  
9 wireless, optical, electromagnetic, or similar capabilities.

10 (2) “Electronic record” means a record created, generated, sent, communicated,  
11 received, or stored by electronic means.

12 (3) “Electronic signature” means an electronic symbol or process attached to or  
13 logically associated with a record and executed or adopted by a person with the intent to sign the  
14 record.

15 (4) “Information” includes data, text, images, sounds, codes, computer programs,  
16 software, and databases.

17 (5) “Non-testamentary estate planning document” means a record relating to  
18 estate planning that is readable as text at the time of signing and that is not a will or codicil, or  
19 contained in a will or codicil. The term:

20 (A) includes a record readable as text at the time of signing that creates,  
21 exercises, modifies, releases, or revokes:

22 (i) a trust instrument ~~that is not created by the settlor’s will or~~  
23 ~~codicil~~;

- 1 (ii) a trust power that under the terms of the trust requires a signed  
2 record;
- 3 (iii) a certification of a trust under [cite to Uniform Trust Code  
4 Section 1013];
- 5 (iv) a power of attorney that is durable under [cite to Uniform  
6 Power of Attorney Act];
- 7 (v) an agent's certification of the validity of a power of attorney  
8 and the agent's authority under [cite to Uniform Power of Attorney Act Section 302];
- 9 (vi) a power of appointment;
- 10 (vii) an advance directive, including a [health-care] power of  
11 attorney; ~~directive to physicians, natural death statement, living will, and medical or physician~~  
12 order for life-sustaining treatment;
- 13 (viii) a record directing disposition of an individual's body after  
14 death;
- 15 (ix) a nomination of a guardian for the signing individual;
- 16 (x) a nomination of a guardian for a minor or adult disabled child-  
17 ~~that is not included in a will or codicil;~~
- 18 (xi) a mental health treatment declaration;
- 19 (xii) a community property survivorship agreement;
- 20 (xiii) a disclaimer under [cite to Uniform Disclaimer of Property  
21 Interests Act Section 2(3)]; and
- 22 (xiv) any other record intended to carry out an individual's intent  
23 regarding property or health care while incapacitated or on death; and

1 (B) does not include a ~~will, codicil, testamentary trust,~~ deed of real  
2 property, ~~document~~ [or][,] certificate of title for a motor vehicle, watercraft, or aircraft, ~~[, or~~  
3 other documents the state ~~desires to exclude~~ excludes from ~~the coverage of~~ Article 2].

4 (6) “Person” means an individual, estate, business or nonprofit entity, public  
5 corporation, government or governmental subdivision, agency, or instrumentality, or other legal  
6 entity.

7 (7) “Power of attorney” means a record that grants authority to an agent to act in  
8 place of the principal, even if the term is not used in the record.

9 (8) “Record” means information:

10 (A) inscribed on a tangible medium; or

11 (B) stored in an electronic or other medium and retrievable in perceivable  
12 form.

13 (9) “Security procedure” means a procedure to verify that an electronic signature,  
14 record, or performance is that of a specific person or to detect a change or error in an electronic  
15 record. The term includes a procedure that uses an algorithm, code, identifying word or number,  
16 encryption, or callback or other acknowledgment procedure.

17 (10) “Settlor” means a person, including a testator, that creates or contributes  
18 property to a trust.

19 (11) “Sign” means, with present intent to authenticate or adopt a record:

20 (A) execute or adopt a tangible symbol; or

21 (B) attach to or logically associate with the record an electronic signature.

22 (12) “State” means a state of the United States, the District of Columbia, Puerto  
23 Rico, the United States Virgin Islands, or other territory or possession subject to the jurisdiction

1 of the United States. The term includes a federally recognized Indian tribe.

2 (13) “Terms of a trust” means:

3 (A) except as provided in subparagraph (B), the manifestation of the  
4 settlor’s intent regarding a trust’s provisions as:

5 (i) expressed in the trust instrument; or

6 (ii) established by other evidence that would be admissible in a  
7 judicial proceeding; or

8 (B) the trust’s provisions as established, determined, or amended by:

9 (i) a trustee or other person in accordance with applicable law; [or]

10 (ii) a court order[; or

11 (iii) a nonjudicial settlement agreement under [cite to Uniform

12 Trust Code Section 111].

13 (14) “Trust instrument” means an instrument executed by the settlor that contains  
14 terms of the trust, including any amendments.

15 (15) “Will” includes a codicil and a testamentary instrument that merely appoints  
16 an executor, revokes or revises another will, nominates a guardian, or expressly excludes or  
17 limits the right of an individual or class to succeed to property of the decedent passing by  
18 intestate succession.

19 **Legislative Note:** *In paragraph (5), the definition of “non-testamentary estate planning*  
20 *document” may be expanded or contracted to conform with state substantive, administrative, or*  
21 *regulatory law or practices. A signature on a non-testamentary estate planning document and on*  
22 *a document excluded from the definition may still be effective under other state law. This act is*  
23 *designed to validate a signature that is in electronic form when other state law has not addressed*  
24 *the issue.*

25  
26 *In paragraph (5)(A)(vii), a state that uses the term “medical power of attorney””, “health-care*  
27 *proxy”, or other term should revise the bracketed text accordingly.*

28  
29

### Comment

1 ~~Paragraph 3.~~ The definition of “electronic signature” is designed to exclude  
2 authentication via verbal or video methods.

3 ~~Paragraph 5(B)(vii). States that refer to a “health care” power of attorney as a “medical”~~  
4 ~~power of attorney should amend this definition according and use the appropriate term of art here~~  
5 ~~and throughout this Act.~~

6 ~~Paragraph 11. Paragraph 5 requires the non-testamentary estate planning document to be~~  
7 ~~readable as text such as an Adobe pdf file or a Word docx file; audio and audio-video records are~~  
8 ~~not included. However, other state law that authorizes audio and audio-video non-testamentary~~  
9 ~~estate planning documents is not impacted by this act and thus non-textual records authorized by~~  
10 ~~other state law are still effective if they comply with the applicable state law.~~

11 The definition of “sign” is designed to exclude authentication via verbal or video  
12 methods.

### 13 **Section 103. Construction**

14 This [act] must be construed and applied to:

15 (1) facilitate electronic estate planning documents and signatures consistent with  
16 other law; and

17 (2) be consistent with reasonable practices concerning electronic documents and  
18 signatures and the continued expansion of those practices.

### 19 **Comment**

20 This section is based on the Uniform Electronic Transactions Act Section 6.

### 21 **[Article] 2**

### 22 **Non-Testamentary Estate Planning Document Electronic Execution**

#### 23 **Section 201. Scope**

24 (a) Except as provided in subsection (b), this [article] applies to an electronic non-  
25 testamentary estate planning document and an electronic signature on a non-testamentary estate  
26 planning document.

27 (b) This [article] does not apply to a non-testamentary estate planning document if: the  
28 document precludes the use of an electronic record or electronic signature.



1 communicated, received, stored, or otherwise processed or used by electronic means or in  
2 electronic form.

3 (b) A person is not required to have a non-testamentary estate planning document in  
4 electronic form or signed electronically even if the person previously created or signed an estate  
5 planning document by electronic means. A person may not waive the right granted by this  
6 subsection.

7 **Comment**

8 This section is based on the Uniform Electronic Transactions Act Section 5.

9  
10 In ~~Section 203~~ [subsection](#) (b), the term “person” rather than “individual” is used because  
11 a trustee may be a corporation or other legal entity. Accordingly, “person” is appropriate as it  
12 encompasses these entities.

13  
14 **Section 204. Recognition of Electronic Non-Testamentary Estate Planning**

15 **Document and Electronic Signature**

16 (a) A non-testamentary estate planning document or a signature on a non-testamentary  
17 estate planning document may not be denied legal effect or enforceability solely because it is in  
18 electronic form.

19 (b) If other law of this state requires a non-testamentary estate planning document to be  
20 in writing, an electronic record of the document satisfies the requirement.

21 (c) If other law of this state requires a signature on a non-testamentary estate planning  
22 document, an electronic signature satisfies the requirement.

23 **Comment**

24 This section is based on the Uniform Electronic Transactions Act Section 7.

25 **Section 205. Attribution and Effect of Electronic Record and Electronic Signature**

26 (a) An electronic non-testamentary estate planning document or electronic signature on

1 the document is attributable to a person if it was the act of the person. The act of the person may  
2 be shown in any manner, including a showing of the efficacy of a security procedure applied to  
3 determine the person to which the electronic record or electronic signature was attributable.

4 (b) The effect of attribution of a document or signature to a person under subsection (a) is  
5 determined from the context and surrounding circumstances at the time of its creation, execution,  
6 or adoption and as provided by other law.

7 **Comment**

8 This section is based on the Uniform Electronic Transactions Act Section 9.

9 **Section 206. Notarization and Acknowledgment**

10 If other law of this state requires a signature or record to be notarized, acknowledged,  
11 verified, or made under oath, the requirement is satisfied if the electronic signature on an  
12 electronic non-testamentary estate planning document of the individual authorized to perform the  
13 acts, together with all other information required to be included under other law, is attached to or  
14 logically associated with the signature or record.

15 **Comment**

16 This act does not address whether the notarization of electronic estate planning  
17 documents must be done in the physical presence of the signer or whether an electronic (remote)  
18 presence is sufficient. These are matters for state substantive law to address such as by the  
19 enactment of the Revised Uniform Law on Notarial Acts.

20 **Section 207. Witnessing and Attestation**

21 [(a)] If other law of this state bases the validity of a non-testamentary estate planning  
22 document on whether it is signed, witnessed, or attested by another individual, the signature,  
23 witnessing, or attestation of that individual may be electronic.

24 [(b) In this subsection, “electronic presence” means that two or more individuals in  
25 different locations are able to communicate in real time to the same extent as if the individuals

1 were physically present in the same location. If other law of this state bases the validity of a non-  
2 testamentary estate planning document on whether it is signed, witnessed, or attested by another  
3 individual in the presence of the individual signing the document, the presence requirement is  
4 satisfied if the individuals are in each other’s electronic presence.]

5 **Legislative Note:** *Optional subsection (b) provides the state the opportunity to authorize*  
6 *electronic presence, or remote, witnessing. If a state has enacted the Uniform Electronic Wills*  
7 *Act, the state should consider making the “presence” rules the same for a non-testamentary as*  
8 *for a testamentary document.*

9 **Comment**

10 This act does not take a position on whether the witnesses who are required by state law  
11 to be in the physical presence of the individual signing the document may satisfy the presence  
12 requirement by a virtual or electronic presence. Optional subsection (b) provides the state with  
13 the opportunity to authorize remote witnessing if the state believes doing so would be a prudent  
14 addition to its jurisprudence.

15 **Section 208. Retention of Electronic Record; Original**

16 (a) Except as provided in subsection (b), if other law of this state requires an electronic  
17 non-testamentary estate planning document to be retained, transmitted, copied, or filed, the  
18 requirement is satisfied by retaining, transmitting, copying, or filing an electronic record that:

19 (1) accurately reflects the information in the document after it was first generated  
20 in final form as an electronic record or under ~~section~~ Section 209 ~~of this act~~; and

21 (2) remains accessible to the extent required by the law.

22 (b) A requirement to retain a record under subsection (a) does not apply to information  
23 the sole purpose of which is to enable the record to be sent, communicated, or received.

24 (c) A person may satisfy subsection (a) by using the services of another person.

25 (d) If other law of this state requires a non-testamentary estate planning document to be  
26 presented or retained in its original form, or provides consequences if ~~the~~ a non-testamentary  
27 estate planning document is not presented or retained in its original form, an electronic record

1 retained in accordance with subsection (a) satisfies the law.

2 (e) This section does not preclude a governmental agency from specifying requirements  
3 for the retention of a record subject to the agency’s jurisdiction in addition to those provided in  
4 this section.

5 **Comment**

6 This section is based on the Uniform Electronic Transactions Act Section 12.

7 **Section 209. Certification of Paper Copy**

8 An individual may create a certified paper copy of an electronic non-testamentary estate  
9 planning document by affirming under penalty of perjury that the paper copy ~~of the electronic~~  
10 ~~non-testamentary estate planning document~~ is a complete and accurate copy of the ~~electronic~~  
11 ~~non-testamentary estate planning~~ document.

12 ~~Comment~~

13 Comment

14 This section is based on the Uniform Electronic Wills Act Section 9. Using this  
15 procedure to obtain a paper copy will not cure any defect that existed regarding the validity of  
16 the electronic non-testamentary estate planning document or electronic signature thereon.

17 **Section 210. Admissibility in Evidence**

18 Evidence ~~of a record or signature~~ relating to an electronic non-testamentary estate  
19 planning document or electronic signature on the document may not be excluded in ~~an action a~~  
20 proceeding solely because it is in electronic form.

21 **Comment**

22 This section is based on the Uniform Electronic Transactions Act Section 13.

23 **[[Article] 3**

24 **Uniform Electronic Wills Act]**

25 *Legislative Note: A state that wishes to expand this act to include electronic creation and*

1 *execution of a testamentary document, including a will, testamentary trust, or codicil, should*  
2 *insert the Uniform Electronic Wills Act or similar statute at this point in the act, making*  
3 *adjustments to this act or to the incorporated act as appropriate. If the Uniform Electronic Wills*  
4 *Act is the statute being included, the only definition in Section 2 of that act necessary is*  
5 *“electronic will.” If remote witnessing is desired for an electronic will, the definition of*  
6 *“electronic presence” found in Section 207(b) of Article 2 of this act is also necessary in this*  
7 *article. Sections 10 (uniformity of application and construction), 11 (transitional provision), and*  
8 *12 (effective date) should be deleted from the Uniform Electronic Wills Act.*

9 **[Article] 4**

10 **Miscellaneous Provisions**

11 **Section 401. Uniformity of Application and Construction**

12 In applying and construing this uniform act, a court shall consider the promotion of  
13 uniformity of the law among jurisdictions that enact it.

14 **Section 402. Relation to Electronic Signatures in Global and National Commerce**

15 **Act**

16 This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National  
17 Commerce Act, 15 U.S.C. Section 7001 et seq.[, as amended], but does not modify, limit, or  
18 supersede 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices  
19 described in 15 U.S.C. Section 7003(b).

20 **Legislative Note:** *It is the intent of this act to incorporate future amendments to the cited federal*  
21 *law. A state in which the constitution or other law does not permit incorporation of future*  
22 *amendments when a federal statute is incorporated into state law should omit the phrase “, as*  
23 *amended.” A state in which, in the absence of a legislative declaration, future amendments are*  
24 *incorporated into state law also should omit the phrase.*

25  
26 **Section 403. Transitional Provision**

27 [(a)] This [act] applies to an electronic non-testamentary estate planning document  
28 created, signed, generated, sent, communicated, received, or stored before, on, or after [the  
29 effective date of this ~~act~~].

30 [(b) This [act] applies to the will of a decedent who dies on or after [the effective date of

1 this [act]].]

2 **Legislative Note:** *A state that enacts this act with optional Article 3 (Uniform Electronic Wills*  
3 *Act) should adopt this section in its entirety, including all of the bracketed text. A state that*  
4 *enacts this act without Article 3 should adopt this section omitting both the bracketed text*  
5 *“[(a)]” and the entirety of bracketed subsection (b).*

6  
7 **[Section 404. Severability**

8 If a provision of this [act] or its application to a person or circumstance is held invalid,  
9 the invalidity does not affect another provision or application that can be given effect without the  
10 invalid provision.]

11 **Legislative Note:** *Include this section only if the state lacks a general severability statute or a*  
12 *decision by the highest court of the state adopting a general rule of severability.*

13 **[Section 405. Repeals; Conforming Amendments**

14 (a) . . .

15 (b) . . .]

16 **Legislative Note:** *A state should examine its statutes to determine whether conforming revisions*  
17 *are required by provisions of this act relating to the execution of testamentary and non-*  
18 *testamentary estate planning documents.*

19 **Section 406. Effective Date**

20 This [act] takes effect . . .