

DRAFT  
FOR ~~DISCUSSION ONLY~~APPROVAL

# Uniform Electronic Estate Planning Documents Act

---

Uniform Law Commission

---

~~May 24~~MEETING IN ITS ONE-HUNDRED-AND-THIRTY-FIRST YEAR  
PHILADELPHIA, PENNSYLVANIA  
JULY 8 – 14, 2022~~Informal Session~~



Copyright © 2022  
National Conference of Commissioners on Uniform State Laws

---

*This draft, including the proposed statutory language and any comments or reporter's notes, has not been reviewed or approved by the Uniform Law Commission or the drafting committee. It does not necessarily reflect the views of the Uniform Law Commission, its commissioners, the drafting committee, or the committee's members or reporter.*

~~May 17~~June 16, 2022

## Uniform Electronic Estate Planning Documents Act

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in preparing this Act consists of the following individuals:

Suzanne B. Walsh	Connecticut, <i>Chair</i>
Mary Ackerly	Connecticut
Turney P. Berry	Kentucky
James W. Dodge	Illinois
David M. English	Missouri
Marc S. Feinstein	South Dakota
Jacqueline T. Lenmark	Montana
Donald E. Mielke	Colorado
Bradley Myers	North Dakota
David G. Nixon	Arkansas
Robert H. Sitkoff	Massachusetts
Susan D. Snyder	Illinois
Dan Robbins	California, <i>President</i>
Nora Winkelman	Pennsylvania, <i>Division Chair</i>

### **Other Participants**

Gerry W. Beyer	Texas, <i>Reporter</i>
Benjamin K. Sanchez	Texas, <i>American Bar Association Advisor</i>
John T. Rogers	California, <i>American Bar Association Section Advisor</i>
Nathaniel Sterling	California, <i>Style Liaison</i>
Tim Schnabel	Illinois, <i>Executive Director</i>

Copies of this act may be obtained from:

Uniform Law Commission  
111 N. Wabash Ave., Suite 1010  
Chicago, Illinois 60602  
(312) 450-6600  
[www.uniformlaws.org](http://www.uniformlaws.org)

**Uniform Electronic Estate Planning Documents Act**

**Table of Contents**

Prefatory Note..... 1

**[Article] 1**

**General Provisions and Definitions**

Section 101. Title..... 3  
Section 102. Definitions..... 3  
Section 103. Construction..... 7

**[Article] 2**

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

Section 201. Scope..... 7  
Section 202. Principles of Law and Equity..... 8  
Section 203. Use of Electronic Signature on Electronic Non-Testamentary Estate Planning Document..... 8  
Section 204. Recognition of Electronic Non-Testamentary Estate Planning Document and Electronic Signature..... 9  
Section 205. Attribution and Effect of Electronic Record and Electronic Signature ..... 9  
Section 206. Notarization and Acknowledgment ..... 10  
Section 207. Witnessing and Attestation ..... 10  
Section 208. Retention of Electronic Record; Original ..... 11  
Section 209. Certification of Paper Copy ..... 12  
Section 210. Admissibility in Evidence..... 12

**[[Article] 3**

**Uniform Electronic Wills Act]**

**[Article] 4**

**Miscellaneous Provisions**

Section 401. Uniformity of Application and Construction..... 13  
Section 402. Relation to Electronic Signatures in Global and National Commerce Act..... 13  
Section 403. Transitional Provision..... 13  
[Section 404. Severability]..... 14  
[Section 405. Repeals; Conforming Amendments] ..... 14  
Section 406. Effective Date ..... 14

# Electronic Estate Planning Documents Act

## Prefatory Note

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

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

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

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

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

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

(ii) a trust power that under the terms of the trust requires a signed record;

(iii) a certification of a trust under [cite to Uniform Trust Code Section 1013];

(iv) a power of attorney that is durable under [cite to Uniform Power of Attorney Act];

(v) an agent's certification of the validity of a power of attorney and the agent's authority under [cite to Uniform Power of Attorney Act Section 302];

(vi) a power of appointment;

(vii) an advance directive, including a [health-care] power of attorney, directive to physicians, natural death statement, living will, and medical or physician order for life-sustaining treatment;

(viii) a record directing disposition of an individual's body after death;

(ix) a nomination of a guardian for the signing individual;

(x) a nomination of a guardian for a minor or adult disabled child-  
~~that is not included in a will or codicil;~~

(xi) a mental health treatment declaration;

(xii) a community property survivorship agreement;

(xiii) a disclaimer under [cite to Uniform Disclaimer of Property Interests Act Section 2(3)]; and

(xiv) any other record intended to carry out an individual's intent regarding property or health care while incapacitated or on death; and

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

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

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

(8) “Record” means information:

(A) inscribed on a tangible medium; or

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

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

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

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

(A) execute or adopt a tangible symbol; or

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

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



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

(13) “Terms of a trust” means:

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

(i) expressed in the trust instrument; or

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

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

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

(ii) a court order[; or

(iii) a nonjudicial settlement agreement under [cite to Uniform Trust Code Section 111].

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

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

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

In paragraph (5)(A)(vii), a state that uses the term “medical power of attorney<sup>2</sup>”, “health-care proxy”, or other term should revise the bracketed text accordingly.

## Comment

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

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

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

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

### **Section 103. Construction**

This [act] must be construed and applied to:

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

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

### **Comment**

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

### **[Article] 2**

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

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

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

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

(1)(c) This [article] does not affect the ~~document expressly precludes use~~ validity of an electronic record or electronic

~~(2) the document~~ signature that is ~~governed by~~ valid under:

(1) [cite to Uniform Electronic Transactions Act]; [or]

~~(32)~~ [[Article 3]] [cite to other state law governing creation and execution of an electronic will, codicil, or testamentary trust]; or

~~(43)~~ [cite to other state law relating to non-testamentary estate planning documents the state ~~intends to exempt~~ excludes from this article]].

### Comment

This section makes certain that the scope of this act is restricted to validating electronic signatures and is not intended to impact the validity of electronic signatures already authorized under other state law. If an electronic non-testamentary estate planning document, or a signature on such a document, is granted legal recognition by UETA, this act does not limit the legal recognition of the document or signature, but if the document or signature is not granted legal recognition by UETA, it will be granted legal recognition by this act.

## Section 202. Principles of Law and Equity

The law of this state and principles of equity applicable to a non-testamentary estate planning document ~~and principles of equity~~ apply to an electronic non-testamentary estate planning document; except as modified by this [article].

### Comment

This section ~~is didactic and~~ makes it clear that the act supplants, but does not negate, other state law requirements that must be satisfied to validate a non-testamentary estate planning document.

## Section 203. Use of Electronic Signature on Electronic Non-Testamentary Estate

### Planning Document

(a) This [article] does not require a non-testamentary estate planning document or signature on a non-testamentary estate planning document to be created, generated, sent,

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. According, “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

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

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

#### Comment

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

### Section 209. Certification of Paper Copy

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

#### Comment

#### Comment

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

### Section 210. Admissibility in Evidence

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

#### Comment

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

## [[Article] 3

## Uniform Electronic Wills Act]

**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.*

#### 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 . . .