

D R A F T
FOR DISCUSSION ONLY

Electronic Estate Planning Documents Act
[Proposed new name:
Electronic Estate Planning Document Execution Act]

Uniform Law Commission

March 21, 2022 Committee Meeting



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.

March 11, 2022

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>ABA Advisor</i>
John T. Rogers	California, <i>ABA 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

Electronic Estate Planning Documents Act

Table of Contents

Prefatory Note..... 1

General Provisions and Definitions

Section 101. Short Title 3

Article 2

Electronic Non-Testamentary Estate Planning Document Execution

Section 201. Definitions..... 3
Section 202. Scope..... 7
Section 203. Use of Electronic Signatures on Non-Testamentary Electronic Estate Planning Documents 8
Section 204. Construction and Application 8
Section 205. Legal Recognition of Non-Testamentary Electronic Estate Planning Documents and Electronic Signatures 9
Section 206. Attribution and Effect of Electronic Record and Electronic Signature 9
Section 207. Notarization and Acknowledgment 9
Section 208. Witnessing..... 10
Section 209. Retention of Electronic Records; Originals 10
Section 210. Certification of Paper Copy 11
Section 211. Admissibility in Evidence..... 11

[[Article 3]

Uniform Electronic Wills Act]

[Article] 4

Miscellaneous Provisions

Section 401. Uniformity of Application and Construction..... 11
Section 402. Relation to Electronic Signatures in Global and National Commerce Act..... 12
Section 403. Retroactive Application 12
[Section 404. Severability Clause]..... 12
[Section 405. Repeals; Conforming Amendments] 12
Section 406. Effective Date 13

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

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

5
6 Adoption of EEPDA will help the citizens of your state to enjoy the convenience and
7 cost-savings engendered by having estate planning documents in electronic form.

Electronic Estate Planning Documents Act

General Provisions and Definitions

Section 101. Short Title

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

Article 2

Electronic Non-Testamentary Estate Planning Document Execution

Section 201. Definitions

In this [article]:

(1) “Computer program” means a set of statements or instructions used directly or indirectly in an information processing system to bring about a certain result.

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

(3) “Electronic agent” means a computer program or an electronic or other automated means used independently to initiate an action or respond to an electronic record or performance in whole or in part, without review or action by an individual.

[(4) “Electronic presence” means the ability of two or more individuals in different locations to communicate in real time to the same extent as if the individuals were physically present in the same location.]

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

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

1 (7) “Governmental agency” means an executive, legislative, or judicial agency,
2 department, board, commission, authority, institution, or instrumentality of the federal
3 government or of a state or political subdivision of a state.

4 (8) “Information” means data, text, images, sounds, codes, computer programs,
5 software, databases, or the like.

6 (9) “Information processing system” means an electronic system used to create,
7 generate, send, receive, store, display, or process information.

8 (10) “Non-testamentary estate planning document” means:

9 (A) a record, other than a will, codicil, testamentary trust, or deed of real
10 property, that is readable as text at the time of signing, that governs:

11 (i) the disposition of property,

12 (ii) the inter vivos exercise or release of a power or authority over
13 property,

14 (iii) the designation, declination, or resignation of a trustee, agent,
15 or other fiduciary,

16 (iv) health care matters, or

17 (v) any other intervivos document intended to carry out an
18 individual’s intent regarding property, or regarding health care matters during life, while
19 incapacitated, or upon death; and

20 (B) a record that is readable as text at the time of signing and that creates,
21 exercises, modifies, or revokes a record under subparagraph (A).

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

1 entity.

2 (12) “Political subdivision of the state” includes a city, [county], district, and any
3 other local or regional governmental authority.

4 (13) “Power of attorney” means a record that grants authority to an agent to act in
5 the place of the principal, whether or not the term “power of attorney” is used in the record.

6 (14) “Record” means information:

7 (A) inscribed on a tangible medium; or

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

10 (15) “Security procedure” means a procedure employed for the purpose of
11 verifying that an electronic signature, record, or performance is that of a specific person or for
12 detecting a change or error in the information in an electronic record. The term includes a
13 procedure that requires the use of an algorithms or other code, identifying word or number,
14 encryption, or callback or other acknowledgment procedure.

15 (16) “Settlor” means a person, including a testator, who creates, or contributes
16 property to, a trust. If more than one person creates or contributes property to a trust, each person
17 is a settlor of the portion of the trust property attributable to that person’s contribution except to
18 the extent another person has the power to revoke or withdraw that portion.

19 (17) “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 (18) “State” means a state of the United States, the District of Columbia, Puerto
23 Rico, the United States Virgin Islands, or any other territory or possession subject to the

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

2 (19) “Terms of a trust” means:

3 (A) Except as otherwise provided in subparagraph (B), the manifestation
4 of the settlor’s intent regarding a trust’s provisions as expressed in the trust instrument; or

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

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

7 (ii) a court order[[]; or]

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

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

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

16 **Comments**

17 Paragraph 4. The definition of “electronic presence” should be included if the state enacts
18 optional subsection (b) of section 208 which authorizes remote witnessing.

19 Paragraph 6. The definition of “electronic signature” is designed to exclude
20 authentication via verbal or video methods.

21 Paragraph 17. The definition of “sign” is designed to exclude authentication via verbal or
22 video methods.

23 Paragraph 10. The definition of “non-testamentary estate planning document” is
24 capacious in nature to encompass a wide variety of documents relating to estate planning that do
25 not qualify as a will or codicil. The drafting committee opted against providing a detailed listing
26 of documents in fear that omission of a specific document would reflect a non-existent intent that
27 the specific document was excluded from the definition. Nonetheless, the drafting committee
28 decided it would be helpful to include the following non-exclusive list of documents in this

1 comment as examples:

- 2 • a trust instrument that is not part of the settlor’s will or codicil;
- 3 • the exercise of a trust power that under the terms of the trust requires a signed record;
- 4 • a certification of a trust;
- 5 • a power of attorney;
- 6 • an agent’s certification as to the validity of a power of attorney and the agent’s
- 7 authority;
- 8 • a power of appointment;
- 9 • an advance directive including a medical power of attorney, directive to physicians,
- 10 natural death statement, living will, and medical/physician order for life-sustaining
- 11 treatment;
- 12 • a document directing disposition of an individual’s body after death;
- 13 • a guardian or conservator designation for the signing individual;
- 14 • a guardian designation for a minor or disabled child that is not included in a will or
- 15 codicil;
- 16 • a mental health treatment declaration;
- 17 • a community property survivorship agreements; and
- 18 • a designation on a contractual arrangement or evidence of title to real or personal
- 19 property providing for payment or transfer on death other than a deed of real
- 20 property.

21 **Section 202. Scope**

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

25 (b) This article does not apply to the extent a non-testamentary estate planning document
26 expressly precludes use of an electronic record or electronic signature.

27 (c) This article does not apply to a non-testamentary estate planning document to the
28 extent the document is governed by:

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

30 (2) [Article 3 of this act] [cite to law governing the creation and execution of a
31 will, codicil, or testamentary trust] [cite to Uniform Electronic Transaction Act]; or

32 (3) [cite other laws identified by state].

33 (d) The law of this state applicable to a non-testamentary estate planning document and

1 principles of equity apply to an electronic estate planning document, except as modified by this
2 article.

3 **Section 203. Use of Electronic Signatures on Non-Testamentary Electronic Estate**
4 **Planning Documents**

5 (a) This [article] does not require a non-testamentary estate planning document or
6 signature on a non-testamentary estate planning document to be created, generated, sent,
7 communicated, received, stored, or otherwise processed or used by electronic means or in
8 electronic form.

9 (b) This [article] applies to a non-testamentary estate planning document only if the
10 person creating or signing the document has agreed to have the document in electronic form or
11 signed electronically. Whether a person agreed to have a non-testamentary estate planning
12 document in electronic form or signed electronically is determined from the context and
13 surrounding circumstances, including the person's conduct.

14 (c) A person who agrees to have a non-testamentary estate planning document in
15 electronic form or signed electronically may refuse to create or sign other estate planning
16 documents by electronic means. A person may not waive the right granted by this subsection.

17 (d) Whether an electronic record or electronic signature has legal consequences is
18 determined by this [act] and other applicable law.

19 **Section 204. Construction and Application**

20 This article must be construed and applied:

21 (1) to facilitate electronic non-testamentary estate planning documents and
22 signatures consistent with other applicable law; and

23 (2) to be consistent with reasonable practices concerning electronic documents

1 and signatures and with the continued expansion of those practices.

2 **Section 205. Legal Recognition of Non-Testamentary Electronic Estate Planning**

3 **Documents and Electronic Signatures**

4 (a) A non-testamentary estate planning document or a signature thereon may not be
5 denied legal effect or enforceability solely because it is in electronic form.

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

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

10 **Section 206. Attribution and Effect of Electronic Record and Electronic Signature**

11 (a) A non-testamentary electronic estate planning document or electronic signature is
12 attributable to a person if it was the act of the person. The act of the person may be shown in any
13 manner, including a showing of the efficacy of any security procedure applied to determine the
14 person to which the electronic record or electronic signature was attributable.

15 (b) The effect of a non-testamentary electronic estate planning document or electronic
16 signature attributed to a person under subsection (a) is determined from the context and
17 surrounding circumstances at the time of its creation, execution, or adoption, and otherwise as
18 provided by law.

19 **Section 207. Notarization and Acknowledgment**

20 If a law of this state requires a signature or record to be notarized, acknowledged,
21 verified, or made under oath, the requirement is satisfied if the electronic signature of the
22 individual authorized to perform those acts, together with all other information required to be
23 included by other applicable law, is attached to or logically associated with the signature or

1 record.

2 **Comment**

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

7
8 **Section 208. Witnessing**

9 [(a)] If a law of this state requires that a non-testamentary estate planning document be
10 signed or attested by another individual, the signature of that individual may be electronic.

11 [(b)] If a law of this state requires that a non-testamentary estate planning document be
12 signed or attested by another individual in the physical presence of another individual, the
13 physical presence requirement is satisfied if the individuals are in each other’s electronic
14 presence.

15 **Comment**

16 Optional subsection (b) provides the adopting state the opportunity to authorize electronic
17 presence (remote) witnessing. If a state has enacted UEWA, the state should consider making the
18 “presence” rules the same for non-testamentary as for testamentary documents.

19
20 **Section 209. Retention of Electronic Records; Originals**

21 (a) If a law requires that an electronic non-testamentary estate planning document be
22 retained, transmitted, copied, or filed, the requirement is satisfied by retaining, transmitting,
23 copying, or filing an electronic record of the information in the record that:

24 (1) accurately reflects the information in the document after it was first generated
25 in its final form as an electronic record or otherwise; and

26 (2) remains accessible for later reference.

27 (b) A law which requires the retention of a non-testamentary electronic estate planning
28 document under subsection (a) does not apply to an electronic recital of information the sole

1 purpose of which is to enable the record to be sent, communicated, or received.

2 (c) A person may satisfy subsection (a) by using the services of another person to satisfy
3 the requirements of that subsection.

4 (d) If a law requires an estate planning document to be presented or retained in its
5 original form, or provides consequences if the record is not presented or retained in its original
6 form, an electronic record retained in accordance with subsection (a) satisfies the requirement.

7 (e) This section does not preclude a governmental agency from specifying additional
8 requirements for the retention of a record subject to the agency's jurisdiction.

9 **Section 210. Certification of Paper Copy**

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

13 **Section 211. Admissibility in Evidence**

14 In a proceeding, evidence of a record or signature may not be excluded solely because it
15 is in electronic form.

16 **[[Article 3]**

17 **Uniform Electronic Wills Act]**

18 *Legislative Note: A state interested in expanding electronic creation and execution of*
19 *testamentary documents, that is, wills, testamentary trusts, and codicils, should include the*
20 *Uniform Electronic Wills Act or its own similar statute at this point in the act and delete the*
21 *following sections _____ which duplicate those in Article 4 of this Act.*

22
23 **[Article] 4**

24 **Miscellaneous Provisions**

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

26 In applying and construing this uniform act, a court should consider the uniformity of the

1 law among jurisdictions.

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

3 **Act**

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

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

13

14 **Section 403. Retroactive Application**

15 This [act] applies to an electronic non-testamentary estate planning document or an
16 electronic will created, signed, generated, sent, communicated, received, or stored before, on, or
17 after the effective date of this [act].

18 **[Section 404. Severability Clause]**

19 [If any provision of this [act] or its application to any person or circumstance is held
20 invalid, the invalidity does not affect another provision or application that can be given effect
21 without the invalid provision.]

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

24 **[Section 405. Repeals; Conforming Amendments]**

25 ([a]. . .

26 (b). . .]

27 ***Legislative Note:** A state should examine its statutes to determine whether conforming*
28 *revisions are required by provisions of this act relating to the execution of testamentary and non-*

1 *testamentary estate planning documents.*

2 **Section 406. Effective Date**

3 This [act] takes effect