

# THE WILD WEST OF DIGITAL ESTATE PLANNING: WHY CLARITY IS REQUIRED TO CLEAR UP UNCERTAINTY SURROUNDING DIGITAL NON-TESTAMENTARY DOCUMENTATION

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## ABSTRACT

*As the integration of technology into our lives continues to accelerate, the prevalence of electronic documents and signatures has become the status quo for many of the most important documents. However, for most states, including Texas, the validity of electronic estate planning documents has been shrouded in uncertainty. Presently, state and federal laws governing electronic documents cover transactions, which are actions between two or more persons, relating to business, government, and commercial affairs. Thus, attorneys have been skeptical that unilateral estate planning documents would not be covered. During the COVID-19 pandemic, these concerns were brought to the forefront as states were forced to implement electronic estate planning temporarily. Unfortunately, amending statutes at the state level to encompass unilateral actions is not feasible, therefore a new statute is required.*

*This Comment advocates that Texas should adopt the Uniform Electronic Estate Planning Documents Act (UEEPDA), which will validate electronic documents and signatures for non-testamentary estate planning documents. This will make the process of creating an estate plan significantly more efficient, particularly for those who struggle to reach their attorney's office due to medical or geographic constraints. Further, it will provide access to modern technologies such as cloud storage for document protection.*

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ABSTRACT .....	349
I. INTRODUCTION .....	351
II. BACKGROUND.....	354
A. <i>The Round Up: A Brief History of Estate Planning Documents</i> .....	355
1. <i>Estate Planning Documents and Formalities</i> .....	355
2. <i>This Ain't Our First Rodeo: Early Digital Signature Legislation (UETA) and (E-Sign)</i> .....	356
3. <i>Ahead of the Pack: Uniform Electronic Wills Act (UEWA)</i> .....	358
4. <i>Uniform Electronic Estate Planning Documents Act (UEEPDA)</i> .....	359
B. <i>There's a New Sheriff in Town: UEEPDA Analysis</i> .....	360
1. <i>What the UEEPDA Covers</i> .....	360
2. <i>What the UEEPDA Does Not Cover</i> .....	361
III. DON'T LOOK A GIFT HORSE IN THE MOUTH: THE UEEPDA WORKS BEST FOR OUR CURRENT SYSTEM.....	362
A. <i>Not Feasible to Change UETA to Apply to Unilateral Documents</i> .....	362
B. <i>Amending UETA Results in a Lack of Uniformity Amongst States</i> .....	363
C. <i>Fear of Loss of Interface with Federal E-Sign Laws</i> .....	363
D. <i>If Law Makers Wanted to Apply a Different Digital Signature Model It Should Be Applied at the Federal Level First</i> .....	363
IV. GIDDY UP! IT'S TIME FOR TEXAS TO TAKE THE REINS AND ADOPT THE UEEPDA .....	365
A. <i>The Right Trail Ain't Always the Easiest Ride</i> .....	365
1. <i>Loosen Up on the Reigns: The Flexible Approach of the UEEPDA Is a Substantial Attribute and Should be Favored Over More Constrictive Legislation</i> .....	366
2. <i>Optional Sections of the UEEPDA</i> .....	367
B. <i>Safety</i> .....	370
V. DON'T SADDLE UP UNLESS YOU'RE READY TO RIDE: POLICY AND PRACTICE.....	373
A. <i>Supporting Attorneys and Principals to Utilize Digital Estate Planning</i> .....	373
B. <i>The UEEPDA Simplifies the Process and Increases Access</i> .....	374
C. <i>Hold Your Horses? How Fast Is Too Fast?</i> .....	375
D. <i>Destruction of a Digital Document</i> .....	376
VI. RIDING OFF INTO THE SUNSET: CONCLUSION .....	376

## I. INTRODUCTION

The digital age has vastly transformed how documents are executed.<sup>1</sup> Documents for taxes, banking, education, health care, and many other areas can now be completed and returned electronically.<sup>2</sup> However, this was not the first drastic change to how we executed important documents.<sup>3</sup> Contracts were once recorded in stone, eventually replaced by paper.<sup>4</sup> The end of the Middle Ages saw the transition from wax seals to ink signatures.<sup>5</sup> These changes are reflected in some of the most important written documents.<sup>6</sup> The Code of Hammurabi was written in stone, the Magna Carta was signed with a wax seal, and the Declaration of Independence was signed in ink with the famous “John Hancock.”<sup>7</sup> Today, the digital age has ushered in an era of electronic documents and signatures.<sup>8</sup> This has become the new normal for most businesses, lawyers, and individuals alike.<sup>9</sup>

However, it seems that estate planning—the practice containing some of the most important documents an individual will create—remains one of the few legal spheres still resisting this change.<sup>10</sup> Traditionally, estate planning documents have required a “wet signature,” signed in ink on the piece of paper.<sup>11</sup> With the explosion of the internet’s prevalence, laws have been created to address the execution of digital transactions, but, as this Comment explains, these laws do not cover estate planning documents.<sup>12</sup>

Despite its vital role, creating an estate plan is a decision most people put off.<sup>13</sup> Studies show that a majority of Americans do not have an estate plan.<sup>14</sup> This may have to do with accessibility, as well as a mindset problem in which people believe estate planning is only for the wealthy or that they can push it off until the future.<sup>15</sup> Those in favor of electronic estate planning hope that easier access through everyday technologies will increase access to

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1. Tyler Biscontini, *Information Age (Digital Age)*, EBSCO, <https://www.ebsco.com/research-starters/information-technology/information-age-digital-age> [https://perma.cc/4P82-TFTL] (last visited Mar. 19 2026).

2. Gil Press, *A Very Short History of Digitization*, FORBES (Jan. 10, 2016), <https://www.forbes.com/sites/gilpress/2015/12/27/a-very-short-history-of-digitization/> [https://perma.cc/3EWZ-2YQS].

3. See M. Castillo, *The Evolution of the Page*, 33 AM. J. NEURORADIOLOGY 1199, 1199 (2012).

4. See *id.*

5. Sam Crook, *The Evolution of Signatures: From Wax Seals to eSignatures*, SIGNINGHUB (Dec. 11, 2015), <https://blog.signinghub.com/the-evolution-of-the-signature-from-wax-seal-to-e-signature> [https://perma.cc/XC6T-CHLW].

6. See *id.*

7. *Id.*; see also Castillo, *supra* note 3, at 1199.

8. See discussion *infra* Part II.

9. See discussion *infra* Part II.

10. See discussion *infra* Part II.

11. See discussion *infra* Part II.

12. See discussion *infra* Part II.

13. Maya Powers, *Barriers—Why Don’t People Have an Estate Plan?*, TR. & WILL (Mar. 20, 2026), <https://trustandwill.com/learn/2025-report-estate-planning-barriers> [https://perma.cc/E5BB-TMN9].

14. See discussion *infra* Section V.B.

15. Powers, *supra* note 13.

this area of the law.<sup>16</sup> For those who live far from an attorney or have a medical condition that may make the trip difficult, the benefit may be the ability to meet with an attorney via Zoom to draft and sign the document.<sup>17</sup> Others may not have the time or resources to afford an attorney.<sup>18</sup> Similar to traditional estate planning documents, the electronic alternative does not require an attorney.<sup>19</sup> However, under the current system, most people are probably not aware that an electronic estate plan is not valid.<sup>20</sup> Their first inclination, if they wanted to write their own estate plan, is likely to use a computer, but, as this Comment will articulate, that approach would be costly, as electronic estate plans are not currently valid in Texas.<sup>21</sup>

When people think of an estate plan, they most commonly think of creating a will and planning for the disposition of their assets after they pass away.<sup>22</sup> However, there are many other important estate planning documents.<sup>23</sup> A guardian designation form allows parents to designate a trusted individual to become the guardian for their minor child in the event of their death.<sup>24</sup> For someone losing their mental faculties, the form can also be used to designate preference for who their guardian will be should the need arise.<sup>25</sup> There are many other types of non-testamentary estate planning documents, but these examples highlight a few examples applicable to many Texans.<sup>26</sup>

Another example is the durable power of attorney document.<sup>27</sup> Here, the principal grants a trusted individual the authority to act on behalf of the principal's business or financial matters if the principal becomes incapacitated, incompetent, or otherwise unable to do so.<sup>28</sup> Imagine a small business owner, Norma, who does not have a durable power of attorney and suddenly becomes incapacitated.<sup>29</sup> Her husband, Charlie, will not be able to pay employees from the business's bank account, negotiate new contracts, or manage business affairs on his wife's behalf.<sup>30</sup> Each of these examples would benefit from a carefully thought-out estate plan, completed well in advance

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16. *Id.*

17. *See* discussion *infra* Part IV.

18. *See* discussion *infra* Part IV.

19. *See* discussion *infra* Part II.

20. *See* Suzanne Brown Walsh & Turney P. Berry, *Electronic Wills Have Arrived*, TR. & EST. 12, 12 (Feb. 2020).

21. *Id.*

22. Bradley Campbell, *What Should Be in a Texas Estate Plan Besides a Will?*, CAMPBELL L. FIRM, PC (Oct. 1, 2025), <https://clfpc.com/what-should-be-in-a-texas-estate-plan-besides-a-will/> [<https://perma.cc/9RMH-XU4H>].

23. *Id.*

24. TEX. EST. CODE ANN. § 1104.053.

25. *Id.* at § 1104.201–.212.

26. Campbell, *supra* note 22.

27. *Id.*

28. TEX. EST. CODE ANN. § 252.051.

29. Author's original thought.

30. *Id.*

of its necessity, but that is not always the case.<sup>31</sup> Imagine Norma, the small business owner, goes to the hospital and realizes a nagging ailment is more serious than she realized.<sup>32</sup> She will have to be operated on shortly, but wishes to create a durable power of attorney to grant her husband, Charlie, certain authority, just in case.<sup>33</sup> Norma lives in Chicago, Illinois, a state that allows electronic estate planning.<sup>34</sup> Norma could contact her attorney from the hospital, set up a Zoom, and draft a power of attorney document.<sup>35</sup> Her attorney could then email it to her, when she and at least one witness could sign the document via her iPad.<sup>36</sup> If Norma lived in Texas, she would not have been able to take advantage of the same convenience.<sup>37</sup>

There is a plethora of writings about electronic will legislation.<sup>38</sup> In fact, much of this Comment analogizes prior discussions regarding electronic wills, as much has been written about the effects of digitizing testamentary documents rather than non-testamentary documents.<sup>39</sup> However, there is significantly less writing about electronic non-testamentary estate planning documents and the Uniform Electronic Estate Planning Documents Act (UEEPDA).<sup>40</sup>

Part II delves into the internet's initial effect as a catalyst for change and how estate planning documents are affected.<sup>41</sup> First, Part II analyzes the laws governing digital transactions and the evolution of attorneys' understanding that these laws did not cover estate planning documents because of their unilateral nature.<sup>42</sup> Part II then highlights the UEEPDA, a statute that aims to validate the execution of electronic non-testamentary estate planning documents, by explaining what it does and does not cover.<sup>43</sup>

Part III addresses why the problem cannot be solved by simply amending the Uniform Electronic Transactions Act (UETA) to cover unilateral actions.<sup>44</sup> Part III begins by arguing that amending the UETA to include unilateral documents would cause it to fall out of alignment with the

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31. See Campbell, *supra* note 22.

32. Author's original thought.

33. *Id.*

34. *Id.*; see also discussion *infra* Section II.A.4.

35. Author's original thought.

36. *Id.*; see Kwabena Sarfo Adjei, *Executing a Power of Attorney in Illinois*, U. OF ILL. SYS., (May 16, 2024), [https://blogs.uofi.uillinois.edu/view/7550/1444535330#:~:text=The%20ILPOAA%20defines%20an%20agent%20as:%20\\*,notary%20public%20for%20a%20POA%20for%20property](https://blogs.uofi.uillinois.edu/view/7550/1444535330#:~:text=The%20ILPOAA%20defines%20an%20agent%20as:%20*,notary%20public%20for%20a%20POA%20for%20property) [https://perma.cc/HXJ3-Z4CS] (stating that Illinois requires "at least one witness").

37. Author's original thought.

38. Margaret Isabel Hall et al., *Purser, Risks, Benefits, Opportunities, and Electronic Formalities in the Law of Wills: A Comparative Approach*, 70 MCGILL L. J. 139, 145–46 (2024).

39. *Id.*

40. See discussion *infra* Part III.

41. See discussion *infra* Part II.

42. See discussion *infra* Part II.

43. See discussion *infra* Part II.

44. See discussion *infra* Part III.

federal e-sign law.<sup>45</sup> This would likely result in federal e-sign law preempting the change to the UETA, making it irrelevant.<sup>46</sup> Part III then argues that amending the UETA could also lead to a lack of uniformity among states, thereby losing one of the UETA's greatest strengths.<sup>47</sup> Lastly, Part III concedes that as technology changes, these statutes may need to be altered, but asserts that if so, then the changes should first be made to the federal e-sign and then reflected in the UETA at the state level to maintain consistency.<sup>48</sup>

Part IV argues that the UEEPDA is the best option for validating the execution of electronic non-testamentary estate planning documents.<sup>49</sup> First, Part IV explains why the UEEPDA's flexibility regarding which electronic document type is used and how that document is signed is preferable to a more stringent approach.<sup>50</sup> Then, Part IV addresses the safety of electronic non-testamentary documents and why concerns are likely overstated.<sup>51</sup>

Part V considers how this change will affect practitioners and potential public policy ramifications.<sup>52</sup>

## II. BACKGROUND

Non-testamentary estate planning documents have been used for thousands of years to protect the principal's assets should unforeseen incapacity arise.<sup>53</sup> While most areas of the law have modernized to include electronic documents, the field of estate planning has dragged its feet.<sup>54</sup> However, this trend has recently begun to change.<sup>55</sup> Subsection A outlines the evolution of legal documents' adaptation to technology and why those changes have been deemed not to cover electronic estate planning documents.<sup>56</sup> Subsection B covers the UEEPDA, a uniform statute for electronic estate planning documents, detailing what the statute covers and what it does not.<sup>57</sup>

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45. See discussion *infra* Part III.

46. See discussion *infra* Part III.

47. See discussion *infra* Part III.

48. See discussion *infra* Part III.

49. See discussion *infra* Part IV.

50. See discussion *infra* Part IV.

51. See discussion *infra* Part IV.

52. See discussion *infra* Part V.

53. See discussion *supra* Part I.

54. See discussion *infra* Part II.

55. See discussion *infra* Part II.

56. See discussion *infra* Section II.A.

57. See discussion *infra* Section II.B.

*A. The Round Up: A Brief History of Estate Planning Documents*

*1. Estate Planning Documents and Formalities*<sup>58</sup>

Non-testamentary estate planning documents are used to transfer or protect property, excluding wills and the probate process.<sup>59</sup> They generally take effect immediately rather than after someone dies.<sup>60</sup> Some common document types are trust documents, powers of attorney, and health care directives.<sup>61</sup>

Non-testamentary estate planning documents have a variety of legal formalities, such as witnesses, signatures, notaries, etc., which vary depending on the document type.<sup>62</sup> For example, a power of attorney requires that the document be either notarized or signed by two competent adult witnesses.<sup>63</sup> Meanwhile, trusts don't require notarization or witnesses being present, however notarization is recommended.<sup>64</sup>

These formalities play an important role in protecting the parties involved and complying with legal standards.<sup>65</sup> The formalities that correspond with the document have an evidentiary purpose, helping courts discern the party's intent.<sup>66</sup> For example, a witness can help confirm the principal's mental capacity and reduce the likelihood of coercion.<sup>67</sup> Similarly, a notary can authenticate a signature, thereby reducing the likelihood of forgery.<sup>68</sup> These formalities also serve as a cautionary or ritual function, emphasizing the seriousness of the document.<sup>69</sup> While non-testamentary

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58. *Estate Planning in the Modern Age: Documents, Execution Poised to Go Electronic*, KEY WEALTH INST., <https://www.key.com/wealth/our-insights/articles/welcome-to-digital-age.html> [https://perma.cc/6E35-39PL] (last visited Mar. 19 2026).

59. UNIF. ELEC. EST. PLAN. DOCUMENTS ACT § 102(5) (UNIF. L. COMM'N 2022).

60. *Estate Planning Basics*, TEX. WILL ATT'Y, <https://texaswillattorney.com/estate-planning-basics/> [https://perma.cc/XF3Q-4JCG] (last visited Mar. 19 2026).

61. UNIF. ELEC. EST. PLAN. DOCUMENTS ACT § 102(5) (UNIF. L. COMM'N 2022).

62. *How to Execute Estate Planning Documents in Texas*, BRADLEY L. FIRM, <https://www.bradleylawyers.com/how-to-execute-a-will-in-texas> [https://perma.cc/UX8T-DJPX] (last visited Mar. 19, 2026).

63. *Id.*

64. *Id.*

65. *Good Intentions, Bad Drafting: Powers of Attorney and the Trust That Wasn't*, KREIG, <https://san-antonio-probate.com/navigating-joint-power-of-attorney-in-texas-probate-law/> [https://perma.cc/GK6W-U44J] (last visited Mar. 19, 2026) (discussing *Hardy v. Robinson*, 170 S.W.3d 777 (Tex. App.—Waco 2005)).

66. *Id.* (intent to create a trust is different than intent to authorize the future creation of a trust through powers granted via power of attorney).

67. Gratia P. Schoemakers, *The Crucial Role of Witnesses in Validating a Texas Will*, GP SCHOEMAKERS, PLLC (Feb. 24, 2025), <https://gpschoemakers.com/the-crucial-role-of-witnesses-in-validating-a-texas-will/> [https://perma.cc/X3YJ-MFAU].

68. *See, e.g., Dauz v. Valdez*, 571 S.W.3d 795, 810 (Tex. App.—Houston [1st Dist.] 2018, no pet.) (stating that the requirement that a notary not notarize a document when the principal is not present is important “to prevent false or fraudulent use of documents”).

69. Hall et. al, *supra* note 38, at 148–49.

documents may serve different purposes, each one results in legal consequences that should not be taken lightly.<sup>70</sup>

Despite these differences, the signature remains a key component in each non-testamentary estate planning document.<sup>71</sup> Historically, there was no need to consider alternatives to the wet signature for transactions.<sup>72</sup> However, the rapid introduction of technology significantly changed how documents were executed, forcing lawmakers to confront this new frontier.<sup>73</sup>

## 2. *This Ain't Our First Rodeo: Early Digital Signature Legislation (UETA) and (E-Sign)*

In the late 1990s, with the explosion of the internet, lawmakers faced the challenge of how to “govern[] the validity of electronically signed documents and electronically signed transactions.”<sup>74</sup> In 2000, Congress enacted the Federal Electronic Signatures in Global and National Commerce Act (E-SIGN).<sup>75</sup> The act did not replace existing contract law, but determined that a transaction could not be deemed invalid simply because it involved a digital contract or a digital signature.<sup>76</sup> Additionally, forty-nine of the fifty states have enacted the UETA at the state level, with New York adopting a similar alternative.<sup>77</sup>

E-SIGN establishes a baseline across the United States, establishing the standard for digital documents.<sup>78</sup> If a state does not adopt the UETA, or another alternative statute consistent with E-SIGN, then E-SIGN will govern

70. See *Good Intentions, Bad Drafting: Powers of Attorney and the Trust That Wasn't*, *supra* note 65.

71. See *17.0 Estate Planning & Wills*, STATE BAR OF TEX., 1, 4 [https://www.texasbar.com/AM/Template.cfm?Section=Disaster\\_Resources\\_for\\_Attorneys&Template=/CM/ContentDisplay.cfm&ContentID=65342](https://www.texasbar.com/AM/Template.cfm?Section=Disaster_Resources_for_Attorneys&Template=/CM/ContentDisplay.cfm&ContentID=65342) [<https://perma.cc/AJK2-5L3P>] (last visited Mar. 19, 2026); see also, Hall et. al., *supra* note 38, at 152–53 (“The hand-drawn, wet signature has always been accorded a special significance in law, with each person’s signature generally treated as a unique, distinctively authoritative and forensically provable proof of identity similar to a fingerprint.”).

72. *What Is a Wet Signature? Is It Still Relevant?*, IRONCLAD (Aug. 17, 2023), <https://ironcladapp.com/journal/contract-management/what-is-a-wet-signature> [<https://perma.cc/Y82H-4CVQ>].

73. *Id.*

74. John G. Browning, *No Ink, No Problems?*, STATE BAR OF TEX., <https://www.texasbar.com/AM/Template.cfm?Section=articles&Template=/CM/HTMLDisplay.cfm&ContentID=38641> [<https://perma.cc/59F7-FTX9>] (last visited Mar. 19, 2026).

75. See 15 U.S.C. §§ 7001–7031 (2000).

76. William D. Pargaman, “*Signing*” *Without Signing What Estate Planners Should Know About the Federal E-Sign Act and The Texas Uniform Electronic Transactions Act*, 28TH ANNUAL EST. PLAN & PROB. DRAFTING COURSE (Oct. 26–27th, 2017 Houston, Texas).

77. *Electronic Signature Law: ESIGN and UETA*, IRONCLAD (Dec. 13, 2021) <https://ironcladapp.com/journal/contract-management/electronic-signature-law> [<https://perma.cc/BV3K-KAW3>]; see also TEX. BUS. & COM. CODE § 322.

78. Alan D. Wingfield & Michael L. Huggins, *Avoid Pitfalls in Electronic Delivery of Documents with an E-SIGN Compliance Strategy*, ABA, 1, 3 (Mar. 21, 2019) <https://www.consumerfinancialserviceslawmonitor.com/wp-content/uploads/sites/501/2019/05/Avoid-Pitfalls-in-Electronic-Delivery-of-Documents-with-an-E-SIGN-Compliance-Strategy.pdf> [<https://perma.cc/7QMT-5KV9>].

digital signatures in that state.<sup>79</sup> If a state chooses to adopt the UETA, or an alternative statute that aligns with E-SIGN, then E-SIGN does not preempt those rules.<sup>80</sup> However, if a state chooses to make alterations that make the statute inconsistent with E-SIGN, then E-SIGN preempts to the extent that the statute is different.<sup>81</sup> This was due to the fact that individual states made changes to the UETA in their state, which made e-business confusing from one state to another.<sup>82</sup> The result “is that every jurisdiction in the United States has substantially the same rules for the use of electronic signatures.”<sup>83</sup>

Similar to E-SIGN, the UETA applies to “transactions,” which it defines as: “an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs.”<sup>84</sup> Additionally, a transaction must include interaction between two or more persons. Consequently, to the extent that the execution of a will, trust, a health care power of attorney, or similar health care designation does not involve another person and is a unilateral act, it would not be covered by the UETA because it does not occur as a part of a transaction as defined in the UETA.<sup>85</sup>

Regarding scope, the UETA 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 the UETA. Unilaterally generated electronic records and signatures that are not part of a transaction also are not covered by the UETA.<sup>86</sup>

The UETA does not require the use of electronic documents or signatures, but instead “applies only to transactions between parties each of which has agreed to conduct transactions by electronic means.”<sup>87</sup>

While the UETA does not explicitly prohibit the digital signing of estate planning documents, it does not include them within its scope; it mentions

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79. *Comment Concerning Use of Electronic Signatures and Third-Party Opinion Letters*, AM. BAR ASSOC. (Apr. 7, 2020), [https://www.americanbar.org/groups/business\\_law/resources/business-law-today/2020-april-comment-concerning-use-of-electronic-signatures/](https://www.americanbar.org/groups/business_law/resources/business-law-today/2020-april-comment-concerning-use-of-electronic-signatures/) [<https://perma.cc/Z9ZM-9PV6>].

80. *Id.*

81. *Id.*

82. Renard Francois, *Fair Warning: Preemption and Navigating the Bermuda Triangle of E-SIGN, UETA, and State Digital Signature Laws*, 19 J. MARSHALL J. OF COMPUTER AND INFO LAW, 401, 423 (2001).

83. *Comment Concerning Use of Electronic Signatures and Third-Party Opinion Letters*, *supra* note 79.

84. UNIF. ELEC. TRANSACTIONS ACT § 2–2.16 (UNIF. L. COMM’N 1999).

85. *Id.* at § 12 cmt. 4.

86. *Id.* at § 3 cmt. 1.

87. TEX. BUS. & COM. CODE § 322.005(b); *see also* Andrew C. Karter, *Born Under a Bad Sign: Avoiding Electronic Signature Blues*, AKERMAN (Sept. 13, 2022), <https://www.akerman.com/en/perspectives/hr-def-born-under-a-bad-sign-avoiding-electronic-signature-blues.html> [<https://perma.cc/JSZ3-RFGK>] (quoting the UETA, “the ‘critical element is the intent of a party to conduct a transaction electronically.’”).

only business transactions.<sup>88</sup> This led to uncertainty among attorneys about whether electronically signed estate planning documents would be valid.<sup>89</sup>

Several courts have validated attorneys' skepticism.<sup>90</sup> For example, *In re Estate of Kittler*, the court found that a will signed digitally did not qualify as a valid will as it was lacking a valid signature.<sup>91</sup> The decedent, located in a nursing home, was diagnosed with cancer during the COVID-19 pandemic.<sup>92</sup> She contacted an attorney, and together they virtually drafted a will.<sup>93</sup> She ultimately signed through DocVerify, which uses an "independent verification process to confirm the signer's identity, including the signer's address and social security number."<sup>94</sup> However, the court said that Pennsylvania's equivalent to the UETA (PETA) did not apply because it governed transactions and not wills.<sup>95</sup>

Further, in *Trotter v. Trotter Van Dyck*, the court rejected the argument that amending the trust constituted a transaction.<sup>96</sup> The court cited the Uniform Law Commission (ULC), agreeing that transactions as defined by the UETA do not cover unilateral actions.<sup>97</sup> Thus, "[t]he mere delivery of such an amendment to the trustee (herself) would not constitute a 'transaction between parties' within the meaning of the UETA."<sup>98</sup> In California, the court ruled similarly when the appellant argued that the email constituted a signature (the amendment here was unsigned) and the trust amendment in the email sufficed as a transaction.<sup>99</sup> While these examples are both testamentary documents, the same logic applies to non-testamentary documents that are also unilateral actions.<sup>100</sup>

### 3. Ahead of the Pack: Uniform Electronic Wills Act (UEWA)

The Uniform Electronic Wills Act (UEWA) was enacted in 2019 by the ULC to address concerns about the validity of digital testamentary

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88. UNIF. ELEC. EST. PLAN. DOCUMENTS ACT Prefatory Note (UNIF. L. COMM'N 2022) (citing to the UETA).

89. *Id.*

90. See *In re Est. of Kittler*, 303 A.3d 463, 468–70 (Pa. Super. 2023).

91. *Id.* at 464–66.

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.* at 468–70.

96. *Trotter v. Trotter Van Dyck*, 103 Cal. App. 5th 126, 132–35 (2024).

97. *Id.*

98. *Id.*

99. See Sean McKissick, *Didn't Stick the Landing: Despite Legal Artistry, You Still Can't Amend a Trust with an Electronic Signature*, JDSUPRA (July 19, 2024) <https://www.jdsupra.com/legalnews/didnt-stick-the-landing-despite-legal-4493303/> [<https://perma.cc/Z3E7-YKRU>] (finding that unilateral actions are not covered by the UETA).

100. UNIF. ELEC. EST. PLAN. DOCUMENTS ACT Prefatory Note (UNIF. L. COMM'N 2022) (citing to the UETA).

documents.<sup>101</sup> As of 2024, thirteen states have enacted the UEWA, while several other states have adopted their own electronic will legislation.<sup>102</sup>

The UEWA allowed testators to execute an electronic will, providing instructions for those who wish to make and execute an electronic will.<sup>103</sup>

Despite several states adopting electronic will legislation, attorneys have been wary about advising their clients to pursue this option.<sup>104</sup> Electronic wills present additional challenges that are not a concern for non-testamentary estate planning documents.<sup>105</sup> “A settlor of an inter vivos trust is in a much better position to ensure that his intentions are carried out than a testator who is not available to dispel any ambiguities in the will admitted to probate.”<sup>106</sup> However, the formalities used are similar, making electronic wills an apt comparison.<sup>107</sup> While electronic will legislation got the ball rolling on tackling this problem for testamentary documents, it did not clear up the ambiguity surrounding digital non-testamentary documents.<sup>108</sup>

#### 4. Uniform Electronic Estate Planning Documents Act (UEEPDA)

The ULC created the Uniform Electronic Estate Planning Documents Act (UEEPDA) in 2022, filling the gap left by the UETA, allowing for non-testamentary documents to be executed in digital form.<sup>109</sup> This act has been enacted in Oklahoma, Illinois, Colorado, Missouri, North Dakota, and Washington, and is pending in several others.<sup>110</sup> Texas Senator Tan Parker proposed an act in 2023 that mirrored the UEEPDA and UEWA, but it ultimately died in committee.<sup>111</sup>

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101. Sharon L. Klein & John M. Mirkin, *The State of the States: 2024*, TR. & EST. WEALTH MGMT. J. (Jan. 2025) 1, 5.

102. *Id.*; see also *Electronic Wills Act*, UNIF. L. COMM’N, <https://www.uniformlaws.org/committees/community-home?CommunityKey=a0a16f19-97a8-4f86-afc1-b1c0e051fc71> [https://perma.cc/R3N8-4RMT] (last visited Mar. 19, 2026).

103. Susan N. Gary, *The Electronic Wills Act: Facing the Inevitable*, AM. BAR ASSOC. (2020) 305, 308–09.

104. Gerry Beyer & Claire Hargrove, *Digital Wills: Has the Time Come for Wills to Join the Digital Revolution?* 33 OHIO N. U. L. REV. 865, 899 (2007).

105. *Id.* at 897.

106. *Id.*

107. *Id.* (stating that “[t]he only important element of a trust that differs in an electronic format from a written format is that the testator must affix an electronic signature to the document”).

108. UNIF. ELEC. EST. PLAN. DOCUMENTS ACT Prefatory Note (UNIF. L. COMM’N 2022) (citing to the UETA).

109. *Id.*

110. Tex. S.B. 468, 88<sup>th</sup> Leg., R.S. (2023); S.B. 468, 59<sup>th</sup> Leg. Reg. Sess. (Okla. 2023); HB24-1248, 74<sup>th</sup> Gen. Assemb., Reg. Sess. (Colo. 2023); HB 754, 103<sup>d</sup> Gen. Assemb., Reg. Sess. (Mo. 2025); SB 2127, 68<sup>th</sup> Legis. Assemb. (N.D. 2023); SB 5787, 68<sup>th</sup> Leg., Reg. Sess. (Wash. 2023); UNIF. ELEC. EST. PLAN. DOCUMENTS ACT (UNIF. L. COMM’N 2022).

111. Tex. S.B. 1779 88<sup>th</sup> Leg. R. S. (2023).

*B. There's a New Sheriff in Town: UEEPDA Analysis*

*1. What the UEEPDA Covers*

The UEEPDA seeks to validate the electronic execution of non-testamentary estate planning documents.<sup>112</sup> The act defines non-testamentary documents as “a record relating to estate planning that is readable as text at the time of signing and is not a will or contained in a will.”<sup>113</sup> The phrase “readable as text” is important because, at the moment, the UEEPDA does not allow for documents to be in audio or video form, unless states have separate legislation allowing it.<sup>114</sup>

The UEEPDA includes the following non-testamentary document types:

- (i) a trust instrument;
- (ii) a trust power that under the terms of the trust requires a signed record;
- (iii) a certification of a trust under Property Code Sec. 114.086;
- (iv) a durable power of attorney under the Estates Code;
- (v) an agent's certification under Estates Code Sec. 751.203 of the validity of a power of attorney and the agent's authority;
- (vi) a power of appointment;
- (vii) an advance directive as defined in Health and Safety Code Sec. 166.002;
- (viii) a record directing disposition of an individual's body after death;
- (ix) a designation of guardian for the signing individual;
- (x) a declaration of appointment of a guardian for a minor child or adult child with a disability of the signing individual;
- (xi) a mental health treatment declaration;
- (xii) a community property survivorship agreement;
- (xiii) a disclaimer under Property Code Chapter 240; and
- (xiv) any other record intended to carry out an individual's intent regarding property or health care while incapacitated or on death.<sup>115</sup>

The authors of the UEEPDA determined that a “laundry list” approach was the best option for defining what is included in non-testamentary documents.<sup>116</sup> However, the authors included a “catch-all” at the end of the list (xiv) to include documents that may have been left out, or that will “arise

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112. UNIF. ELEC. EST. PLAN. DOCUMENTS ACT Prefatory Note (UNIF. L. COMM'N 2022).

113. *Id.* at § 102(5) (UNIF. L. COMM'N 2022).

114. *Id.*

115. UNIF. ELEC. EST. PLAN. DOCUMENTS ACT General Provisions and Definitions (UNIF. L. COMM'N 2022).

116. DIG. PLAN. PODCAST, The Uniform Electronic Estate Planning Documents Act: An Interview with Suzanne Brown Walsh and Professor Gerry W. Beyer (Apple Podcasts, Nov. 16, 2022).

in the future.”<sup>117</sup> The act also mentions that states are free to expand or contract the definition as they see fit.<sup>118</sup>

The UEEPDA does not require electronic execution, but similar to the UETA, it prohibits the denial of the document’s legal effect simply because of its electronic nature.<sup>119</sup> Thus, a party can still use traditional methods, such as affixing a “wet signature” to a typed or written document.<sup>120</sup>

## 2. What the UEEPDA Does Not Cover

The UEEPDA does not include wills or testamentary trusts.<sup>121</sup> However, the UEEPDA includes optional language in Article 3 that allows states to seamlessly pass the UEWA and the UEEPDA together.<sup>122</sup> Both the UEWA and the UEEPDA were created to clear up ambiguity created by the UETA.<sup>123</sup> However, despite both having been written similarly to the UETA, testamentary documents have some of their own formalities and unique challenges, such as the document taking effect after the testator’s death.<sup>124</sup>

Additionally, the UEEPDA also “does not include a deed of real property or certificate of title for a motor vehicle, watercraft, or aircraft.”<sup>125</sup> The UEEPDA also does not require an electronic signature, meaning a traditional signature is still valid.<sup>126</sup> Because the UEEPDA only applies to documents readable as text, it doesn’t apply to audio or video recordings.<sup>127</sup> However, states can change this if they wish.<sup>128</sup> The UEEPDA leaves remote notarization and remote witnessing up to the states.<sup>129</sup>

Lastly, the UEEPDA does not make requirements for how documents are stored or what type of digital document is used.<sup>130</sup> This approach is similar to the UETA, meaning that electronic trusts are not required to be created in a Microsoft Word document, for example.<sup>131</sup> This was also likely partially due to the electronic wills statute, which was very constrictive and led to minimal use because of its burdensome requirements.<sup>132</sup>

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117. *Id.*

118. *Id.*

119. *See* UNIF. ELEC. EST. PLAN. DOCUMENTS ACT § 102(5)(B) (UNIF. L. COMM’N 2022).

120. *See id.* at § 203(C).

121. *See id.* at Prefatory Note.

122. *See id.* at art. 3

123. *See id.* at Prefatory Note

124. *See* discussion *supra* Part II.

125. *See* UNIF. ELEC. EST. PLAN. DOCUMENTS ACT § 102(5)(B).

126. *See id.* at § 203.

127. *See id.* at §102 Legislative Note.

128. *Id.* at § 102. (UNIF. L. COMM’N 2022); *see generally* Hüseyin Can Aksoy, *Audiovisual Wills: A Contemporary Approach to Testamentary Formalities*, 15 ERASMUS L. REV. 30, 44 (2022) (proposing each state adopt a digital registry for electronic wills to ensure compliance with testamentary formalities.).

129. *See* UNIF. ELEC. EST. PLAN. DOCUMENTS ACT § 206 cmt. (UNIF. L. COMM’N 2022).

130. *See* discussion *supra* Sections II.A.4, II.B.

131. *See* discussion *supra* Part II.

132. *See* Hall et. al., *supra* note 38, at 145–46; *see also* Beyer & Hargrove, *supra* note 104, at 899.

### III. DON'T LOOK A GIFT HORSE IN THE MOUTH: THE UEEPDA WORKS BEST FOR OUR CURRENT SYSTEM

The first step in resolving the ambiguity surrounding non-testamentary estate planning documents is to determine that the UETA cannot simply be altered to include unilateral transactions.<sup>133</sup>

#### *A. Not Feasible to Change UETA to Apply to Unilateral Documents*

Altering the UETA to include unilateral documents may sound simple, but the decision is quite complex.<sup>134</sup> As previously stated, the UETA does not cover estate planning documents; instead, it covers transactions between two parties.<sup>135</sup> However, this does not diminish the essential role that the UETA plays in the execution of digital transactions across America.<sup>136</sup> Altering the UETA to accommodate estate planning documents is riskier than adding the UEEPDA as separate legislation.<sup>137</sup>

Therefore, a separate rule is required.<sup>138</sup> The UEEPDA, which is conveniently structured similarly to the UETA but is its own stand-alone law, strikes this balance quite well.<sup>139</sup> It also has a narrow scope of validating electronic signatures for non-testamentary estate planning documents, which clears up the UETA's estate planning blind spot without changing the meaning of the statute itself.<sup>140</sup>

First, a key component of the UETA is that the signer consents to using an electronic signature.<sup>141</sup> However, this is likely not an issue for non-testamentary documents, which are unilateral.<sup>142</sup> Unlike transactions governed by the UETA, which require at least two parties, non-testamentary documents generally require only one.<sup>143</sup> Legal disputes surrounding the UETA often involve issues of whether one party intended to sign or knew what they were signing.<sup>144</sup> In a unilateral agreement, there is only an effect on one person.<sup>145</sup> Take a power of attorney: upon signing the document, the principal authorizes the agent to act on their behalf in certain matters.<sup>146</sup> If

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133. See discussion *infra* Section III.A–D.

134. See Wingfield & Huggins, *supra* note 78, at 3.

135. See discussion *supra* Part II.

136. See discussion *supra* Part II.

137. See discussion *infra* Part III.

138. Author's original thought.

139. See discussion *supra* Sections II.A.4, II.B.

140. See discussion *supra* Sections II.A.4, II.B.

141. See *Electronic Signature Law: E-SIGN and UETA*, *supra* note 77.

142. See discussion *supra* Sections II.A.4, II.B.

143. See discussion *supra* Part II.

144. See *Electronic Signature Law: E-SIGN and UETA*, *supra* note 77.

145. See discussion *supra* Part II.

146. See discussion *supra* Part II.

the principal chose to use an electronic signature, then it is obvious that they consented to an electronic signature.<sup>147</sup>

### *B. Amending UETA Results in a Lack of Uniformity Amongst States*

Second, amending the UETA could lead to a lack of uniformity amongst the states, eliminating one of its greatest attributes.<sup>148</sup> The UETA's ubiquity in the United States has provided a level of consistency for businesses executing digital transactions.<sup>149</sup> If each state made alterations to the UETA to incorporate digital estate planning documents, it may have larger effects on the UETA and diminish the uniformity businesses currently enjoy.<sup>150</sup> Instead, this niche oversight is better corrected by introducing separate legislation in the form of the UEEPDA.<sup>151</sup>

### *C. Fear of Loss of Interface with Federal E-Sign Laws*

Third, altering the UETA could cause it to be unaligned with E-SIGN.<sup>152</sup> Currently, both the UETA and E-SIGN govern transactions related to business, commercial, and government affairs, but likely do not govern unilateral actions.<sup>153</sup> Therefore, changing the UETA to now govern unilateral transactions, such as electronic non-testamentary documents, would create an inconsistency between the UETA and E-SIGN.<sup>154</sup> When the UETA differs from E-SIGN, E-SIGN preempts.<sup>155</sup> Accordingly, amending the UETA is unlikely to be an effective way to address the execution of electronic non-testamentary estate planning documents.<sup>156</sup>

### *D. If Law Makers Wanted to Apply a Different Digital Signature Model It Should Be Applied at the Federal Level First*

Lastly, even if changes needed to be made to digital signature law, the trickle-down method from the Federal government to the states is the proper

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147. See discussion *supra* Part II.

148. See *Comment Concerning Use of Electronic Signatures and Third-Party Opinion Letters*, *supra* note 79.

149. See discussion *supra* notes 71–77 and accompanying text.

150. See Francois, *supra* note 82, at 422.

151. See discussion *supra* Sections II.A.4, II.B.

152. Rachana Chotia, *What is the E-SIGN Act?*, SIGNEASY (Jan. 21, 2026), <https://signeasy.com/resources/esign-act> [<https://perma.cc/BG2E-SFRL>].

153. See *Comment Concerning Use of Electronic Signatures and Third-Party Opinion Letters*, *supra* note 79.

154. See *id.*; see also Chotia, *supra* note 152.

155. See Chotia, *supra* note 152; see also *Comment Concerning Use of Electronic Signatures and Third-Party Opinion Letters*, *supra* note 79.

156. See Chotia, *supra* note 152; see also *Comment Concerning Use of Electronic Signatures and Third-Party Opinion Letters*, *supra* note 79.

way to make these changes.<sup>157</sup> The UETA and E-SIGN have been overall successful in guiding businesses through the complications of the rapidly changing digital space.<sup>158</sup> However, that does not mean there are not other options or that the UETA will not have to be changed in the future.<sup>159</sup>

For example, the United States may at some point decide to borrow from the European model.<sup>160</sup> Their approach to digital signatures is three-pronged, allowing lawmakers to assign differing levels of security to various document types.<sup>161</sup> The lowest is the Standard Document Signature, used in everyday business transactions, and therefore the most commonly used.<sup>162</sup> Next, is the Advanced Electronic Signature, used for loan agreements, leases, and most court documents.<sup>163</sup> Finally, the Qualified Electronic Signature provides the most security and is “the only electronic signature considered on par with a wet signature in Euro countries following eIDAS standards.”<sup>164</sup> Because the digital signature is so vital for proving the intent and sanctity of the digital document, lawmakers may at some point need to consider innovating the UETA.<sup>165</sup>

However, for now, America continues to use a very broad approach to digital signatures, allowing transactions to require higher levels of security if the parties so desire.<sup>166</sup> For example, American government agencies use Public Key Infrastructure, which binds a party’s identity to their public key, thereby increasing transaction security.<sup>167</sup>

Likewise, the UEEPDA offers a similar benefit, allowing parties to choose the level of security they prefer for their estate planning documents.<sup>168</sup> If lawmakers decided to change E-SIGN and federal signature law, then logically these changes will trickle down to the state level as well, and at that point, states can decide if these changes should be adopted in the UEEPDA.<sup>169</sup> However, until these changes are made, states should not craft

157. See Franco, *supra* note 82, at 422; see also Wingfield & Huggins, *supra* note 78, at 3.

158. See Franco, *supra* note 82, at 422; see also Wingfield & Huggins, *supra* note 78, at 3.

159. See discussion *infra* notes 165–70 and accompanying text.

160. Author’s original thought.

161. *A Simple Guide to European Electronic Signature Laws*, IRONCLAD (July 22, 2022), <https://ironcladapp.com/journal/contract-management/guide-to-european-electronic-signature-laws> [https://perma.cc/4MET-JB6N].

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*; see also *E-Signatures: What Are the Legal Requirements?*, PURDUE GLOB., (June 21, 2023) <https://www.purduegloballawschool.edu/blog/news/e-signatures-legal-requirements> [https://perma.cc/4VEH-M6VN].

166. Kathy Lyons-Burke, *Federal Agency Use of Public Key Technology for Digital Signatures and Authentication*, NAT’L INST. OF STANDARDS AND TECH., 1,4 (2021).

167. *Id.*

168. See discussion *supra* Part II (stating that it does not require a specific document type, thus allowing the user to select a free document or pay for a high security document system).

169. See Franco, *supra* note 82, at 422; see Wingfield & Huggins, *supra* note 78, at 3.

unique alterations to digital signature law that may cause confusion or inconsistencies.<sup>170</sup>

However, Delaware took a different approach.<sup>171</sup> Instead of using the UEEPDA, which mirrors language from the UETA, they chose to create their own statute.<sup>172</sup> This statute states “that the documents listed ‘[i]f otherwise validly executed . . . may be executed in accordance with the Uniform Electronic Transaction Act.’”<sup>173</sup> This means that if the UETA is changed, the Delaware statute will not need to be updated like a UEEPDA statute would.<sup>174</sup> The UEEPDA is likely the better model, as estate planning documents are unique from other electronic documents.<sup>175</sup> If the UETA is altered in the future, it will be beneficial to lawmakers to not have to consider the implications of the changes on estate planning.<sup>176</sup> Then, once the changes to the UETA are made, lawmakers can separately amend the UEEPDA to incorporate those changes as necessary.<sup>177</sup>

#### IV. GIDDY UP! IT’S TIME FOR TEXAS TO TAKE THE REINS AND ADOPT THE UEEPDA

Understanding that the UETA cannot simply be amended to include unilateral transactions, the UEEPDA is the best solution for Texas to validate the electronic execution of electronic non-testamentary estate planning documents.<sup>178</sup>

##### *A. The Right Trail Ain’t Always the Easiest Ride*

As the field of estate planning grows, lawmakers have had to decide how constrained a party should be in regard to creating estate planning documents.<sup>179</sup> Over time, America has evolved into a system that gives the principals substantial flexibility in expressing their desires.<sup>180</sup> This section explains why the tradition of flexibility should be continued through

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170. *See Comment Concerning Use of Electronic Signatures and Third-Party Opinion Letters, supra* note 79.

171. Jennifer Smith et al., *New Uniform Law Permits Electronic Signatures on Estate Planning Documents: States May Enact Companion Laws*, 162 TR. & EST. 17, 18 (Apr. 2023).

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.*

178. *See* discussion *supra* Part III; *see also* discussion *infra* Section IV.A.

179. Daniella Pierce, *The History of Trusts: A Journey from Roman “Fideicommissum” to Modern Asset Management*, PIERCE LEGAL GRP. (July 26, 2023) <https://pierce-legal.com/2023/07/26/history-of-trusts/> [<https://perma.cc/LC6G-EJQM>].

180. *Id.*

electronic estate planning documents and why the UEEPDA is the best way to do so.<sup>181</sup>

*1. Loosen Up on the Reigns: The Flexible Approach of the UEEPDA Is a Substantial Attribute and Should be Favored Over More Constrictive Legislation*

The flexibility of the UEEPDA makes it easier for those who wish to create digital estate planning documents.<sup>182</sup> Technology is rapidly advancing, meaning that new software a party wishes to use could be created at any time.<sup>183</sup> By limiting the statute to currently existing software platforms, lawmakers run the risk of excluding new ways of document creation that may be safer, more efficient, and/or easier to use.<sup>184</sup> Similarly, limiting parties to certain document types may also exclude everyday parties from creating non-testamentary digital estate planning documents.<sup>185</sup>

Surely, law firms and wealthy parties may be able to afford more expensive platforms with additional safety features, but interested parties should at least be given the choice, accepting the risk of using a less expensive, more accessible platform that may have fewer security features.<sup>186</sup> However, these concerns are likely overstated, particularly when the signature technology is most important for confirming the document's legitimacy, not necessarily which platform created it.<sup>187</sup>

The UEEPDA merely seeks to validate digital estate planning documents.<sup>188</sup> Parties will still have to follow the law regarding the required formalities required to execute the non-testamentary estate planning documents in their jurisdiction.<sup>189</sup> Likewise, if a party wishes to use pen and paper, they still can.<sup>190</sup> The UEEPDA does not require the use of digital estate planning documents.<sup>191</sup> Parties can continue to use the traditional method as if nothing had changed.<sup>192</sup>

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181. See discussion *infra* Section IV.A.1–2.

182. *Embracing the Digital Age: Oklahoma's Uniform Electronic Estate Planning Documents Act*, SKILLERN L. FIRM, PLLC (Nov. 19, 2024) <https://skillernlaw.com/2024/11/19/embracing-the-digital-age-oklahomas-uniform-electronic-estate-planning-documents-act/> [<https://perma.cc/Y8PV-J8W3>].

183. See DIG. PLAN. PODCAST, *supra* note 116.

184. See Hall et. al., *supra* note 38, at 163–67 (making this argument for the UEWA, but the same logic applies for the UEEPDA).

185. Beyer & Hargrove, *supra* note 104, at 890–95.

186. See *id.*

187. See discussion *supra* Section IV.B; see also Hall et. al, *supra* note 38, at 151–53.

188. See discussion *supra* Part II.

189. See discussion *supra* Part II.

190. See discussion *supra* Part II.

191. See discussion *supra* Part II.

192. See discussion *infra* notes 202–10 and accompanying text.

Ultimately, courts will decide what constitutes as a valid electronic estate planning document.<sup>193</sup> Some cases will be simpler, such as when an attorney drafts the document and the circumstances surrounding its creation are not complex.<sup>194</sup> However, not all cases will be so simple.<sup>195</sup> In Australia, Mark Nichol took his own life, leaving behind an unsent text message with his initials, birth date, the date, “My will”, and bank pin, as well as the fact that he wanted to leave his possessions to his brother and nephew.<sup>196</sup> The court ultimately ruled that the unsent text constituted Mark’s will.<sup>197</sup> Other tricky cases include writing and signing a will on a tablet, a will written on a note in an iPhone, and a will written in Evernote.<sup>198</sup> While many of these cases took place outside the United States and involve testamentary situations, they illustrate the decisions courts will have to make regarding electronic non-testamentary documents.<sup>199</sup> However, the alternative to these unique wills not being considered is that the parties have no will at all, and the same logic applies to non-testamentary documents.<sup>200</sup> Further, these issues are not limited to estate planning.<sup>201</sup> In 2025, a Canadian appellate court “addressed whether a farmer’s thumbs-up emoji in response to a contract image constituted acceptance.”<sup>202</sup> While American courts have not yet decided on this issue, it is unlikely that when creating the UETA and E-SIGN they anticipated dealing with emojis.<sup>203</sup> Similarly, issues will arise with electronic non-testamentary documents, and the courts will use the flexibility of the UEEPDA and existing estate planning law to reach a decision.<sup>204</sup>

## 2. Optional Sections of the UEEPDA

The UEEPDA’s optional language allows states to choose how they want to proceed regarding some of the more controversial aspects of digital estate planning documents.<sup>205</sup> This increases the likelihood that other states will adopt similar statutes, keeping most of the UEEPDA’s language while

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193. Author’s original thought.

194. *Id.*

195. *Id.*

196. Bridget J. Crawford, *Block Chain Wills*, 95 IND. L. J. 731, 751 (2020).

197. *Id.*

198. Walsh, *supra* note 20, at 12.

199. *Id.*

200. *See, e.g.*, Crawford, *supra* note 196, at 751 (noting that without the unsent text message Mark would not have had a will).

201. Jeffrey K. Lewis, Esq., *From Paper to Pixels: Do Emojis Count as Electronic Signatures?*, FARM OFFICE (Feb. 10, 2025) <https://farmoffice.osu.edu/blog/mon-02102025-835am/paper-pixels-do-emojis-count-electronic-signatures> [perma.cc/LQ35-9FDH].

202. *Id.* (affirming that it was a contract).

203. *See id.*

204. *See id.*

205. *See* UNIF ELEC. EST. PLAN. DOCUMENT ACT (UNIF. L. COMM’N 2022); *see also* *Digital Estate Planning*, RESPONSIVE L., <https://www.responsivelaw.org/digital-estate-planning> [https://perma.cc/7DEL-ED7W ] (last visited Mar. 19, 2026).

deciding for themselves on the more difficult issues.<sup>206</sup> Three of these optional sections include the storage of electronic non-testamentary documents, virtual notaries, and virtual witnesses.<sup>207</sup>

First, the storage of estate planning documents is essential: preserving them from destruction or tampering.<sup>208</sup> While digital non-testamentary estate planning documents present many of the same challenges as traditional paper documents, they also offer more secure options.<sup>209</sup> As previously stated, digital estate planning documents can be printed, allowing for storage the old-fashioned way, such as in a safe or lock box at the house.<sup>210</sup> Similarly, a flash drive with the documents can be stowed the same way.<sup>211</sup> However, this method allows documents to be easily misplaced or destroyed in a flood or fire.<sup>212</sup> Additionally, like traditional documents, electronic documents can be stored in a bank lockbox, the drafting attorney's office, or with a commercial third party, each likely charging a small fee in exchange.<sup>213</sup> It is true that a principal could forget to inform others that they created an estate plan, or fail to share the password, but this concern is also present with a paper copy stored in a safe.<sup>214</sup>

Storing estate planning documents in the cloud provides further convenience, both for ease of access and security.<sup>215</sup> This allows for additional password protection, tracking when the last edit was made, and allowing for the transfer to new platforms.<sup>216</sup> Most importantly, if an accident such as a fire occurred, the document will not be destroyed.<sup>217</sup>

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206. See UNIF ELEC. EST. PLAN. DOCUMENT ACT (UNIF. L. COMM'N 2022); see also *Digital Estate Planning*, *supra* note 205.

207. See discussion *supra* Part II (noting optional language regarding the UEWA and that whether Texas should adopt it is outside the scope of this Comment).

208. *Deciding Where to Store Your Documents is Critical*, TEX. TR. L. (July, 15, 2025 July 5, 2022) <https://www.texastrustlaw.com/deciding-where-to-store-your-documents-is-critical/> [<https://perma.cc/2VGH-HZPG>].

209. See Hall et.al, *supra* note 38, at 165.

210. See discussion *supra* Part II.

211. See *How Should You Store Your Estate Planning Documents?*, WOLFE, RICE, AND QUINN, LLC (May, 07, 2024), <https://www.wolfeandrice.com/blog/2024/05/how-should-you-store-your-estate-planning-documents/> [<https://perma.cc/7PN9-X7RX>].

212. See *What Happens if Your Estate Planning Documents Are Lost or Destroyed?*, SURPRENANT, BENESKI, AND NUNES (Mar. 17, 2025), <https://myfamilyestateplanning.com/2025/03/17/what-happens-if-your-estate-planning-documents-are-lost-or-destroyed/> [<https://perma.cc/G49A-S5H6>].

213. See *How Should You Store Your Estate Planning Documents?*, *supra* note 211.

214. See Hall et.al, *supra* note 38, at 150.

215. *Storage of Estate Planning Documents: What to Know*, DAVIS, DAVIS & ASSOCIATES (May, 17, 2023), <https://www.ddalawfirm.com/storage-of-estate-planning-documents-what-to-know/> [<https://perma.cc/K8DF-TXKL>].

216. *Id.*

217. *Id.*

Unfortunately, there are still risks.<sup>218</sup> Commercial third-party cloud storage providers could be hacked or go out of business.<sup>219</sup> Additionally, courts will have to reconcile the validity of copying or deleting the document.<sup>220</sup> Document storage will be a challenge that attorneys and their clients will face going forward.<sup>221</sup>

For the moment, Texas lawmakers should not address the issue of storage within the UEEPDA.<sup>222</sup> Lawyers will be able to advise their clients on the advantages and risks of storing documents electronically and, in some cases, provide storage services.<sup>223</sup> Once again, it is best that parties are given the option of professional storage, but not required to do so.<sup>224</sup> However, professional storage of legal documents is a rapidly growing field, so there is room for optimism in that regard.<sup>225</sup> Additionally, introducing blockchain is another popular idea that could increase security while minimizing the digital footprint and consumer costs.<sup>226</sup>

Ultimately, Section 208 of the UEEPDA requires that documents must be retained as is required by law, allowing the Texas legislature to make adjustments in the future if they are required.<sup>227</sup>

Second, the comment to Section 206 of the UEEPDA addressing virtual notarization states that the UEEPDA does not directly address virtual notarization and leaves this up to the states.<sup>228</sup> As of January 23, 2024, thirty-eight states, including Texas, have passed Remote Online Notarization (RON).<sup>229</sup> Texas first passed RON legislation in 2018, establishing two-way video conferencing between the notary and the principal.<sup>230</sup> In 2025, Senate Bill 693 passed the Texas legislature, updating RON by adding a criminal

218. *Id.*

219. See Hall et. al, *supra* note 38, at 166 (“In addition to storage, a public body could determine (and standardize) the format of fully electronic wills; ensure that there is only one *authentic* version of each fully electronic will (if necessary); take responsibility for migrating fully electronic wills to new formats in order to ensure they continue to be accessible; and put robust security mechanisms in place to reduce vulnerability to hacking.”).

220. See *id.* at 148.

221. See *id.* at 165.

222. Author’s original thought.

223. Sheila-Marie Finkelstien, *Powers of Attorney*, 33 No. 4 GPSOLO 36, 39 (2016).

224. See Hall et.al, *supra* note 38, at 150.

225. See Angela Shah, *With International Growth in Mind, LegalTech Firm Disco Nabs \$83M*, NEWSTEX (Jan 24, 2019) <https://www.proquest.com/docview/2252751191/5FCE8AF61C5B413BPQ/17?accountid=7098&source-type=Blogs,%20Podcasts,%20%20Websites> [https://perma.cc/3MXD-H74Y] (mentioning that a startup recently raised two million dollars and are focused on digital estate planning documents).

226. Bridget J. Crawford, *Wills Formalities in the Twenty-First Century*, 2019 WIS. L. REV. 269, 292–93 (2019).

227. UNIF ELEC. EST. PLAN. DOCUMENT ACT § 208 (UNIF. L. COMM’N 2022).

228. *Id.* at § 206.

229. Pat Kinsel, *Which States Have Passed Remote Online Notarization?*, NOTARIZE, <https://www.notarize.com/blog/which-states-have-passed-remote-online-notarization-bills> [https://perma.cc/4CQ3-VXA7] (last updated Jan 23, 2024).

230. TEX. GOV’T CODE ANN. § 406.110.

offense for notaries who knowingly seal fraudulent documents, increasing notary education, and extending the retention period for records.<sup>231</sup>

Enacting the UEEPDA would allow digital non-testamentary estate documents to be signed and notarized digitally.<sup>232</sup> This would continue to allow easier access to estate planning documents while also allowing principals an easier method to protect their documents.<sup>233</sup>

Lastly, the comment to Section 207 of the UEEPDA addressing witnessing does not directly address virtual witnesses, stating that it does not take a position on whether “physical presence” is required, and leaves this up to the states.<sup>234</sup> During the COVID-19 pandemic, “electronic presence” was temporarily allowed in some states.<sup>235</sup> Various restrictions and requirements were put in place, such as requiring live witnessing (rather than a recorded viewing) or holding the document up to the camera.<sup>236</sup>

### B. Safety

The safety concerns surrounding digital non-testamentary estate planning documents are overstated, as they mirror those in traditional estate planning and disregard advances in technology.<sup>237</sup>

Traditional estate planning documents are assessed by a judge to determine whether the requirements are met or to discern a party’s intent, a process not dissimilar to how these documents would be reviewed in digital form.<sup>238</sup> Ideally, a traditional estate planning document demonstrates the proper formalities, as well as clear intent, but realistically, this is not always the case.<sup>239</sup> When controversies arise, the judge weighs the surrounding circumstances and determines the validity of the document.<sup>240</sup> Digital non-testamentary estate planning documents will not change this process and will be reviewed in the same manner.<sup>241</sup> If the document requires witnesses, those

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231. See *Texas RON Law Changes 2025: What Every Remote Online Notary Needs to Know*, NOTARYHUB (Aug. 11, 2025) <https://notaryhub.com/articles/tx-ron-law-changes-2025> [<https://perma.cc/4CQ3-VXA7>].

232. *Id.*

233. *Id.*

234. See UNIF. ELEC. EST. PLAN. DOCUMENTS ACT § 207 (UNIF. L. COMM’N 2022).

235. See Hall et. al., *supra* note 38, at 154–57.

236. See *id.*

237. See *id.* at 149–53.

238. See *Basic Introduction to Non-Testamentary Estate Planning Documents*, LIBRE TEXTS, [https://biz.libretexts.org/Courses/Northeast\\_Wisconsin\\_Technical\\_College/Basic\\_Introduction\\_to\\_Estate\\_Planning\\_and\\_Probate\\_Practice\\_for\\_Paralegals/04%3A\\_Estate\\_Planning\\_Documents/4.01%3A\\_Basic\\_Introduction\\_to\\_Non-Testamentary\\_Estate\\_Planning\\_Documents](https://biz.libretexts.org/Courses/Northeast_Wisconsin_Technical_College/Basic_Introduction_to_Estate_Planning_and_Probate_Practice_for_Paralegals/04%3A_Estate_Planning_Documents/4.01%3A_Basic_Introduction_to_Non-Testamentary_Estate_Planning_Documents) [<https://perma.cc/8GUP-W7EN>] (last visited Dec. 1, 2025).

239. See discussion *supra* Part II.

240. *Can A Power Of Attorney Be Challenged In Texas Probate Court?*, FORD & BERGNER, LLP (May 01, 2025), <https://fordbergner.com/blog/2025/05/can-a-power-of-attorney-be-challenged-in-texas-probate-court/> [<https://perma.cc/DWT2-NBZR>].

241. See Hall et. al., *supra* note 38, at 154–57.

witnesses will testify to the signer's intent and mental capacity.<sup>242</sup> Likewise, the same is true if a notary is required.<sup>243</sup>

Concerns of safety and signer's intent have long been a concern with documents drafted without an attorney.<sup>244</sup> While it is not a non-testamentary document, the holographic will provides an analogous example to instances when an electronic document is similarly drafted without an attorney.<sup>245</sup> Texas currently allows parties to draft documents, such as a trust, without an attorney present.<sup>246</sup> Although similar to its stance on holographic wills, an attorney is strongly recommended.<sup>247</sup>

While a holographic will does have the benefit of handwriting analysis or viewing the ink color, virtual non-testamentary documents have other methods for confirming who wrote them.<sup>248</sup> Microsoft Word, for example, requires a username, password, and two-factor authentication for a party to access their account.<sup>249</sup> It also shows the last date the document was edited if stored in the cloud through OneDrive.<sup>250</sup> If the user stored their document on their computer, the computer will show when it was last saved.<sup>251</sup> While this varies slightly depending on the platform or device, it establishes a trail for courts to follow.<sup>252</sup> If the document was sent in an email, the courts will be able to tell who sent it and who received it.<sup>253</sup> They can look into whose account the document was created on.<sup>254</sup> Who it was sent to, both via email

242. *See id.*

243. *See id.*

244. *See The Dangers of DIY Legal Documents for Your Business*, COONEN L., PLLC, <https://coonen-law.com/the-dangers-of-diy-legal-documents-for-your-business/> [<https://perma.cc/R6HP-9A76>] (last visited Mar. 19, 2026).

245. Derick Lancaster, *How to Write a Valid Holographic Will*, STATE BAR OF TEX., <https://www.texasbar.com/AM/Template.cfm?Section=articles&Template=/CM/HTMLDisplay.cfm&ContentID=33860> [<https://perma.cc/KUD2-3TV4>] (last visited Mar. 19, 2026) (analogizing to this concern because holographic wills are informal and written without an attorney).

246. *Id.*

247. *Id.*; *see also* Houston Volunteer Lawyers, *Do-It-Yourself Guide for Handwritten Wills*, TEXASLAWHELP (Aug. 15, 2025), <https://texaslawhelp.org/article/do-it-yourself-guide-for-handwritten-wills> [<https://perma.cc/99JT-T9R7>].

248. *See* discussion *supra* Part II.

249. *What is: Multifactor Authentication*, MICROSOFT, <https://support.microsoft.com/en-us/topic/what-is-multifactor-authentication-e5e39437-121c-be60-d123-eda06bddf661> [<https://perma.cc/Z7P5-KEJ2>] (last visited Mar. 19, 2026).

250. Raul Munoz, *Save New Files Automatically to the Cloud in Word for Windows*, MICROSOFT (Aug. 26, 2025), <https://techcommunity.microsoft.com/blog/microsoft365insiderblog/save-new-files-automatically-to-the-cloud-in-word-for-windows/4445216> [[perma.cc/KDT8-57JG](https://perma.cc/KDT8-57JG)].

251. *Id.*

252. *See generally*, Michael Muchmore, *The Best Cloud Storage and File-Sharing Services for 2025*, PC MAG (Nov. 17, 2025), <https://www.pcmag.com/picks/the-best-cloud-storage-and-file-sharing-services> [<https://perma.cc/NRZ3-7QHM>] (comparing cloud storage options for documents such as OneDrive, Google Drive, Dropbox, etc.).

253. *See* Kirk C. Strange, *Email & Text Message Evidence in Litigation*, STRANGE L. FIRM (Nov. 13, 2024), <https://www.stangelawfirm.com/articles/email-text-message-evidence-in-litigation/> [<https://perma.cc/6RPS-2L8F>].

254. *See* Muchmore, *supra* note 252.

or sharing internally through the Microsoft platform, from one user to another.<sup>255</sup> Therefore, while a holographic will's authenticity may come down to whether the handwriting matches, a digital document could be substantiated by the account it originated from, the location, or device it was saved to.<sup>256</sup> Additionally, there are options for unique signatures on digital documents, such as mouse or stylus signatures or biometrics, such as a fingerprint.<sup>257</sup> Thus, while there are some unique challenges to digital signatures, most of the concerns are similar, but simply in digital form.<sup>258</sup>

The legal sphere has been forced to grapple with how to adopt the internet and related technologies since its inception.<sup>259</sup> In its early stages, attorneys and legal scholars were concerned that parties who flocked to the internet for legal advice and the attorneys who provided assistance may inadvertently establish the attorney-client privilege.<sup>260</sup> Similarly, it was not so long ago that lawyers weighed the pros and cons of e-filing estate planning documents with the court.<sup>261</sup>

In some instances, digital documents may even present an opportunity for parties to have further security than a paper document.<sup>262</sup> Storage would be one place that could be accessed via a computer and transferred to another device if necessary.<sup>263</sup> Also, an electronic document cannot be burned or flooded while in the cloud.<sup>264</sup>

Signatures play a critical role in determining both the intent of the party and the authenticity of the document.<sup>265</sup> However, this concern is not unique to digital documents, as forging a signature is possible on paper, and so is fraudulently inducing a "wet" signature.<sup>266</sup>

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255. *Share A Document*, MICROSOFT, <https://support.microsoft.com/en-us/office/share-a-document-d39f3cd8-0aa0-412f-9a35-1abba926d354> [https://perma.cc/D73G-LSQM ] (last visited Mar. 19, 2026).

256. See discussion *supra* Section IV.B.

257. See discussion *supra* Part II (iPad stylist signature); see also *Biometric Signature Definition and Examples*, GOODSIGN, <https://goodsign.io/term/Biometric-Signature> [https://perma.cc/X23D-YBQX] (last visited Mar. 19, 2026).

258. See Hall et. al., *supra* note 38, at 147.

259. See discussion *supra* Part II.

260. See Catherine J. Lanctot, *Attorney-Client Relationships in Cyberspace: The Peril and the Promise*, 49 DUKE L. J., 147–259 (2019) (using regulations on lawyers communication via radio, telephone, and television to establish why the internet would be no different).

261. Mary W. Baker, *Where There's a Will, There's a Way: The Practicalities and Pitfalls of Instituting Electronic Filing for Probate Procedures in Texas*, 39 TEX. TECH L. REV. 423, 454 (2006–2007).

262. See *Book Trusts vs. Digital Trusts: Which Is the Better Choice for Modern Estate Planning?*, AMERICAN LEGACY SOL., <https://www.alegacys.com/book-trusts-vs-digital-trusts-for-estate-planning/> [https://perma.cc/XMB3-WK5G] (last visited Mar. 19, 2026).

263. *Id.*

264. *Id.*

265. See Hall et. al., *supra* note 38, at 143.

266. See *id.* at 152.

## V. DON'T SADDLE UP UNLESS YOU'RE READY TO RIDE: POLICY AND PRACTICE

After establishing that the UEEPDA is the best way to clear up the uncertainty surrounding digital non-testamentary estate planning documents, the next issue to address relates to its application.<sup>267</sup> The following subsections address some important effects of the UEEPDA on policy and practice.<sup>268</sup>

### *A. Supporting Attorneys and Principals to Utilize Digital Estate Planning*

As states clarify digital estate planning law, they should go one step further by supporting attorneys and principals in utilizing this technology.<sup>269</sup>

The COVID-19 pandemic forced attorneys to temporarily adopt digital platforms to execute estate planning documents, leading some to wonder whether these practices should become permanent.<sup>270</sup> For example, Texas adopted virtual notarization legislation during the pandemic, which it ultimately made permanent.<sup>271</sup> However, as previously stated, some attorneys in states that have enacted electronic will legislation have been hesitant to recommend this alternative to clients.<sup>272</sup> Attorneys are cautious and may be wary of recommending electronic documents until they have seen how courts interpret the UEEPDA.<sup>273</sup> Unlike Nevada's statute, which suffocated attorneys' ability to recommend electronic wills, the UEEPDA will allow for flexibility, but attorneys will need to be informed on the best options to take advantage of this opportunity.<sup>274</sup>

Thus, Texas should support attorneys with recommendations on best practices for electronic estate planning.<sup>275</sup> While states cannot predict exactly

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267. See discussion *infra* Section V.A–D.

268. See discussion *infra* Section V.A–D.

269. See generally, *Do It Yourself Estate Planning*, AM. BAR ASSOC., [https://www.americanbar.org/groups/real\\_property\\_trust\\_estate/resources/estate-planning/diy-estate-planning/](https://www.americanbar.org/groups/real_property_trust_estate/resources/estate-planning/diy-estate-planning/) [<https://perma.cc/B96X-8CV6>] (last visited Feb. 20, 2026) (listing as an example of ABA resources); *A.B.A. Issues First Ethics Guidance On A Lawyer's Use of AI Tools*, AM. BAR ASSOC., (July 29, 2024) <https://www.americanbar.org/news/abanews/aba-news-archives/2024/07/aba-issues-first-ethics-guidance-ai-tools/> [<https://perma.cc/U3KU-XJNK>] (listing as an example of the ABA addressing emerging technology).

270. Steve Leimberg, *Steve Leimberg's Estate Planning Email Newsletter - Archive Message #2794*, LEIMBERG INFO. SERV., INC., 1, 45–48, (May 11, 2020) <https://shenkmanlaw.com/uploads/2020/05/2020-05-11-Signing-Estate-Planning-documents-during-COVID.pdf> [<https://perma.cc/842G-ET48>].

271. See *Texas RON Law Changes 2025: What Every Remote Online Notary Needs to Know*, *supra* note 231.

272. See Hall et. al., *supra* note 38, at 148; see also Beyer & Hargrove, *supra* note 104, at 891.

273. See Hall et. al., *supra* note 38, at 148; see also Beyer & Hargrove, *supra* note 104, at 891–92.

274. See Hall et. al., *supra* note 38, at 147; see also Beyer & Hargrove, *supra* note 104, at 897–99.

275. See generally, Norma Harris, *Why Do Lawyers Need to Keep Up with Legal Technology?*, AM. BAR ASSOC. (Mar. 23, 2023), [https://www.americanbar.org/groups/law\\_practice/resources/law-technology-today/2023/why-do-lawyers-need-to-keep-up-with-legal-technology/](https://www.americanbar.org/groups/law_practice/resources/law-technology-today/2023/why-do-lawyers-need-to-keep-up-with-legal-technology/) [<https://perma.cc/V2V4-AU4M>] (stating the importance for attorneys to stay up to date on new technology which would apply to electronic estate planning).

how a court will decide when a controversy arises on a non-testamentary electronic document, they can learn from the last twenty years of online business transactions to advise the public.<sup>276</sup> Using this information, they can provide articles and Continuing Legal Education to enhance attorneys' understanding of electronic document security.<sup>277</sup>

### B. The UEEPDA Simplifies the Process and Increases Access

Digital non-testamentary estate planning documents provide increased access to estate planning documents.<sup>278</sup> A survey conducted in 2025 revealed that 55% of Americans do not have an estate plan.<sup>279</sup> The survey also revealed that rural communities were less likely to have an estate plan.<sup>280</sup> This finding is unsurprising, given that roughly 40% of counties in America “have less than [one] lawyer per 1000 residents.”<sup>281</sup> In Texas, “[sixty-seven . . . counties have five lawyers or fewer, including [seventeen] counties with just one lawyer and six with no lawyers at all.”<sup>282</sup>

The term “legal deserts” has been coined for rural locations significantly lacking attorneys, and digital estate planning can hopefully act as an oasis.<sup>283</sup> Presently, technology is already being used to address limited access to attorneys in Texas’s rural communities, and by passing the UEEPDA, Texas could further these efforts.<sup>284</sup> However, rural communities are not the only group that the UEEPDA could increase estate planning access.<sup>285</sup>

Digital access to estate planning documents benefits the elderly who may have difficulty going to a law office regularly.<sup>286</sup> For Americans age 65

276. See generally, Canaan Suitt, *New Tech, Old Law: How Legal Expertise Helps Technology Transactions Succeed*, SUPER LAW. (June 25, 2025), <https://www.superlawyers.com/resources/technology-transactions/how-legal-expertise-helps-technology-transactions-succeed/> [https://perma.cc/E7J8-VPVF] (explaining concerns lawyers face with digital transactions such as privacy and adapting to new technologies).

277. See generally, *Cybersecurity and Tech Competence for Beginners*, STATE BAR OF TEX., <https://www.texasbar.com/AM/Template.cfm?Section=articles&Template=/CM/HTMLDisplay.cfm&ContentID=48651> [https://perma.cc/MA7K-3RL7] (last visited Mar. 19, 2026) (stating that lawyers have a duty to “remain competent in their legal practice—and that includes staying up to date on technology”).

278. Sarah C. Stewart, *How Adopting Uniform Rules for Electronic Signing and Acknowledgement of Formal Wills and Non-Testamentary Estate Planning Documents Can Increase Access to Estate Plans*, 37 QUINNIPAC PROB. L. J. 161, 180 (2024).

279. *Redefining Legacy: Insights into How Americans Are Preparing for the Future, Navigating Technology, and Embracing Change* 7 TR. & WILL 2025 EST. PLAN. REPORT 1, 3–10 (2025).

280. *Id.* at 11. (finding that only 8% of rural respondents had a trust).

281. Legal Deserts: How Texas, New York Are Tackling The Problem, AM. BAR ASSOC. (Feb. 15, 2020) <https://www.americanbar.org/auth/register/?authSuccessRedirect=%2F renew%2F%3FreturnPath%3D%2Fnews%2Fabanews%2Faba-news-archives%2F2020%2F02%2Flegal-deserts--how-texas--new-york-are-tackling-the-problem%2F> [https://perma.cc/AWU4-UK6L].

282. *Id.*

283. *Id.*

284. *Id.*

285. See discussion, *supra* Part II.

286. See *Redefining Legacy*, *supra* note 279, at 6.

and older, 75% say they use the internet.<sup>287</sup> Additionally, 95% of American households have at least one type of computer.<sup>288</sup> Thus, the ability to use technology for estate planning will increase access.<sup>289</sup>

Modernizing estate planning documents via the UEEPDA will allow more Texans to take advantage of an estate plan and the security it provides.<sup>290</sup>

### C. *Hold Your Horses? How Fast Is Too Fast?*

The digital age has ushered in a landscape where transactions are executed at a rapid pace, and documents can be altered, downloaded, and dispersed in mere moments.<sup>291</sup> The legal community tends to move at a slower pace, carefully analyzing details, dotting i's and crossing t's.<sup>292</sup> A party that chooses to utilize an attorney when creating an electronic non-testamentary estate planning document may still feel some of the similar methodical pace, while still being able to enjoy the advantage of executing their document virtually.<sup>293</sup> For parties using an attorney, is there a concern of constant pestering to make changes to the document, given the sudden ease with which it can now be executed?<sup>294</sup> Conversely, the opposite question arises for those who choose to create an electronic non-testamentary estate planning document themselves.<sup>295</sup> How frequently will they feel the need to change their document?<sup>296</sup> Courts will resolve these questions over time if parties frequently update their documents.<sup>297</sup>

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287. Michelle Favero, *Share of Those 65 and Older Who Are Tech Users Has Grown in the Past Decade*, PEW RSCH. CTR. (Jan. 13, 2022), <https://www.pewresearch.org/short-reads/2022/01/13/share-of-those-65-and-older-who-are-tech-users-has-grown-in-the-past-decade/> [<https://perma.cc/S8ZU-D988>].

288. *Computer and Internet Use in the United States: 2021*, U.S. CENSUS BUREAU (June 18, 2024), <https://www.census.gov/newsroom/press-releases/2024/computer-internet-use-2021.html> [<https://perma.cc/DJ5T-3GQM>].

289. See *Embracing the Digital Age: Oklahoma's Uniform Electronic Estate Planning Documents Act*, *supra* note 182.

290. See discussion, *supra* Part II.

291. See discussion, *supra* Part II.

292. *Overcoming lawyers' resistance to change*, THOMSON REUTERS, <https://legal.thomsonreuters.com/en/insights/articles/overcoming-lawyers-resistance-to-change> [<https://perma.cc/M39N-24GW>] (last visited Mar. 19, 2026).

293. Author's original thought; see also *The Dos and Dont's of Proofreading for Legal Documents*, PROOFED (Feb. 29, 2024), <https://proofed.com/knowledge-hub/the-dos-and-donts-of-proofreading-for-legal-documents/#do-verify-facts-and-legal-terminology> [<https://perma.cc/76BT-VH66>] (stating examples of good practices for proofreading legal documents).

294. Author's original thought.

295. *Id.*

296. *Id.*

297. *Id.*

### *D. Destruction of a Digital Document*

Traditional estate planning documents are fairly easy to destroy.<sup>298</sup> While copies can be made with a scanner, generally, the shredding of a traditional paper document is sufficient.<sup>299</sup> Digital estate planning documents are not so simple.<sup>300</sup> What if a document is deleted but retained in the recently deleted folder?<sup>301</sup> What if a party deletes a document but is unaware of a copy that is saved in the cloud?<sup>302</sup> What if a document is deleted on accident?<sup>303</sup> Judges will likely answer these questions, but they may matter less for non-testamentary than for testamentary documents when the individual has passed away.<sup>304</sup> Some attorneys have speculated that the best way to revoke a digital estate planning document is to create another one.<sup>305</sup> This new document complies with the required formalities, such as a witness or notarization, and includes an additional document stating the party's intention to revoke all or part of the previous document.<sup>306</sup> Ultimately, following best practices, such as time-stamped documents and witnesses, will mitigate this concern.<sup>307</sup>

## VI. RIDING OFF INTO THE SUNSET: CONCLUSION

The way in which documents are recorded has changed drastically from stone tablets, wax seals, ink, and now electronic signatures, and it is time that Texas embraces that change in non-testamentary estate planning.<sup>308</sup> Although they were once a fairly primitive technology, electronic documents can now meet the necessary formalities to validate electronic non-testamentary

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298. See generally *How to Effectively Revoke a Will in Texas*, LEIGH B. MEINEKE L. FIRM (Aug. 5, 2024) <https://www.yourtexasattorney.com/how-to-revoke-a-will-in-texas/> [<https://perma.cc/U5LW-YQFT>] (demonstrating that traditional methods of destruction are simpler as they include “burning, tearing, shredding, or crossing out the will with the intent to revoke it,” which can be analogized to non-testamentary documents).

299. *Id.*

300. See Hall et. al., *supra* note 38, at 258–62.

301. *Id.* at 159–61.

302. *Id.*

303. Katherine MacKenzie, *An Electronic Change is Gonna Come: Recommendations for the Alteration and Revocation of Electronic Wills*, ABLAWG, 1, 3–5 (May 3, 2024).

304. Robert M. Harper, *Will New York Law Allow for the Electronic Execution of Wills?*, N.Y. TR. & EST. LITIG. (July 7, 2025), <https://www.nyestatelitigationblog.com/2025/07/articles/probate/will-new-york-law-allow-for-the-electronic-execution-of-wills/> [<https://perma.cc/KH9E-GXED>].

305. See MacKenzie, *supra* note 303; see generally Susan N. Gary, *The Electronic Wills Act: Facing the Inevitable*, 55 REAL. PROP., TR. & EST. L. J. 305, 336 (2020) (explaining how “[a] testator can revoke a non-electronic will by executing a new will”).

306. See MacKenzie, *supra* note 303; see also Susan N. Gary, *The Electronic Wills Act: Facing the Inevitable*, 55 REAL. PROP., TR. & EST. L. J. 305, 336 (2020).

307. See *supra* Part IV.

308. See *supra* Part I.

documents.<sup>309</sup> Further, by limiting Texans to traditional methods, Texas fails to maximize access to estate planning, leaving some of the herd behind.<sup>310</sup>

The purpose of non-testamentary estate planning is to look out for a principal's medical and financial decisions during their lifetime, if unfortunate circumstances arise.<sup>311</sup> However, many Texans don't have an estate plan due to the costs and barriers of entry.<sup>312</sup> Thus, it's time for Texas to blaze the trail that leads to further use of estate planning amongst Texans, with electronic estate planning being the first step in the right direction.<sup>313</sup>

This Comment argues why amending the UETA, while seeming simple, is not a feasible solution.<sup>314</sup> However, the structure of the statute informs the solution for electronic non-testamentary documents.<sup>315</sup> Additionally, the UETA highlights the benefits in terms of low cost and increased accessibility that its framework has provided for electronic transactions.<sup>316</sup>

Enacting the UEEPDA will give Texans the opportunity to utilize the advantages that electronic documents provide.<sup>317</sup> It is likely that many will continue to choose "wet signatures," particularly in the early stages.<sup>318</sup> However, others will want to use cloud storage, digital passwords, PDF files, or other features electronic documents offer for their estate plan.<sup>319</sup> Additionally, perhaps the client lives in a legal desert, is a bedridden patient, or works a job that doesn't give much time off: each makes visiting an attorney very difficult.<sup>320</sup> Regardless of whether the desire comes from the technological features or the virtual convenience, there are clients who could take advantage of this technology today, and over time, others will follow.<sup>321</sup>

As the prevalence of technology continues to rise and its position as the preferred document platform for most individuals only grows, the issue surrounding electronic non-testamentary documents will only intensify.<sup>322</sup> A new frontier for document creation is here, and by embracing the UEEPDA, Texas can tame the wild west of electronic non-testamentary estate planning documents.<sup>323</sup>

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309. *See supra* Part IV.

310. *See supra* Part V.

311. *See supra* Part II.

312. Powers, *supra* note 13.

313. *See supra* Part IV.

314. *See supra* Part III.

315. *See supra* Part III.

316. *See supra* Part III.

317. *See supra* Parts IV, V.

318. *See supra* Part IV.

319. *See supra* Part IV.

320. *See supra* Part V.

321. *See supra* Parts IV, V.

322. *See supra* Parts IV, V.

323. *See supra* Parts IV, V.