



# REMOTE NOTARIZATION of Estate Planning Documents

By KRISTI VITELLI

The first line of the prefatory note for the draft Electronic Estate Planning Documents Act (“EPPDA”) set for release by the Uniform Law Commission this fall is “Times are changing.” Connecticut is the land of steady habits, and change happens slowly. However, lawyers must adapt the way they practice, or risk being left behind.

**F**OR 20 YEARS, Connecticut has allowed e-signatures. Connecticut adopted the Uniform Electronic Transaction Act (“UETA”) in 2002. C.G.S. § 1-266 et seq. facilitates the use of electronic signatures. C.G.S. § 1-276 specifies that “If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.” This uniform law, however, applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. C.G.S. § 1-270. Thus, this statute can apply to a real estate transaction but not to an estate planning document involving only one party.

One year after UETA, Congress enacted the Electronic Signatures in Global and National Commerce Act (“E-Sign Act”), allowing the transition from written to electronic documents for many business, commercial, and governmental transactions. These laws allow the use of electronic signatures in interstate commerce and bilateral commercial transactions, but specifically exclude estate planning documents. Connecticut’s UETA conforms to the requirements of the Electronic Signatures in Global and National Commerce Act, 15 US 7002. See C.G.S. § 1-286.

When UETA was enacted, state statutory notary laws and the Uniform Law on Notarial Acts (“ULONA”) still required the signer to physically appear before the notary. The Mortgage Bankers Association and the American Land Title Association realized that additional changes to notarial laws were necessary to allow remote online notarization for executing electronic documents pursuant to

UETA. To remedy the problem, the associations drafted their own Remote Online Notarization (“RON”) acts. Similarly, the Uniform Law Commission recognized the need to update ULONA and in 2018 released an updated uniform notary act, the Revised Uniform Law on Notarial Acts (“RULONA”). RULONA added Section 14A allowing Remote Online Notarization, or “RON.” As of February 23, 2022, Connecticut was one of only nine states with no remote notarization law.

When the COVID-19 pandemic made in-person meetings difficult, if not impossible, especially with nursing home residents, states that had previously adopted some form of RON law were in a much better position to pivot and adapt to the new restrictions. A notary performing a RON must comply with the specific requirements of the state where they are authorized to perform notarial acts. Most often the notary has special training and is required to use only approved technology to perform the online notarial act.

Other states like Connecticut relied upon executive orders authorizing remote ink notarization (“RIN”). Unlike RON, which allows a notary to electronically notarize an electronic document, RIN requires an electronic document to be printed and signed with ink in the virtual presence of a notary. The paper document must then be delivered to the notary within a set time and notarized in ink.

Governor Lamont issued several executive orders during the pandemic to facilitate the execution of estate planning documents remotely via RIN, but not electronically via RON. See Governor Lamont’s 2020 Executive Orders 7K, 7Q and 7ZZ. Because the orders were quickly drafted and the concept was foreign to many practitioners and their clients, many Connecticut lawyers deemed

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the executive orders too difficult to follow. Many lawyers conducted signings by viewing the signer through windows or glass doors. Other signings occurred on trunks of vehicles and park benches. Outdoor “offices” sprung up as needed when the weather was nice.

With the difficulties of practicing law during a pandemic fresh in the minds of estate planning attorneys, many practitioners would like Connecticut to follow the lead of the Uniform Law Commission and other states to enact laws allowing more flexibility for notarizing legal documents. A bill was proposed to the Connecticut legislature the last two legislative sessions which, if passed, would allow electronic notarization of electronic signatures in Connecticut. In the most recent legislative session, the bill passed the State Senate but did not yet make it through the State House of Representatives. The Estates and Probate Section expects to join other CBA sections in the next legislative session to introduce a remote notarization law.

As mentioned previously, the Uniform Law Commission is poised to release the Electronic Estate Planning Document Act in fall 2022. The Electronic Estate Planning Document Act facilitates the creation of all estate planning documents, except wills, in electronic form. The Act does not change the state law requirements for validly signing and witnessing these documents. It simply makes it easier to execute estate planning documents. EEPDA is modeled after UETA so it will cleanly interface with existing laws. This act will apply to all estate planning documents other than wills not previously included in UETA, including durable power of attorney, health care instructions, trusts, and other documents that include notarization.

EEPDA does not intend to make the practice of law more challenging for seasoned lawyers. It is merely an *option* for signing estate planning documents. Consumers demand easier ways of signing.

In our “new normal” world where you can buy a car on the Internet and have it delivered to your home, as well as conduct all your banking without ever entering a brick-and-mortar building, clients now want the convenience of signing their estate planning documents without having to go to a law office.

What became clear during the COVID-19 pandemic was that lawyers could draft and execute documents for clients without ever being in the same room with them. Valid execution of estate planning documents no longer required signing paper documents around a big conference table.

Several states allow RON where electronically created and notarized documents are valid. In our transient society these electronic documents, which were legally created elsewhere, will inevitably make their way into Connecticut. We can no longer ignore the virtual world of electronically created documents. The probate courts and financial institutions will accept them because they themselves have transitioned to electronic documents.

A lawyer cannot tell a potential client “I can’t do that because I do not have the technical expertise.” See the Commentary in the Connecticut Rules of Professional Conduct, Rule 1.1, on the duty to maintain competence. Connecticut attorneys have already replaced paper calendars with an online calendar and communicate with clients of all ages through email and text. The use of remote execution of estate planning documents is a similar transition. Even though these new methods seem difficult, once they are put into practice and Connecticut attorneys know the nuances of how they work, they will broaden the scope of an attorney’s practice and ensure the attorney’s competence. ■

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