

News & Insights

Estate Planning Attorney Sarah Sadler for The Journal Record: Estate Planning Enters the Digital Era

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With Oklahoma's enactment of the Oklahoma Uniform Electronic Estate Planning Documents Act (OUEEPDA) this month, which adopts the Uniform Electronic Wills Act, a last will can now be signed, witnessed, notarized to be made self-proving, and stored, all electronically. This modernization in estate planning law brings estate planning documents, including last wills, on par with contracts, which have long been recognized in electronic form. However, while availability of electronic tools can make estate planning more accessible and convenient, practitioners must regard the requisite formalities.

Under the OUEEPDA, a testator would digitally sign their electronic will before at least two witnesses who are either physically or electronically in the presence of the testator. In an effort by the drafters to avoid use of witnesses located in foreign countries, the law requires that each witness be both a resident of and physically located in United States or a United States territory at the time they witness the instrument. The electronic will should also include specific acknowledgment language which recites that the instrument is intended to be the testator's electronic will.

While it is not yet clear the precise manner and form in which probate courts will require delivery of electronic wills, the new law provides a process for preparing a certified copy of the electronic will. Some testators may find they prefer to have an electronic will solely for the advantage of electronic storage.

Importantly, under the OUEEPDA, Oklahoma now recognizes electronic wills executed under the laws of other states. Electronic wills need not comply with the OUEEPDA requirements to be valid, so long as the electronic instrument complies with the law of the state in which (i) it was executed, (ii) the testator resided when it was executed, or (iii) the testator resided when he or she died. It must be noted, though, that not all states recognize electronic wills. Thus, practitioners should advise clients that their electronic will may not be recognized in other states should they relocate or own property in other states.

Finally, the Oklahoma Uniform Electronic Estate Planning Documents Act provides important clarifications in the law regarding electronic non-testamentary documents, such as trusts, powers of attorney, and

advanced directives. In whole, the new enactments bring Oklahoma estate planning fully into an electronic era.

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