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Estate Planning For Crypto And Other Digital Assets: What You Need To Know



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Personal Finance

I cover financial regulatory issue, cybersecurity, fintech & bitcoin.



Crypto requires new work in estate planning, but comfortably not everything has changed. A coin representing Bitcoin cryptocurrency is reflected on a polished surface as it sits in a pool of translucent liquid in the U.K.
Photographer: Luke MacGregor/Bloomberg

Death isn't what it used to be. Write a will, put stock certificates and the deed to your home and a few other pieces of paper in a safe deposit box and you were set for life for the hereafter.

But digital assets from crypto to online contact lists have changed that. New laws and considerations need to be taken into account for financial accounts and other digital assets in your estate planning.

Yet, some of the old rules still apply. As always, your executor needs to know what assets you have and how to access them. It is the access that is the trickiest part in planning for handing off your digital assets to your heirs.

The good news is you don't have to be a Silicon Valley tech genius or a Wall Street lawyer to make it happen. When it comes to listing your crypto keys so your executor and heirs can know what's your estate, "I'm a big fan of paper and pen," says Pam Morgan who has written a book on cryptoasset inheritance planning.

"It's most important to explain (to them) the kinds of assets, key locations, and access controls you're using for security. Access controls are things like PINs, passphrases, multisignature or timelock requirements," explains the probate lawyer. She has developed a form that you can print out, fill in and store in a safety deposit box or in a secure location in your home to increase the chances your heirs can get what you want them to get without a hitch:

<https://bit.ly/2sBNL05>

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The hitch can be that without proper tech and legal preparation your digital assets could be abandoned much like a house trailer would be if not securely hitched to a car. If you have just technical planning and you haven't looked at the legal side, you could be creating law suits among your heirs that could last for decades, explains Morgan.

Likewise, if you only have legal planning with no technical access plans, your heirs may not be able to inherit your crypto assets, she points out. "Without keys, a court order is impotent," the attorney stresses.

Morgan says she is a firm believer in making at least two copies of records of your assets and putting them in different places. Considering an investor can have an unlimited number of wallets for each cryptocurrency, it might seem advisable to put them on a USB drive and place the drive in a safety deposit box. But this may not be such a good idea, says Morgan, because drives fail and may not work on the computer operating system your executor uses.

How often you should update your crypto holdings list for your estate probably depends on how active of a trader you are. Morgan says active traders would be smart to update their lists weekly.

But Michael Goldberg, a suburban Chicago attorney who also has written on crypto estate planning, says infrequent traders (like himself) can probably get away with doing a list annually. “I have a pretty wide variety, small amount of Bitcoin, some Ethereum,” says Goldberg, who claims to practice what he preaches when it comes to keeping his crypto holdings list reasonably current.

Fortunately, the law in most places, is finally catching up with the reality of digital assets. In the last several years, 42 states have enacted laws allowing executors to manage digital assets in much the same way they do traditional holdings of estates. Missing from that list for no ideological or other compelling reasons are Rhode Island, Louisiana, Maine, Kentucky, Oklahoma, Pennsylvania, New Hampshire, and Massachusetts. Delaware has a law on its books relating to executors and digital assets but takes a different tact than the rest of the states.

The vast majority of states with laws on digital assets have adopted a model law that was written broadly enough to include things that haven’t been invented yet, says Ben Orzeske, chief counsel for the Uniform Law Commission, which comes up with such model statutes.

Another project in the works at the Commission is a final draft of standard state legislation to allow electronic signatures on wills. That one is due out next July. Suzanne Brown Walsh, an attorney who co-chairs the drafting committee, notes most estate lawyers aren’t keen on e-wills. “They don’t see the need. Nobody likes change,” says the long-time probate attorney.

Speaking to bitcoin and the like in estates, Brown says the volatility of cryptocurrency makes it a hot potato for executors. “Typically, executors will want to sell crypto property quickly, so they won’t be criticized for holding it if the virtual assets drop in value,” she notes.

On the other side of the bench, National College of Probate Judges President Tamara Curry predicts jurists in her niche are going to have to get up to speed on crypto in the next three-to-five years. “Courts are going to become more inundated. Judges are going to have to be educated and made aware of what to look for when these assets come before them,” says Curry, a Charleston County South Carolina associate probate judge.

Ted Knutson is one of the most experienced financial regulatory reporters in Washington. For years, he has covered the SEC, CFTC, the bank regulators and the key Congressional committees.



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