

Estate Planning and Cryptocurrency



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Digital assets, such as cryptocurrency, are becoming a larger component of investors' portfolios. More and more people are owning some form of cryptocurrency.

Cryptocurrency creates unique challenges for estate planning because (i) there is no personally identifiable information associated with the cryptocurrency; (ii) cryptocurrency is a virtual asset that may not be readily identifiable to your heirs; and (iii) all cryptocurrency transactions require the individual's private key.

Unlike traditional investments, there are no traditional ownership or beneficiary designations on cryptocurrency accounts. Cryptocurrencies are entirely anonymous – if the holder dies without communicating that she owns a cryptocurrency and does not provide the corresponding password or "private key," the asset dies with them. The only way for a fiduciary to access cryptocurrency after the holder's death is with the password or "private key." Without the private key, the fiduciary has no access, and without access, the estate or trust has no cryptocurrency, and all the value is lost.

To ensure that your intended beneficiaries actually receive your cryptocurrency following your death, the following steps should be part of your planning:

- **Make sure your estate planning attorney knows about your cryptocurrency.** By letting your attorney know, she should be able to assist you with the critical steps to ensure your cryptocurrency is not lost to your heirs.
- **Maintain current asset lists which include your cryptocurrency.** Providing detailed asset information for your successor fiduciary is important in any estate plan. Your fiduciary needs to know to look for a cryptocurrency. Without specific information about how and where your cryptocurrency is stored, your fiduciary will not be able to access the asset for your intended beneficiaries.
- **Provide your successor fiduciaries with access.** Even if your successor fiduciary knows how to find your crypto, she will have no way to access it unless she can find your keys. You might write a memorandum and keep it with your estate planning documents; leave your information written down and in a safe or safe deposit box that your successor fiduciary has access to; or use a password manager and leave instructions about how to access that manager.
- **Keep your documents up to date.** As you acquire more or different kinds of cryptocurrency (or use different wallets or storage devices), you will need to make sure your estate planning documents and instructions to your fiduciaries contain full information.
- **Taxes.** The IRS treats cryptocurrency as personal property and not as a currency. General tax principles applicable to property transactions apply to virtual currency. As such, cryptocurrency transactions have tax consequences that may result in tax liability in the form of capital gains or losses. For tax purposes, gifts of cryptocurrency are treated as gifts of property, in which the donee receives the donor's cost basis in the property. At the death of the "owner", cryptocurrencies receive

a step-up in basis like other property assets. The carryover and step-up rules governing these assets should be factored into decisions about what to do with the cryptocurrencies in a client's estate plan.

Not properly planning for digital assets can frustrate your carefully prepared estate plan. When preparing and updating your estate plan, make sure you account for your digital assets.