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Your Crypto and NFTs Could Outlive You: Here's How to Plan

That piece of paper with your private keys isn't going to cut it. So I talked with New York attorney and law firm partner Asher Rubinstein about estate planning steps to consider.

By Leslie Quander Wooldridge, @lesliequander

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Do you know what will happen to your crypto, NFTS, or other digital assets when you die? And how you'll pass along these assets to your heirs?

Or, if your loved one dies, and you're the beneficiary, do you know how you'll access your inherited holdings?

While estate planning may not be something we ponder on a daily basis, these are very real questions that we should be able to ask ourselves. And answer.

We already know some bitcoin, for instance, is already lost or inaccessible. In fact, one oft-cited 2020 estimate from Chainanalysis suggested about 20 percent of Bitcoin's then-18.6 million supply had been lost. And while some of these losses were due to holders forgetting their access info, in general, some crypto has been lost after people died. For instance, in 2018 when then 30-year-old Gerald Cotten, founder of QuadrigaCX (a cryptocurrency exchange) died unexpectedly, he reportedly died with the passwords to $215 million of investor funds in cryptocurrency and fiat. (His death is now being explored in a new documentary, but that's another story.)

The fact is, given the value cryptocurrency—it press time it hovered above a $2 trillion market capitalization— it is now "an additional class of assets that an estate planning attorney has to deal with—just like one's home, one's bank accounts, brokerage accounts," confirms Asher Rubinstein, partner at the law firm of Gallet, Dryer, & Berkey, in New York City. "Now we have to also take into account the client's cryptocurrencies, NFTs, tokens, et cetera. You don't want to leave those out of an estate plan because, for many people, they constitute a very significant holding."

You can see how creating a legally binding plan for your crypto is important. So what have you done to put a plan into place? If you thought it was enough to have a quick conversation with your beneficiaries, or to write down a few passwords in a notebook and hope for the best…sadly, you'd be mistaken.

Taking initial steps to protect your holdings

Before we get into more details, let's back up so you can consider two questions. Do you even know who you'd want to inherit your digital assets? And do you know what you hold?

Answering these questions is key when it comes to estate planning. After all, losing track of your crypto *can* happen. Many of us have seen tweets from people who forgot a wallet existed and rediscovered funds…months or years later. (Rapper 50 Cent is just one of the lucky ones whose memory once failed him.)

But imagine what would happen if you not only forgot you held a certain asset, but then you died. Given the decentralized nature of cryptocurrency, and how different it is from other trackable and known assets—like certain bank accounts, stock holdings, or real estate—your digital assets could be lost forever.

By the way, the same principle of loss holds true even if you know what you hold but fail to adequately inform your heirs.

Attorney Rubinstein adds that, in general when somebody dies, the family can go through papers and "find" the assets. But for digital assets, in many cases you don't get statements where these assets are held.

That's why it's important to communicate with your heirs, and with your executor or attorney (more on that in a moment) about what you hold and how you'd like it to be managed.

Establishing a legally binding process to pass on your digital assets

As advocacy site Death With Dignity notes, the process of safeguarding your digital legacy (including cryptocurrency and other accounts and assets) includes four basic steps.

1. Taking inventory of your digital assets and devices
2. Securing your passwords
3. Making decisions about your digital assets
4. Providing instructions for handling your digital assets

However, when it comes to cryptocurrency, these steps can get tricky. That's partly because anyone who has access to your private keys has access to your crypto. So you need to be *extremely* careful about who you share that private information with and take steps to prevent the information from becoming public.

Taking a look at wills and online storage options

"The overriding goal of estate planning is getting one's assets to one's beneficiaries in the most efficient way possible," says Rubinstein. "One way to do this is with a will where you specify who gets what upon your death."

However, wills go through probate court, which seeks to ensure a deceased person's debts are paid and assets are properly allocated. And this process can lead to more issues.

As Rubinstein notes, if you create a will for your digital assets, your survivors would then need to hire an attorney to go through the probate process. Plus, he says, "you've now introduced the court, you've now introduced the government—so that's automatically going to mean a slowdown because courts are very slow, especially during the pandemic." For instance, in New York, he says he's seeing courts that deal with estate planning and wills take 6 to 9 months to just *begin* proceedings.

Another issue? As Rubinstein confirms, a will then becomes a public document, which means the public would be able to see what you've left behind. And since you should not put private information like a PIN or private keys in public documents, you still would need to figure out how to safely ensure your heirs or executor have access to your keys or other information in order to access your digital assets.

If this process sounds messy, it can be. And if your heirs or executor aren't familiar with the cryptocurrency market, or don't know exactly how to access your assets, they could face the very real possibility that the assets you worked so hard to collect would be lost to them.
At this point, do note that some online exchanges have policies for helping heirs access the assets of people who have died, if heirs can't access them otherwise. Coinbase, for instance, has posted its process for gaining "access to a deceased family member's Coinbase account" and instructs people to contact the company and provide documents such as a death certificate, the person's last will and testament, valid photo ID, and a letter signed by the person (or people) named in the probate documents that instructs Coinbase on what to do with the balance of the account. (And there again is a reference to probate.)

But if you have your holdings in your own wallet, you can see how things would get more complicated if your survivors don't have access. And since dealing with a loved one's incapacitation or death already can be emotional, adding this kind of confusion about assets could be even more difficult to manage.

Sisters Julie Fry and Renee Fry understand this scenario in general. "Our dad had Alzheimer's and so it was a 6-year experience," Renee explains, noting that their mother lost paperwork multiple times over the years and would be in tears during the "scary" process.

In the Fry sisters' case, their parents had paid for estate planning but still had these issues, so they decided to create a new online service that could help. Renee Fry is now the CEO of their company Gentreo, which they call an online next generation estate planning company, and Julie Fry is founder and COO. Their service offers a "digital vault," and resources for managing, accessing, and updating various documents throughout your life. And as their father's dementia progressed, before he passed away, Julie says they were able to access his documents and upload information.

Of course, the sisters' online service isn't the only one. You see, while some sources (like this one) recommend having a sealed paper copy of key information, and keeping it in a secure place for your executor or other beneficiaries to access after your death, other online options also are available.

In fact, a variety of online services have cropped up, with companies noting they can keep your passwords and other information safe until you need to share it (say, if you become incapacitated) or until after your death. Some companies also offer help with managing passwords and other documents day to day.

If these services sound interesting to you, as always, do your own research to determine whether you're comfortable with a company's services and whether they would be a fit for your situation. And feel free to consult with an attorney for specific advice.

Putting your trust in a trust

Speaking of attorneys, there's one more thing to mention. Remember the discussion earlier that wills can have drawbacks such as being public and going through probate? Well, there is another legal vehicle to consider when it comes to passing on your assets.

As Rubinstein explains, this is where the concept of a trust comes in.

What is a trust exactly? "Trust are legal arrangements that provide for the transfer of assets from their owner, called the grantor or trustor, to a trustee. They set the terms for the trustee's management of the assets, for distributions to one or more designated beneficiaries, and for the ultimate disposition of the assets," Investopedia explains. And unlike wills, which take effect upon death, " trusts may be used both during the life and after the death of their creators," the site notes.

So, another way to pass along your digital assets is to set up a trust—right now. "If somebody sets up a trust while they're alive, they pass away but the trust still exists," Rubinstein says. The trust then also avoids probate, Rubinstein adds. "You have now essentially gone around the inefficiencies of a probate court distributing your assets, including your cryptocurrencies," he explains, noting that you've privatized the process. "It's cheaper, because you may not have to hire an attorney, it's not subject to the delays of the probate court, and it's private. The trust that you've left behind is not recorded, or even delivered to the court… With that in mind, if the goal of estate planning is the efficient distribution of your assets upon your death, then the trust becomes a very important way to maximize that efficiency along with privacy."

If you think a trust is hard to set up, Rubinstein says they're not complicated. You just hire an attorney to draft a trust, and then you choose a trustee who you trust—of course—to guard the assets you've left behind or distribute them as desired, he explains. Your trustee can be a person you know or even a trust company that understands how to access and manage digital wallets, he adds.

A trust also can come in particularly handy if, say, you don't want your heir to inherit your assets all at once—remember our discussion of trust funds—and to inherit the assets over time. (If you think about those TV shows featuring characters with "trust funds," you probably get this concept.)

Trusts also can be used as a way to protect your assets while you're living, including protecting against creditors, Rubinstein says. Crypto is a significant asset class, and people's holdings can be in the 7 or 8 figures, he says, adding when it comes to planning for potential incapacitation, you also should have documents such as a health care proxy, living will, and a durable power of attorney.

And while you may be skittish about establishing a process to share access to your holdings if you become incapacitated, and after you pass on, if you don't, your crypto could be lost forever. This is why planning—and trust in the people you communicate with—are both extremely important.

Leslie Quander Wooldridge is a writer, editor, consultant, and speaker whose articles have reached tens of millions of readers. Visit her at www.lesliequander.com or follow her on social media, including Twitter and TikTok @lesliequander.