

# ESTATE PLANNING AND CRYPTOCURRENCY

Cryptocurrency, such as Bitcoin and Ethereum, is becoming a lucrative asset. As the value of some cryptocurrency keeps skyrocketing, this creates a number of issues, especially with your estate planning. What do you need to consider with your estate planning when you have cryptocurrency?

## What is cryptocurrency?

Cryptocurrency is digital currency. It is an online form of currency that has no central authority to manage or track transactions. Further, transactions are made “peer to peer” with no intermediary such as a bank which results in a fast and reliable method of payment that anyone can use. The downfall is that cryptocurrency requires a lot of security measures such as encryption to prevent any unauthorised use.

The advantage of cryptocurrency is that there are no fees associated with the currency and is “free” from government control. Although transactions can be made privately and anonymously, this can result in illegal activities.

## Difficulties with estate planning

The basis behind cryptocurrency is that transactions are conducted online, privately and anonymously. However, if the investor were to die, and no one else is aware that they had cryptocurrency, there is a real risk that the asset will be lost forever.

Furthermore, other problems that may arise include issues with jurisdiction when applying for probate. If deceased’s assets aren’t linked to a particular jurisdiction (such as with real property or bank accounts) it could potentially lead to Courts not having jurisdiction to deal with the deceased’s estate.

## What you need to consider?

A simple method of ensuring that your cryptocurrency won’t be lost is to inform your executor of its existence, either personally or by leaving information with your Will such as in a memorandum of wishes. However, you need to ensure that no private information is actually in your Will as your Will becomes a public document upon obtaining probate. When informing your executor, either personally or by Will, not only will you need to provide information about what currency you hold, but also “keys” on how to unlock them. This poses other issues:

- (a) Does your executor understand what cryptocurrencies are?
- (b) Would they know how to access it?
- (c) Would they know how to deal with it, sell it or transfer it to beneficiaries?
- (d) If you tell them personally, do you trust them not to use that information until you die?
- (e) If you inform them through your Will, is the information securely documented and stored such as in safety deposit box?

## Other options available

There are also other options available which don’t involve leaving information with your Will.

### 1. Multi-signature Transactions

Standard transactions on currencies such as Bitcoin can be utilised generally by a “single-signature transaction”. This essentially means that only one signature is required to effect transaction – usually from the owner of the private key associated with the currency.

However, an alternative is to have a “multi-signature transaction” also known as a minimum number of signatures (M) out of a number of possible signatories (N). To illustrate:

- (a) You may provide Bitcoin with 5 possible signatories;
- (b) Bitcoin then requires 3 people to sign off before the transaction can be effected;
- (c) You then may nominate a number of executors, or inform your intended beneficiaries, providing each with a key or password;
- (d) Upon providing the original death certificate to the cryptocurrency fund, the third party could sign off to confirm the transaction.

## 2. Dead Man's Switch

Another option is referred to as the Dead Man's Switch. This occurs where an event triggers a transfer of your cryptocurrency such as your death. This method uses a programme to send you regular emails and waits for your response. Further, as a security measure, it also checks various databases to see if your death certificate appears.

If you don't respond to the emails and a death certificate is located, then this activates the "switch" and signs the transaction to transfer your currency to your nominate beneficiaries.

This method does require you to regularly check your emails and respond.

## 3. Smart contracts

Smart contracts refer to a computer protocol which is intended to facilitate, verify and enforce a transaction. With this method, you input a time in the future (ie 6 months, 12 months) that the transaction is to take place. This time is continually postponed by you when you are alive. However, if you die and the time stipulated rolls over, then the transaction will be processed, transferring your currency to your beneficiaries.

This method requires you to regularly postpone the time for the transaction to be processed.

## 4. Shamir's Secret Sharing

Cryptocurrency is held in a digital wallet. To access this wallet, you have to have a "key" or password. Shamir's secret sharing (also known as a sharing scheme) allows you to divide this "key" into a number of pieces. You can then give each piece to different beneficiaries. For the "key" to be reconstructed, you require all the different parts. Thus, all beneficiaries will need to cooperate to reconstruct the "key".

## 5. Google's Inactive Account Manager

If you have an account with Google, then Google has a feature called the Inactive Account Manager. This is a way for users to share parts of their account data or to notify your executor or beneficiaries if your account has been inactive for some time.

If Google detects inactivity, you can set up that Google notifies selected contacts and share data with them. You can utilise this function to send your executor or beneficiaries with and an encrypted file with the "key" to access your cryptocurrency.

This method requires you to be active on your account.

If you have cryptocurrency, or are thinking of obtaining it, it is important to consider your estate planning. Unlike traditional assets, cryptocurrency can be untraceable, and if you haven't informed anyone that you own it or how to access it, you risk it being lost forever. If you would like any estate planning advice, please contact [Henry Kalus](#) or [Kimi Shah](#).

*For over 20 years Kalus Kenny Intalex have been providing expert legal and proactive strategic advice for some of Melbourne's most successful property developers, entrepreneurs and business people. Underpinning this success, and what really sets us apart from other firms, is the way we work with our clients. What exactly does this mean for you? It means providing clarity. It means understanding strategy and risk. It means being a different kind of lawyer.*