

# DIGITAL ASSETS: CREATING AN EFFECTIVE SUCCESSION PLAN



# INTRODUCTION

- *Creating an effective estate and succession plan requires planning, preparation, execution and updating. In this process the tools to affect a successful plan will be dependent on various factors such as religion (Muslim, Christian, Hindu etc.), local laws (Common Law, Civil Law, Sharia Law etc.), recognisable tools such as Wills, trusts, foundations, and so on.*

*One of the great challenges of today, is that we are in a transitional phase in the way we own and access assets. This transition is leading to a greater and greater dependency on digital access to personal wealth which may also be stored in digital form. The result is that our estate and succession plan must adapt to this new way we engage with and record our assets. The danger is that if we do not carefully record and communicate the way we hold assets digitally, there is a considerable danger that these assets could be “lost” over time, as the connection to those assets (oneself), disappears.*

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## What are Digital Assets?

The first factor one needs to consider is what form do these assets take. In doing so, one can see how assets we hold are generally transitioning into a digital signature. For example, take your bank account. The “signature” of one’s bank account in the “old days”, was a physical address, a high street bank – bricks and mortar. One’s spouse or partner or relative would typically know that “Oh, Mum banks at ABC bank in Town”.

Nowadays however things have changed radically, “Mum” may have set up an online bank account with a bank that does not have physical branches, she may have bought some Bitcoin, a digital wallet with 24 words on it might be hidden in a closet or safe, she may have an account with an online broker.

What about Mum’s computer or cell phone - these are increasingly becoming the access points to digital assets – what are the log in details and passwords, does she use 2 Factor Authorisation, is it via SMS code, or possibly an Authenticator App – does she use Biometric authentication?

Furthermore traditional assets with sentimental value (as well as monetary value) like family photo albums, records (remember those?), e-books, movie libraries i.e. “stuff” that one might find in a suitcase in Mum’s attic or in a bookcase in the living room, are no longer there. They are in the Cloud somewhere, in plain sight or perhaps hidden for security or safety purposes.

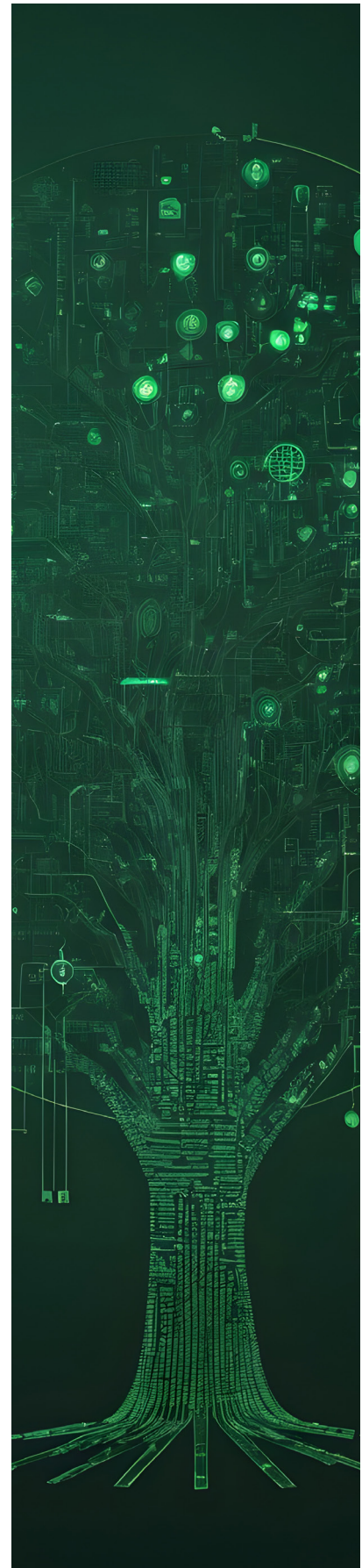
## Creating a Digital Asset Inventory

The creation of an asset inventory to sit alongside one’s Will or

other testamentary document is a pre-requisite of one’s estate plan. Family members should know where this document is and alongside it should be a detailed list of one’s asset.

This list of assets now needs to be expanded substantially to include digital assets. This may take various forms and simply add a small number of additional items to the overall inventory, but might include such items as:

1. Vaults holding information – online inventory applications are appearing.
2. Password Managers.
3. Email providers – this may incorporate personal, business (if you are a business owner), voluntary organisations that you work with etc.
4. Social Media Platforms.
5. Communication or Collaboration Platforms such as Teams, Zoom or Dropbox etc.
6. Digital Photo Apps – Google, Microsoft, Adobe, Amazon etc.
7. Cloud Based Applications and Digital Storage – Apple iCloud, Google Drive, Microsoft OneDrive etc.
8. On-line Banks and Brokers.
9. Insurance Companies and Pension Providers (private and Government).
10. Credit cards.
11. Apple Pay/Google Pay/Paypal.
12. Web domains and hosting.
13. Home phone, cell phone, internet provider, routers, networks etc.



- 14. Blockchain accounts and wallets, and Crypto Currency Custodians and Account information.
- 15. Non-Financial Tokens.
- 16. Hardware – Computers, laptops, smartphones.
- 17. Streaming services such as Netflix, Spotify etc.
- 18. Online shopping accounts.
- 19. Household and Property related online accounts.

The above (non-exhaustive) list illustrates how much of our lives has transitioned over time into this digital world and how much complexity it creates for us. Yet, what we are planning for is the sad day when we are no longer here. When that day comes, what may have become complex for us to manage ourselves, can become a nightmare for one's family and the fiduciaries involved in the administration of a deceased's estate. This is not a legacy one needs to leave.

### Implementing a Digital Estate Plan

The nature of the digital world is that it creates significant opportunities for things to go wrong. Whereas in years gone by,

the deceased had a bank account at a bricks and mortar bank, probate would be granted, written communication with the bank by the appointed Executor or other Fiduciary would take place with the bank, who would ensure matters were legally correct.

Today, a username and password, or perhaps 24 words providing the code for a blockchain, if in the wrong hands, could create significant problems in a deceased persons wishes being carried out. The opportunity for fraud in administering an estate, has increased substantially.

**So, what issues need to be considered:**

- 1. Firstly, if a Digital Asset Inventory is to be prepared, where and how will it be securely stored?
- 2. Are passwords and secure protocols stored in the same location (ideally not)?
- 3. Who is the Fiduciary that has access to this? To all intents the Fiduciary who has your login details, passwords and security protocols, to all intents becomes a bearer holder of those assets with considerable power. Should there be more than one?

- 4. How does a Fiduciary's access to (say) your bank accounts fit with legal requirements and the terms and conditions of service of that platform. For example, Client A dies, Spouse A accesses Client A's online bank accounts and transfers money to their own account. Is this legal? Probably not without the completion of probate and submitting appropriate documentation. The temptation to break the law may be high either deliberately or inadvertently.
- 5. Has the deceased's testamentary instrument taken account of the need to specifically mention digital accounts and assets. For example, should certain accounts be closed, should online photograph accounts be specifically left to certain family members.
- 6. Should the testator of a Will apply a separate document (the Will being a binding legal document) to guide the Executor of the Will (in a non-legally binding manner) as to their general wishes when it comes to online/digital assets i.e. a Memorandum of Wishes. ■



## Summary

Administering an estate used to be a complex matter. It is now a very complex matter when digital assets are incorporated into the mix. This complexity if not handled correctly can lead to loss of control, loss of assets, fraud, and the accidental breaking of laws by inexperienced Executors and other Fiduciaries. Furthermore, significantly increased costs can be incurred as time passes and access to assets is impeded, and even lost.

The answer is to ensure that a Digital Asset Inventory is explicitly created in addition to the standard Asset Inventory, and appropriate wording added to testamentary documents. This may even involve the specific appointment of a “Digital Executor” to handle specific digital assets.

The moral of the point is that digital assets significantly increase the complexity of recording an estate and implementing an effective succession plan. To this end, the importance of obtaining qualified legal advice is required to ensure that the best process is implemented combined with effective drafting of testamentary arrangements and execution of probate matters in accordance with all relevant laws.

Now may be a good time to revisit your Wills and other Testamentary documents and see if they measure up to this challenge.

