



## DIGITAL ASSETS - KEY ESTATE PLANNING CONSIDERATIONS

We live in an increasingly digital world and most individuals now own one or more digital assets. The importance of considering these assets and what should happen to them on death has never been greater.

### WHAT ARE DIGITAL ASSETS?

The term “digital assets” refers, in broad terms, to intangible items held digitally. The term covers a wide variety of assets, but some of the most commonly held assets include cryptocurrency, online-only bank and other financial accounts, digital photos, and email and social media accounts.

A common point of misunderstanding is that an individual’s digital assets do not include items which are accessed only through a licence. A licence to access digital media will usually end on the user’s death and cannot be transferred to someone else. For example, the music in your iTunes or Spotify library, or the books in your Kindle library, are accessed by way of licence and cannot be passed on.

### WHY ARE DIGITAL ASSETS IMPORTANT?

Some digital assets, such as cryptocurrency and online-only bank accounts, can have significant financial value. In contrast, assets like digital photographs or the content of social media accounts may be of little financial value but can have significant sentimental value which can be equally as important to family and friends after the death of a loved one. It is therefore important to consider what should happen to these assets in the event of your death to ensure that your wishes are followed.

### HOW CAN DIGITAL ASSETS BE PASSED ON?

In the same way as physical assets, your digital assets can be passed through your will. It is important to consider who you would like these to pass to and whether you would like to pass any specific digital assets separately from the rest. It is common for wills to be prepared so that your digital assets pass with your personal chattels (i.e., your personal possessions, which often also have a sentimental value). However, if you have financially valuable digital assets, you may prefer for these to be dealt with separately.

Although digital assets can pass through your will, there are often practical issues that arise when an estate is administered. Even if your personal representatives are aware of all of your digital assets (and this will not necessarily be the case without forward planning), accessing them can be difficult, as they are often password-protected and subject to the terms and conditions of the relevant service provider, which usually prohibit the sharing of passwords. It

is therefore important to consider, ahead of time, what assets you would like to pass on, to whom, and how this will be achieved from a practical perspective.

### WHAT PRACTICAL STEPS SHOULD YOU TAKE?

- Keeping an inventory of your online accounts, subscriptions and devices will help your personal representatives to identify and secure your digital assets in the future. It is important to keep the inventory up to date and store it somewhere where your personal representatives will be able to access it. We can provide a standard form inventory for you to complete if desired.
- Check your online accounts to see whether any lifetime planning options are available. For example, Google, Apple and Facebook all provide a facility allowing a user some control over what can happen to their account after they have died. Unfortunately, at the moment most smaller online providers do not offer any option such as this. However, this is a developing area and we anticipate such measures becoming more widespread, so we recommend checking regularly for any updates.
- If you own cryptoassets, consider who you would like these to pass to and how, as a practical matter, your personal representatives can access these on your death. For example, ensure that your personal key is stored securely, but that your executors know where it is so that they are able to access these assets following your death. Ensuring security of a personal key while ensuring that your executors can access what can be valuable assets in the future can be a difficult balancing act. Some companies are now starting to offer a personal key manager service, which may be worth considering if you have a significant cryptoasset holding.
- Do not share passwords to your online accounts with anyone else and do not include them in any inventory you may complete. This is often prohibited by the terms and conditions governing user accounts. In addition, it may also be a criminal offence for a third party to access a user's account (even with the password) unless authority is given by the relevant service provider.
- Consider downloading and/or printing photos, emails etc. during your lifetime that may otherwise be lost or become inaccessible. Consider deleting any files that you would prefer to remain private following your death.

For many individuals, these measures will be sufficient for the nature of the digital assets they own. However, please do let us know if you feel you need further advice in relation to your digital assets.

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