



CESTNICK

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TAX MATTERS

## Make sure your estate plan considers your digital assets

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One of life's greatest problems is the password. I'm talking about computer passwords. Years ago, I used the same password for everything: "password1." Yeah, I also thought it was pretty creative at the time. I had a friend whose name was Forrest (he heard a lot of Forrest Gump jokes) who used the password "1Forrest1." Now that was creative.

It occurred to me that, if I were to die tomorrow, my family would have a tough time accessing all my online accounts. And what about my growing list of digital assets? Would they know what those assets are? Do I even know what those assets are?

You've probably given some thought to who will inherit your home, your grandmother's jeweler and your rubber chicken collection. But what about your digital assets?

### Digital assets defined

Digital assets, like tangible assets, may have significant value. And at the time of your death, you'll be deemed to have sold any capital property you own, at fair market value – including digital assets. If those assets have appreciated in value,

the gain could be taxable at the time of your death.

Your digital assets can include things such as cryptocurrencies, non-fungible tokens (NFTs), domain names, digital photos and videos, digital rights to literary, musical composition, motion picture or theatrical works, blog content, online video channels where your content is monetized or generating advertising revenue, online gaming avatars that offer goods or services that may be worth real-world money, digital online betting accounts, other accounts (such as PayPal) where you may have money or credits stored or even prepaid subscriptions to online content or goods and services.

If your estate plan hasn't properly accounted for these things, your heirs may not be able to access these digital assets when you're gone. Do you, and your executor, even know what digital assets you own?

### Digital asset challenges

Even if your executor has a list of your digital assets, this doesn't mean those assets can be accessed when you're gone.

Your online photos and videos could be inaccessible forever, your social media accounts might stay online indefinitely, and your heirs might not receive money or other valuable assets that you intended for them to have.

The first hurdle your heirs will face in gaining access to your digital assets is not knowing your passwords for information or those assets stored on your smartphone or computer, in online accounts or on the cloud. Some passwords (like the one to log in to your laptop) could be bypassed by experts, but others can't (cryptocurrency keys, for example) and could mean the loss of those assets forever.

Furthermore, data privacy and criminal laws can prevent family members from accessing your online accounts and assets unless you give specific authorization to provide that access.

As an aside, for assets other than [cryptocurrencies](#) and NFTs, it makes sense to use a password manager app such as 1Password, LastPass, Dashlane or something similar. If your executor or family has the master password for that app when you're gone, they'll have access to all your passwords.

## Digital asset strategies

If you want to ensure a smooth transition of digital assets when you're gone, here's a game plan:

- 1. Document your digital assets.** That is, understand what you own. And realize that there's a difference between owning a digital asset and simply owning a non-transferrable licence to use the asset.

- 2. Back up your digital assets.** Make sure that all your online documents, data and assets are backed up to the cloud (there are many services, such as OneDrive, Drop Box, etc.). But it also makes sense to store these on a local computer or storage device so your family can access these with fewer obstacles.

- 3. Leave digital assets to your spouse.** You can avoid the deemed disposition at fair market value if you leave assets to your spouse when you die. In this case, there will be no tax to pay until your spouse dies or transfers the assets to your kids or others.

- 4. Provide authorization in your will.** Update your will to ensure that your executor is provided authorization to bypass, reset or recover your passwords. And by the way, if your digital assets are significant enough (perhaps the majority of your net worth), it might be wise to have a separate will to deal with those assets and to name an executor of that second will who has some acumen in digital assets.

- 5. Check in regularly.** Since digital assets are still a new thing for most people and the laws are changing quickly, talk to your lawyer regularly to update your wills and powers of attorney to reflect any changes in the law or your digital assets.

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