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**Digital Assets**

# Digital estate myth #1: All assets are the same

By **Sharon Hartung**

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(October 8, 2019, 8:52 AM EDT) -- Planning for digital assets is not a new topic. Estate planners have been discussing this topic for the last 10 years, and yet during this time of rapid global technology adoption the topic of digital assets remains one of the least understood aspects of estate planning and estate administration.

From a technology management perspective, I've seen three myths circulating about how to handle this new asset class in estate planning. They range from the misunderstanding that all digital assets are the same; to the false comfort that password managers and hard-copy password lists are the answer; to thinking that appointing a digital asset executor solves the problem.

In 2017 the value of bitcoin rose, increasing public awareness of unregulated cryptocurrencies as well as the conversation around the financial implications of owning crypto-asset and digital assets. Are these digital assets handled the same way as an e-mail account? Would you handle a client's fine art collection the same way as their real estate holdings?

While the volume of digital assets in estate administration grows, until the corporate executors and trust companies start raising alarm bells, we may unfortunately continue to see these myths perpetuate.

**Myth #1: Digital assets are all the same**

I've heard and seen digital assets described and grouped in the same asset class along with the art collection, rare sculptures, or with the skulls or other historically significant artifacts you're not sure the client should have in the first place.

The definition of a digital asset from the Uniform Conference Law can make it seem innocuous and uniform: "A digital asset may be defined as anything that is stored in a binary format or more simply an electronic record."

In many respects, that is like saying digital assets are made up of water molecules. We know how many physical things contain water, and from one to the next, the form and function can be so characteristically different we might not even know water is contained within.

The Society of Trust and Estate Practitioners (STEP) definition begins to peel back the varied nuances of the definition as it recognizes digital assets can have financial value or sentimental value. Certainly, this definition is a useful conversation starter with clients because it draws in all the other process steps in estate planning. The estate planner should consider listing them with equal importance as other client effects along with their specific wishes, and the conversation should consider any tax liabilities associated with these assets.

Digital assets are not all the same, and estate planners should treat each one as having individual characteristics during estate planning. Some digital assets, such as online access to financial

institutions, are governed by rules aligned with the underlying financial asset; so much so, that fiduciaries should not be accessing these digital assets and should be dealing directly with the institutions to establish their own access, if required, supported by the legal documentation the individual holds. Even within types of digital assets, such as e-mail or loyalty points, characteristics of what is allowable upon death will differ within each provider's terms of service.

As a starter, to address this myth about the homogeneity of digital assets, I recommend that estate advisers ask their clients to identify their top three digital assets. Then, I suggest they ask the individual how devastated they would be if the asset were not transferred. Those assets could be e-mail correspondence, loyalty points, their wishes for online memorialization, or the handling of unregulated cryptocurrencies. Then, review the distinguishing features of each asset considering the terms of service or technical management characteristics of each. Most importantly, develop an estate plan addressing the unique aspects of each digital asset so they can be effectively managed upon incapacity and transferred upon death.

In addition, a client's e-mail account is as significant in estate administration as is today's home office. Clients should be urged to create an estate inventory or list of all their significant assets –– physical and digital –– as an executor can no longer rely on a paper trail. It's unwise to rely solely on the executor's ability to gain access to a client's e-mail account because there is a high degree of risk that won't happen for the reasons I've outlined above.

This is the first in a three-part series. Myth #2 is next.

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