

Keeping Pace with Digital Assets: Preparing for the Future

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Overview

This webinar will identify what is happening globally in the world of Digital Assets by exploring:

- Working legislation in place
- Cases demonstrating the need to protect Digital Assets
- A Digital Assets succession Checklist

Opening Questions



How many accounts do you estimate you have which require passwords to access?



What percentage of your clients have asked you about advice on digital assets in the past year?



Do you have any sentimental digital assets stored online?



Have you thought about including digital assets in your estate planning?

What are Digital Assets?

Email accounts (and text messages)

Social network accounts, online banking and credit card accounts

Electronic documents, including those in cloud storage (such as iCloud, One Drive, Google)

Digital subscriptions and digital wallets

Web Domain names, blogs, Web Pages

Crypto or virtual currencies, NFT's

Digital art, music, and books

NEW

Digital Wealth

- A significant number of crypto asset owners may be dying or becoming incapacitated without leaving their heirs a pathway to access their assets
- Recent estimates have claimed that global cryptocurrency assets are now worth \$2.48 trillion
- It is estimated that 20% of all Bitcoins are 'lost' meaning that the wallets containing them haven't been accessed in over 5 years. This accounts for approximately 3.7 million in bitcoin, or, \$140 billion in lost assets
 - Bitcoin is only one specific cryptocurrency; there are over 10,000 other specific cryptocurrencies.



A Uniform Act for Canada

Uniform Access to Digital Assets by Fiduciaries Act

<https://www.ulcc-chlc.ca/Civil-Section/Uniform-Acts/Uniform-Access-to-Digital-Assets-by-Fiduciaries-Ac>

- Introduced by the Uniform Law Commission of Canada in 2016
- Media neutral legislation – not barred by any Canadian privacy laws
- Default access for fiduciaries is the basic rule
- Governs four types of fiduciaries: personal representatives, POAs, guardians, and trustees



Saskatchewan

Fiduciaries Access to Digital Information Act, SS 2020, c 6

<https://www.canlii.org/en/sk/laws/stat/ss-2020-c-6/latest/ss-2020-c-6.html>

- Came into effect on June 29, 2020
- First and only Canadian province to enact the ULCC Model Act
- Right to access is only granted pursuant to instructions given in a will, letters of administration, guardianship order, power of attorney, trust, or court order



Revised Uniform Act in America



Revised Uniform Fiduciary Access to Digital Assets Act

<https://www.uniformlaws.org/committees/community-home?CommunityKey=f7237fc4-74c2-4728-81c6-b39a91ecdf22>

- Introduced in 2015. Enacted by 47 states, introduced by 1 recently.
- Grants fiduciaries access to a person's online accounts when they die or become incapacitated
- Restricts fiduciary access to electronic communications (such as email or text messages) unless specifically outlined in a legal instrument such as a will or Power of Attorney

'Intangible Personal Property'

Wyoming

- The only state in the world to define digital assets in reference to the common law concept of 'intangible personal property' under the classification of UCC Article 9
- In it's 2019 legislative session, Wyoming signed 13 blockchain-friendly laws into effect
- Wyoming divided digital assets into three categories under the Uniform Commercial Code (UCC): (1) Digital Consumer Assets (UCC: general intangibles), (2) Digital securities (UCC: securities: investment property); and (3) Virtual currency (UCC: money)

Article 13-A

New York State

- Enacted Uniform Act with Article 13-A of the state's *Estates, Powers and Trusts Law*
- *Estate of Swezey*:
 - 2017, Ric Swezey, a former champion gymnast and Hollywood stuntman, died unexpectedly in a recreational trampoline accident
 - NY State Surrogate Court relied on 13-A to order Apple to give Ric's late husband access to his digital assets

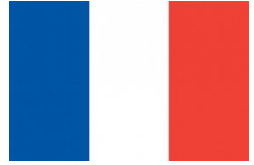


France's Digital Republic Act

Digital Republic Act

<https://www.republique-numerique.fr/pages/in-english>

- Grants individuals significant rights to control what happens to personal data after death
- Pursuant to this legislation, service providers must comply with an account holder's expressed wish
- Allows users to make post-mortem arrangements for their data at any point in their lifetime. Places a duty on Service Provider's to inform the user about what will happen to their data when they die



France's "PACTE" Act

Plan d'Action pour la Croissance et la Transformation des Entreprises (the Action Plan for Business Growth and Transformation)

<https://www.entreprises.gouv.fr/fr/industrie/politique-industrielle/plan-d-action-pour-la-croissance-et-la-transformation-des>

- Introduces two new categories of 'tokens' and 'digital assets' in France's Monetary and Financial Code
- Article L54-10-1 does not actually define digital assets but it does enumerate the kinds of assets that fall within the category

Protect your Digital Assets

Matthew Moody

- Inherited BNY Mellon banking fortune
- Invested \$2 million in cryptocurrency XRP/Ripple; \$1 billion return
- Died in Mexico in 2018
- Did not leave his heirs a path to access his digital assets
 - Matthew was rumored to have stored the private keys to his crypto wallets in other people's names in random cold storage units

Password problems

Marsha Mehran

- Author of 'Pomegranate Soup'
- Died unexpectedly in 2016
- 200 documents recovered

Maureen Henry

- Couldn't access son's Facebook account

Carol Anne Nobel

- Widow, writing husband's book
- Court ordered Apple to provide access

Be Careful with your Digital Assets

QuadrigaCX

- 2018, Gerald Cotten, CEO of the crypto exchange, died with the knowledge of the private keys to \$250 million worth of personal and client's cryptocurrency
- 2019 OSC report: QuadrigaCX was a essentially a Ponzi scheme

Digital Assets Checklist

1. Listing your Digital Assets

1.1 - Make a detailed list of all Personal Digital Property INCLUDING a corresponding list of any passwords that protect your Personal Digital Property

- Document all **personal computers, laptops, and cellphones** (including the model number and serial number if possible)
- Document any passwords needed to access these personal computers, laptops, and cellphones
- Document all **personal music storage devices** (iPads, mp3 players and online storage accounts)
- Document any passwords needed to access any devices or online storage accounts (ie. Apple for iTunes music)
- Document all **storage hardware devices** (such as removable USB drives and external hard drives)
- Document any passwords needed to access any storage hardware
- Document all **personal online accounts** (including social media accounts, online banking accounts, online gaming accounts – basically anywhere you've stored media that you or your beneficiaries want to save)
- Document any passwords needed to access your online accounts as well as any instructions for closing or memorializing these accounts

- Document all of your **personal Web Domain Names** (ie. personal blog or website)
- Document any passwords needed to access the Web Domain service provider's online platform

1.2 – Make a detailed list of all Digital Property with Monetary Value INCLUDING a corresponding list of any passwords that protect access to your property

- Document all **websites, blogs, and social media accounts** that generate revenue
- Document the passwords needed to access the web domain providers platform for these websites, blogs, and social media accounts
- Document all **digital art** including photographs, books, music (including the rights to these items)
- Document the Certificate of ownership (or Original Receipt of Purchase)
- Document all **Non-fungible Tokens** (NFTs)
- Document the location of the Certificate of ownership for any Non-fungible Tokens (NFTs)
- Document any **crypto or virtual currency** held in a digital wallet
- Document the location of your private keys or digital wallets containing crypto or virtual currency
- Document any **digital Intellectual Property** including copyrighted materials, Trademarks, Code, or applications you have developed
- Document any passwords needed (or their location) to the online platform used to access any digital Intellectual Property

Digital Assets Checklist

1.3 – Make a list of all Digital Business Property INCLUDING a corresponding list of any passwords that protect access to you Digital Business Property

- Document any **Intellectual Property** owned by your business or corporation including copyrighted materials, Trademarks, Code, or any applications developed
- Document any passwords needed (or their location) to access any online platforms or devices where any Intellectual Property owned by your business or corporation is stored
- Document any stake or **shares in any digital asset** (shared ownership)
- Document any passwords needed to access any platforms or devices where these digital assets are stored

2. Deciding what you want to have done with assets

2.1 – Make a list detailing what you want done with your digital assets INCLUDING corresponding list of any passwords that protect access to your property

- Detailed directions on how to **access password protected hardware & devices**
- Include the passwords (or where to find them) for any password protected hardware and devices
- Detailed directions for **accessing social media accounts**
- Include the passwords (or where to find them) for any social media accounts
- Instructions on **closing social media accounts**
- Include the passwords (or where to find them) for any social media accounts

- Document up-to-date **instructions for third parties assisting** with the management of your digital assets

- Include all previous lists and passwords to all online accounts and password protected devices

- Document detailed instructions for **how your digital executor should handle your assets**

- Include all previous lists and passwords to all online accounts and password protected devices

2.2 – Decide who to name as your Digital Executor

Consider some of the following characteristics of a good choice for digital executor:

- Someone you know personally and well
- Someone who is not in a conflict of interest with any of your interests
- Someone who is willing to take on the task and do a good job
- Someone who can devote the time needed to be your executor
- Someone with specific knowledge of your assets and how to handle them
- Someone who is financially responsible and organized

3. Formalizing your Information

3.1 - Make a detailed list of where your information is stored INCLUDING a corresponding list of any passwords that protect access to your property

- Document where to find your list of Personal Digital Assets (one list of assets with monetary value and one list of assets without)
- Make sure your digital executor is provided with this list or knows where to find it

Digital Assets Checklist

- Document where to find your Business Digital Assets
- Make sure your digital executor is provided with this list or knows where to find it
- Document where to find any master lists of all your passwords
- Make sure your digital executor is provided with this list or knows where to find it
- Document any accounts which use a Digital Wallet for any of their services
- Make sure your digital executor has the passwords and instructions for all digital wallets and where any wallets are connected to bank accounts
- Detailed instructions on how to transfer funds out of and close any accounts using a Digital Wallet

3.2 – Formalize your information in a legal document

- Assign a fiduciary in a legal instrument (such as a Power of Attorney)
- Make sure that fiduciary has access and instructions for how to handle all of your digital assets
- Draft a will which includes how to handle your digital assets in your last wishes and instructions
- Make sure your digital assets are clearly bequeathed to beneficiaries
- Register your will with an online Registry service such as NoticeConnect's Canada Will Registry

Helpful Tools for Digital Estate Planning

<input type="checkbox"/> Use a Password Manager	Examples: Keeper, <u>Dashlane</u> , LastPass, <u>Bitwarden</u> , <u>LogMeOnce</u> Password Management Suite Ultimate, Password Boss, <u>NordPass</u> , 1Password, RoboForm, Sticky Password, McAfee True Key, <u>Zoho Vault</u> .
<input type="checkbox"/> Use a Digital Estate Planner	Examples: <u>eState Planner</u> , <u>Everplans</u> , <u>LifeSite</u> , <u>LifeFilez</u> , <u>LegacyShield</u> , <u>Cake</u> .
<input type="checkbox"/> Use a Will Creation Tool	Examples: <u>eState Planner</u> , Willful, <u>LegalWills.ca</u>
<input type="checkbox"/> Use a Registry Tool	Examples: <u>NoticeConnect</u> , <u>Canada Will Registry</u>

Questions?

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