Digital Assets and Blockchain - New Considerations for Estate Planning

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Overview

Estate planning has always adapted to new forms of wealth. Historically, planners have focused primarily on real estate, securities, and closely held businesses. Today, an increasing number of clients own digital assets ranging from cryptocurrency to tokenized investment interests. At the same time, blockchain technology is beginning to influence how ownership records, business succession, and estate administration may be managed in the future.

While blockchain technology is not replacing wills and trusts, it is creating new planning opportunities and new risks that estate planners, CPAs, and financial advisors should understand.

Blockchain Is More Than Cryptocurrency

Many people equate blockchain with Bitcoin or other cryptocurrencies. In reality, blockchain is simply a decentralized digital ledger that securely records ownership and transactions. Rather than being controlled by a single institution, copies of the ledger are maintained across a network of computers, making the records highly secure, transparent, and extremely difficult to alter.

For estate planners, blockchain's greatest value is not replacing wills, trusts, or other traditional estate planning documents. Those instruments will continue to be governed by state law. Instead, blockchain offers a powerful tool for improving recordkeeping, documenting ownership, and preserving asset histories.

As estates increasingly include digital assets - such as cryptocurrency, online businesses, digital intellectual property, and cloud-based financial accounts - maintaining accurate records becomes more important. Blockchain can provide a permanent, verifiable record of ownership that helps fiduciaries identify assets and reduces the risk that valuable property will be overlooked or disputed during estate administration.

For farmers, ranchers, and closely held business owners, blockchain may also enhance documentation of business interests, equipment, inventories, and other assets. While technology is still evolving, its greatest promise lies not in replacing traditional estate planning, but in complementing it by creating secure and reliable ownership records for both traditional and digital assets.

Digital Assets Are Property

One of the most significant developments came in 2014 when the IRS issued Notice 2014-21,[1] concluding that virtual currency is property, not currency, for federal income tax purposes. As a result, the familiar tax rules

[1] 2014-16 IRB 938, *as modified by* Notice 2023-34, 2023-19 IRB 837.

governing basis, gain, loss, gifts, and inheritance generally apply to cryptocurrency just as they do to other capital assets.

That classification has important estate planning implications. Cryptocurrency owned at death becomes part of the decedent's gross estate and generally receives a basis adjustment under the normal rules applicable to inherited property.

The IRS later expanded its guidance in Revenue Ruling 2019-24,[2] addressing the tax consequences of hard forks and airdrops. While the ruling primarily concerns income tax issues, it reinforces the principle that digital assets are property subject to the traditional tax rules governing ownership and control.

Estate Planning Challenges

Unlike traditional financial assets, digital assets often exist only through cryptographic keys known only to the owner. If those private keys are lost, the assets may be permanently inaccessible.

Accordingly, estate plans involving cryptocurrency should include procedures for:

- identifying digital assets;
- securely storing access credentials;
- authorizing fiduciary access;
- maintaining appropriate cybersecurity; and
- documenting ownership.

Simply listing cryptocurrency in a will is often insufficient if no one can actually access the assets after the owner's death.

Fiduciary Access

Perhaps the most important legal development has been the widespread adoption of the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) by the vast majority of states.[3]

RUFADAA establishes rules governing when executors, trustees, agents acting under powers of attorney, and conservators may obtain disclosure of or manage digital assets a person's digital assets. Although the statute does not automatically grant unlimited access, it provides a legal framework that did not previously exist.

Estate planners should ensure that estate planning documents expressly authorize fiduciaries to manage digital assets whenever appropriate.

[2] 2019-44 IRB 1004.
[3] *See, e.g.*, Texas Estates Code, Title 4, Chapter 2001.

> **Note:** Because RUFADAA is a relatively recent statute, there is little reported appellate case law interpreting its provisions. Consequently, practitioners must rely primarily on the statutory language, the Uniform Law Commission's official comments, and evolving guidance from custodians and state probate courts.[4]

Business Succession Opportunities

Blockchain technology may eventually become valuable for family-owned businesses, including farming and ranching operations.

Many agricultural operations now involve multiple LLCs, partnerships, corporations, and trusts. Membership interests often transfer over several generations through gifts, sales, redemptions, and inheritances. Maintaining accurate ownership records can become increasingly difficult.

Blockchain technology offers the potential to maintain secure, time-stamped ownership records documenting transfers, valuations, restrictions, and ownership percentages. Such records could simplify future transitions and reduce ownership disputes among family members.

Similarly, recording a cryptographic "hash" of important legal documents - such as operating agreements, buy-sell agreements, or trust amendments - could provide evidence that the document has not been altered after execution while preserving confidentiality.

Smart Contracts

Another developing application of blockchain technology involves so-called "smart contracts." Despite the name, a smart contract is not necessarily a legal contract. Rather, it is computer code programmed to automatically perform specified actions when predetermined conditions are satisfied. For example, funds could be released automatically upon the occurrence of a particular event, or periodic payments could be made without further human intervention.

Although still in the early stages of widespread adoption, smart contracts may eventually assist with installment sales, lease payments, business succession agreements, royalty distributions, and certain aspects of trust administration. By automating routine transactions, they have the potential to reduce administrative costs, improve efficiency, and minimize disputes over whether contractual obligations have been fulfilled.

Nevertheless, practitioners should remember that a smart contract is only as good as the legal agreement underlying it. Technology cannot cure poor drafting, resolve ambiguities, or substitute for careful legal planning. Traditional contract principles and sound estate planning remain essential, with blockchain serving as a tool to implement—not replace—a well-crafted legal arrangement.

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[4] Courts generally require fiduciaries to satisfy the statute's procedural requirements before ordering disclosure by a custodian. Courts continue to recognize that the Stored Communications Act (18 U.S.C. §§2701-2712) limits disclosure of the content of electronic communications absent the user's consent or another statutory exception. RUFADAA was drafted specifically to work alongside—not override—the federal statute.

Proceed With Caution

Despite its promise, blockchain is not a substitute for traditional estate planning. The technology cannot resolve family conflicts, determine tax consequences, or replace carefully drafted wills and trusts. Moreover, many legal issues - including evidentiary standards, cybersecurity, valuation, and fiduciary responsibilities - continue to evolve.

Estate planners should also recognize that technology changes much faster than estate plans. A trust drafted today may remain in effect for decades. Planning techniques that depend upon a particular software platform or technological standard should therefore be approached cautiously.

Estate planners increasingly emphasize express authorization in wills, trusts, and powers of attorney because RUFADAA gives priority to a user's directions (including online tools provided by custodians) over more general fiduciary powers.

Conclusion

For most clients, blockchain technology should be viewed as a supplement to and not a replacement for traditional estate planning.

The real estate planning issues today involve identifying digital assets, ensuring fiduciaries have legal authority to access them, protecting private keys, and understanding the federal tax rules governing cryptocurrency and other blockchain-based property. Looking ahead, blockchain technology may also improve business succession planning by providing secure ownership records and document authentication.

As more wealth is held in digital form, estate planners who understand both the technology and the tax law will be better positioned to help clients protect and transfer their assets efficiently. For now, however, the fundamentals of estate planning remain unchanged: careful drafting, thoughtful succession planning, and attention to the client's objectives continue to be the keys to a successful estate plan.