



CRYPTOCURRENCY AND WILLS – EITHER DON'T DIE, OR MAKE SURE YOUR CRYPTO IS ACCESSIBLE BY YOUR EXECUTOR

We've all heard the stories about investors who have lost millions of dollars in crypto because they've lost or can't remember their hard-wallet passphrase.

Stefan Thomas, famously known in the 'cryptosphere' as the man who lost 7,002 Bitcoins because he could not remember his passphrase. You can read more about that [here](#). At the time the article was written, his Bitcoin was estimated to be worth \$250 Million.

How to store your cryptocurrency phrases and passwords have been a point of discussion since its inception. Storing access details electronically makes them susceptible to hacking and memorizing or recording them on a piece of paper also present significant risks.

Ultimately, it's a choice that you will have to make but it is important that you consider the degree of accessibility to your cryptocurrencies if you have or are considering creating a Will.

If you die, or lose mental capacity, and nobody knows your hard-wallet passphrase (and other access-related information) or where to find that information, then your crypto will be inaccessible and lost forever.

But if you provide access details to a third party now, then there is a risk they, or anybody else who finds it, could access your crypto holdings now.

Some ways to prevent that happening are:

1. Don't die. If you have the solution to this one, please let us know; or
2. Ensure that mechanisms are in place for your executor to have access to the hard-wallet passphrase, trading platform username and password, and if necessary 2-Factor Authentication (2FA).

The matters in no.2 are easier said than done and involve assumption (and mitigation) of some level of risk that someone could learn of your access details and access your crypto while you are alive.

One way to mitigate that risk might be to ensure that numerous people have different parts of the puzzle, and their details are kept with your Will or EPA so that only your executor can contact them and pull it all together. However, nothing is risk-free.

Even if the “access issue” is adequately dealt with, other issues (and there are many) to consider regarding crypto and Wills are:

1. Do you want to leave specific holdings/crypto to others (e.g., I leave my 25 Bitcoin to Uncle Joe)? The default position, unless you specify otherwise, is that such holdings will not be given to a specific person but will instead likely form part of your residual estate, possibly be sold or disbursed to beneficiaries in accordance with your Will.
2. Can your crypto be jointly held if it is left to two or more beneficiaries?
3. In the case where you lose mental capacity, how is your attorney going to deal with your crypto? Where your EPA is applicable without the need for a loss of capacity, what authority will your attorney have to deal with your crypto?
4. When is your executor to sell (liquidate) your holdings and distribute the proceeds? The volatility of the crypto market makes this an uneasy/difficult decision.
5. Do you have any derivative or income earning investments in crypto (e.g., staking) in which your executor might be unable to access and sell the capital, or there might be a penalty in accessing it early? If the latter, how long are they to wait before accessing it and incurring the penalty, if at all?

At Murfett Legal we can assist you with creating or amending your Will, or implementing an EPA, to take account of the above matters, as well as suggestions and guides for gathering the relevant access information to ensure your crypto is not lost forever.

For further information or assistance contact Murfett Legal on [+61 8 9388 3100](tel:+61893883100).

Note: The above is a summary for general information purposes only. It is not intended to be comprehensive or constitute legal advice. You should seek formal legal or other professional advice in relation to your particular circumstances before relying on the content of this article.

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