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# DIGITAL ASSETS: ESTATE AND TAX PLANNING CONSIDERATIONS

NEVADA TRUST CONFERENCE

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# THE CRYPTO WINTER

- A crypto winter is an extended period of depressed cryptocurrency asset prices compared with prior peaks
- The phrase is likely derived from the *Game of Thrones* saying: “Winter is coming” – suggesting that lasting conflict could descend on the land of Westeros at any time
- The last crypto winter lasted nearly three years, from January 2018 to December 2020
- The bellwether Bitcoin is currently hovering around \$28,000, 60% off November 2021 highs
- Like the stock market, the digital asset space is generally down across the board, with altcoins like Ethereum (ETH), Cardano (ADA), Avalanche (AVAX) and Polkadot (DOT) off by similar or greater margins than Bitcoin
- Crypto markets are said to have shed in excess of two trillion dollars of value

# BUT WAIT, THERE IS MORE...

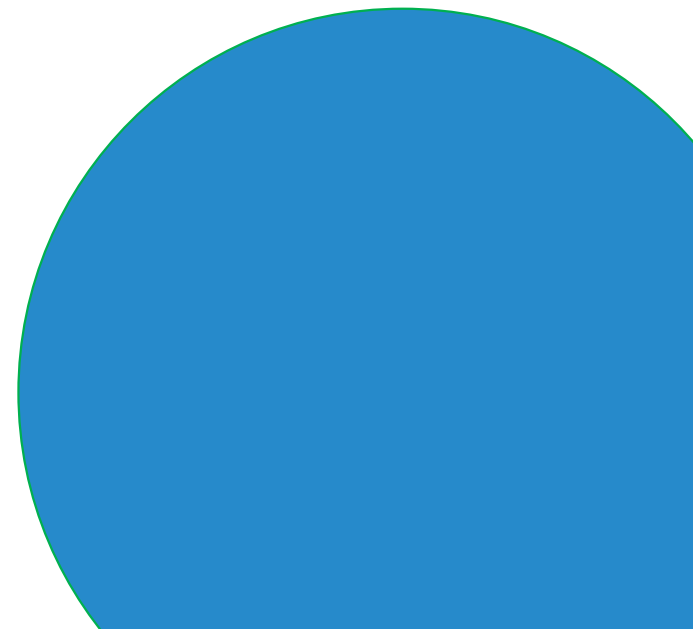
- Collapse of TerraUSD and Luna – the linked algorithmic stablecoin
- Stablecoin Tether's (USDT) revelation that is not backed dollar-for-dollar
- The bankruptcy of Celsius Network – a fintech platform
- The bankruptcy of 3AC (Three Arrows Capital) – a crypto hedge fund
- The associated bankruptcy of Voyager Digital – a large crypto brokerage
- Trading volume on the largest NFT market, OpenSea, dropped 90% in 2022
- Mass market Coinbase's hot public offering on April 14, 2021 @ \$381 per share now trades at \$66 – a casualty of many issues, including the crypto winter, overextension, SEC solvency disclosures, insider trading scandals...
- The FTX implosion

# A DREAM OF SPRING

- Wyoming may be first state to offer its own stablecoin
- Dogecoin spikes after Elon Musk changes Twitter icon
- In February 2011, Bitcoin was worth \$1
- The global crypto market cap is greater than one trillion dollars

# PLANNING FOR CRYPTOCURRENCY

- **Digital assets**
- Blockchain basics
- Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA)
- Practical planning for blockchain assets (not a RUFADAA asset)
- Fiduciary duties in administering blockchain assets
- Taxation of cryptocurrency
- Planning ideas
- Current market sentiment



# WHAT ARE DIGITAL ASSETS?

- Uniform Fiduciary Access to Digital Assets Act (Revised) (“RUFADAA”): an electronic record in which an individual has a right or interest. The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record.
- Examples:
  - Online Accounts
  - Intellectual Property in Digital Form
  - Licenses to use Digital Content
  - Domain Names
  - Blockchain tokens, including virtual currency or cryptocurrency
  - Others...

# WHAT IS SPECIAL ABOUT PLANNING FOR DIGITAL ASSETS?

- Difficulty identifying and accessing digital assets
  - No centralized administrator or list
  - Digital assets may be password protected or otherwise encrypted
  - Hardware may be damaged
  - Digital assets may be in hands of third-party custodians
- Interacting with custodians
  - Terms of Service (TOS) may not allow custodians to grant access
  - Federal privacy and criminal laws may prevent access
- Personal privacy concerns
  - Individuals may feel particularly secretive about digital assets
- Limited rights over licenses and other assets

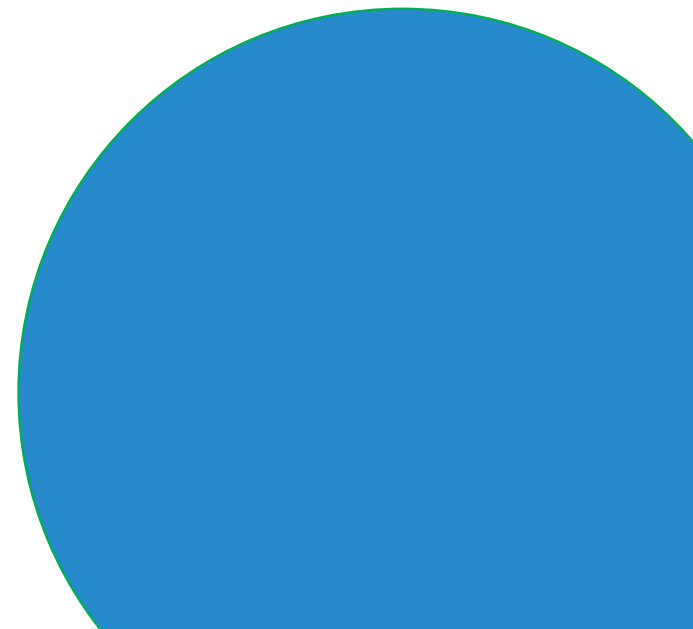
# WHAT HAPPENS TO DIGITAL ASSETS WITHOUT PLANNING?

- They might be unknown and lost forever
- They might be identified but with no legal way for a fiduciary to access them
- A fiduciary might have to spend a lot of time and money to obtain the legal right to access them
- They might be used for nefarious purposes



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# WHAT IS A BLOCKCHAIN?

- Simply, blockchain is a list of transactions that anyone can view and verify (an “immutable ledger” or “distributed ledger”)
- There are thousands of blockchains (e.g., Bitcoin, Litecoin, Ethereum)
- Certain blockchains are secured by a large peer-to-peer network of computers running open-source software
  - Crypto miners: In exchange for contributing their computing power to maintaining the blockchain, the network rewards participants with a small amount of cryptocurrency
- The Bitcoin blockchain, e.g., essentially provides “triple entry bookkeeping” in which the third “entry” is a receipt verifying the accuracy of the record and publishing agreement of the secure and irreversible validity of transactions. The entries are cryptographically sealed. The blockchain essentially eliminates the bank, credit card company or other trusted money transmitter.

# WHAT ARE BLOCKCHAIN TOKENS?

- A digital representation of an asset, datum, information or other item on a blockchain
- Any asset can be tokenized, including things that are not traditionally considered to be assets, including:
  - Other intangible asset (e.g., share of stock, IP rights)
  - Physical asset (e.g., ounce of gold, bushel of wheat)
  - Intangible asset that is purely digital (e.g., a Bitcoin or other cryptocurrency)
  - Unique art or digital collectable (e.g., NFT)
  - Software license

# OVERVIEW OF TYPES OF DIGITAL ASSETS

## Security Tokens

Tokens that provide rights and obligations similar to a share or debt instrument, which could include rights to ownership, payment of specific sums at a later date, or a share of future profits

## Exchange Tokens

Decentralised and primarily used as a means of exchange; do not meet the definition of e-money; not readily accepted for 3rd party transactions

## Utility Tokens

- Tokens that allow users to access products or services on a blockchain platform
- May overlap/convert into a security token or e-money token later in the tokens' life

## E-Money Tokens

Electronically stored monetary value; represents claim on issuer; accepted for payment by persons other than issuer

## Non-Fungible Token (NFTs)

- Cryptoassets with unique identification codes and metadata that distinguish them from each other
- Usually classified as Utility Tokens
- Can also serve as unique digital items in online platforms, e.g., unique digital land

## Central Bank Digital Currency (CBDCs)

- An E-money token that is issued by a central bank
- E.g., Digital Yuan

## Stablecoins

- Tokens that have their value tied to one or more underlying assets (not government backed)
- Unlike security tokens, which are designed as an investment, stablecoins are designed to remain stable in value

# NON-FUNGIBLE TOKENS (NFTS)

- NFTs are a relatively new type of cryptoasset
- NFTs are most often used as unique proof of ownership over intangible property such as a piece of digital art, digital collectibles, or part of a video clip
- Unlike fungible tokens (compare Bitcoin), where all tokens are equal and one token can be easily exchanged for another, an item or value, each NFT is unique (i.e., has different functionalities and characteristics) and cannot be divided
- NFTs are powered by blockchain and smart contracts ensuring there is only one copy of a specific NFT in existence at any given time

Characteristics	Fungible Token	Non-fungible Token
Unique	No	Yes
Interchangeable	Yes	No
Divisible in parts	Yes	No
Rights to profit sharing	Yes	Depending on structure

# WHAT IS AN NFT?

- NFT is the Collins Dictionary 2021 Word of the Year
- NFT is a unique digital file, usually taking the form of a GIF, artwork, tweet, audio file, etc.
  - CryptoKitties
  - NBA Top Shot
  - Kings of Leon's album
- From IP perspective, you are NOT buying the rights to the work
- Artist may create similar NFTs and control the supply (e.g., 1 of 250, like a print)
- Could be traditional asset like real estate



*"Everydays: The First 5,000 Days" by Beeple sold for a record \$69.3 million*

# WHAT IS A WALLET?

- Wallet
  - Tokens are stored in “wallets” that are uniquely identified with a public key and a private key
  - Public key is [generally] the “address” and is needed to transfer tokens to that wallet
  - Private key is the “password” of the wallet and is needed to transfer tokens from the wallet
  - Without the public key and the private key, tokens cannot be transferred
  - It is infeasible to break the cryptography securing the wallet
- **Hot Wallet** – a wallet connected to the internet. Hot wallets are subject to hacking theft
- **Cold Wallet** – a wallet that can’t be hacked because it is not connected to the internet. The address and private key are stored offline in a “hardware wallet” or paper form or otherwise
- **Multi signature** – software and hardware vaults can be established to require multiple keys (e.g., your key and bank key)

# HOW IS CRYPTOCURRENCY HELD?

- To ensure the efficiency and safety of cryptoasset transfers and storage processes, new financial operators including institutional and private players can enter the market to establish a communication channel between the world of traditional investors and the cryptoassets market.
- The ecosystem growth and massive adoption of cryptoassets raises new risks unique to the crypto market such as compliance constraints and keys management for digital assets.

## Self-Custody

- Direct ownership where the customer holds custody of coins themselves, either through hardware, software or paper wallets
- “Not my keys, not my coin”

## Exchanges

- A number of exchanges trade cryptocurrency and also maintain accounts for users
- Coinbase, Kraken, Gemini and Binance are examples of exchanges
- Exchanges are centralized and require Know Your Customer (KYC) procedures
- Can be subject to loss if exchange maintains control of public and private keys

## Banks and trust companies

- Some banks and trust companies offer cryptocurrency custodial services
- Bank security and access to insurance may provide quality security...but at a cost
- Some view as involving a trusted third party in an intentionally trustless monetary system



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# RUFADAA

Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) (2015):

- Uniform law adopted by almost every state that establishes fiduciary rights to receive disclosure of, and access, digital assets (including cryptocurrency)
- A fiduciary (such as a trustee or executor) has the right to receive access to digital assets held by custodians (such as an exchange)
- A fiduciary is legally able to access non-custodial wallets (such as hardware or software wallets) without concern about violating anti-hacking laws
- Additional rules apply to digital assets that include the contents of electronic communications, but those are generally not relevant to cryptocurrency

# RUFADAA – HIERARCHY OF CONSENT

- On-line Tools
  - *Account specific* tools that provide directions for the disclosure of digital assets to a “designated recipient”
  - Only serve the purpose that the custodian defines them to serve
- Consent in Wills/Trusts
  - Testator may specifically provide lawful consent to the fiduciary
  - On-line tools could diverge from consent in wills/trusts
- Terms of Service (“TOS”)
  - The TOS may restrict access to the executor
  - The TOS may delete the asset in its entirety

# RUFADAA

## Sample Language for Grant of Powers Over Digital Assets to Fiduciary

I authorize my [trustee / agent / personal representative] to exercise the maximum powers under federal and state law to receive disclosure of, access, use, share, and control the contents of any electronic communication or other electronic or digital information, however created or stored, that I owned or could have accessed immediately before my death. I grant my express consent under the Stored Communications Act of 1986, the Computer Fraud and Abuse Act of 1986 and all other state and federal data privacy and criminal laws to allow the [trustee / agent / personal representative] to exercise the powers described in this paragraph.

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# NOT A RUFADAA ASSET?

- Most cryptocurrency and NFT holdings are not RUFADAA assets
- Most owners of significant blockchain assets hold investments in secure cold storage hardware wallets. “Not my keys, not my coin”
- No custodian exists for direct blockchain holdings
- RUFADAA has no mechanism to provide access to direct blockchain holdings
- Technology is often employed to create a nearly impenetrable security arrangement
- Note that Coinbase, Crypto.com, Robin Hood accounts and accounts other with similar providers or exchanges are not direct blockchain holdings and RUFADAA may assist a fiduciary in accessing the accounts

# WHAT IS SPECIAL ABOUT TESTAMENTARY PLANNING FOR CRYPTOCURRENCY & OTHER DIGITAL ASSETS?

- Difficulty locating and accessing
  - Not a RUFADAA asset
  - No centralized administrator, tracing program or way to identify owner of wallet
  - In most cases, no “statements,” wires or tax records that leave a trail
  - Wallet or account may be password protected or otherwise encrypted
  - Hardware wallets may be lost, damaged or inaccessible
  - Alternatively, easy access to passwords and accounts may lead to lifetime theft or security issue
- Fiduciary risk
  - Fiduciary must be prepared to accept and manage asset
  - Estate planning documents require special authority and guidance for digital assets
- Interacting with custodians
  - Terms of Service (TOS) may limit custodians from granting access to benevolent third parties
  - Federal privacy and criminal laws may prevent access

# WHAT HAPPENS TO CRYPTOCURRENCY & OTHER DIGITAL ASSETS WITHOUT PLANNING?

- Digital assets may inadvertently be disposed of with tangible personal property under a will
- Asset may be unknown and lost forever
- Asset might be identified but not be accessible due to legal or technical barriers
- A fiduciary may expend a great deal of time, money and effort to obtain access to a digital asset that is discovered to have minimal value
- A party who received public and private keys to a wallet may assume that he or she received a lifetime completed gift transfer and that the asset is not a part of an estate
- A party with knowledge may steal an asset from the estate or otherwise dispose of asset inconsistent with estate plan



# KEY WILL/TRUST PROVISIONS FOR BLOCKCHAIN ASSETS

- General tangible personal property disposition provisions must be updated to exclude blockchain assets  
(e.g., the cold storage hardware wallet with BTC keys may inadvertently pass to children (or second spouse) outright and free trust with bequest of other tangible personal property like old clothing)
- Blockchain assets should be properly defined, which definition may include any storage device or other tangible personal property the contents of which evidence or control the disposition of a blockchain asset
- As appropriate and in order to avoid a public probate of blockchain assets, appropriate documentation should evidence ownership of blockchain assets by the trustee of a revocable trust
- Investment provisions of governing documents should authorize and enable blockchain investments
- Governing documents should grant fiduciary consent to access electronic and digital information after death or incapacity. These are generally Revised Uniform Fiduciary Access to Digital Asset provisions that provide access to account custodian (Facebook, Coinbase....). This is NOT a blockchain asset provision
- Many establish special investment adviser provisions or custodial arrangement provisions with respect to the disposition, investment and management of blockchain assets

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# ENSURING FIDUCIARY ACCESS

- Cryptocurrency held by banks or exchanges can be accessed by fiduciaries in the same manner as other assets – the fiduciary provides proof of authority and the custodian provides access
- Software and hardware wallets do not involve a custodian who can grant access, so the fiduciary needs to be able to overcome or fulfill the wallet's security
  - Most wallets are very secure and practically impossible to hack
  - The wallet owner needs to provide a way for a fiduciary to access the wallet, typically by written passwords or seed phrases, and instructions where to locate any physical wallet
  - Some cryptocurrency owners may expect their fiduciaries to be an “Indiana Jones” to access the wallet
- What happens when document giving access is digitally stored (i.e., cloud storage)?

# FIDUCIARY DUTIES

- High Risk
  - Cryptocurrency is a largely unregulated, high risk asset class
  - Exchange hacks, pump and dumps, and all varieties of scams are common
  - Although thought to be practically impossible, a “hack” of the entire blockchain of a cryptocurrency is possible through parties gaining control of 51% of the nodes and rewrite the blockchain to reallocate tokens to themselves
  - A hardware wallet, or the means to access a software wallet, may be inadvertently lost
  - Physical security is also important – due to the high value of some cryptocurrencies, many holders are afraid of kidnapping or threats of physical harm
  - There is limited recourse for lost or stolen cryptocurrencies
- The fiduciary must take reasonable steps to control and preserve cryptocurrency, as well as all other property – which means that the fiduciary must be sufficiently knowledgeable to understand how to secure it

# PRUDENT INVESTOR RULES

- Under the Uniform Prudent Investor Act (UPIA), a trustee must consider the following factors when investing and managing trust assets:
  - General economic conditions;
  - The possible effect of inflation or deflation;
  - The expected tax consequences of investment decisions or strategies;
  - The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;
  - The expected total return from income and the appreciation of capital;
  - Other resources of the beneficiaries;
  - Needs for liquidity, regularity of income, and preservation or appreciation of capital; and
  - An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries
- How does cryptocurrency fit in to these factors?
- Does the trustee have the power to HODL?

# FIDUCIARY CHECKLIST: DO YOUR HOMEWORK

- Money Transmitter Licenses / New York BitLicense
- Use of Funds
- Scrutinize and Negotiate Contracts
- Custody
- Audited Financials
- Securities Act of 1933 Registration
- Commodities Act Registration

# DID YOU SELECT THE RIGHT FIDUCIARY?

- Trustee establishes a cryptocurrency wallet to receive a gift from donor and the trustee must properly secure the keys
- This is similar to giving the trustee a briefcase of cash: (a) trustee may simply lose asset through mismanagement or theft, (b) limited recourse against a rogue trustee, (c) money is fungible and can slip into ether, and (d) no third party has oversight or authorizes transactions
- Corporate trustees may not accept or may not have required infrastructure
- “Uncle Bob” may not be the right trustee
- Cryptocurrency requires special consideration of security, structure and implementation
- The “Not Your Key – Not Your Coin” crowd likes to HODL and trust structure alters control and brings to the table an unwanted “traditional” third party

# RISKS FOR FIDUCIARIES

- Estate planning documents should waive duties expressly with respect to crypto holdings
- Cryptocurrency is a largely unregulated highly volatile asset class. Regulation is coming
- No/little insurance or recourse for hacked or lost crypto
- Have policies and protocol in place BEFORE you assume a fiduciary role
- Know your digital asset and the rights attached to it (e.g., NFT)
- Be prepared for AML and KYC documentation requests from financial institutions accepting fiat generated from a cryptocurrency sale



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# FAIR MARKET VALUE OF CRYPTOCURRENCY

- Exchange trade
  - Fair market value (FMV) is USD value recorded for that transaction by the exchange, or the USD value that would have been recorded for the exchange if not otherwise recorded
- Peer to peer transaction
  - Must use value that is “accurate representation of the cryptocurrency’s fair market value”
  - IRS will accept value identified by “cryptocurrency or blockchain explorer” (e.g., <https://www.blockchain.com/explorer>) that analyzes worldwide indices and calculates value at the specific date and time of the transaction
- Not otherwise valued
  - If cryptocurrency is not publicly traded or valued, then the value is equal to the goods or services received in exchange for it

# TAXATION OF VIRTUAL CURRENCY & OTHER BLOCKCHAIN TOKENS

- Cryptocurrency (virtual currency) is taxed as property, not currency
- Cryptocurrency can be held as capital asset, and subject to capital gain
  - No longer qualifies for delayed exchange after Tax Cuts & Jobs Act (TCJA) amendments to IRC section 1031
- Mining virtual currency is taxed as ordinary income and subject to self-employment taxes
- Hard fork of cryptocurrency is not itself an income recognition event, however, receipt of cryptocurrency tokens in conjunction with a hard fork (airdrop) is a receipt of ordinary income (which establishes tax basis)
  - **Hard fork** is a blockchain split that results in two versions and may include creation of a separate token (i.e., BTC and BCH)
  - **Soft fork** is change to blockchain that is treated as an update and does not result in creation of new token
- Receipt of cryptocurrency tokens is marked at the time that the receipt is recorded on the blockchain, provided that the recipient has dominion and control over the tokens
- 2022 Form 1040 has question (slightly different from prior years) on first page: “At any time during 2022, did you: (a) receive (as a reward, award, or payment for property or services); or (b) sell, exchange, gift, or otherwise dispose of a digital asset (or a financial interest in a digital asset)?”
- IRS continues to issue “John Doe” summons to exchanges to determine identity and activity of cryptocurrency exchange account holders with transactions over a five year period of at least \$20,000 – most recently in August 2022

# TAX LOSS HARVESTING

- Tax loss harvesting is recognizing a tax break when you sell a losing investment – it's one of the few benefits of a loss
- Tax losses offset current taxable gains and unused losses can be carried forward to future years – a small amount (\$3,000) can usually offset ordinary income
- Some taxpayers are committed to the investment and view the crypto winter as a temporary phase in the adoption of transformational technology
- Special wash-sale tax rules disallow a current tax loss if the taxpayer sells a security at a loss and buys the same or a "substantially identical" security within 30 days before or after the sale
- Most cryptocurrency is not a "security" and the wash-sale rules do not apply
- This means that a taxpayer can sell cryptocurrency and immediately repurchase the security and enjoy the immediate benefits of the tax loss and/or carry that tax loss into the future
- Tax loss harvesting can be an important part of navigating the crypto winter

# INCOME TAX PLANNING

- Cryptocurrency is subject to capital gains and Net Investment Income Tax (NIIT) on disposition (generally 23.8%)
- States tax capital gains and ordinary income at the same rates
- State tax burdens are a significant burden
- State income taxes (for most purposes) are no longer deductible for Federal income tax purposes
- In advance of liquidation, establishing a favorable tax situs can be significant
  - Taxpayer can move to tax a free state in advance of a liquidation
  - Taxpayer can situs crypto in a tax-free state in advance of liquidation
    - An irrevocable non-grantor trust may establish situs of cryptocurrency in a favorable tax location \*
    - Intentional Non-Grantor (ING) trust may establish situs of cryptocurrency in a favorable tax location \*
    - Trusts provide clear and clean succession and security – and may maintain privacy
    - CON: trustee and special provisions and limitations are required to tax locate property \*
    - CON: trustee income tax compliance obligations may differ from taxpayer

*\* The tax situs of a trust for income tax purposes requires special planning and considerations.*

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# USE OF TRANSFER TAX EXEMPTIONS

- Many taxpayers establish irrevocable trusts in favorable jurisdictions (like Nevada) that can last for multiple generations and establish reasonable guardrails for the management and administration of resources
- Many taxpayers fund irrevocable trusts with assets approximating the transfer tax exemption amount (currently \$12.92M per taxpayer, \$25.84M for married spouses)
- Many taxpayers allocate generation-skipping transfer tax exemption so trusts can benefit multiple generations free of death taxes
- Many taxpayers are taking advantage of these transfer tax benefits before scheduled the scheduled reduction of the benefit at the close of 2025
- Many taxpayers elect to transfer cryptocurrency and other blockchain related investments because current asset volatility reduces valuations and believe that these types of assets will appreciate dramatically over time

# USE OF ENTITIES IN WEALTH TRANSFER PLANNING

- Many wealthy families use traditional family LLCs and family partnerships to own cryptocurrency and address control and management. Entities should include special provisions
- A properly structured entity may help to situs asset in a favorable state and alleviate or manage risks associated with cryptocurrency security and key management
- Properly structured entities may be subject to substantial discounts to reflect appropriate marketability and minority interest discounts. Underlying cryptocurrency holdings may enhance discounts as a result of investment volatility and risk. Applicable discounts may enhance lifetime wealth transfers or reduce estate taxes
- Interests in the entity may be easily transferred in traditional gift and/or gift and sale transactions
- Lifetime wealth transfers of interests to multigenerational “grantor trusts” and “non grantor trusts” are common



# TRANSFERRING CRYPTOCURRENCY

- Bitcoin and other cryptocurrency is primarily transferred on the blockchain
- Whether making a donative transfer, funding an entity or trust, or executing a commercial transaction, transferring the cryptocurrency over the blockchain makes the amount and date of the transfer clear and immutable
- Some have questioned whether it is possible to “assign” a wallet through physical transfer of a hard wallet, or paper assignment of the hard or soft wallet?
- Assignments of wallets raise questions as to whether the gift or other transfer is completed, or if there is a retained interest based on the transferor still having knowledge of the private key
- It is safest for all parties for transfers of cryptocurrency to be done on the blockchain
- Entities that own cryptocurrency in a wallet can be assigned or transferred in the customary way (i.e., stock or unit assignments)

# PLANNING CONSIDERATIONS: DEATH, MARRIAGE, MOVING

- Cryptocurrency can fit into any estate plan, subject to practical concerns and planning
- Planning for security and smooth succession at death is of utmost importance
  - Qualified custodian or trustee may ensure security and succession
  - Limited liability company (LLC) with multisignature cryptography may ease succession and security
- Cryptocurrency is property that is entitled to a tax basis adjustment at death – traditional and advanced planning for inclusion in a taxable estate can be beneficial
- Appropriately managing community property interests in digital assets can be difficult yet very important to the marital community (is that crypto key community property?)
- Due to capital gains exposure, expatriation or becoming a bona fide resident of Puerto Rico is a frequently discussed plan of cryptocurrency holders and traders

# CHARITABLE GIVING WITH CRYPTOCURRENCY

- Cryptocurrency can be a tempting for charitable giving due to its high value and volatility. Many donor advised funds and other charities accept cryptocurrency
- Cryptocurrency is treated like property for donation purposes. Contributions of cryptocurrency held for more than one year qualify for FMV deduction
- Watch for special treatment of cryptocurrency dealers or taxpayers that mine cryptocurrency
- Donor may need to identify specific fungible cryptocurrency that is donated (for tax basis, holding period or other characteristics) and if units are not identified the default transfer is first-in first-out order. Identification can be key
- Remember, donated cryptocurrency that has not been held for the long-term holding period is limited to the lesser of tax basis or fair market value
- If the taxpayer has a cryptocurrency capital loss, the taxpayer is better off selling the cryptocurrency to recognize the loss and donating the proceeds

# CHARITABLE GIVING – REQUIRED DOCUMENTS

- For donations of less than \$250, donor must keep a contemporaneous receipt from the charity. Donations greater than \$250 require a contemporaneous acknowledgement by the charity of the gift (before the tax return is filed). Donations in excess of \$500 require Form 8283 for noncash contributions
- For donations over \$5,000 donor must complete Form 8283 and provide a qualified appraisal (verifiable experience valuing type of property appraised), which form must also be signed by the appraiser and the charity
- Form 8283 requires a qualified appraisal, that is an appraisal signed by a recognized appraiser with at least 2 years experience valuing the type of property at issue
- Charities also have obligations in certain instances, including reporting sales of cryptocurrency within three years of the contribution
- The NFT charitable giving and uses are exploding with exciting new and cutting-edge endeavors

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# NFT SCAMS

- **Rug-Pull:** Scammers initially put money in and then pull out when the investment grows in value, tanking the price
- **Pump and Dumps:** Scammers artificially inflate the value of an NFT through misrepresentation and the spreading of misleading information. Once the value increases they dump the investment and disappear without a trace.
- **Phishing:** Scammers phish access to an NFT wallet through email, social media, Discord, Twitter or other channels and, once they have a target's information, empty the wallet of digital assets
- **Bidding Scams:** Scammers artificially drive up the price of an NFT during the auction process
- **Fakes / Plagiarism:** Scammers create “original works” and sell as the NFT without authorization or legitimacy. Plagiarism is rampant on many NFT platforms.

# ENVIRONMENTAL AND SOCIAL IMPACT

- Environmental impact less in proof of stake (Ethereum)
  - More than 22,000 cryptocurrencies in existence in March 2023?
  - More than 11 million NFTs?
- Access for artists to centralized marketplace (NFTs)
  - 96% of artwork sold at auction produced by men\*
  - 85% of artists in 18 U.S. major museums are white; 87% are men\*\*
  - No intermediaries; ability to trace works
  - Virtual sales (COVID-free)

\*"Glass Ceilings in the Art Market," *Social Science Research Network*, Feb. 2020

\*\* <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6426178/#pone.0212852.ref031>

# SPEAKER



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Elise J. McGee advises high-net-worth individuals and business owners on all aspects of wealth-transfer planning, including estate and trust administration, leveraged wealth-transfer techniques, tax matters, cryptocurrency and QSBS planning, real estate transactions and closely held business matters. Elise has extensive experience working with owners of closely held businesses to develop governance and succession plans, and on corporate, tax and compliance matters relating to those businesses. Elise is an American College of Trust and Estate Counsel (ACTEC) Fellow, and also has been recognized in Chambers High Net Worth 2022, Illinois: Private Wealth, Up and Coming. She is currently a member of the Executive Committee of the Trust Law Committee of the Chicago Bar Association, where she acts as legislative liaison.



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