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# Estate Planning Update Summer 2019 - Cryptocurrencies: An Estate Planning Conundrum

The rise of bitcoin and other cryptocurrencies (the virtual currencies associated with blockchain technology) has created a wave of new millionaires and raised questions in the legal community regarding how to address cryptocurrencies in estate plans. Because the Internal Revenue Service classifies cryptocurrencies as property for tax purposes, owners of cryptocurrency may stipulate the disposition of their cryptocurrencies in their estate planning documents. The challenge, however, is determining how to enable the transfer of cryptocurrencies upon the testator's death without jeopardizing the security of the cryptocurrency holdings during the testator's lifetime. Cryptocurrencies are effectively bearer instruments that are accounted for in "wallets" on a decentralized blockchain. A cryptocurrency wallet is a software program that stores access credentials and interacts with blockchains to enable users to send and receive virtual currencies and monitor balances. This means that whoever knows a wallet's access credentials (the private key) has access to the cryptocurrency in the wallet and can transfer the cryptocurrency to themselves. Conversely, if no one knows a wallet's access credentials, its contents are permanently lost, which can have a major impact on heirs after the wallet owner's death. One such example occurred in 2018, when a major cryptocurrency investor died unexpectedly on a trip abroad. He left an estimated $500 million worth of cryptocurrency to his heirs but died without passing on the private keys for his wallets. Unless someone can find the private keys, the heirs will never be able to access the fortune they inherited. This is the crux of the cryptocurrency estate planning conundrum: If you share your private keys with someone, they can abscond with your funds; if you share your private keys with no one, access to your cryptocurrency is lost when you become disabled or die. Best practices for protecting against the loss of your cryptocurrency include the following:

- Add detailed information to your will and/or revocable trust that lists the type and quantity of each cryptocurrency that you own, how these cryptocurrencies are stored, and the location of the access credentials
- Avoid including access credentials in your will or revocable trust
- Write a side letter to your executor and/or trustee detailing the steps necessary to access and distribute your cryptocurrency holdings
- Store a copy of the access credentials in a safe place that can be accessed following your disability or death (For example, you could use a "password manager" on your computer or cell phone, or a home safe. In either case, make sure someone you trust has access to your master password or safe.)

If you would like to discuss cryptocurrencies or how to transfer them to your desired beneficiaries under your estate plan, please contact your Day Pitney estate planning attorney.