



# Cryptocurrency in estate planning: ensuring safety and effectiveness in your Will

**Author:** [Bridget Schultz](#)

**Email:** [bridget@ealawyers.com.au](mailto:bridget@ealawyers.com.au)

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With the introduction of EFTs for Bitcoin and Ethereum, it is becoming increasingly common for Australians to be holding some form of cryptocurrency in their portfolio, be it by EFT, self-custody, or on an exchange. In some cases, cryptocurrency can represent a significant part of an estate, and a significant risk if it is not planned for properly. In New South Wales, you can, and should, deal with your cryptocurrency explicitly in your Will.

This blog will provide a practical guide to structuring provisions for dealing with cryptocurrency and giving your executor the power and the tools to access and administer your digital assets lawfully and efficiently.

For more information on a range of digital assets in estate planning, you can read our earlier blog, [“How do I gift my digital assets in my Will?”](#)

## What is a “digital asset” in my Will?

In the context of estate planning, we are dealing with the following when considering the structure of your Will and how the below information needs to be captured in your estate plan in a secure way:

- Cryptocurrencies held on exchanges or in self-custody (hot, cold, hardware wallets).
- Tokens or NFTs held on chains such as Ethereum, Solana, etc.
- Keys and credentials such as your private keys, seed phrases, passcodes, 2FA recovery codes, and password managers.

- Exchange accounts (Australian and overseas), including any fiat balances linked to those accounts.
- Websites, photos, social media accounts, and software.

## Why cryptocurrency needs special attention in estate planning

Unlike a bank, there is no centralised management of your crypto accounts. You are your own custodian.

This poses a potential issue in estate planning if your executor cannot locate your wallets or access your private keys, as this can render your assets unrecoverable. In addition, exchange Terms of Service, privacy laws and computer access offences mean that executors must access accounts lawfully and with clear authority.

## What the law is in NSW

There is currently no specific NSW statute that automatically grants executors a universal right to access a deceased person's digital accounts. Instead, we rely on:

- your Will providing specific powers and directions to your executor;
- general executor/trustee powers which allow holding, realising and investing property; and
- provider policies and terms. Many exchanges have deceased-user procedures which require probate documents and proof of authority before they will assist.

Because unauthorised access to computer systems can be a criminal offence, your Will must authorise the executor to deal with digital assets and to liaise with service providers to obtain lawful access.

However, it is very important that you do not share passwords or seed phrases during life in ways that breach provider terms or compromise security. Instead, plan for controlled, lawful access paths, which are outlined below.

## Structuring cryptocurrency in your Will

The following are some general options for you to consider; however, the appropriate approach for you will be subject to your particular circumstances. Tailored advice from an experienced estate planning lawyer to achieve your intentions.

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## Step 1: Decide how you want to gift your cryptocurrency

- This may be specific gifts such as "I give two BTC to my son John".
  - Pros of this approach: clarity and certainty.
  - Cons of this approach: market volatility. Values can diverge sharply between beneficiaries.
- This may be percentage or value-based gifts, such as "I give 20% of my cryptocurrency portfolio by market value at death to each of my children, in equal shares".

- Pros of this approach: balances volatility across beneficiaries.
- Cons of this approach: needs valuation and, sometimes, sales to equalise.
- Gift of particular wallets of assets, such as “I give all assets held at my Ledger Nano X with public keys.... to my spouse”.
  - Pros of this approach: simple to administer if well-documented.
  - Cons of this approach: risky if one wallet vastly appreciates compared to others.
- Residue approach, where you let your cryptocurrency fall into the residue to be administered with everything else.
  - Pros of this approach: simple Will drafting.
  - Cons of this approach: less control and may not reflect your intentions for high-risk/high-growth assets.

Often, the best approach is a hybrid approach where you make some specific gifts (for example, a long-held bitcoin position) and have the rest fall into the residue to be divided by percentage across beneficiaries.

## Step 2: Consider a Testamentary Trust for cryptocurrency

A [Testamentary Trust](#) can:

- spread risk and allow professional oversight of complex wallets;
- provide tax flexibility for income and gains distributed to minors or family beneficiaries;
- permit trustee powers to hold, stake or realise digital assets with explicit acknowledgement of volatility.

If using a Testamentary Trust, include the following:

- Risk acknowledgement that beneficiaries accept cryptocurrency’s volatility and the trustee’s discretion.
- Power to retain the cryptocurrency without being treated as negligent for not diversifying.
- Power to convert cryptocurrency to fiat or stablecoin, and to use reputable custody solutions.
- Power to engage specialists such as blockchain forensics, crypto accountants, and custody providers.

## Step 3: Add bespoke executor digital asset powers

Include a dedicated clause authorising your executor to:

- identify, access, secure, hold, stake, sell or transfer your digital assets;
- contact exchanges, wallet providers and password-manager services, complete deceased-user procedures, and provide probate grants;
- use, reset, recover and rotate authentication factors and decrypt devices;

- engage crypto-literate professionals and pay them from the estate.;
- make practical decisions such as moving assets to a secure estate wallet, converting a portion to fiat to meet tax and estate expenses, or delaying realisation during extreme market conditions.

You should include indemnity and prudence language recognising price swings and confirming the executor's discretion, so long as they act in good faith and with due care.

## Step 4: Keep your keys out of the Will

Your Will becomes public once probate is granted. **Never** put seed phrases or private keys in your Will. Instead, you should:

- maintain a confidential Digital Asset Memorandum listing wallets, exchanges, device locations, and how access can be lawfully obtained.
- store this memorandum and any hardware wallets, recovery sheets, and 2FA backup codes in a secure place such as a safety deposit box.
- reference the memorandum in your Will (without revealing any contents) and authorise the executor or trustee so they can be granted access on death, following identity checks.

## See an estate planning lawyer with a knowledge of cryptocurrency

Once you have audited your holdings and decided how you want them distributed, we recommend making an appointment with an estate planning lawyer with a knowledge of cryptocurrency. The team at E&A Lawyers can assist you with drafting bespoke clauses, setting up a secure access plan for your executor, and they can coordinate with your tax adviser to ensure a smooth and compliant administration.

Please remember that, in our view, whilst a lawyer's safe custody storage where Wills and other estate planning documents are stored is safe, it is not safe enough for storage of your private keys, seed phrases or passcodes.

### Contacting E&A Lawyers

For more information or to arrange a consultation with a lawyer, you can call or email us.

[02 9997 2111](tel:0299972111)

[info@ealawyers.com.au](mailto:info@ealawyers.com.au)

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