



FROM BYTES TO HEIRS: DIGITAL ESTATE PLANNING IN WEALTH MANAGEMENT

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Introduction

The wealth management landscape keeps evolving because of the growth of technology and digitalization. Assets are no longer confined to traditional forms such as monies in accounts, shares, real property, tangible assets like jewellery. Interestingly, they now encompass digital assets¹, such as personalized online platforms accounts e.g. X account, all contributing to an individual's overall worth. This article highlights the need for proper integration of digital assets into an individual's estate to facilitate effective management, transfer and preserving both wealth and legacy.

Understanding the Regulatory Framework for Digital Assets in Nigeria in the context of wealth and estate management

The Foundation: Wills and Estate Laws:

In Nigeria, the transfer of assets is primarily regulated by the Wills Act of 1852 and the Administration of Estate Law. However, these traditional statutes do not specifically address the management or transfer of digital assets. Nevertheless, individuals may exercise their testamentary freedom, by executing a will to clearly state how their digital assets should be administered. In the absence of a will, the Administration of Estates Law and the Civil Procedure Rules of the respective States dictate how to manage the deceased's assets. Unfortunately, digital assets are often inadequately considered or managed under administration of estate, which makes the transfer process more complex.

The Rise of Digital Assets and Regulatory Responses

The emergence of digital assets, particularly cryptocurrencies, has led Nigerian regulators to publish guidelines aimed at protecting the public and enhancing market confidence.

¹ Digital assets are essentially any form of content stored digitally in any format, along with its associated value. These are electronic data files that individuals can own, transfer, and utilize as currency for transactions or for storing intangible content like computerized artwork, videos, or contractual documents. Examples of digital assets include: Online banking accounts, social media accounts, blogs and domain names, email accounts, cloud storage accounts, online store and shopping accounts, subscription service accounts, utility accounts, gaming accounts, cryptocurrency and non-fungible tokens (NFTs).



The Nigerian Securities and Exchange Commission (SEC) Rules on Issuance Offering and Custody of Digital Assets 2022 ("the Rules") define digital assets as tokens that represent assets such as debt or equity claims. The Rules also define virtual assets as a digital representation of value that can be transferred, digitally traded, and can be used for payment or investment purposes. These Rules establish operational frameworks for various aspects of digital assets, including issuance, registration requirements for digital asset offering platforms (DAOPs), registration requirements for digital asset custodians (DACs), regulations on virtual asset providers (VASPs), and mechanisms for digital assets exchanges (DAX).

Similarly, the Central Bank of Nigeria (CBN) issued guidelines on the operation of bank accounts for virtual asset service providers (VASPs) on December 22nd, 2023. These guidelines apply to all financial institutions regulated by the CBN and establish minimum standards for opening VASPs in Nigeria, monitoring of the activities of banks and other financial institutions providing service to SEC licensed VASPs. Additionally, it offers guidance for account operations and oversee the overall management of the relationships between banking and financial institutions with the operations of licensed VASPs. While this undoubtedly is a significant step towards the formal recognition of digital assets/virtual assets in Nigeria, it does not specifically address disposition of ownership of digital assets.

The Finance Act 2023 (Act) introduced a 10% capital gains tax on digital asset dispositions, indicating a move towards the economic integration of digital assets into Nigeria's fiscal landscape. However, the Act mainly targets the corporate issuance and investment in digital assets, leaving a gap in guidelines for the personal management and inheritance of digital assets.

Overall, the current regulatory environment in Nigeria shows a piecemeal approach to digital asset management. There is currently no comprehensive legal framework in Nigeria governing digital planning and the administration of an individual's digital assets, especially in cases of death or incapacity. This highlights the need for reforms in succession planning laws to ensure the preservation and effective management of digital assets in Nigeria. However, despite the absence of a catch-all legal framework, it remains essential for individuals to proactively make plans to manage these digital assets.

Understanding Digital Estate Planning

Digital estate planning refers to the forward-looking process of organizing, managing, and safeguarding digital assets and online accounts. It is aimed at integrating online and digital assets seamlessly into an estate management strategy.



Digital estate includes virtual and electronic accounts and assets, ranging from social media profiles, domain names, subscription service accounts, online video channels such as YouTube, online reward programs and points, such as credit card rewards or frequent flyer miles, gaming accounts, cryptocurrencies, non-fungible token (NFT) holdings to online banking accounts, emails, and stored photos. Essentially, anything stored online or on devices is part of a digital estate.

Why is Digital Estate Planning Essential?

Digital planning is essential for various reasons including:

- Digital planning ensures compliance with estate planning laws, thus mitigating potential legal challenges or bottlenecks that may arise due to lack of proper planning.
- Proper planning ensures that digital assets which hold sentimental value and memories are preserved and passed to future beneficiaries.
- Digital assets such as monetized social media accounts can hold significant monetary value. Without proper planning, these assets may be lost, depriving both the owner and future beneficiaries of their financial worth.
- For e-commerce or businesses with an online presence, planning ensures that digital assets are protected, allowing for succession planning or transfer.

Crafting a Digital Estate Plan and Legacy

This process requires proactive steps. Here is how to start:

- **Document Instructions for Digital Assets:** Given the difficulty in tracing digital assets, it is crucial to provide detailed instructions. These instructions can be part of a traditional will, a separate document, or included in a trust. To enhance security, keep passwords and encryption keys separate from other estate documents, considering options like storing them on physical flash drives in a safe or safety deposit box, entrusting them to a legally authorized practitioner or asset manager or using secure offline (hardware) wallets or reputable non-custodial wallets. Such precautions prevent sensitive information from falling into the wrong hands, reducing the risk of identity theft or security breaches.
- **Take a Comprehensive Inventory:** Create a detailed inventory of all digital assets and accounts, including digital accounts (social media, online banking, cloud storage, etc.), passwords and access codes, digital files (photos, videos, documents), cryptocurrencies



and NFT holdings. This inventory aids in organizing and storing essential access information securely.

- **Implement comprehensive security measures:** use encryption, strong passwords, and other protocols to prevent unauthorized access, theft or loss of digital accounts and assets. Additionally, appropriate login credentials and personal information are securely stored and accessible to designated individuals in case of incapacity or death.
- **Appoint Beneficiaries or Trustees:** Designate a trusted individual or entity to inherit or manage digital assets, sharing inventory and access information with them. This creates a fiduciary relationship, ensuring one's digital legacy is managed according to one's wishes.
- **Execution of an estate planning document:** This could either be a will or a trust document that formally includes digital assets. Such a document will specify beneficiaries, appoint executors or trustees, and provide management instructions for preservation, transfer, or deletion of assets.
- **Regular review of digital planning strategy and laws:** It is important that the owners of digital assets stay up-to-date and, with professional guidance, regularly review and update their respective digital strategies considering the evolving laws and technologies. This ensures that plans remain relevant, legal and reflect changes in technologies, assets, laws, or circumstances.

What Next?

As digital assets continue to grow in both monetary and sentimental value, especially within Nigeria, it becomes increasingly crucial to integrate these assets into comprehensive estate planning. Digital estate planning is not just a recommendation; it's an essential component of modern estate planning that addresses the realities of our digital lives. By incorporating digital assets into an estate plan, individuals ensure that their digital legacy is preserved and protected.

At SimmonsCooper Partners, our family and wealth management team are available to assist you in navigating the intricacies of safeguarding your digital assets. Our services extend beyond traditional estate planning to include specialized consultation and legal advice tailored to the unique aspects of digital asset management. Whether you are looking to integrate digital assets into your estate, ensure the longevity of your digital business, or simply secure



your online presence for future generations, our experts are here to guide you. For further information, please contact:

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