

Can Cryptocurrency be Inherited?

You've heard the terms - *cryptocurrency, blockchain, bitcoin* – but unless you have been personally dabbling in the emerging virtual currency marketplace, it is unlikely you have given it much thought. This article attempts to decode the mystery of cryptocurrency, explains its legality in Canada, and discusses whether cryptocurrency can form a legitimate part of a deceased's estate.

What is Cryptocurrency?

Cryptocurrency is a form of digital money. It is not regulated by a governmental body. The most popular example of a type of cryptocurrency is Bitcoin. Transactions in cryptocurrency are irreversible (once transferred, the currency cannot be recalled, even for reasons of fraud). Cryptocurrency can be owned virtually pseudonymously – it can be difficult to trace cryptocurrency ownership to an actual individual.

Where Does Cryptocurrency Come From? How is it Made?

The first form of cryptocurrency, Bitcoin, was created in 2009 by an anonymous entity known as Satoshi Nakamoto. Satoshi created a certain number of digital cryptographic puzzles based on an algorithm called SHA 256 Hash, which used a peer-to-peer electronic cash system. It is a completely decentralized system, void of any controlling authority. There are currently over 17 million Bitcoins in circulation.

How is Cryptocurrency Used?

Cryptocurrencies use a peer-to-peer (P2P) network as the medium of transaction for its particular type of cryptocurrency. You can think of this as the blockchain, a public ledger where transactions are verified by miners (i.e. the people who originally solved cryptography puzzles to discover new Bitcoins). The blockchain is protected using technologies that make it virtually immune to attack, i.e. the ledger cannot be altered. The blockchain and verification process helps protect cryptocurrency against fraud, such as digital double-spending.

The control of cryptocurrency lies with “peers” within a given cryptocurrency network. Each peer owns some cryptocurrency. Much like a bank, the “peers” together maintain an accurate and up-to-date ledger of all transactions of their particular type of digital currency – what goes in, what goes out, and “who” has how much, at any given point in time.

The verification is effected through a validation process, using algorithms and cryptographic keys (which are built into each

Bitcoin). This verification process is completed by the individuals known as miners.

Once the transaction is verified, the blockchain is updated for all of the peers in the P2P network.

How Do I Make Cryptocurrency and What is Cryptocurrency Used For?

Cryptocurrency has been known for its more nefarious uses on the DarkNet (due to its ownership being virtually pseudonymous), but more recently, it has been used as a form of currency to purchase goods and services through certain online retailers. Cryptocurrencies can be accepted as a form of payment, earned as income, and purchased through trading.

With marketplace acceptance and legitimization, cryptocurrency is also an investable commodity. As of October 2018, the value of one Bitcoin is over \$8000 CDN.

Is Cryptocurrency Legal in Canada?

The Government of Canada has stated that cryptocurrencies are not a form of legal tender in Canada (i.e. it is not money), and a few Canadian banks have banned the use of cryptocurrencies to complete banking transactions.

Cryptocurrency offerings otherwise known as initial coin offerings (ICOs) or initial token offerings (ITOs) may trigger securities law. The Canadian Securities Administrators (CSA) recently announced that any business planning to raise capital through offerings would have to consider whether it involves a distribution of a security. Income earned in cryptocurrency, or capital gains or losses incurred through trading cryptocurrencies, are subject to the *Income Tax Act*. Goods and services bartered using cryptocurrency is subject to any applicable sales taxes.

Can I Inherit Cryptocurrency?

The short answer to this is, yes. In Canada, cryptocurrency is recognized as a taxable commodity, and therefore would and should form part of the assets of an estate.

The more difficult question to answer is how to access the deceased's cryptocurrency. Since cryptocurrency can only be transferred through the owner's "private key", the estate would need to be in possession of the private key in order to access the cryptocurrency assets. Without the private key, the cryptocurrency is likely to be inaccessible, and would be considered inactive.

Cryptocurrency owners should also ensure that the existence of a cryptocurrency wallet is declared as an inheritable asset in their will, to avoid unscrupulous heirs taking the wallet for themselves. To protect their families, cryptocurrency owners can use third-party services to manage their private keys in the event of death, entrust the private key to a family member or advisor, or keep a physical list or flash drive of private keys in a safety deposit box with instructions on how to access the cryptocurrency, all to ensure that their cryptocurrency assets are accessible to their heirs.

Dead Man's Switch

Another more unconventional method is referred to as the Dead Man's switch. This involves a third-party computer automated program that emails you at regular, specified times, and awaits your reply. If the program does not receive a reply, it checks death certificate records of your passing. Thereafter, it transfers the contents of your cryptocurrency wallets to a specified account

(likely your inheritor) that you had set up beforehand. The limitation for this method is the consistent replies you would have to give to the automated system.

Contemporary third party providers such as Safe Haven and DigiPulse have created their own networks to ensure that crypto wallets are stored in a decentralised vault and are then automatically transferred to selected recipients based on activity signals. For example, Safe Haven has created a "Family Circle," composed of anyone the user chooses from family to friends or stakeholders in their wallet. Upon passing, the beneficiaries would have to reconstruct the key by merging their shares, but not without the share of the validator, a legal entity, which would be secured on the blockchain through a smart contract. DigiPulse has its own in-built "Pulse" network that is in constant sync with a user's activity status. Any time there is a stop in the user's activity, the vault will be automatically transfer the crypto wallet to the selected recipients that was set up before the occurrence.

The law in the ever-growing and gradually more mainstream cryptocurrency marketplace will continue to evolve. At Pallett Valo we will continue to monitor the cryptocurrency marketplace for emerging trends and changes to the laws that affect you.

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