



FEATURE: ESTATE PLANNING & TAXATION

By **Conrad Teitell, Heather J. Rhoades & Katherine A. McAllister**

Cryptocurrency—Estate and Charitable Planning and Compliance

Getting up to speed on virtual currencies for fiduciaries, heirs and charities

Bitcoin (which is capitalized when referring to the overall network or concept but is left uncapitalized when referring to a unit of currency) and other cryptocurrencies were once thought of as vehicles for illicit activities. But, for some time, these assets have been recognized as legitimate and have rapidly growing importance in income, gift, estate and philanthropic planning.

Cryptocurrency Donations

The Fidelity Charitable Gift Fund, named the largest U.S. charity in a 2017 survey,¹ received \$69 million in cryptocurrency donations in 2017, a 10-fold increase over the previous year.² Many smaller charities have scrambled to accept cryptocurrency donations, most famously from an anonymous philanthropist known only as “Pine,” whose giving fusillade began in December 2017. Pine lavished transformative Bitcoin donations totaling more than \$50 million on nearly 60 unsuspecting charities.³ Weeks later, Ripple, the company behind the cryptocurrency known as XRP, delighted public school educators and students across the United States by funding every project posted on *DonorsChoose.org’s* non-profit educational crowdfunding platform for a total donation of \$29 million.⁴

Cryptocurrency Holdings

Charities aren’t alone in adjusting to the growth of cryptocurrencies. Executors of estates are increasingly grappling with decedents’ cryptocurrency holdings and often discovering too late that critical information needed to recover a deceased cryptocurrency holder’s digital holdings was known only to the decedent.⁵ It’s long been said, “Dead men tell no lies.” Nor can they tell the truth about their cryptocurrency holdings.

Whether giving or receiving cryptocurrency—or marshaling a decedent’s virtual currency holdings—time is of the essence, as the famously volatile Bitcoin value illustrates. Bitcoin began 2017 valued at less than \$1,000 per unit, then surged to more than \$19,000 in December 2017 before tumbling well below \$10,000 for much of 2018. Advisors, fiduciaries, charities and heirs should be ready to act quickly. This requires understanding this new asset class. (See “Best Practices,” p. 47.)

Bitcoin 101

Bitcoin—the most well-known cryptocurrency, and sometimes used as shorthand in this article for the class—is a convertible virtual currency system featuring a decentralized, public ledger of all transactions, referred to as a “blockchain.”⁶ Transactions are validated—and new bitcoins generated—through “mining,” a complex computing process that confirms each transaction and protects against double spending of the virtual tokens by requiring consensus among all network participants. To receive a payment in Bitcoin, a user needs an “address,” a single-use, unique identifier that will be permanently associated with the transaction in the blockchain and a “private key” that functions as the password necessary for a user to gain access to the underlying asset. Bitcoin users store the private keys corresponding to their Bitcoin holdings in “wallets,” which may be housed online or in an offline hardware

From far left: **Conrad Teitell** is chairman of the national charitable planning group in the Stamford, Conn. office, **Heather J. Rhoades** is a principal in the West Hartford, Conn. office and **Katherine A. McAllister** is an associate in the Stamford, Conn. office, all at Cummings & Lockwood



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wallet. Like cash, cryptocurrency can be spent by anyone who gains access to a wallet, so users should safeguard their private keys. Because the system is decentralized, there's no authority to turn to if a private key falls into the wrong hands—or is simply forgotten or misplaced. Recent estimates place the number of permanently lost bitcoins at nearly 4 million and counting—a shockingly high number considering the total number of bitcoins that can ever be generated is capped at 21 million.⁷ (For details on how we got from barter to bitcoins, see “A Brief History of Money,” p. 49.)

The Internal Revenue Service holds cryptocurrency isn't currency. IRS Notice 2014-21 announced that Bitcoin, along with other convertible virtual currencies, would be treated as property, rather than currency, for federal tax purposes. It set forth the income tax consequences of that categorization.

Basis rules. When the virtual currency is received as payment for goods or services, the taxpayer's basis is its fair market value (FMV) in U.S. dollars on the date of receipt. If the virtual currency is listed on an exchange at a rate determined by market supply and demand, as is the case with Bitcoin and a number of other widely available cryptocurrencies traded on popular exchanges like Coinbase or Gemini, Notice 2014-21 explains that the FMV of the virtual currency in U.S. dollars is determined by converting the exchange rate into U.S. dollars in a “reasonable manner that is consistently applied.”

Special rules for “miners.” Some Bitcoin users engage in the competitive process of mining, harnessing computing power to solve complex equations to validate transactions and maintain the public transaction ledger in exchange for newly created bitcoins.⁸ Notice 2014-21 holds that the FMV of bitcoins so received is includible in the miner's gross income. Depending on the miner's employment status, the self-employment or employment tax rules govern.⁹

No tax-free Section 1031 exchanges. Before 2018, Internal Revenue Code Section 1031 on like-kind exchanges permitted taxpayers to exchange some types of property for other property of the same “kind” while deferring the recognition of gain. Some advisors maintained that an exchange of one form of cryptocurrency for another should qualify for favorable tax treatment.

Other commentators believed cryptocurrencies fell outside IRC Section 1031 and wouldn't qualify.¹⁰ The 2017 Tax Cuts and Jobs Act resolved the issue. Section 1031 applies only to some real property exchanges, effective Jan. 1, 2018.¹¹ Thus, subsequent exchanges of one cryptocurrency for another will trigger the recognition of gain (or loss). Who knows how the IRS will treat pre-2018 cryptocurrency exchanges?

Recordkeeping and IRS compliance issues. For income tax purposes, all cryptocurrency holders should maintain detailed records—the date of acquisition, the

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value in dollars as of that date and whether the cryptocurrency was received as payment for goods and services and thus constitutes income. Bitcoins can be exchanged in fractional units as small as a satoshi (that is, one one-hundred-millionth of a bitcoin).¹² Each fractional unit will have a different basis associated with its acquisition date. Thus, the recordkeeping required to satisfy tax reporting obligations can be enormous—onerous too. The data indicates that many cryptocurrency holders don't know or care about those obligations. Based on the IRS' own analysis, roughly 800 taxpayers per year disclosed cryptocurrency sales between 2013 and 2015, while the actual number of taxpayers who engaged in significant cryptocurrency transactions during that period is widely believed to be many times higher.¹³

But, the IRS isn't ignoring the potential for cryptocurrency abuse. It brought an expansive subpoena against Coinbase, a popular cryptocurrency exchange, to



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investigate this perceived abuse by demanding that Coinbase turn over transaction data for thousands of customers.¹⁴ Over Coinbase's vigorous objections, a federal court ultimately agreed that the IRS was justified in seeking transaction data of the roughly 14,000 Coinbase users who had made transactions over \$20,000 from 2013 to 2015.¹⁵

In a March 23, 2018 news release, the IRS once again "reminded taxpayers that income from virtual currency transactions is reportable on their income tax returns" and reiterated the serious consequences—including imprisonment and fines of up to \$250,000—for the most egregious offenders who fail to take the reporting

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requirements seriously.¹⁶

Even for those who take compliance seriously, the correct tax treatment of many cryptocurrency issues is beyond the scope of Notice 2014-21 and remains uncertain. Although high profile groups such as the American Bar Association's Section of Taxation have asked for IRS guidance on many of the thorniest cryptocurrency taxation issues,¹⁷ the IRS has largely refrained from comment, citing resource limitations.¹⁸

Estate-planning Considerations

Although official tax guidance on cryptocurrency remains underdeveloped, executors and trustees must nevertheless grapple with new tax and administrative responsibilities for reporting and taking custody of this new asset class. Often, the only person who could untie the Gordian knot to access the decedent's cryptocurrency holdings was the decedent himself.¹⁹ A substantial number of permanently lost bitcoins can be attributed to private key carelessness and a failure to consider what

would happen to cryptocurrency holdings at death.²⁰ Cryptocurrency holders shouldn't overlook these assets when designing their estate plans, and estate-planning advisors should initiate the cryptocurrency conversation as part of their estate-planning discussions.

Recordkeeping. For estate-planning purposes, cryptocurrency holders should take steps to ensure that their fiduciaries and advisors know how to take custody of those assets at death or incapacity. **How?** Provide a list or detailed letter to be kept in the client's safe deposit box or other secure location that's accessible to the fiduciaries on death or incapacity. The list should provide details about the cryptocurrency holdings owned, how they're accessed and backed up and where to locate the sensitive keys, passwords or codes needed to take custody of the assets.²¹ The client should update these instructions periodically to ensure that the details remain complete and accurate. The need for detailed guidance should be balanced against security, however, and private keys shouldn't be disclosed in potentially public documents such as wills that may ultimately be admitted to probate.

Role of the Uniform Fiduciary Access to Digital Assets Act (UFADAA). On a cryptocurrency holder's death, it ordinarily falls to the decedent's executor or administrator to identify and secure the cryptocurrency holdings. With most states' recent enactment of the UFADAA,²² cryptocurrency is treated like other forms of property a decedent owns at death. It's subject to the executor's or administrator's control, must be valued and reported on an estate tax return if required and will likely have to be disclosed on any probate court filings, such as inventories or accountings of the governing jurisdiction.

Caveat executors and administrators. To minimize risks, take control of a decedent's cryptocurrency holdings and strongly consider converting cryptocurrency into dollars as soon as you're appointed. This action is to avoid claims of breach of fiduciary duty associated with fluctuations in the volatile cryptocurrency markets. One potentially unavoidable risk may be the delay in obtaining an executor's judicial appointment after death, without which the executor lacks authority to act on the decedent's cryptocurrency holdings. Where delays in the probate process are common, executors and their advisors should determine whether streamlined procedures are available under local law to obtain



preliminary authority to take control of a decedent's virtual currency holdings to ensure the estate is preserved.²³

Cryptocurrency executor? Some cryptocurrency holders with significant and complicated holdings should consider designating a special purpose co-executor or co-trustee who has the technological savvy to take control of a deceased holder's cryptocurrency that may be beyond the primary fiduciary's expertise.

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Incapacity planning. Estate-planning conversations about cryptocurrency shouldn't be limited to the transfer of cryptocurrency at death. Cryptocurrency holders and their advisors should also plan for incapacity. Attorneys drafting durable powers of attorney should ensure that the documents are sufficient under local law to enable the attorneys-in-fact to take control of cryptocurrency holdings on the owner's incapacity. Conservators and agents appointed under durable powers of attorney should consider the risks of maintaining cryptocurrency holdings after the holder becomes incapacitated and obtain periodic judicial approvals of their accounts to avoid liability.

Assigning cryptocurrency to trusts to facilitate continuous access to assets. Cryptocurrency holders may consider assigning those holdings to a revocable trust. Original and successor trustees should know how to gain access to the trusts' wallets. When identifying those assets, the drafting attorney must protect the security of the private keys or other access codes.

Alternative forms of ownership. As this article goes to press, we haven't identified any commonly available wallet or exchange services that enable cryptocurrency holders to designate joint owners of their holdings. Several sources specifically state that it isn't possible to designate a beneficiary of an account enabling cryptocurrency to pass outside of probate.²⁴ But, some commentators hope for development of a "Dead Man's Switch," a technological transfer-on-death instruction that would avoid probate, although significant concerns remain about its technological shortcomings.²⁵ Of course, some individuals wishing to avoid probate for their cryptocurrency fortunes may actually be hoping to avoid estate taxes. But, no matter how high-tech the transfer-on-death mechanism might be, it doesn't avoid

Best Practices

Taxpayers, advisors, fiduciaries, donors and charities dealing with cryptocurrencies will often find themselves in uncharted waters

- **Keep careful records.** All cryptocurrency holders should keep careful records of the date the cryptocurrency was acquired and its basis. Investors should also maintain in a secure location a list of their holdings and the private keys (or seed phrases) necessary to access their wallets.
- **Communication is key.** Estate planners should inquire about cryptocurrency when collecting a client's asset information. Testators should consider notifying executors and trustees that the estate may contain cryptocurrency—and how to locate the necessary private keys.
- **Trust no one.** Private keys should be zealously guarded at every stage. Once transferred, recovery is difficult if not impossible. A dishonest bank employee or heir could easily and irrevocably transfer the decedent's cryptocurrency before anyone realizes it's lost. Never include specific references to private keys in wills, probate filings or other potentially public documents.
- **Uncle Sam is watching.** The Internal Revenue Service has signaled that it's ramping up cryptocurrency enforcement. Advisors should remind clients of the need to report gains from sales of cryptocurrencies on income tax returns. Noncharitable gifts of Bitcoin may require federal gift tax returns, and cryptocurrency owned by a decedent should be valued and reported on any required estate tax returns. Charitable donations of Bitcoin over \$500 require the completion of Form 8283, Noncash Charitable Contributions.
- **Caveat recipients.** Risky, volatile assets and fiduciary duties are a dangerous combination. As soon as practicable, a charity receiving a donation in cryptocurrency should convert it into cash. And, in most circumstances, an executor or trustee should also convert any cryptocurrency in the estate or trust into cash.

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the inclusion of cryptocurrency in a deceased holder's gross estate.

Estate tax reporting. No matter how cryptocurrency is disposed of on a holder's death, it must be reported on any required federal estate tax return and on any required state tax returns. Applying Notice 2014-21's principles, an executor of an estate that exceeds the filing threshold for the decedent's year of death must value



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the decedent's cryptocurrency holdings at the FMV on the decedent's date of death. If the executor didn't or couldn't liquidate the decedent's cryptocurrency holdings and the value declined substantially after death, the executor may elect to use the FMV of the estate's assets as of six months after death. Because this election applies to all assets, not selectively to underperforming ones, its application will be limited unless the decedent's overall portfolio decreased in value during the six months after death.

Cryptocurrency Philanthropy

Cryptocurrency holders like the anonymous "Pine," who purchased bitcoins early and saw their holdings grow exponentially, may contemplate tax-efficient charitable

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giving using significantly appreciated cryptocurrency holdings.²⁶ "Pine," whose \$56 million giving campaign began in December 2017 and consisted entirely of appreciated Bitcoin holdings, no doubt intended for those donations to qualify for income tax charitable deductions. To qualify, strict compliance with the IRS' substantiation rules is essential.

Substantiation pitfalls for donors. Cryptocurrency's tax status as property, rather than currency, has a curious and easily overlooked side effect: Donations of cryptocurrency must comply with the strict substantiation requirements applicable to gifts of property detailed in IRC Section 170(f).²⁷ As with all gifts of \$250 or more, a donor of cryptocurrency must obtain a contemporaneous written acknowledgment from the donee-charity to substantiate the charitable deduction for the donation.²⁸

Aggregation of similar items. The substantiation requirements for noncash donations increase along with the value of the donated property, with additional restrictions applicable at the \$500, \$5,000 and \$500,000

thresholds. When determining whether a contribution exceeds those thresholds, taxpayers must aggregate donations of "similar items of property."²⁹ But, what's similar in the cryptocurrency world? Multiple donations of bitcoins certainly fit the bill, but taxpayers who make donations of bitcoins and Ether, or any of the other cryptocurrencies currently on the market, may also be required to aggregate all cryptocurrency donations. Like many cryptocurrency taxation issues, current IRS guidance is silent.

Filing obligations by donors and charities. Donors making cryptocurrency gifts of more than \$500 must complete and attach Form 8283, Noncash Charitable Contributions, to their income tax returns in the year the charitable deduction is claimed. Charities disposing of the donated property within three years of the donation must file Form 8282, Donee Information Return, with the IRS. In most cases, charities should convert cryptocurrency donations into dollars as quickly as possible to comply with their fiduciary duties to manage assets prudently. Thus, virtually all charities receiving donations of cryptocurrency should be filing Form 8282.

Appraisal issues. A qualified written appraisal will be required for any cryptocurrency donation of more than \$5,000. An appraisal of the more common cryptocurrencies traded on an exchange, such as Bitcoin or Ethereum, will simply rely on the exchange-traded values in accordance with the valuation standards provided in Notice 2014-21, but the appraisal of newer and less widespread cryptocurrencies may be more complex. The IRS' regulations on substantiation provide highly specific guidance on an appraiser's experience and her education requirements.³⁰ Given the novelty of this field, it's an open question whether anyone is truly a qualified appraiser of cryptocurrency. Once again, IRS guidance is needed.

Funding charitable remainder trusts (CRTs) with cryptocurrency. For a charitably inclined cryptocurrency owner with significant gains, a CRT can be a tax-efficient way to make a significant charitable gift while retaining income for the investor or the beneficiaries of her choosing. Low basis cryptocurrency can be an especially attractive asset for funding a CRT. The donor will receive an income tax deduction equal to the actuarial value of the remainder interest and can minimize capital gains when diversifying out of cryptocurrency.



A Brief History of Money

Highlights of the worldwide journey from barter to blockchain

- **Barter (9000 BCE).** Cattle and other livestock were likely the first form of currency under the barter system, a direct form of exchange of goods or services.
- **Cowrie shells (1200 BCE).** Used as a form of exchange beginning in China and expanding throughout the world, cowrie shells (small to large snails) served as currency for two millennia.
- **Metal coins (1000 BCE).** China first introduced metal cowrie shell substitutes as a form of currency around 1000 BCE. In 600 BCE, the Lydian kingdom began minting gold and silver coins reminiscent of modern-day coins, which quickly spread throughout the ancient world.
- **Leather money (118 BCE).** Leather deerskin currency, arguably the first form of banknotes, was introduced in China around 118 BCE.
- **Paper currency (9th century CE).** China was again at the currency cutting edge in the 9th century when the first paper banknotes were generated.
- **Gold standard (19th century).** In 1816, England adopted the gold standard to back its banknotes. Other countries followed, including the United States in 1900, but the Great Depression hastened its end in the mid-20th century.
- **Credit cards (1949).** Legend has it that New York businessman Frank McNamara found himself without enough cash to pay his restaurant bill in 1949, which inspired him to create Diner's Club to prevent future embarrassments. The story may be apocryphal, but the concept proved to be a major success.
- **Bitcoin (January 2009).** The pseudonymous Satoshi Nakamoto, who published a white paper on the Bitcoin system in 2008, mined the first bitcoin (referred to as the "genesis block") in January 2009.¹

Endnote

1. "The History of Money," NOVA (Oct. 26, 1996), www.pbs.org/wgbh/nova/article/history-money/; Elizabeth Smith, "The History of Money: From Barter to Bitcoin," Western Union (Feb. 13, 2017), www.westernunion.com/blog/history-of-money/; Rebecca Burn-Callander, "The history of money: from barter to bitcoin," *The Telegraph* (Oct. 20, 2014), www.telegraph.co.uk/finance/businessclub/money/11174013/The-history-of-money-from-barter-to-bitcoin.html; Matthew Cochrane, "The History of Bitcoin," *The Motley Fool* (April 2, 2018), www.fool.com/investing/2018/04/02/the-history-of-bitcoin.aspx; David Bear, "Who deserves the credit for credit cards?" *Pittsburgh Post-Gazette* (Nov. 19, 2006), www.post-gazette.com/life/travel/2006/11/19/Who-deserves-the-credit-for-credit-cards/stories/200611190203.

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For long-term appreciated cryptocurrency, the charitable remainder interest is based on its FMV. But, if it's short term, the deduction is the remainder value of the cost basis.

A donor funding a CRT with cryptocurrency should avoid structuring her gift as a charitable remainder annuity trust (CRAT), which pays the beneficiary a fixed dollar amount every year, or a standard charitable remainder unitrust (STANCRUT), which pays a fixed percentage of the value of the trust assets to the beneficiary each year. Instead, cryptocurrency donors should consider the net income or net income with make-up variations on the charitable remainder unitrust (NICRUT or NIMCRUT), which instructs the trustee to distribute the lesser of trust income and the unitrust amount to the beneficiary, a crucial plan where future trust income—or ability to sell assets—is uncertain. To provide maximum flexibility, the donor could instead structure her CRT as a flexible flip charitable remainder unitrust (Flip CRUT), which starts off as a NICRUT or a NIMCRUT and then converts to a STANCRUT on the happening of a triggering event, such as the sale of the cryptocurrency.


Those accepting an appointment as trustee of a CRT being funded with cryptocurrency, however, should proceed with extreme caution: A trustee who fails to diversify out of volatile cryptocurrency quickly enough could face breach of fiduciary duty claims for failing to diversify trust assets.³¹ Those claims may be brought by charitable remainder organizations or by state Attorneys General. Thus, a prudent CRT trustee should convert cryptocurrency into dollars and invest in an appropriately diversified portfolio as soon as possible.

Caution—charitable gift annuities (CGAs). Potential donors should never use cryptocurrency to fund CGAs. CGAs bear some similarities to CRATs, but the tax rules differ substantially.³² Charities should steer clear as well. Setting aside questions of whether a CGA funded with cryptocurrency would even comply with relevant state law governing CGAs, note that while a CRT will make payments to the donor only as long as the trust has sufficient assets, the charity must make CGA payments even if it has to sell its last pencil sharpener to do so.

Not your grandfather's coin collection. Although Bitcoin and other cryptocurrencies are in



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their infancy, they're already reshaping income, gift, estate and philanthropic planning. The IRS is paying close attention. Taxpayers, advisors and charities would be wise to do the same. 

Endnotes

1. "The Philanthropy 400 and the New Donor," *The Chronicle of Philanthropy* (Nov. 1, 2017), www.philanthropy.com/specialreport/the-philanthropy-400-and-the-n/158.
2. See "Fidelity Charitable 2018 Giving Report," www.fidelitycharitable.org/docs/giving-report-2018.pdf.
3. Drew Lindsay, "Anonymous Bitcoin Donor Rains \$56 Million on Stunned Non-profits," *The Chronicle of Philanthropy* (Feb. 22, 2018).
4. Niraj Chokshi, "How to Get \$29 Million for Classroom Projects? Just Ask," *New York Times* (March 30, 2018).
5. See Nathan Vardi, "The Last Days of Banking Heir Matthew Mellon," *Forbes* (April 19, 2018).
6. See Ivan Taback and Nathaniel Birdsall, "The Bitcoin GRAT," *Trusts & Estates* (July 2014), for an excellent overview of the Bitcoin system.
7. See Jeff John Roberts and Nicolas Rapp, "Exclusive: Nearly 4 Million Bitcoins Lost Forever, New Study Says," *Fortune* (Nov. 25, 2017), citing research by Chainalysis.
8. IRS Notice 2014-21, 2014-16 IRB 938 (April 14, 2014).
9. See Conrad Teitell, Charitable Gifts of "Virtual Currency" (Bitcoins), *Taxwise Giving* (April 2014).
10. See Sarah-Jane Morin, "Tax Aspects of Cryptocurrency," *Practical Lawyer* (February 2018), at pp. 25-28.
11. See "An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018," Pub. L. 115-97.
12. The smallest possible unit of Bitcoin that can be recorded on the Bitcoin blockchain, referred to as a "satoshi," is named for Satoshi Nakamoto, the pseudonymous creator of the Bitcoin protocol. See "Satoshi Nakamoto, bitcoin's enigmatic creator," *The Economist* (Sept. 1, 2018); *Key Facts About Bitcoin: An Infographic*, ValueWalk.
13. See Declaration of David Utzke in Support of Petition to Enforce Internal Revenue Service Summons, filed March 16, 2017 in *U.S. v. Coinbase*, Case 3:17-cv-01431-JSC; see also Jeff John Roberts, "Only 802 People Told the IRS About Bitcoin—Lawsuit," *Fortune* (March 19, 2017).
14. Mark Aquilio, "Court grants IRS summons of Coinbase records," *The Journal of Accountancy* (March 1, 2018).
15. Kelly Phillips Erb, "IRS Nabs Big Win Over Coinbase In Bid For Bitcoin Customer Data," *Forbes* (Nov. 29, 2017).
16. IR-2018-71 (March 23, 2018).
17. The American Bar Association Section of Taxation and American Institute of CPAs have sought guidance on issues including "hard forks"—roughly akin to spin-offs where the blockchain splits into separate versions—and initial coin offerings, where new cryptocurrencies are made publicly available for purchase to raise capital. See Allyson Versprille, "Treasury May Answer Some Crypto Tax Questions Soon: Official" *Bloomberg Tax Daily Tax RealTime* (June 23, 2018).
18. *Ibid.*
19. See Jeff John Roberts, "What Happens to Cryptocurrency When You Die?" *Fortune* (Sept. 26, 2017), <http://fortune.com/2017/09/26/cryptocurrency-bitcoin-death/>.
20. See *supra* note 5.
21. See Pamela Morgan, "Letter to Loved Ones: a template for your crypto estate planning," *Medium* (June 6, 2017), <https://medium.com/@pamelawjd/letter-to-loved-ones-a-template-for-your-crypto-estate-planning-4ee0975434e4>.
22. To date, the Uniform Fiduciary Access to Digital Assets Act has been enacted in Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, South Carolina, South Dakota, Tennessee, Texas, U.S. Virgin Islands, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming. See National Conference of Commissioners on Uniform State Laws, Legislative Fact Sheet—Fiduciary Access to Digital Assets Act, Revised, Uniform Law Commission, www.uniformlaws.org/LegislativeFactSheet.aspx?title=Fiduciary%20Access%20to%20Digital%20Assets%20Act,%20Revised%20 (2015).
23. In New York, for instance, an executor may request that the Surrogate's Court issue preliminary letters testamentary pursuant to New York Surrogate's Court Procedure Act Section 1412.
24. Coinbase, for instance, provides support for estate executors but notes that "it's not currently possible to name a beneficiary directly within your Coinbase account." See <https://support.coinbase.com/customer/en/portal/articles/2321225-how-do-i-gain-access-to-a-deceased-family-member-s-coinbase-account->.
25. See Jingnan Huo, "Lawyer Says Dead Man's Switch Not Best Option for Digital Asset Inheritance," *Coin Telegraph*, <https://cointelegraph.com/news/lawyer-says-dead-mans-switch-not-best-option-for-digital-asset-inheritance>; Pamela Morgan, <https://medium.com/@pamelawjd/humans-die-cryptocurrencies-dont-d392627bb15c>.
26. See *supra* note 8.
27. For an overview of the potential pitfalls of the substantiation requirements, see Conrad Teitell, Heather J. Rhoades and Cara Howe Santoro, "Substantiating Charitable Deductions at the IRS," *Trusts & Estates* (July 2017).
28. See Conrad Teitell, "Contribution, Substantiation and Reporting Rules," *Taxwise Giving* (August 2018).
29. Treasury Regulations Section 1.170A-13(c)(1)(i); see *supra* note 9.
30. See *supra* note 28.
31. See Conrad Teitell, Daniel G. Johnson and Katherine A. McAllister, "Diversifying Charitable Remainder Trust Investments," *Trusts & Estates* (October 2017).
32. See Conrad Teitell, *Portable Planned Giving Manual* Section 8.01 [E], at p. 574.