

Digital Assets –

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Patrick Alyward Biography

Patrick is the Founder and CEO of TRUSTworthy Consultants, Inc. where he provides fiduciary consulting services and training to banks, credit unions, and trust companies. He also serves as Executive Director of the Fiduciary Education Foundation and has his ATFA designation.

Previously, Patrick was the President & CEO for RIC and has 30+ years experience in the fiduciary & wealth management industry including:

- CEO at RIC (Unique Assets) for 6 years partnering with over 200 trust clients
- EVP and Chief Fiduciary Officer for National City/PNC Bank overseeing all fiduciary staff and functions (18 years in banking)
- CCH (Wolters Kluwer) where he founded and managed a fiduciary tax preparation service for trust organizations
- Big 4 accounting experience in fiduciary taxation (EY/KPMG) and Fleet Bank

Patrick is a frequent speaker and author at wealth management & fiduciary compliance conferences across the nation. www.trustworthyconsultants.com



New Survey Shows Americans Don't Know Which Digital Assets They Own

By Jamie Hopkins, Contributor. © Jamie Hopkins of Bryn Mawr Trust covers re... ▾

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INVESTMENT MANAGEMENT, TRUST & ESTATE PLANNING

Bryn Mawr Trust Survey Reveals Americans Value Digital Assets at \$191,516 on Average, But Gaps Exist in Digital Asset Awareness and Estate Planning



Jamie Hopkins, Esq., LLM, CFP®, ChFC®, CLU®, RICP®
Bryn Mawr Trust
Bryn Mawr Trust Advisors

- 29% “somewhat knowledgeable” (15% never heard of it)
- Only 32% have estate plan – those that do (53% addressed digital assets)
- 76% little or no knowledge of digital estate planning
- 44% of advisors addressed digital assets with them

Source: <https://www.bmt.com/news-insights-events/bryn-mawr-trust-survey/>

Today's Objectives

Digital Assets appear to be on the rise and continue to be frequently discussed at fiduciary conferences throughout the industry. Although these assets may not be common in fiduciary accounts **yet**, the trends show it is a matter of time before they start appearing in fiduciary accounts and estates.

Are you ready? This session will be an introduction to Digital Assets from a fiduciary and estate planning perspective. Some best practices will be shared and lesson learned.

Agenda

An Introduction to Digital Assets

How this asset class is stored and accessed

Fiduciary Risk and Concerns

Challenges in managing Digital Assets

Taxation Considerations

Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA)

Trustee Best Practices and Ideas

Appendix and Footnotes

Digital Assets



What is a Digital Asset?

A **digital asset** is anything that exists in a digital format and comes with the right to use and provides VALUE. Note: data that do not possess that right are not considered assets.¹

Some examples:

Photos, Videos, Domain Names, Logos, Social Media Pages, Cryptocurrencies, Digital painting, Mobile payment service (PayPal/Venmo), E-commerce accounts (eBay/Etsy) – often stored on tablets, phones, etc.

What about Non- Fungible Tokens (NFT's)?

Economics not controlled by a centralized authority

*Bitcoin which launched in 2009, established the **world's first decentralized digital asset.***

Who Maintains Digital Assets

Financial Institutions and Brokerage Firms

Digital Media providers – Spotify, Audiochuck

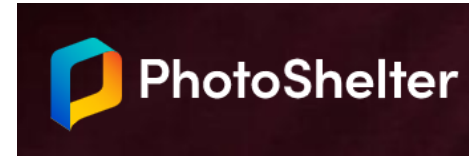
Domain/Website hosts - GoDaddy

Online providers (Ecommerce) – eBay, Etsy

Cloud storage companies – IBM, Dropbox

Email providers – Hotmail, Yahoo

Wallets - Coinbase



How are Digital Assets Stored and Accessed?

On Laptops, tablets, phones, etc.

Passwords/Encryption – More complicated for digital assets

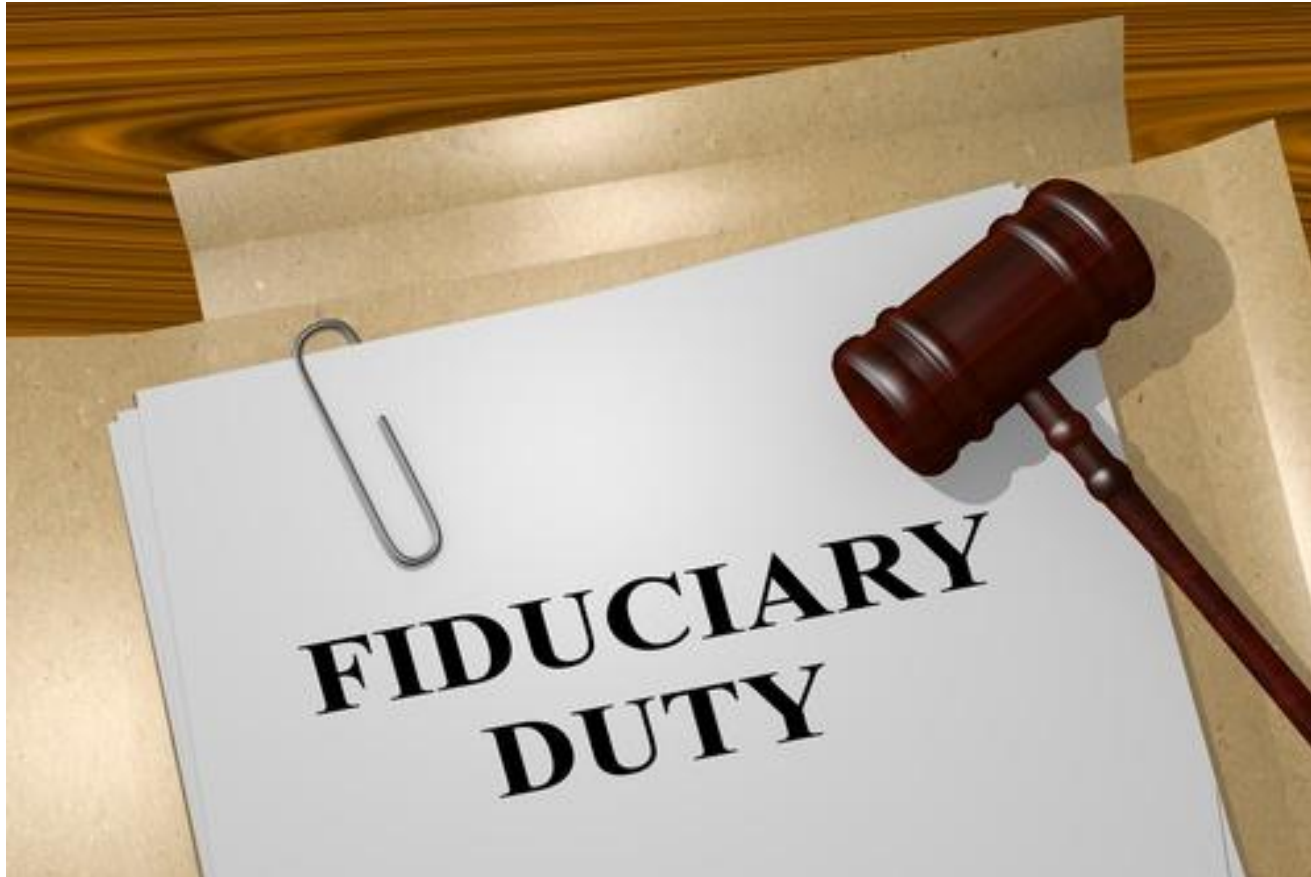
Cryptocurrency, NFT's, and others

- Blockchain – digitized accounting ledger across a computer network; transactions are recorded and validated
- Wallets (used to buy, sell, and store) store private keys
- Hosted (most popular) vs. Non-custodial wallets
- Cold Storage – offline (not connected to the internet)
- Hot Storage – managed through internet (cloud, mobile, or desktop)

Digital Asset Management (DAM) & online tools

- Allows content to be managed and accessed more easily
- Can be expensive.... But might be worth it!





Fiduciary Risks and Concerns

Fiduciary Challenges with Digital Assets

Lack of documentation (governing documents, accessibility clauses)

Trustees have limited or no experience

- Digital asset and privacy laws
- Navigation and 'rights' to a client's digital information

Validating ownership

Valuations

Outdated state probate codes

Custody (storage)

Taxation...

Accessing Digital Assets

- Passwords/encryption
- Terms of Service and License Agreements from online providers
- Consumer protection laws
 - Stored Communications Act
 - Federal/State Computer Fraud and Abuse Acts
- Privacy policies and concerns

Custodians of online accounts may refuse to recognize Fiduciaries' authorities over digital assets



Stop right there Patrick!

*Most Trustees don't currently
accept digital assets, so we
don't have to worry.*

Well, this is Something you may see..

1. A client dies... your firm accept the Executorship
2. “Basic assets” – investments, trust, residence
3. Upon review of the estate assets, a family member tells you they had an eCommerce business
4. They point to the computer and say, “here you go”...
Is there value? What is it? How do I access?
5. Now what?

Uniform Law Commission

Practicing lawyers, judges, legislators appointed by state governments to research and promote enactment of uniform state laws

- Conflicts and court cases arise due to digital assets
- Created a committee in 2012 to study and focus on fiduciary powers to assist with digital assets

Original Uniform Fiduciary Access to Digital Access Act (UFADAA) completed in 2014

- Granted fiduciaries access to digital assets



www.uniformlaws.org/home

But.... issues and conflicts arose!

Revised Uniform Fiduciary Access to Digital Assets Act

RUFADAA enacted in 2015 and contains 21 sections²

*“The general goal of the act is to **facilitate fiduciary access and custodian disclosure while respecting the privacy and intent of the user**. It adheres to the traditional approach of trusts and estates law, which respects the intent of an account holder and promotes the fiduciary’s ability to administer the account holder’s property in accord with legally-binding fiduciary duties.³”*

Fiduciaries no longer have authority over the digital contents unless user explicitly consented (and service agreement allows); Conflicts may arise!

- Executors and others may need to petition court and explain why access is needed (estate admin.)

Custodians may: 1) charge fees 2) request court orders 3) may not provide access to deleted assets or joint accounts 4) refuse unduly burdensome requests

Uniform Law Commission

Revised Uniform Fiduciary Access to Digital Assets Act

RUFADAA gives internet users the power to plan for the management and disposition of their digital assets —email, social media accounts, etc.—in the same way they can make plans for their tangible property.

Gives Internet Users Control



RUFADAA lets users decide whether their digital assets will be preserved, distributed to heirs, or destroyed.

Respects Privacy Interests



RUFADAA prevents companies from disclosing the contents of a user's email and social media without the user's consent.

Provides Efficient Uniformity



RUFADAA standardizes the rules in each state for access to digital assets when the user dies or becomes disabled.

Source: <https://www.uniformlaws.org/committees/community-home?CommunityKey=f7237fc4-74c2-4728-81c6-b39a91ecdf22>

Revised Uniform Fiduciary Access to Digital Assets Act

Depends on fiduciary capacity and level of consent from client:

Personal Representative

Executor

Conservators

Trustee

Power of Attorney



Some capacities allow more access than others (Trustee vs. Conservator)

- State law or court authorization often applies

Must demonstrate client's consent to gain access

Different levels of access - Content vs. Catalogue (time, date, and electronic address both sent and received)

Many legacy trust agreements/documents do not address duties/access in respect to digital assets

Difference between “*Catalogue and Content*” of Electronic Communications

Catalogue/Catalog

Information that identifies each person with which a user has had an electronic communication including:

- A) Time and date of communication
- B) Electronic address of the person

Content

Information concerning the substance or meaning of the communication which:

- A) Has been sent by a user
- B) Is in electronic storage by a custodian
- C) Is no readily accessible to the public

Digital Asset Trustee Considerations/Ideas

Create digital asset expertise (internally or align with external provider); Be aware of applicable laws (federal/state, probate, communication, etc.) and accessibility rights for your respective state(s). *Stay up to speed!*

Review applicable policies and update accordingly:

- Account acceptance documentation and KYC (may want to include section on digital assets)
- When your organization is named in a will/trust (Will File procedures)

Encourage clients that update legal documents to include digital asset clauses if applicable (*consent* to disclosure of content if needed); Assist with planning as needed

Estate Settlement – Review & modify documentation and procedures to serve as Executor

- Align with experts – Computer scanning provider, valuation experts, legal
- Establish checklist for digital assets; create inventory procedure

In Summary....

It is only a matter of time before your firm is approached to custody a digital asset in a fiduciary account or settle an estate that has some type of digital asset. Ask yourself:

Is your organization ready?

If not, are you taking the proper steps to get there? (develop some knowledge/process around Digital Assets, aligning yourself with expertise)

Have you started to address policy or procedural impacts (account acceptance, serving as Executor) and/or developed internal checklists?

Digital Assets in one form or another are here to stay. Start a plan!

Questions?

Thank you and let's stay in touch!

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Footnotes

¹ https://en.Wikipedia.org/wiki/digital_asset

² <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=112ab648-b257-97f2-48c2-61fe109a0b33&forceDialog=0>