SIR NINIAN STEPHEN LECTURE – MELBOURNE

The great logout: succession planning for digital assets

Current issues and state of play

Lisa Barca, Partner
Turner Freeman

28 October 2026 · RACV City Club

Turner Freeman
LAWYERS

Equity Trustees
Incorporating
Australian Executor Trustees

THE PLAN



THE PLAN

Where Are We Going?

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Barriers to Access

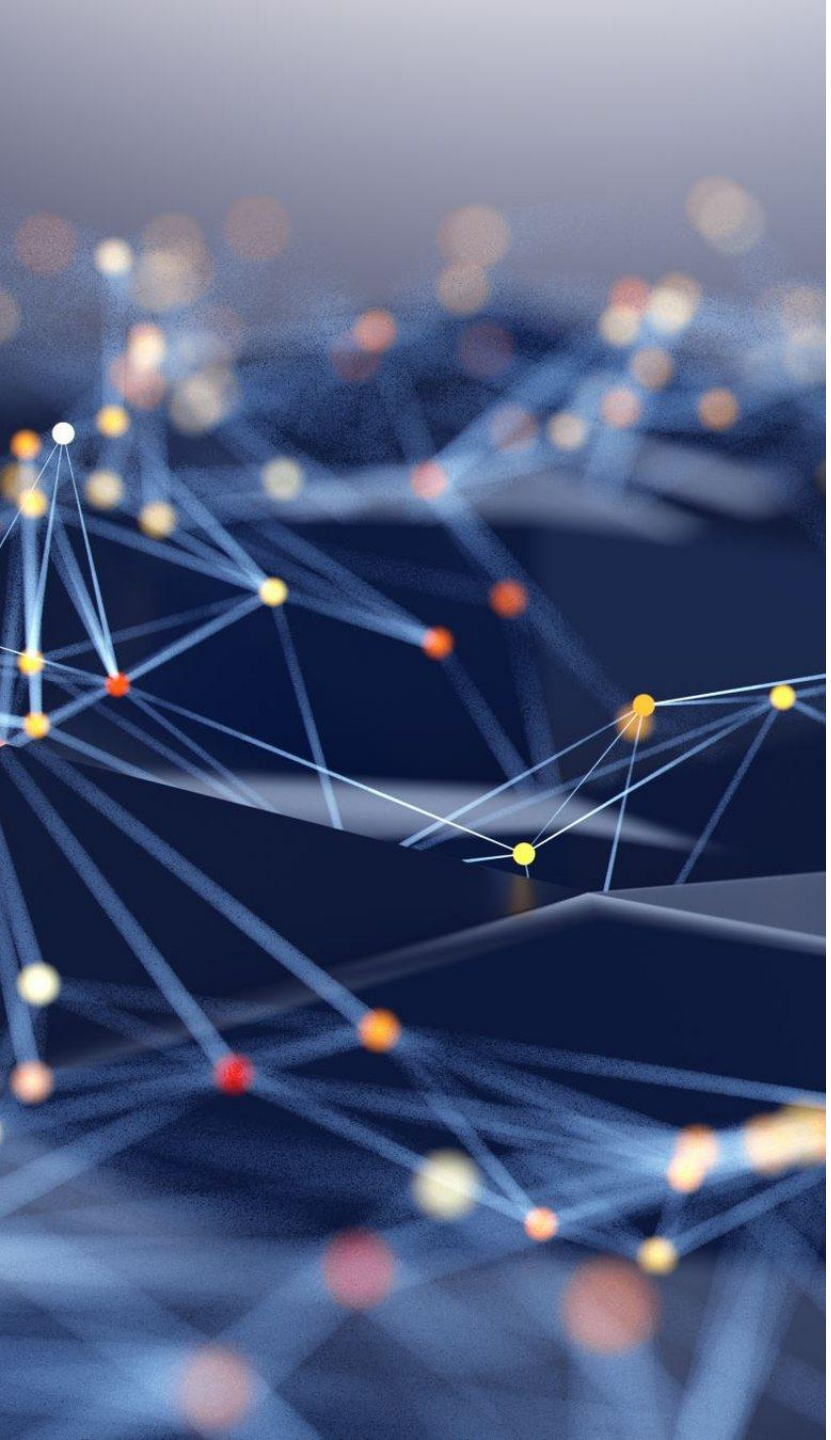
06

How Can You Help?

01

Why it matters?

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Statistics

2.5b

Active Apple devices globally

$3.2b

worth of digital assets in SMSF holdings by end of 2025 (up from $240m 4 years ago) – 333% increase.

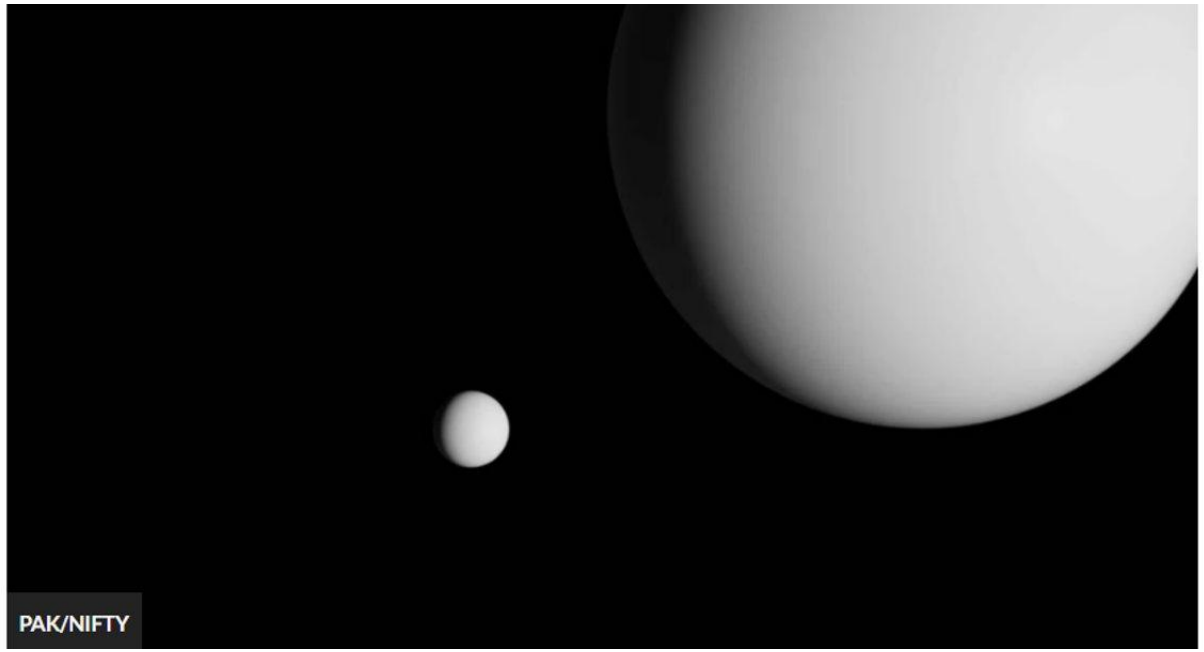
33%

Australians hold cryptocurrency (as at March 2026)

2,000

Crypto ATMs in Australia

Your clients hold digital assets and/or records – and chances are they hold quite a few of them.



Pak’s ‘The Merge’ — $91.8m

OnlyFans



https://expressdigest.com/kayla-itsines-reveals-the-key-to-her-success/



The History

May 2018

Attorney General requested the NSW Law Reform Commission to review and report on the laws that affect access to a NSW person's digital assets when they die or are incapacitated.

The review

Held that the current law in NSW does not effectively ensure that people with a legitimate interest can access a person's digital records when they die or are incapacitated. Recommended a new statutory scheme.

March 2020

The NSW Law Reform Commission's final report, including the proposed scheme, was tabled to Parliament.

02

The Lingo

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Digital Assets

Definition

Digital material in which users have proprietary rights or interests. Definition is infinite, and likely to encompass more items as technology develops.

Examples

Includes cryptocurrencies, and digital material which users have intellectual property rights, such as digital photographs, digital artwork, or written work. It further includes but is not limited to data, text, emails, documents, audio, photos, video, images, sounds, social media content, social networking content, codes, health care records, health insurance records, computer source codes, computer programs, software, software licenses, databases, or the like, including the usernames and passwords, created, generated, sent, communicated, shared, received, or stored by electronic means on a digital device.



Digital Records

Definition

Digital records are records that exist in digital or other electronic machine-readable form, and are either:

(i) created by or on behalf of the user, in whole or in part, or

(ii) relate to the user, and the user had access to it while the user was alive, or

(iii) relate to the user, and their representative had access to it.

Exclusions

Digital records do not include an underlying asset (such as shareholdings held by a share registry) or liability, unless the asset or liability is itself a digital record.

Examples

Social media accounts and profiles, online purchasing accounts such as PayPal and eBay, loyalty program benefits, sports gambling accounts such as TAB, and online gaming accounts and avatars.

Digital Records

Three categories of digital records



1

Virtual Currency Accounts

Contain virtual currency – PayPal, loyalty program accounts



2

Virtual Property Accounts

iTunes, Spotify – the user doesn't own the files, it has a licence to use them



3

Social Media Accounts

Email, Facebook, X, LinkedIn

Digital Devices

Electronic devices that generate, send, share, receive, create, store, display or process digital records and assets.

Include but are not limited to laptops, smartphones, iPads, tablets, desktop computers and hard drives. Like the digital estate, digital devices are infinite and will include more items as technology develops.

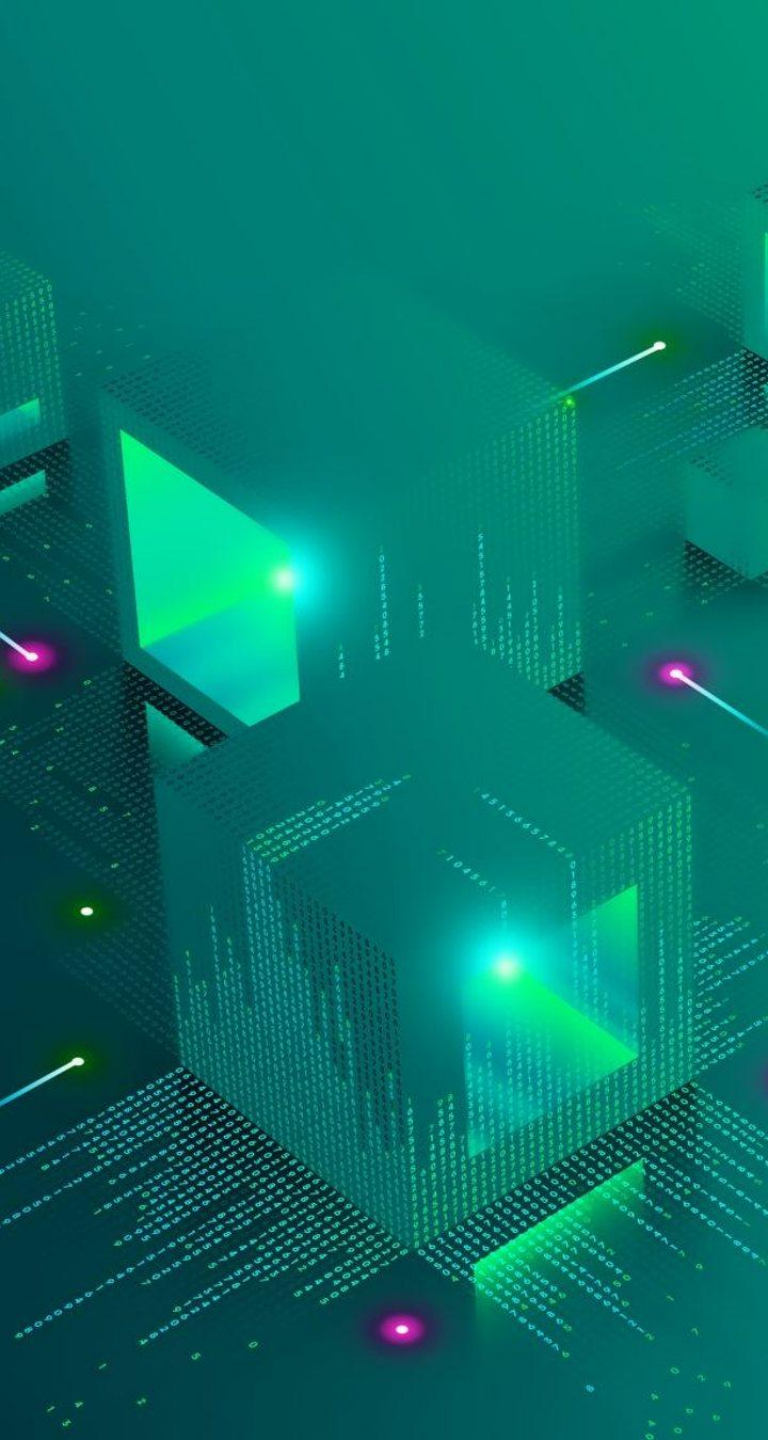
Unlike digital assets and records, digital devices are tangible.



03

The Wonderland

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Crypto Assets

AUSTRALIAN TAXATION OFFICE

'Crypto assets are a digital representation of value that you can transfer, store, or trade electronically. This also includes non-fungible tokens (NFTs). Crypto assets are a subset of digital assets that use cryptography to protect digital data and distributed ledger technology to record transactions. They may run on their own blockchain or use an existing platform such as Ethereum. A blockchain is a form of secure digital ledger used to store a record of crypto transactions.'

$2.85 trillion

Cryptocurrency market capitalisation, with the largest cryptocurrency being Bitcoin (over 58%).

The crypto market includes

- Non-fungible tokens
- Governance tokens
- Crypto currency
- Stablecoins
- Utility tokens



Wallets

Crypto wallet = tool that allows users to interact with blockchain networks. They are necessary when sending and receiving Bitcoin and other digital currencies.

Unlike the traditional wallets we use in our everyday life, cryptocurrency wallets don’t really store your funds. In fact, your coins (or tokens) are simply part of a blockchain system as pieces of data, and the wallets serve as a means to access them.

Custodian wallets *or* **Non-custodian wallets**

Source: https://www.olliv.com/intro-to-crypto/getting-started/cryptocurrency-explained-crypto-wallet

Keys

Most crypto wallets are able to generate one or more pairs of public and private keys.



Public key

The public key is used to generate wallet addresses, which are needed to receive payments.

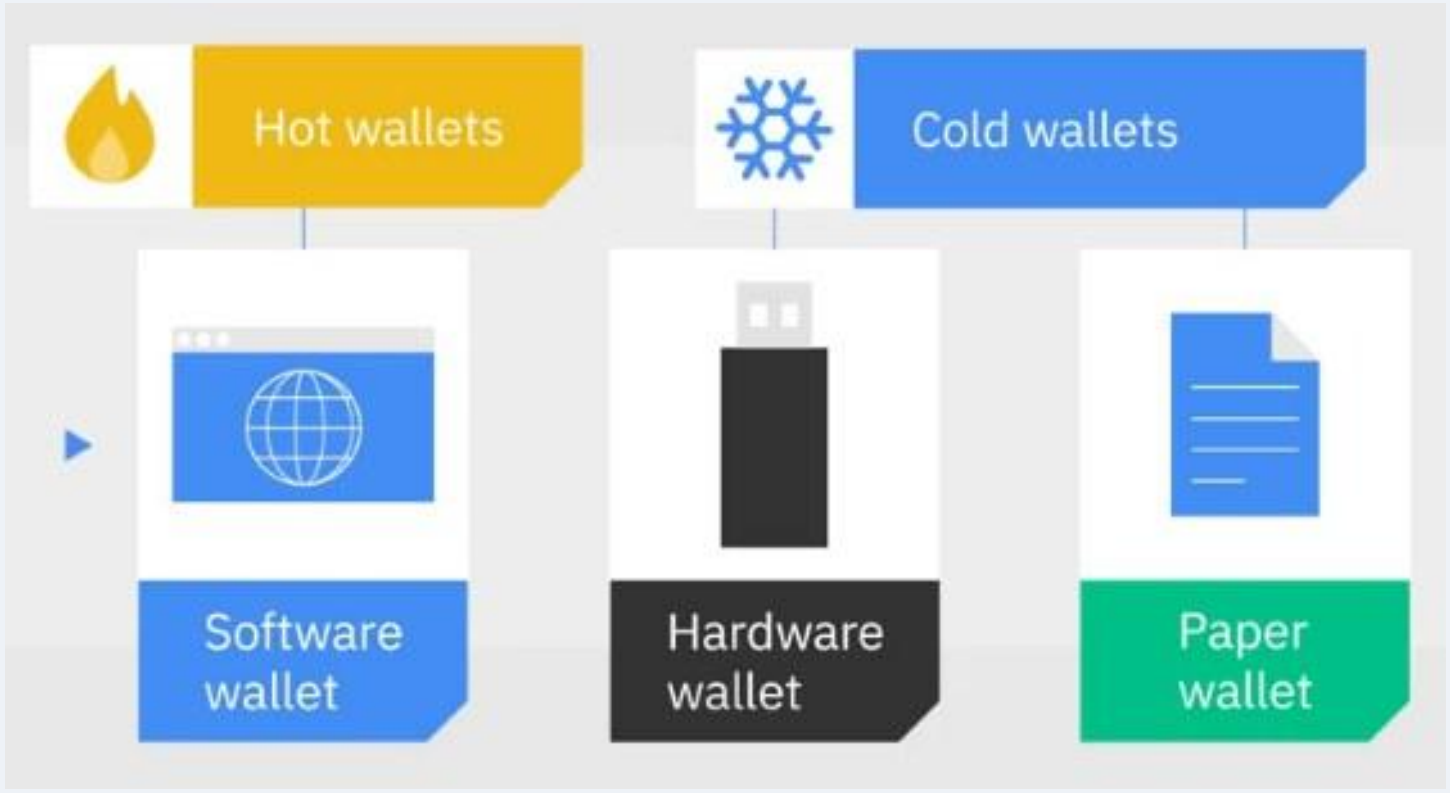


Private key

The private keys are used during the creation of digital signatures and verification of transactions. Private keys are confidential and should never be shared with anyone.

Source: https://www.olliv.com/intro-to-crypto/getting-started/cryptocurrency-explained-crypto-wallet

Non-Custodian Wallets





Seed Phrases

- A seed phrase is a series of between 12–24 random simple words generated when a crypto wallet is first set up.
- Enables a user to recover their private key.
- Like the private key, the seed phrase, if in the wrong hands, could lead to a misappropriation or theft of funds.

AN EXAMPLE SEED PHRASE

1 rich	2 one	3 iron	4 help
5 glass	6 cheap	7 house	8 tiger
9 cat	10 eager	11 crocodile	12 ignores



Source: https://medium.com/blockchain/seed-phrase-explained-9468a5fd8dc3

Boating Accidents





Boating Accidents





04

Obligations of LPR

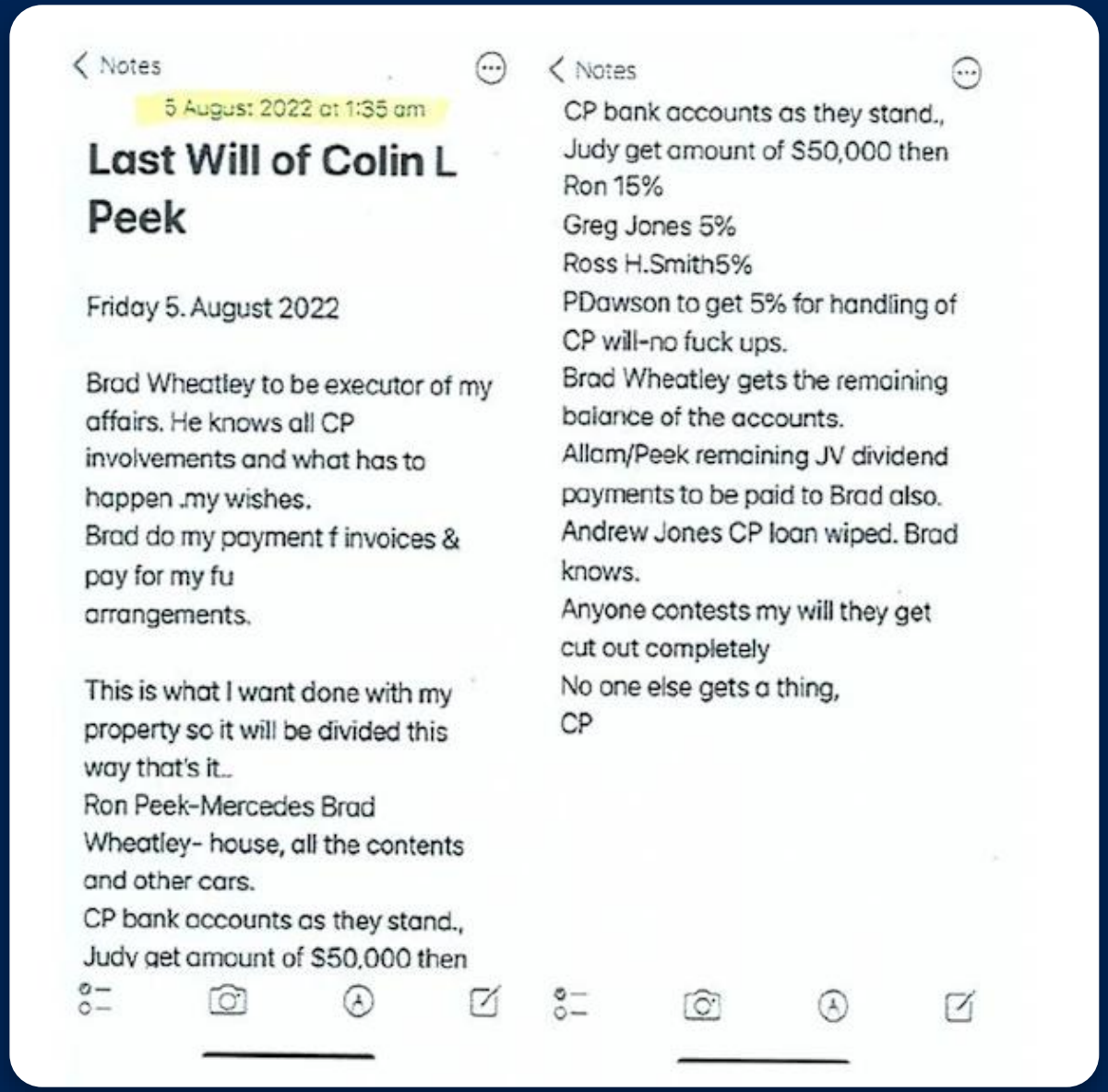
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The Note

The Note was discovered on 19 August 2022 by Colin's solicitor, Mr Dawson, at Colin's home when he and the appellant, Mr Wheatley, were there looking for Colin's will.

All or nothing. Brother to inherit under intestacy or note admitted to Probate and beneficiaries therein to inherit.

Wheatley v Peek [2025] NSWCA 265



Notes

5 August 2022 at 1:35 am

Last Will of Colin L Peek

Friday 5. August 2022

Brad Wheatley to be executor of my affairs. He knows all CP involvements and what has to happen .my wishes.
Brad do my payment f invoices & pay for my fu arrangements.

This is what I want done with my property so it will be divided this way that's it..
Ron Peek-Mercedes Brad Wheatley- house, all the contents and other cars.
CP bank accounts as they stand.,
Judy get amount of $50,000 then

Notes

CP bank accounts as they stand.,
Judy get amount of $50,000 then
Ron 15%
Greg Jones 5%
Ross H.Smith5%
PDawson to get 5% for handling of CP will-no fuck ups.
Brad Wheatley gets the remaining balance of the accounts.
Allam/Peek remaining JV dividend payments to be paid to Brad also.
Andrew Jones CP loan wiped. Brad knows.
Anyone contests my will they get cut out completely
No one else gets a thing,
CP

05

Barriers to Access

Section 5 of 6

Barriers to Access

***308H Crimes Act 1900* (NSW)**

Unauthorised access to or modification of restricted data held in computer (summary offence)

(1) A person –

(a) who causes any unauthorised access to or modification of restricted data held in a computer, and

(b) who knows that the access or modification is unauthorised, and

(c) who intends to cause that access or modification,

is guilty of an offence.

Maximum penalty – Imprisonment for 2 years.

Criminal Code (Cth) s 478.1; Crimes Act 1900 (NSW) s 308H.

"Restricted data" means any data that is subject to an access control system.

Criminal Code (Cth) s 478.1(3); Crimes Act 1900 (NSW) s 308H(3).

Any files stored on a device that has a login password would be considered "restricted data".

"Access to data held in a computer" includes displaying, copying or moving the data, or executing a program.

Criminal Code (Cth) s 476.1(1) definition of "access to data held in a computer"; Crimes Act 1900 (NSW) s 308A(1).

Any contact with the data that causes the computer to respond will amount to "access".

"Modification" includes (a) the alteration or removal of the data, or (b) an addition to the data.

Criminal Code (Cth) s 476.1(1) definition of "modification"; Crimes Act 1900 (NSW) s 308A(2).

Barriers to Access

A general power to deal with a user's personal property under a will (or other instrument) may not be enough to authorise access to or modification of the user's data held in a computer.

Being authorised to deal with a physical computer is not the same as being authorised to access or modify the data stored on it.

J Clough, *Principles of Cybercrime* (Cambridge University Press, 2012) 72.



Barriers to Access

Custodian service agreements

Custodian service agreements and policies that prohibit or restrict:

1. the sharing of usernames and passwords;
2. the transfer of the user's account to anyone else, and/or
3. third party access to a user's account upon their death or incapacity.

Facebook

You must not share your password, give access to your Facebook account to others or transfer your account to anyone else (without our permission).
https://www.facebook.com/legal/terms

LinkedIn's service agreement provides:

You will keep your password a secret.
You will not share an account with anyone else …
https://www.linkedin.com/legal/user-agreement

Passwords and access codes



Barriers to Access cont’d

Twitter’s (now marketed as ‘X’) service agreement provides:

> *This license has the sole purpose of enabling you to use and enjoy the benefit of the Services as provided by X, in the manner permitted by these Terms.*
>
> *We are unable to provide account access to anyone regardless of their relationship to the deceased.*

As the user’s Twitter account is “personal” and “non-assignable”, it may be terminated upon the user’s death.

Barriers to Access cont'd

Microsoft – will deactivate or delete the account after a period of inactivity

"For privacy and other legal reasons, we are generally unable to provide information to non-account holders … Outlook.com and OneDrive accounts will be ***frozen after 1 year and any email messages and files stored on OneDrive will be deleted shortly after.*** *Microsoft accounts expire after two (2) years of inactivity … Microsoft must first be formally served with a valid subpoena or court order to consider whether it is able to lawfully release a deceased or incapacitated user's information regarding a personal email account (this includes email accounts with addresses that end in Outlook.com, Live.com, Hotmail.com, and MSN.com), OneDrive storage, or any other aspect of their Microsoft account. Microsoft* ***will only respond to non-criminal subpoenas and court orders*** *served on Microsoft's registered agent in the requesting party's state or region and is unable to respond to faxed or emailed requests for such matters."*



Every service agreement and policy is different.

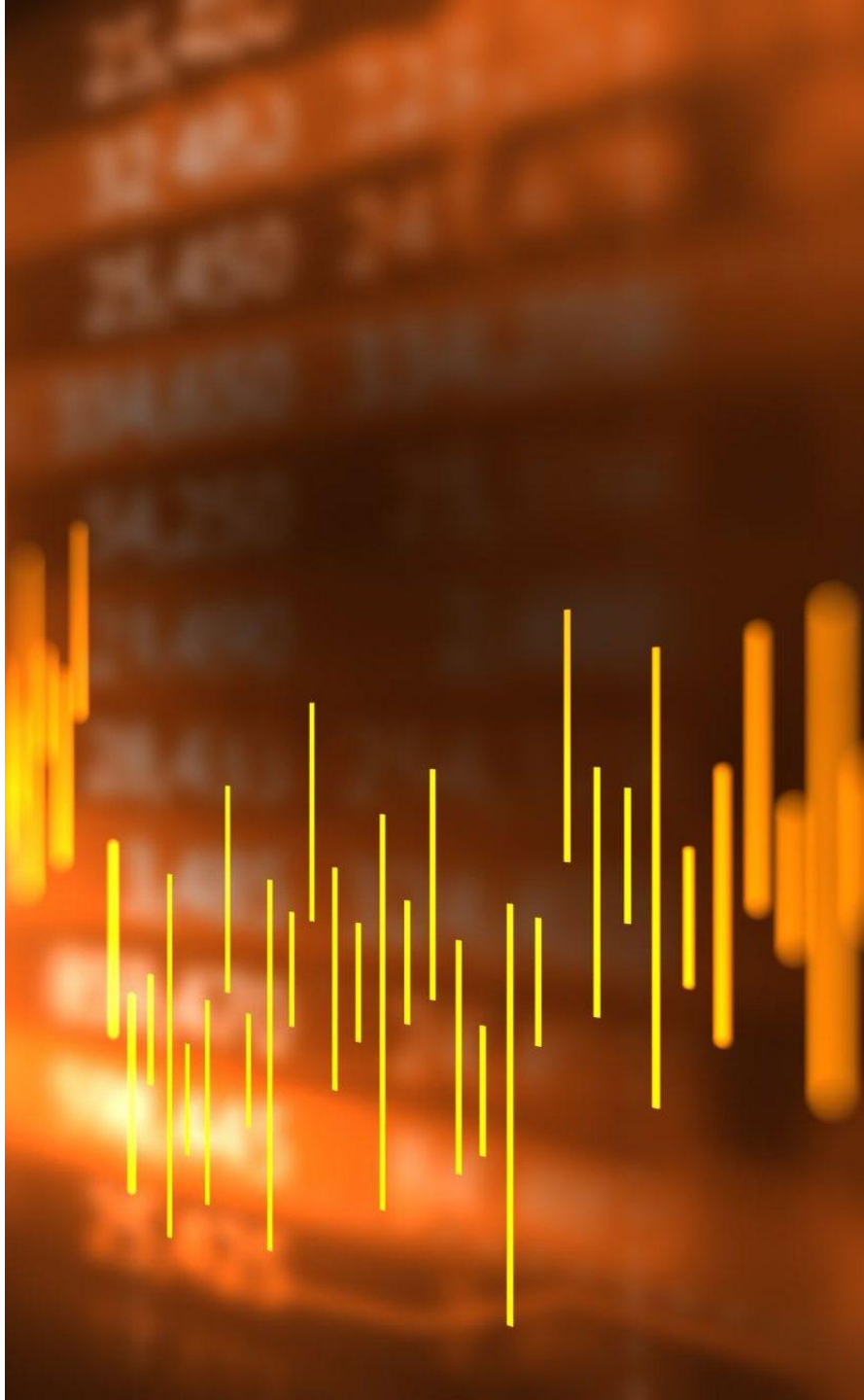


Region specific.

Barriers to Access

Several laws of different jurisdictions can apply to different components of the digital estate.

Component	Applicable law / issue
Music	Music stored on a CD v music stored on Spotify or an iTunes account, being a digital account (a digital record)
Digital assets	Law of domicile of deceased
Crypto assets	Exclusive ownership is difficult to prove. ATO adopted residence.
Digital assets contained within record/account	??
Digital devices	Law of domicile of deceased



Current State of Play

2020 · GERMANY

‘Trailblazer case’ relating to digital assets. Germany’s Federal Court of Justice delivered a landmark judgment allowing an LPR to access the deceased’s Facebook page (German Judgment). The Court held it was not enough for Facebook to enable the LPR access to the content of the Facebook account, and instead ordered full access to the Facebook account. The German Judgment was made on the findings that the contract of use of an account on a social network is inheritable.

2020 · NEW ZEALAND

The New Zealand High Court held that cryptocurrencies, as digital assets, are a form of property capable of being held on trust. *Ruscoe v Cryptopia Ltd (in Liquidation)* [2020] NZHC 728.

AUSTRALIA

Australian Securities and Investments Commission v NGS Crypto Pty Ltd (No 3) [2024] FCA 822 – held meaning of ‘property’ in section 9 of the *Corporations Act 2001* (Cth) is sufficiently broad to encompass cryptocurrency assets.

In April 2026, the Corporations Amendment (Digital Assets Framework) Bill 2025 received Royal Assent, officially amending the Corporations Act 2001 to regulate cryptocurrency exchanges and digital asset platforms under the Australian Financial Services Licence (AFSL) framework. Implementation window until April 2027.

Re Blockchain Tech Pty Ltd [2024] VSC 690
Victorian Supreme Court treated Bitcoin as property capable of being held on trust. Heavily referenced in TD 2026/D2 - Income tax: CGT consequences of using a smart contract to wrap and unwrap crypto assets

ASIC v Web 3 Ventures [2026] HCA 21
In June 2026, High Court handed down judgment. Was an appeal from the Full Court of the Federal Court. The High Court upheld the appeal, finding the crypto-asset product known as Earner was a derivative within the meaning of the Corporations Act 2001 (Cth) (‘Act’).

06

How can you help?

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KEY CONSIDERATIONS

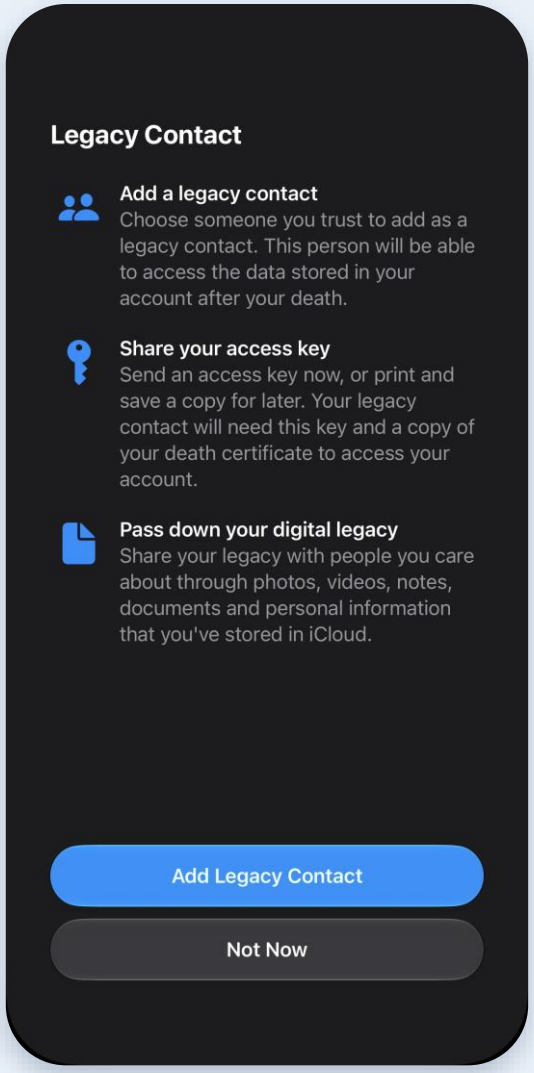
Estate Planning Phase

Part 1 of 2

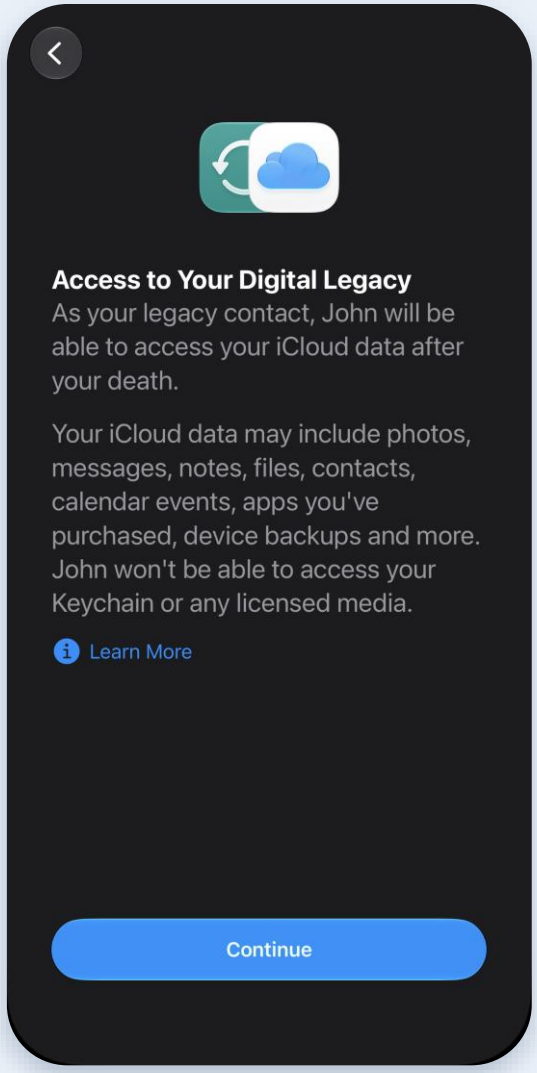
- Discovery – STEP Inventory for Digital Assets and Digital Devices
- Refining retainer – exclude if necessary, together with written advice
- Is digital record, digital device or digital asset capable of being gifted in a Will, and/or under the control of LPR or attorney?
- Include express powers in Power of Attorney and definitions in Wills
- No immediate right to access digital records or accounts.
- Memorandum of Wishes - Confidential? Dating apps
- What are you prepared to store on behalf of the client? Risks?
- Digital devices to include or exclude content contained therein?

Apple Legacy Contact

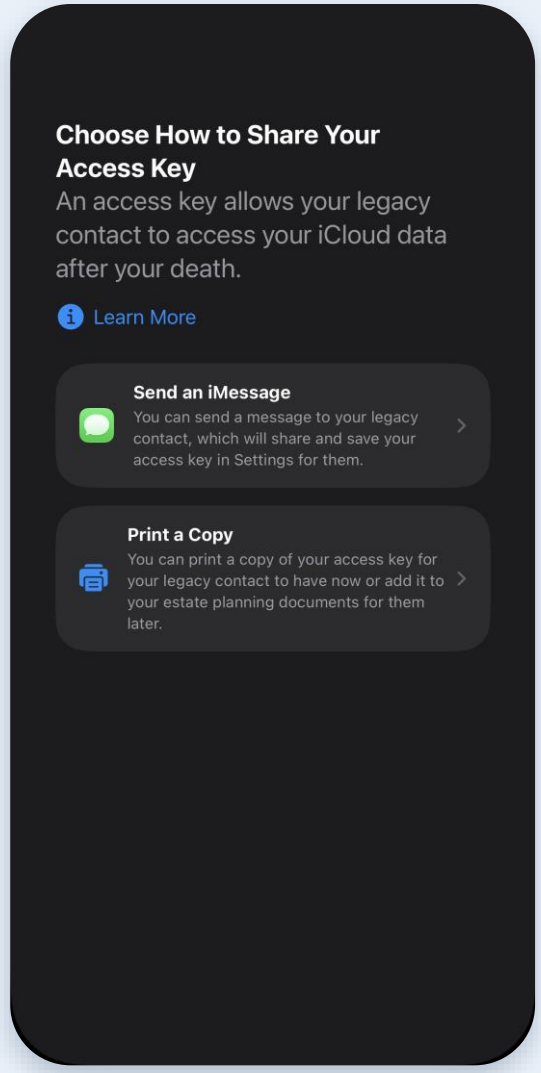
How an iPhone user nominates someone to access their iCloud data after death



1 Choose a Legacy Contact

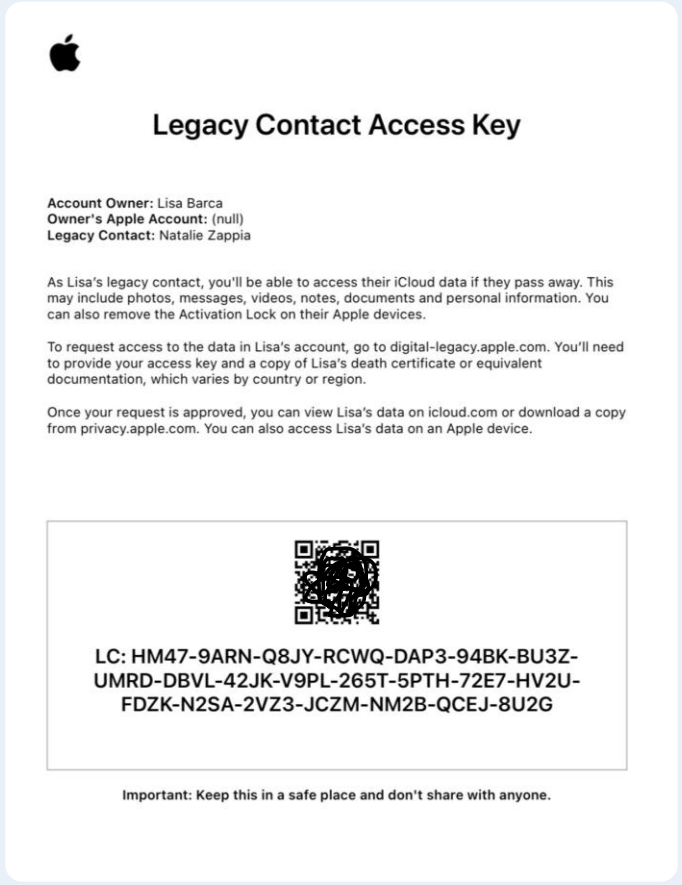


2 Review what they can access



3 Share the access key

Apple Legacy Contact



Legacy Contact Access Key

Account Owner: Lisa Barca
Owner's Apple Account: (null)
Legacy Contact: Natalie Zappia

As Lisa's legacy contact, you'll be able to access their iCloud data if they pass away. This may include photos, messages, videos, notes, documents and personal information. You can also remove the Activation Lock on their Apple devices.

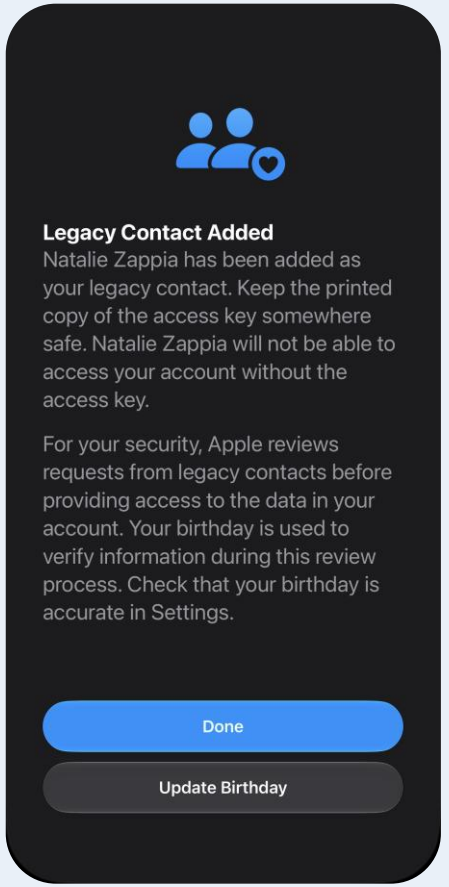
To request access to the data in Lisa's account, go to digital-legacy.apple.com. You'll need to provide your access key and a copy of Lisa's death certificate or equivalent documentation, which varies by country or region.

Once your request is approved, you can view Lisa's data on icloud.com or download a copy from privacy.apple.com. You can also access Lisa's data on an Apple device.

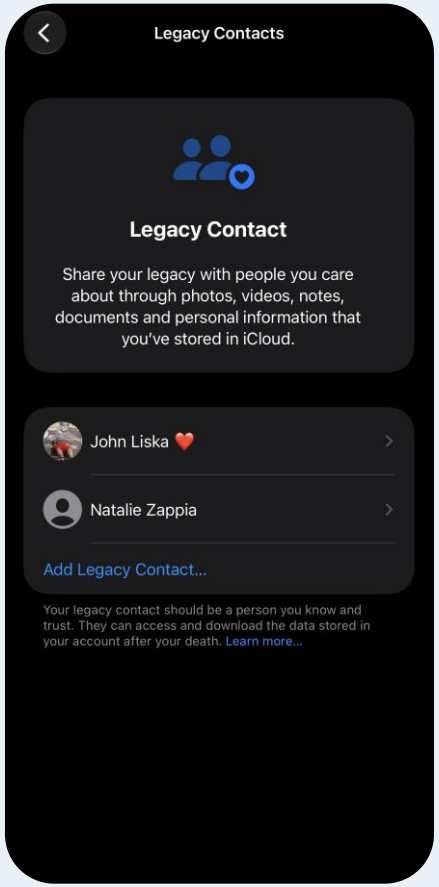
LC: HM47-9ARN-Q8JY-RCWQ-DAP3-94BK-BU3Z-UMRD-DBVL-42JK-V9PL-265T-5PTH-72E7-HV2U-FDZK-N2SA-2VZ3-JCZM-NM2B-QCEJ-8U2G

Important: Keep this in a safe place and don't share with anyone.

1 **Store the access key**



2 **Contact added**



3 **Contacts list**

NEXT STEPS

If You Cannot Access Digital Devices

Most digital accounts or records have 2 step authentication

1

Review custodian agreements

2

Review custodian website – Apple ‘Legacy Contact’. If there is no Legacy Contact set up, Apple requires and verifies legal documentation

3

Court order

If You Cannot Access Digital Assets or Records

1

Review custodian agreements

2

Review custodian website – Facebook has a page titled ‘Managing a deceased person’s account’

3

Court order

KEY CONSIDERATIONS

Estate Planning Phase

Part 2 of 2

SURE access plan

Secure

Useable

Resilient

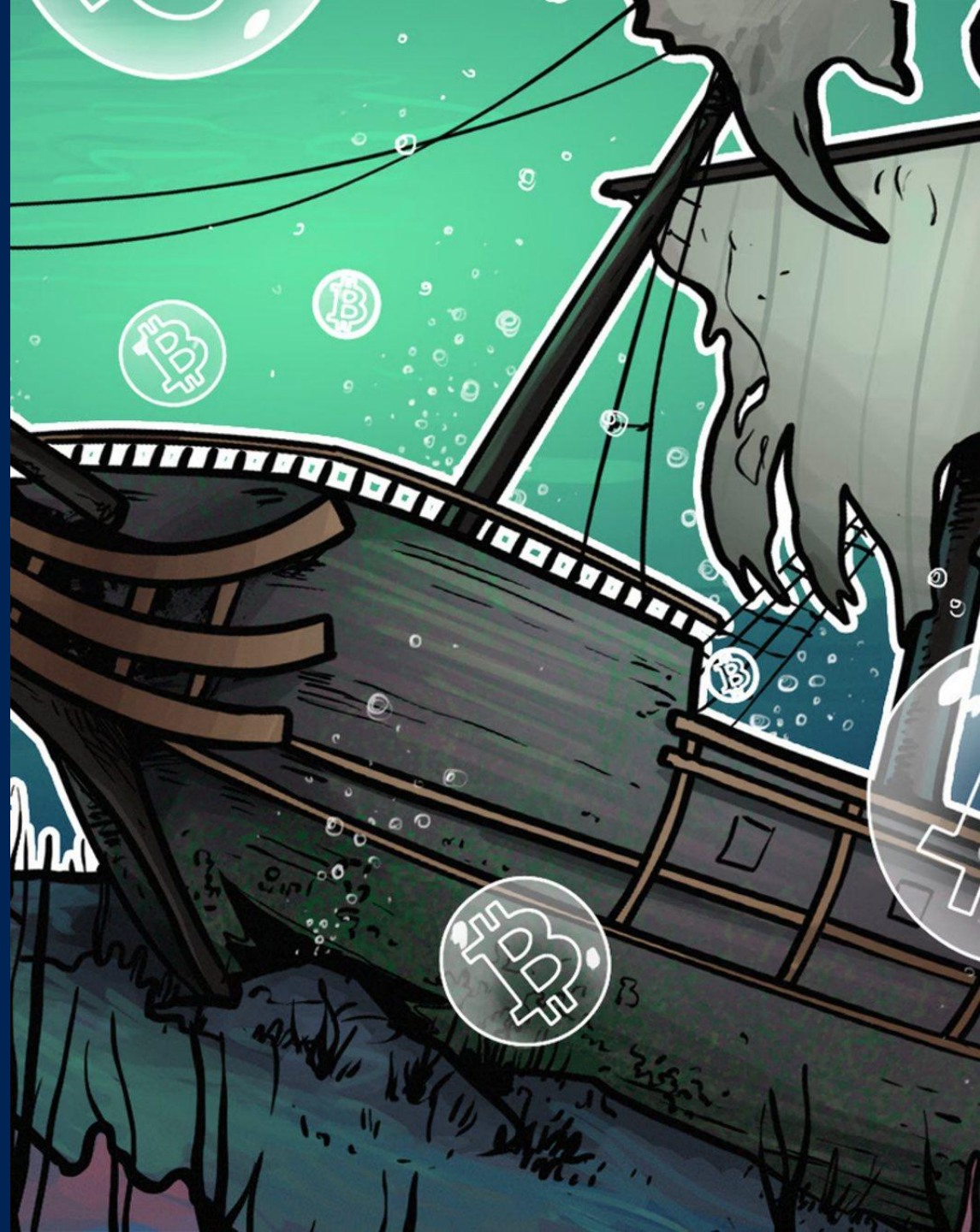
Efficient

Brainstorm access plans

- Storing private keys & seed phrase separately
- Extra digit or word
- Safety deposit box, vault or safe
- Copies inter vivos
- Deadman Switch
- Dividing paper between custodians
- Information vaults
- Inventory with EP documents

KEY TAKE AWAY

If a will maker does not have an adequate **legal and access plan** for their digital estate upon death, LPRs are likely to be left sailing through uncharted waters and ultimately into a boating accident.



Questions

Lisa Barca, Partner
Turner Freeman

