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Your Digital Assets Are Property — But Can Your Executor Retrieve Them?

Why the Wills Act 1959 does not solve digital asset succession

Section 3 of the Wills Act 1959 entitles a testator to devise "all property which he owns and to which he is entitled, either at law or in equity, at the time of his death." The statutory definition is broad enough to capture digital assets — cryptocurrency, NFTs, virtual property in environments such as The Sandbox, and tokenised real-world assets recorded on a blockchain. The legal entitlement is not in doubt; the practical retrievability is.

What an estate plan must answer in 2026 is no longer whether digital assets are property. It is whether your executor can find them, identify them, and recover them — without exposing the keys on the public record of the High Court in the process.

KEY HIGHLIGHTS

- Digital assets — cryptocurrency, NFTs, virtual property, and tokenised holdings — fall within the meaning of "property" under section 3 of the Wills Act 1959. Separately, the Malaysian High Court in Lee Ee Foong v Ong Seow Lee confirmed that digital assets carry value and constitute valid consideration — judicial recognition that strengthens the case for treating them as disposable property in a will.
- The estate's problem is not legal entitlement but practical retrieval — assets held only as entries on a distributed ledger require the private key, and the law of succession does not generate one.
- A will admitted to probate becomes part of the public record under the Probate and Administration Act 1959; the seed phrase belongs in a letter of wishes, an inventory, and a custody plan — not in the will itself.

THE LEGAL STATUS IS SETTLED

The Malaysian High Court in Lee Ee Foong v Ong Seow Lee confirmed that a transfer of Litecoin possesses value and constitutes valid consideration capable of supporting an enforceable contractual obligation. While the case did not concern estate administration, the judicial recognition that digital assets carry value reinforces the position that they fall within the broad language of section 3 of the Wills Act 1959. The Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019 classifies prescribed digital currencies and digital tokens as securities under the regulatory authority of the Securities Commission Malaysia.

Whether a digital asset is "property" capable of forming part of a deceased person's estate is no longer an open question in Malaysian law. Recognition, however, is not retrievability.

WHY DIGITAL ASSETS ARE STRUCTURALLY DIFFERENT

A house has a land title registered with the Land Office under the National Land Code 1965. A bank account has a custodian licensed by Bank Negara Malaysia. Listed shares sit in the Central Depository System maintained by Bursa Malaysia Depository Sdn Bhd. Each asset class carries an institutional anchor that survives the owner — a register the executor can search, a custodian the executor can compel, a record the estate can audit.

Digital assets built on blockchain do not always carry that anchor. A Bitcoin balance, an Ethereum-based NFT, a parcel of virtual land in a metaverse environment, or a tokenised real-world asset may exist solely as an entry on a distributed ledger, accessible only to whoever holds the relevant private key or seed phrase. The category of intangible asset a business owner might hold is no longer confined to trademarks, patents, and goodwill — each of which is provable by certificate, registration, or audited entry on the company's books. Digital assets built on blockchain have no certificate, no central registry, and no institutional custodian unless the owner has specifically arranged one.

Two custody patterns matter for succession. In a custodial arrangement, the asset sits with a third party — most commonly an SC-licensed digital asset exchange — which holds the keys on the user's behalf and provides access through standard account credentials. In a non-custodial arrangement, the asset sits in the user's own wallet and is accessible only through a private key or seed phrase that the user controls personally. The custodial route fails the estate where the executor does not know the account exists; the non-custodial route fails the estate where the seed phrase has not been recorded somewhere the executor can find it.

Some holders do not know with confidence which arrangement applies to which holding. That ambiguity is itself a succession risk.

A further layer of complexity arises where holdings sit on platforms that do not operate under Securities Commission Malaysia licensing. Not all digital asset exchanges are SC-recognised, and holdings on such platforms carry additional succession risk: the executor may have no regulatory framework to compel disclosure, no institutional recovery process to invoke, and no assurance that the platform will cooperate with a grant of probate issued by a Malaysian court.

WHEN THE KEY-HOLDER IS NOT IN THE WILL

In our experience, the most exposed digital asset holders are not those with poor custody hygiene. They are those who have outsourced custody to a single trusted person with no documented standing in the estate plan. We have seen clients hand the entirety of a portfolio — cryptocurrency, NFTs, and other holdings — to a third party who manages the keys, executes trades, and rebalances allocations on the client's behalf. The client cannot independently access the wallet. The third party is not named in the will, in any letter of wishes, or in any trust instrument.

If the client dies before that arrangement is regularised, the assets are effectively lost. Not because the law denies them to the estate — section 3 of the Wills Act 1959 plainly captures them — but because no one in the estate knows who to call, what to ask for, or how to verify what remains. The estate inherits a legal entitlement to assets it cannot identify, located on infrastructure it cannot access, held by a person it has no instrument to compel.

The arrangement works while the client is alive. It collapses on the day it most needs to hold.

WHY YOU CANNOT PUT YOUR PRIVATE KEY IN YOUR WILL

The natural drafting instinct — write the seed phrase into the will, so the executor finds it on opening the envelope — is the one approach that must not be taken. Under the Probate and Administration Act 1959, a will admitted in support of a probate application is filed with the High Court and forms part of the court record. It is no longer a private instrument; it is a court document, accessible to interested parties and persisting beyond the administration of the estate.

A seed phrase committed to a will is a seed phrase committed to a court file. Anyone who can extract a copy of the will — and the class of persons with that ability is wider than the testator usually imagines — has the keys to the wallet. The asset is no longer the estate's; it is whoever moves it first.

This is a structural feature of probate, not a drafting failure to be patched with sharper clauses. The will tells the executor what to retrieve and to whom it should pass; it cannot be the document that confers technical access without exposing the asset to anyone with sight of the file.

WHAT TO DO BEFORE IT IS TOO LATE

Six steps, ordered by sequence rather than priority. Each is a discrete piece of work; together they discharge the digital asset succession problem before the estate has to.

First, conduct a digital asset inventory. List every holding — wallet, exchange account, NFT collection, virtual property, tokenised asset — with the type, the approximate value, and the access mechanism. The inventory must include all holdings regardless of the platform on which they sit; holdings on platforms outside SC oversight may lack the institutional recovery mechanisms available on licensed exchanges, making the custody documentation and letter of wishes even more critical for those assets. The inventory lives outside the will. It is the document the executor needs first; it is also the document a court file must never see.

Second, document the custody position for each holding. Custodial accounts on SC-licensed digital asset exchanges follow one access path. Non-custodial wallets follow another. The executor needs to know which is which on day one of the administration, because the recovery procedure differs at every step that follows.

Third, execute a letter of wishes alongside the will. The letter is not legally binding on the executor, but it is also not part of the public record on probate. It is the right place for points of contact, custody arrangements, and directional guidance the executor needs — without exposing the underlying credentials in the will itself.

Fourth, consider a trust structure where the holdings are significant. A bare trust or a private declaration of trust can provide custody continuity that survives the testator without depending on probate timing — and without putting the asset on the public file. The trust instrument is also the right place to name and bind the third party who holds the keys today, so that the relationship survives the client.

Fifth, where holdings sit on an SC-licensed digital asset exchange, check whether the exchange offers a nominated-contact or beneficiary-designation mechanism. Some do; some do not. The mechanism is administrative, not testamentary, and it works only if it has actually been set up before death.

Sixth, appoint an executor who understands digital assets — or ensure that the appointed executor has access to someone who does. The competence to administer a digital asset estate does not pass automatically with the appointment. If the named executor cannot

read a wallet address or distinguish a custodial account from a non-custodial wallet, the estate plan needs that capability written in elsewhere, before it is needed.

PRACTICAL TAKEAWAY

Section 3 of the Wills Act 1959 does the legal work; the retrieval work has to be done elsewhere. Your digital assets pass to the estate by operation of law. They are recovered by operation of planning.

Ask not whether your will mentions digital assets — it should — but whether your executor knows the inventory, holds the access path, and can tell a custodial account from a non-custodial wallet on the day after probate is granted. The letter of wishes should tell the executor where to look without telling a court registry where to find the keys. And the person holding your keys today should have standing in the documents that survive you tomorrow.

The defensibility of your estate depends on those answers being given before they are needed, not after.

All information in this Newsletter is correct as at 5 May 2026 unless otherwise stated.

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