



***Bitcoin, Blockchain
and
The Nebraska Financial Innovation Act***

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About the Speaker

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Who is Using Bitcoin?

2018 Edelman Financial Survey

Ages 24-38

Either \$50,000.00 of investable assets or
\$100,000.00 annual income

25% had owned cryptocurrencies in the past year

Why Do People Want to Obtain Bitcoins?

BitStamp (USD)

Apr 20, 2021 - Daily

■ Closing Price: 56608



Who is Using Bitcoin?



Who is Using Bitcoin?

Bitcoin in the News

Infrastructure Bill Regulation
China's Digital Yuan
Recent Price Increases
Elon Musk and Dogecoin
Ransomware and Hackers
What are Non-Fungible Tokens?

Who is Using Bitcoin?

Nations Accepting Bitcoin as Currency

Island of Bequia

El Salvador

Who is Using Bitcoin?

1. Speculators.
2. Day traders.
3. Computer enthusiasts
4. Libertarians
5. Retailers/Small Businesses (save on fees)
6. Financial Technology Industry (“Fintech”)
7. Criminals (1%)
8. International travelers
9. International remittance
10. Countries/regions with unstable currency
11. Investors and FOREX traders (recent)
12. UNL College of Law students and recent graduates (anecdotal)

What is Bitcoin?

What is Bitcoin?



What is Bitcoin?

Bitcoin is a...



What is Bitcoin?

Bitcoin is a ledger book.



What is Bitcoin?

Bitcoin is a ledger book.

1. “Bitcoin” is a software program run on a network of computers that records and secures transactions.
2. There are no physical coins.
3. Units on the ledger are called “bitcoins”. Like pennies to a dollar, they are divisible into millionths of a bitcoin known as “satoshis”.
4. A network of over 400,000 computers run the program to process transactions and maintain the integrity of the ledger.
5. “Digital ledger book.” - Dan Schulman, Paypal

What is Bitcoin?

“Bitcoin is to money as the Internet is to communication.”

Compare:

1. U.S Postal Service to an email/text message
2. Check, credit card or wire transfer to Bitcoin

Bitcoin is Decentralized

- No central authority runs Bitcoin, no “Fed”.
- Bitcoin program run by thousands of computers linked over the internet – “miners”.
- Peer-to-peer transactions - no “middle-man”.
- “Trustless”
- Not a “fiat currency”
- No central exchange or a “CEO of Bitcoin”.
- “Open source” software than anyone can download, operate or alter.

Bitcoin is Cryptography

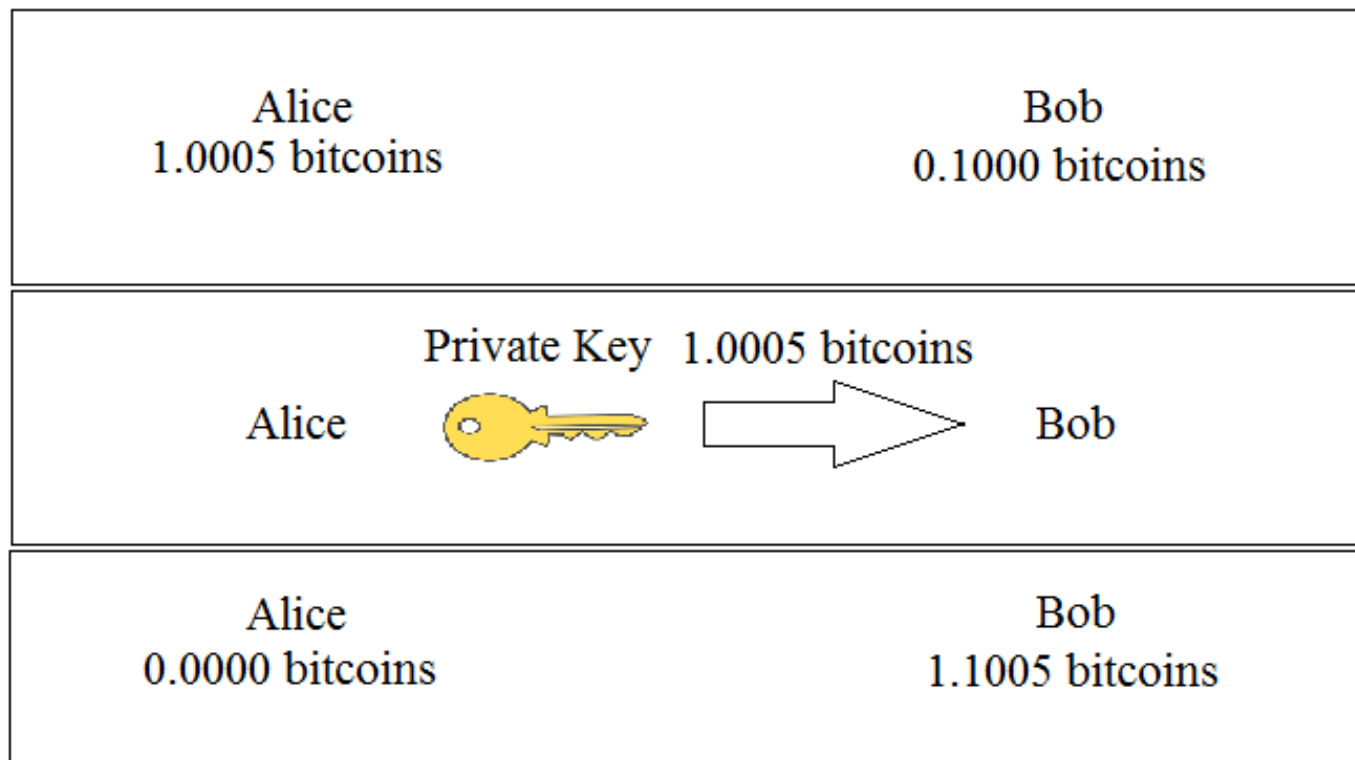
1. Cryptography and shared nature prevents duplication and fraud.
2. Transactions are held together by math puzzle.
3. Bitcoin is a puzzle that is solved one piece at a time, called a “block”.
4. Each block holds records of a series of transactions on the ledger.
5. Each block of transactions must be processed through a mathematical process known as a “hash function” or “hash” to write new transactions onto the ledger. All the computers on the network must agree to accept the transaction.
6. The series of blocks is called the “blockchain”.

What is Blockchain Technology?

1. It is the software technology behind Bitcoin.
2. Bitcoin is the first blockchain.
3. Combination of New Technologies
 - A. Digital Ledger Books
 - B. Networked Computers (Internet)
 - C. Cryptography
4. Also called “digital ledger technology” or “shared ledger technology”.

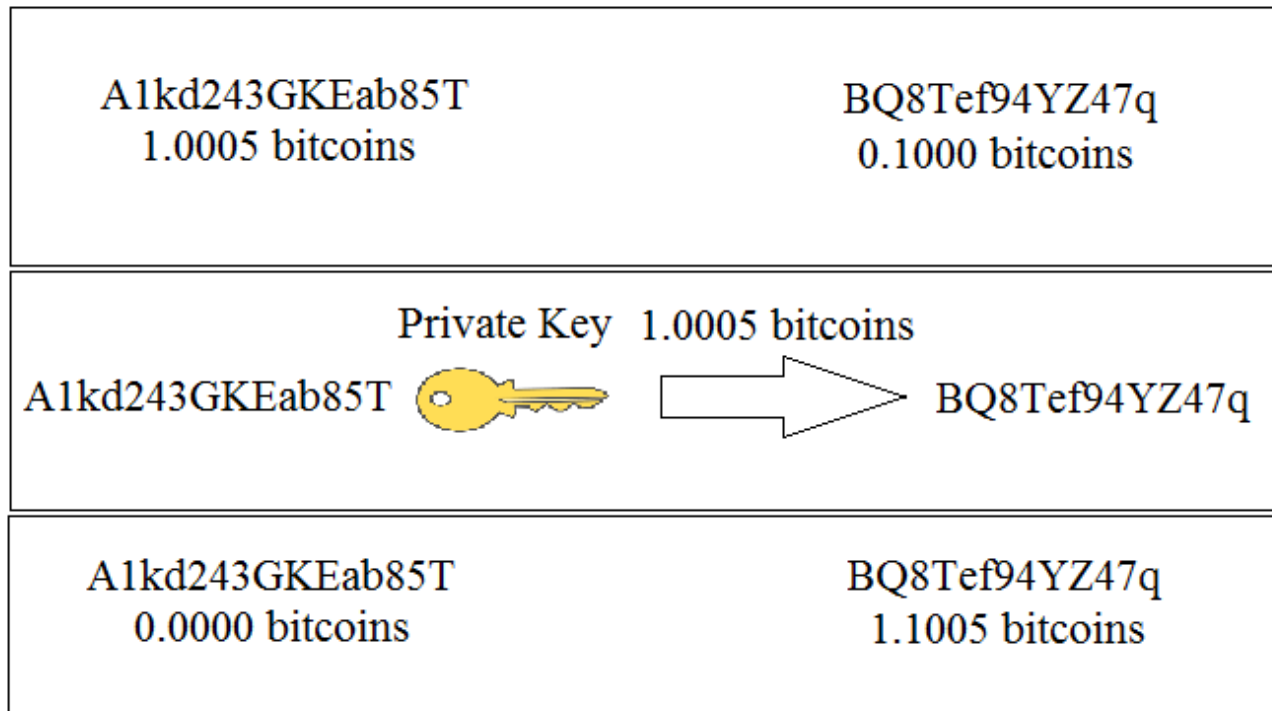
What is Blockchain Technology?

Transactions on a Blockchain



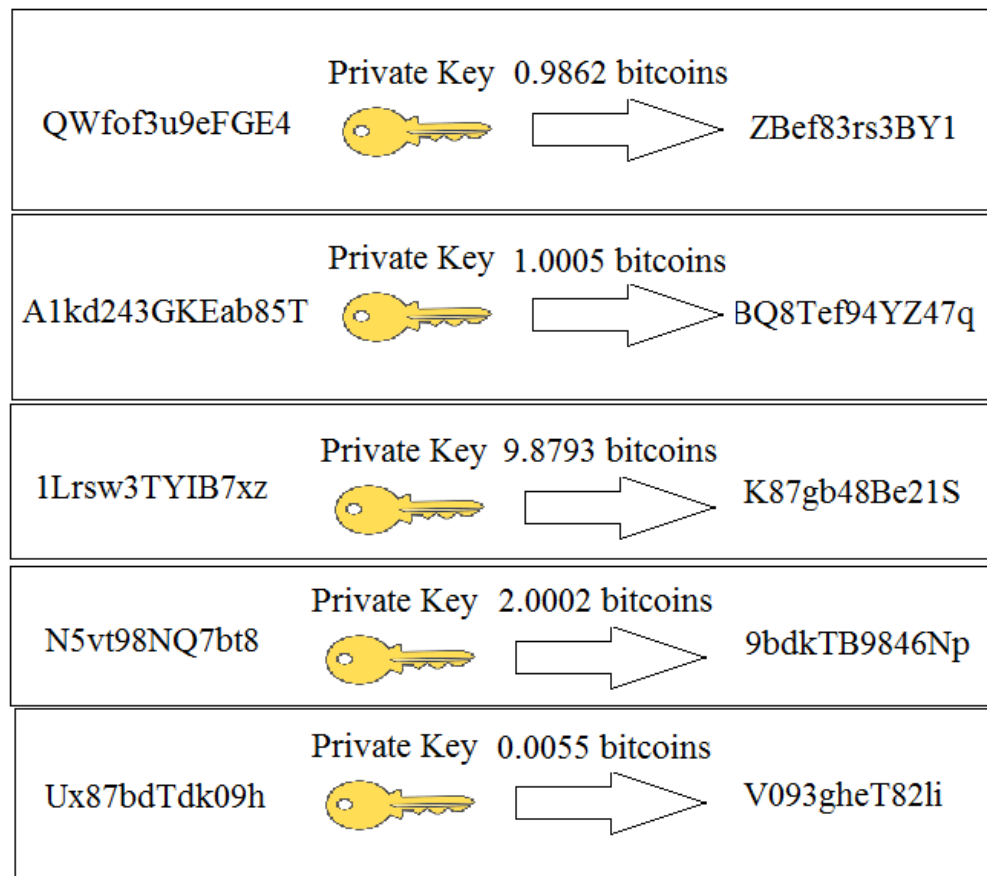
What is Blockchain Technology?

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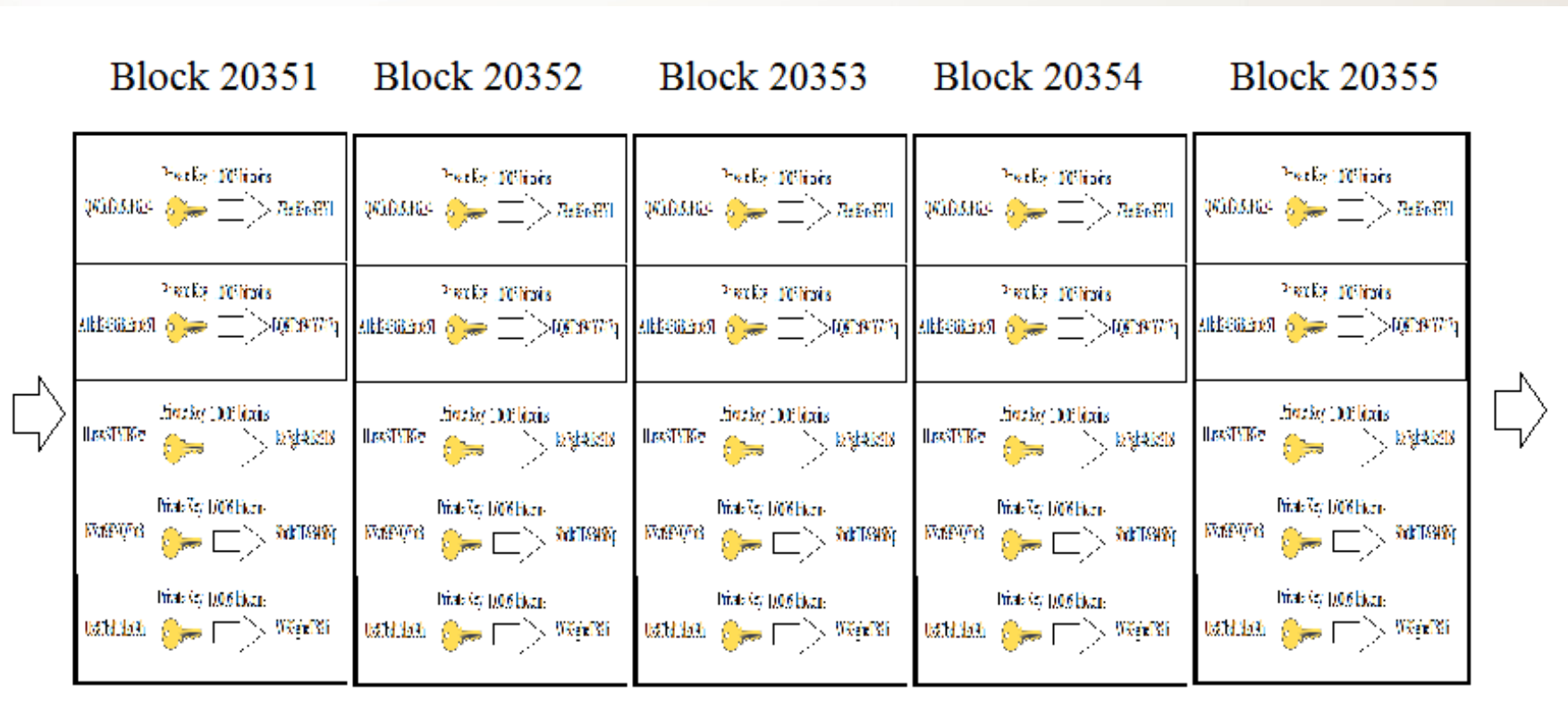
What is Blockchain Technology?

Transactions on a Blockchain



What is Blockchain Technology?

Transactions on a Blockchain



Thousands of Blockchains

1. Litecoin – faster version of Bitcoin
2. Ethereum – Network for “smart contracts”
3. Ripple – Private, centralized.
4. Bitcoin Cash – Fork of Bitcoin to solve scalability
5. Dash – Privacy-centered (formerly “Darkcoin”)
6. Monero – Privacy-centered
7. Peercoin – Partially “Proof of Work”
8. Blackcoin – Completely “Proof of Stake”
9. PowerLedger – Tokens to represent grid units

and...

Thousands of Blockchains

Dogecoin



Blockchain Applications – Not Just For Transactions

1. Logistics and Quality Control (IBM)
Tokens for produce, diamonds, or head of livestock
2. Records and Documents
Secure encrypted medical records on blockchain
Register of Deeds, Notary, Wills?
3. Accounting
All transactions automatically tracked.
4. Copyrights
Music industry (Embermine)
Art & Photos (Kodak, Nonfungible Tokens)
Printing (Ink)
5. Banking (R3, Anchorage)
Banking industry creating private blockchains for interbank transfers. Banks allowing custodial services and loans against stored cryptocurrencies
6. Insurance. (Mutual of Omaha)

Mining - How Bitcoins Are Created

1. Bitcoin is software run on a network of fast, powerful computers.
2. Operators of the computers are known as “miners”.
3. Each miner’s computer is trying to break a code before the other miners.
4. Approximately every 10 minutes, a miner receives a reward of 12.5 bitcoins.
5. Bitcoin is inflationary for now.
6. Functional limit of 21 million bitcoins.
7. Only 2.755 million bitcoins remain to be mined.

How to I Send and Hold Bitcoins?

1. Bitcoins are stored in “wallets”, computer files that interact with the software.
2. Wallet software creates your “wallet address” (your account number on the ledger) that is publicly available.

Public Wallet Address Example:

TXzDG2359D3GSInq2nTZqe83952QRt

3. You send bitcoins through use of “private keys” (PIN number) that unlock your wallet and authorize the amount of bitcoins you send. Private keys are secret, must be securely kept and are often encrypted.

What is the Basis for Bitcoin's Value?

1. Not backed or guaranteed by “fiat currency”, precious metals or other assets.
2. Not backed by “full faith and credit” of any sovereign government.
3. Intrinsic value is based upon:
 1. Utility – transmission of data
 2. Speed – instant but with verification
 3. Little to no transaction cost
 4. Security – cannot be “hacked”
 5. Transmit and store data (NFTs)

What are the Advantages of Bitcoin?

- Transmit secure information (data)
- Speed – instant transactions
- Privacy (pseudonymous)
- Security
- No government control.
- Person-to-person like cash.
- Alternative to credit cards and wire transfers.
- Volatility

What are the Advantages of Bitcoin for Businesses?

- Instant.
- No transaction fees (2%- 3% plus swipe costs)
- No transmission fees.
- No currency exchange fees.
- No chargebacks.
- No hardware costs.
- No chance of identity theft.
- No physical cash
- No bank account required (Colorado)
- Small Business or Retail: Save 5% - 10%.

What are the Disadvantages of Bitcoin?

1. Volatility
2. Changing Regulation
3. Acceptance
4. Security
5. Stigma of Criminal Elements
6. Difficult to Obtain
7. Learning Curve
8. Competition: ApplePay, GoogleWallet, Venmo
9. Public Ledger (not so private)
10. Rising Costs & Fees (Scalability)

Definitions

Industry Terminology

Digital Currency – units or tokens shared, digital ledger books.

Virtual Currency – any form of online money that is not official currency

Cryptocurrency – shared digital ledger entries secured and bound together by mathematical cryptography.

Distributed Ledger Technology - term used for blockchain technology but also other forms of distributed ledgers.

Industry Terminology

ICO – Initial Coin Offering. The initial method of distribution of coins that may resemble securities. Similar to an initial offering of stock (IPO).

Smart Contracts – Contracts that execute themselves. Possible when the money itself is programmable. Allows units of value to be told when and to whom to be delivered.

HODL - Panic hold your investment and cancel any open sell orders. Not an acronym. Typist intended to cry “HOLD”!

International Legal Status

1. U.S., Europe, Japan: Legal but regulated!
2. Iceland, China, Russia: Restricted
3. Canada, India & South Korea: Bank issues.
4. Banned: Venezuela (except for the “Petro”), Zimbabwe, Egypt, Bolivia
5. Implicit Bans: Vietnam, Indonesia, Taiwan
6. Foreign Countries: Warnings or Bans.
7. Trade Sanctions may restrict

U.S. Legal Status

1. Legal!
2. IRS: It's a commodity.
3. Treasury Dept.: It's a currency.
4. Federal Regulation: FinCEN, KYC and AML.
5. 48 State Money Transmitter Laws.
6. NY BitLicense & The Great Bitcoin Exodus
7. Foreign Countries: Warnings or Bans.

State Laws – Other States

1. Wyoming
Not money transmitters
Not securities
Exempt from property tax
Successful in attracting new banks
2. Arizona – Smart Contracts
3. New Hampshire – Not money transmitters
4. Texas – Two-page statute enacted to encourage development in Texas

State Laws - Nebraska

Regulation: Money transmitters must apply for a money transmitter's license.

Banks do not need a money transmitters license.

The Big Question:

Are you a “money transmitter”?

State Laws - Nebraska

October 1, 2021

Effective date of LB649

The Nebraska Financial Innovation Act

Federal Tax Treatment

IRS Guidance of March 25, 2014

1. Bitcoin is an asset, not a currency.
2. Taxed as capital asset (short-term or long-term capital gains rules are used)
3. Wages paid in virtual currency must be subject to withholding and taxes paid in fiat.
4. Conversion to fiat or use in transaction is a taxable event.
5. Implications for Charitable Donations: Donation value is the value of currency at the time of the donation.

Federal Tax Treatment

Capital Gains Taxes

1. The tax basis in bitcoins is the cash purchase price.
2. Fair market value (FMV) at time of acquisition.
3. Exchanges can use used to determine FMV.
4. As with similar assets, taxable gain or loss in dollars received on the sale is considered. Gain can be long-term if owned for twelve (12) or more months .

Federal Tax Treatment Capital Gains Taxes

Like-Kind 1031 Exchanges:

While some taxpayers claimed “like-kind” 1031 exchange rules may apply, their arguments have not been persuasive.

Federal Tax Treatment Capital Gains Taxes

Wash Sales:

“Wash sale” rules apply for assets with a similar nature repurchased within thirty (30) days. The basis of their digital currency investments. Only precedents are for sales of exactly the same digital currencies, not one digital currency for another.

Federal Tax Treatment

Capital Gains Taxes

1. Realization of gains creates taxable events.
2. Bitcoin is treated no differently than any other investment such as a share of stock.
3. No taxes are due on the investment while it increases in value until the investment is actually sold for U.S. dollars or other official currency.
4. Many digital currency exchanges help users maintain the complicated records needed to track
5. Taxpayers must self-report (or exchanges may).
6. Step-up basis for gifts and inheritances.

Federal Tax Treatment Income Taxes

1. Miners receive income
2. Proof of Stake income
3. Hard Forks – Copies of the same blockchain. Income is realized when taxpayer assumes dominion and control of units of a new cryptocurrency. Rev. Rul. 2019-24 (Oct. 2019)

Federal Tax Treatment More Guidance Anticipated

IRS Information Reporting Program Advisory Committee (IRPAC) Report October 24, 2018

1. Taxpayers need more guidance.
2. IRS Authorities need more guidance
3. Few reporting capital gains or income
4. Cooperation with foreign governments
5. Cooperation with foreign businesses

Securities Regulation

1. Initial Coin Offerings are sales of new cryptocurrencies or tokens representing ownership interests in companies.
2. “Pump & Dump”
3. Definition of “security” challenged.
4. ICOs are legal if they comply
5. Regulation D and other SEC filings.
6. State Blue Sky Laws
7. Exchange Traded Fund (ETF) approval.

Securities Regulation Issues

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Securities Regulation Issues

May 5, 2021
First Reg A Public Offering Using Tokens

Exodus Movement, Inc.
Omaha, NE
Raised \$75,000,000.00

Nebraska cryptocurrency firm seeking approval for novel stock offering

- MATT OLBERDING Lincoln Journal Star
- Mar 15, 2021 Updated Apr 27, 2021

Hi Mom Send Bitcoin



Ukrainian Relief Efforts



How Do People Make Money With Bitcoin?

1. Investment Strategies.
2. Buy low and pray.
3. Trading (exploiting volatility).
3. Mine and sell.
4. Arbitrage.
5. Ancillary opportunities - “Sell the shovels.”
6. Retail: Accept BTC for sales & save money.

Getting Familiar With Digital Currencies

1. Most User-Friendly Exchange: Coinbase
www.coinbase.com
Equivalent to setting up a new bank account.
Warning: Customer service is all automation.
2. Most User-Friendly Phone Wallet: Mycellium
Mycellium Bitcoin Wallet (Play Store)
3. Most User-Friendly Computer Wallet: Exodus
www.exodus.io
4. Fastest Way Locally: Bitcoin ATM or check-cashing storefront

Financial Planning

Financial planners should inquire whether the have any virtual currencies or other digital assets. This includes bitcoin, online bank accounts, venmo, Apple Pay, frequent flyer miles.

Your intake should include:

1. Whether clients owns or plans to own digital assets.
2. Locations of digital accounts and wallets.
3. Usernames, passwords, private keys and 2-Factor identification codes.
4. Where backup data is or will be located.
5. When, how and at what price the client acquired the assets.

Financial Planning – Relating to the Customer

Financial planners should be conversant in the field.

Many investors (especially early ones) are hesitant to place assets in the hands of others.

Your familiarity could include:

1. Owning a small amount for “practice”
2. Transferring small amounts between wallets
3. Download an app showing prices or follow tickers
4. Trade publications: Coindesk, Cointelegraph

Financial Planning: Advice for Clients

1. Risk and responsibility involved may require expert advice for storage and trading.
2. Little oversight or regulatory control
3. Prudent investor and fiduciary rules apply
4. Volatility
5. Necessity to keep precise records

Keeping Precise Records:

1. Day-trading losses and gains
2. Transfers
3. Gifts
4. Payments (taxable events?)

Estate Planning: Uniform Fiduciary Access to Digital Assets Act

The Uniform Fiduciary Access to Digital Assets Act established model language in POAs, Wills and Trusts to allow fiduciaries, personal representatives and trustees to access and control digital currency. Banks, online trading companies, cryptocurrency exchanges and other custodians of Bitcoin accounts can be compelled to provide a fiduciary with records of the digital assets and access to such accounts. Neb. Rev. Stat. § 30-501, et seq.

Explicitly include this language in your documents.

Planning: The Uniform Fiduciary Access to Digital Assets Act

The Act applies to:

- (1) a fiduciary acting under a will or power of attorney executed before, on, or after January 1, 2017;
- (2) a personal representative acting for a decedent who died before, on, or after January 1, 2017;
- (3) a conservatorship proceeding commenced before, on, or after January 1, 2017; and
- (4) a trustee acting under a trust created before, on, or after January 1, 2017.

Neb. Rev. Stat. § 30-503

Planning: The Uniform Fiduciary Access to Digital Assets Act

The Act provides:

1. Procedures to disclose digital assets. § 30-506
2. Procedures to disclose electronic communication. § 30-507
3. Disclosures of digital assets held in trust. § 30-511, et seq.
4. Disclosures to conservators after hearing. § 30-514
5. Termination of digital accounts. § 30-515(g)
6. Consents must be in the documents or you may need motion practice. § 30-507

Trusts, Trustees and Digital Currencies

1. Nebraska Ethics Advisory Opinion 17-03 indicated the Code of Professional Conduct allows attorneys to also hold digital currencies in trust under certain circumstances with reasonable precautions.
2. Neb. Ct. R. of Prof. Cond. § 3-501.15(a) allows attorneys to store property as well as currencies on behalf of clients..
3. Clients must be specifically advised that their digital currencies held in trust or escrow will not be converted to U.S. dollars.

Trusts, Trustees and Digital Currencies

4. Reasonable measures include encrypting private keys, use of multiple private keys (“multisig” accounts) and offline storage (“cold storage”) in a computer not connected to the Internet.
5. Bitcoins cannot be deposited in a client trust account created pursuant to Neb. Ct. R. 3-901 to 3-907 (Trust Fund Requirements for Lawyers). If received for a retainer, the lawyer must immediately convert the bitcoins into U.S. dollars (such as through a payment processor).

Probate Issues

1. Where are they “located”? Bitcoin is decentralized and accessible anywhere.
2. Valued date of death – recommend established exchange such as Coinbase, Coindesk.com or coingecko.com
3. Inventory must show amounts at date of death value.
4. Transfers: There is no “no PR Deed”, you may need expert IT support.
5. Transfers: Who is to receive them, how much and how?
6. Transfers: Keep in cryptocurrency or distribute in U.S. dollars?

Finding Digital Assets

1. **When to Search:** When client, friends and relatives indicate the debtor had history or interest. Also when decedent or ward is in the target demographic and income range.
2. **Where to Search:** Phones (need password), computers, flash drives, portable hard drives, bank records, credit card records, wire transfer records, safe deposit boxes.

Finding Digital Assets

3. Goal of the Search: Trying to find wallet software, visits to online wallets, downloads of software, visits to online currency exchanges.

Planning Tip: Plan so that the digital assets and their custodians are both secure and easy to find.

Replacing Wills and Trusts With Smart Contracts?



What is a Smart Contract?

A *smart contract* is a self-executing contract based upon “if-this–then-that” logic. It is a computer protocol intended to digitally facilitate, verify, or enforce the negotiation or performance of a *contract*. Smart contracts allow the performance of credible transactions without third parties.

An *oracle* is a trusted sources of data for use by the smart contract and/or the blockchain used to operate the smart contract.

Examples of Smart Contract Applications

1. Transaction with escrow. Escrow funds are placed under the control of a smart contract. If the parties both indicate the transaction is complete, the funds are returned. If not, the funds are destroyed.
2. Airline Insurance. If the flight arrives more than 30 minutes late, virtual currency automatically sent to you (such as more frequent flyer miles).
3. Landlord/Tenant. If you pay on time, the key code is released to you. If the code is not released, your funds are returned.

Examples of Smart Contract Applications

4. Sports Betting. Using ESPN.com as an oracle, a smart contract can be created, money deposited and will self-execute to pay the winner.
5. Artist Royalties. Pay to unlock encrypted artwork or recordings.
6. Wills and Trusts. When an heir uses a key or an oracle reports a death, units of a blockchain such as bitcoins can be transmitted to a destination along with data encrypted with the bitcoins (a digital will).

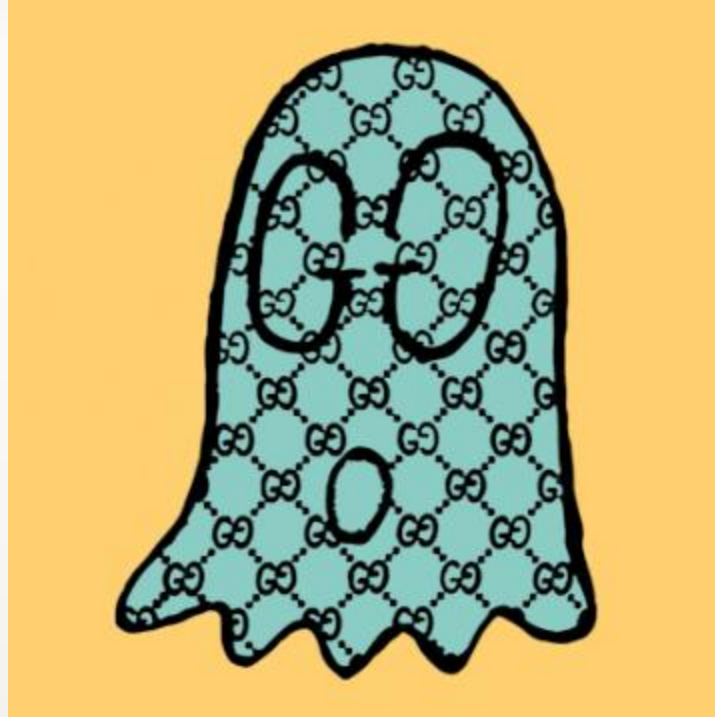
Wills, Trusts and Smart Contracts

1. Nevada allows digital wills so long as they are “written, created and stored in an electronic record” and signed by the testator. This could be on a blockchain.
2. Process of a Blockchain “Will”
 - A. Testator lists beneficiaries’ wallet addresses.
 - B. Smart contract created on blockchain to distribute funds to beneficiaries.
 - C. Cryptocurrencies transferred to become subject to the smart contract.
 - D. Upon death, funds automatically sent.

Will Smart Contracts Leave Us All Unemployed?

1. A professional will need to draft the terms of the smart contract.
2. Not everything that can be coded is legal or enforceable. (Arizona is better than Nebraska about this)
3. Code cannot resolve all disputes.
4. Evolving field will need input of financial planners, accountants and lawyers.
5. Our intrinsic value is advice and service.

Nonfungible Tokens (NFTs)



Is this Guccighost digital artwork worth \$3,600.00?

Nonfungible Tokens (NFTs)

What on God's Green Earth is a Nonfungible Token?

Bitcoins are fungible tokens. Each one is exactly the same as the other. Dollar bills are fungible.

Nonfungible tokens are each unique. Each one is different and has different data attached.

Example: Dollar bills are fungible. Aside from a serial number, each one is the same and has the same value. But what if there was unique, valuable artwork drawn on a dollar bill?

Nonfungible Tokens (NFTs)

How are Nonfungible Tokens Made?

Each unit on the blockchain can store encrypted data. It can be unlocked with a private key (password, PIN number).

In a nonfungible token, you own a unit of a blockchain (usually Ethereum) that has an encrypted data file or link to a website.

Example: A photo of artwork is attached to a blockchain unit as an encrypted JPG file.

Nonfungible Tokens (NFTs)

Warning the Clients About NFTs & Possible Scams

Verification of Uniqueness: How do you know it's the only copy of the attached art?

Art or Link to Art?: Is the client buying a token with the artwork attached? Is it just a link to a website or server address with the art? What happens if the hosting server shuts down?

How Strong Is the Blockchain? Is the blockchain hosting the NFT going to last? Ethereum blockchain is the second largest with millions of users. A token there is more secure than one on a less popular blockchain or single host server.

Telcoin & Nebraska Financial Innovation Act



Nebraska Financial Innovation Act

- LB649 passed and signed by Governor on May 25, 2021.
- Effective October 1, 2021.
- Sponsored by Sen. Mike Flood (Norfolk).
- Lobbying effort by Telcoin and others.

Changes to Uniform Commercial Code

Committee of Uniform Commercial Code and Emerging Technologies defines Controllable Electronic Records in a new UCC § 12-102.

Nebraska UCC § 12-101A

Controllable Electronic Records (“CERs”) defined as records subjected to control. Has the same meaning as a digital asset.

Includes digital currency such as Bitcoin.

Nebraska first to adopt the Committee’s framework.

Changes to Uniform Commercial Code

UCC §12-102 – § 12-108

Allows rights to Controllable Electronic Records (CERs).

Defines control of CERs.

Allows for security interests and secured transactions regarding CERs.

Changes to Nebraska Banking Laws

Creation of new Digital Asset Depository Institutions (“DADIs”) in Nebraska

May be a new company or be associated with a bank.

Creates application process.

Creates Nebraska Money Transmitter Act exemption.

May apply to be part of the Federal Reserve System.

Changes to Nebraska Banking Laws

Cannot make loans unless also a bank.

Must include consumer warnings.

Must undertake Know-Your-Client (KYC), Anti-Money Laundering (AML) compliance and beneficial ownership requirements.

May use the title “Digital Asset Bank”.

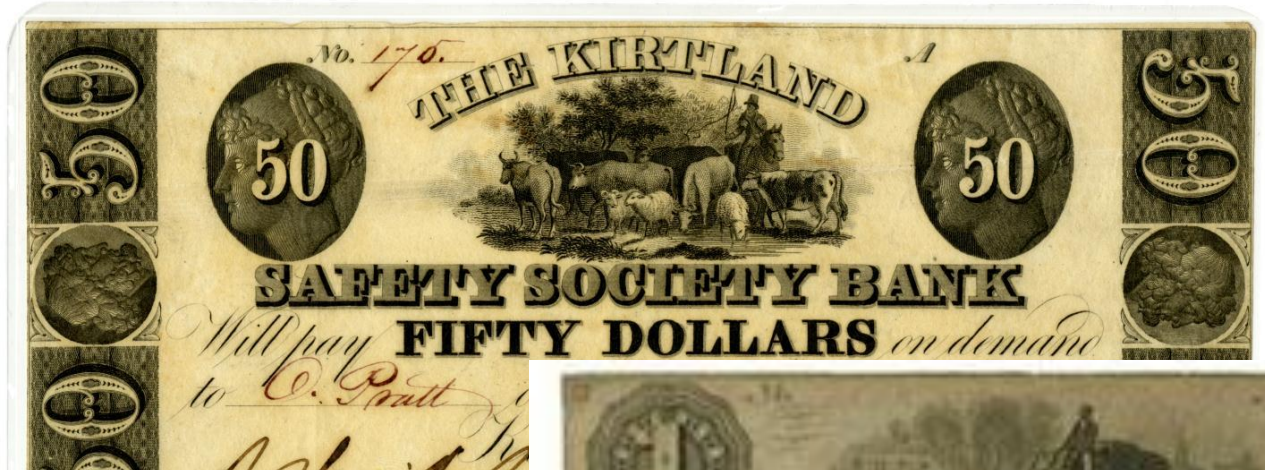
Changes to Nebraska Banking Laws

Digital Asset Banks may hold digital assets for customers

The Digital Assets are not on the balance sheet of the Digital Asset Bank. They are not deposits. They are not assets or liabilities of the bank but simply held.

“A financial institution that securely holds liquid assets when such assets are in the form of controllable electronic record.”

Stablecoins: Wildcat Banking Revisted



Stablecoins – Wildcat Banking Revisited

Definition of a Stablecoin:

A unit of a blockchain that has an assigned value and based on certain real-world assets, usually US dollars.

Analogy of a Certified Check:

You deposit \$100.00 in a bank. The bank gives you a certified check. The bank holds the funds separate from your bank account. The bank pays the person who redeems the certified check.

Stablecoins as Proof of Deposited Funds:

For a stablecoin, you deposit \$100.00 in a bank. The bank gives you 100 units on a blockchain each worth \$100.00. Anyone can redeem the units at the bank and be paid by the bank in dollars. The dollars in your bank account are reduced by the amount of stablecoins redeemed.

Stablecoins – Wildcat Banking Revisited

September 2018 - NY State Department of Financial Services approves dollar-collateralized “stable coins”

Gemini Dollar (Gemini Exchange)

Paxos Standard (Paxos Trust)

Is this the bridge for cryptocurrencies:
Tokenized bank notes / certified checks?

“Tether” – USDT not backed by actual dollars.

Effects of the Nebraska Financial Innovation Act

1. Large financial institutions specializing in digital currencies and other digital assets will locate in Nebraska. Telcoin will be the first.
2. Existing industry members will stay in Nebraska.
3. Depositors, lenders and borrowers around the country will use Nebraska Banks and Digital Asset Banks.

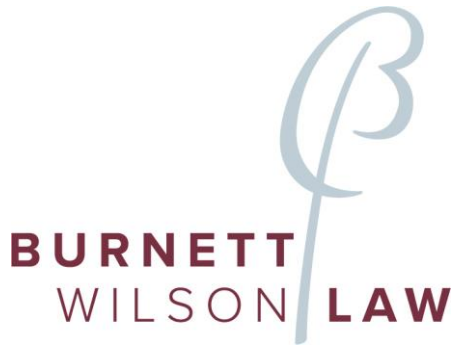
Effects of the Nebraska Financial Innovation Act

4. Nebraska Banks and Digital Banks can provide trusts and other depository arrangements for digital asset customers around the country.
5. Loans for Bank customers can be secured by their digital assets. Customers can take loans secured by their bitcoins instead of selling them.
6. Transactions can be made using stablecoins issued by Nebraska Banks and Digital Asset Banks.

New Legal Products and Services

1. Trusts using Digital Assets
2. Custodial arrangements for Digital Assets.
3. Estate Planning for Digital Assets
4. Financial Planning using Digital Assets.
5. Stablecoin Transactions.
6. Loans using Digital Assets as collateral.
7. Transactions using Digital Assets.

Our Estate Planning and Elder Law Team



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DeAna Schafer



David Thompson

www.DigitalAssetPlanning.com

Thank you!
Joe Pittman
Katharine Kline

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www.DigitalAssetPlanning.com

FAQ #1: Are you giving out free bitcoins?

Answer: No, of course not.

FAQ #2: Will my bitcoins follow me to Heaven?

Answer: There must be internet access in Heaven, so, yes.

FAQ #3: Where can I go for more information?

Answer: Coindesk.com and CoinTelegraph.com

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