

A close-up photograph of a wooden gavel and two gold wedding rings. The gavel is positioned diagonally across the frame, with its head resting on a wooden surface. Two gold wedding rings are placed on the gavel's head. The background is a blurred wooden surface.

An Introduction to Cryptocurrencies in Divorce

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AN INTRODUCTION TO CRYPTOCURRENCIES IN DIVORCE

Written by [Ian Nesteruk](#) | Apr 6, 2018

A cryptocurrency is, in general terms, a digital asset used as a medium of exchange with encryption techniques to secure the transactions. Cryptocurrencies are difficult to counterfeit because of encryption, and they utilize peer-to-peer, decentralized networks for transactions. These aspects are, in part, what add value to cryptocurrencies and make them desirable as a medium of exchange. While there are many more technical aspects of cryptocurrencies worth exploring, this article provides only a basic overview of the complex topic.

Cryptocurrencies have only recently received mainstream attention but the concept has existed for years. Bitcoin, the very first and most popular cryptocurrency, was first created in 2009. Since then, hundreds of cryptocurrencies have been created. Among the cryptocurrencies with the largest market capitalization today are Bitcoin, Litecoin and Ethereum. Cryptocurrencies may be purchased and sold on online exchanges (the largest of which are Coinbase and Bitfinex) linked to the user's bank account, as well as at cryptocurrency ATMs (a less common option but a growing trend). Cryptocurrencies can also be moved offline to a hardware wallet that functions like an encrypted USB device.

How is this all relevant to divorce proceedings? Cryptocurrencies, like any assets acquired by spouses during marriage, may be community property (depending on the applicable community property laws) subject to division. And with the rise in popularity of cryptocurrencies, more and more spouses in divorce proceedings are sure to own them. This creates new and

difficult challenges for divorce proceedings that are already contentious. Specifically, the main challenges are in tracking and valuing the cryptocurrencies.

While parties are typically required to voluntarily disclose all assets in connection with divorce proceedings, the reality is that the parties do not always do so. Moving forward, it is therefore important to add standard interrogatories and requests for production with the right language aimed at obtaining information and documentation regarding the opposing party's potential cryptocurrencies. You can also review the party's financial statements for clues. If a party has linked a credit card, debit card or bank account to a cryptocurrency exchange, a review of the financial statements should reveal deposits to (or withdrawals from) the exchange.

Even if the opposing party's financial statements reveal transactions with a cryptocurrency exchange, however, there will be additional tracing challenges if the party has moved their cryptocurrencies offline. In the event that the opposing party denies having cryptocurrencies and the financial statements do not reveal transactions with a cryptocurrency exchange (or if the party has moved the cryptocurrencies offline), it may be necessary to hire a digital forensic expert to investigate further (including a review of the party's emails for evidence of transactions). This is sure to be a slow and expensive process.

Another challenge after a party's cryptocurrencies are identified is valuation. Valuing cryptocurrencies is not as simple as valuing ordinary investments. Cryptocurrencies are historically volatile, which makes it difficult to ascertain the value (especially since the value of the cryptocurrencies can fluctuate drastically throughout the divorce proceedings). One solution is to agree with the opposing party on a date at which the cryptocurrencies will be valued. The simplest solution may be to

divide the cryptocurrencies between the parties (instead of valuing them) and have one party pay an equalization payment to the other.

Although this is a new area of the law that the Courts are just beginning to address, cryptocurrencies will continue to be an issue in divorce proceedings and will require a thorough understanding of the complexities for the reasons outlined herein.

About the Author:

[Ian A. Nesteruk](#) practices in the areas of commercial litigation, family law and immigration. His immigration practice involves representing foreign nationals for employment-based and family-based non-immigrant and immigrant visas. He has experience in a range of non-immigrant classifications including H, TN, E, O and P. His permanent residence experience is primarily in the technology industry and includes outstanding researcher and extraordinary ability petitions, and national interest waivers. Contact him via email at: inesteruk@dickinsonwright.com and visit his bio [here](#).

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