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A Practical Guide to Cryptocurrencies in Divorce Proceedings

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In the past year, cryptocurrencies have gone from niche assets to Wall Street. A recent 2025 study shows that approximately 55 million Americans own cryptocurrency today. (NCA, 2025 State of Crypto Holders Report).

And with two-thirds of all cryptocurrency owners under the age of 45, it may not be a surprise that cryptocurrency is finding its way into more and more divorce proceedings around the country.

Perhaps of greatest concern is the use of cryptocurrency by a spouse to hide assets. Cryptocurrency adoption is driving a growing trend where one spouse may exploit their partner's lack of understanding to retain more assets in a divorce proceeding.

While some cryptocurrencies are held in "hot wallets" on exchanges that resemble stock exchanges, others are held in self-hosted "cold wallets" posing discovery challenges for litigants.

In addition, the most sophisticated cryptocurrency holders may use privacy coins or technology such as "mixers" to hide assets.

To mitigate harm, costly errors and delays in matrimonial proceedings involving cryptocurrencies, advocates should familiarize themselves with this technology ex ante and adopt appropriate evidentiary strategies for discerning if cryptocurrency may be a part of the marital estate.

Understanding this new technology and the potential for abuse is essential to prevent parties from exploiting the novel characteristics of these assets to their unfair advantage.

Classifying Cryptocurrency in Divorce Proceedings

In the state of New York, as in most states, cryptocurrencies can be marital property subject to various orders from matrimonial courts including the Automatic Orders. (*see* DRL §236 [B] [2] [b]).

Cryptocurrencies are also subject to the broad equitable powers available to judges in matrimonial actions under DRL § 234 which can include preliminary injunctions or sale.

The volatile and speculative nature of cryptocurrencies alone is not enough to justify restraint or sale, however, particularly where such restrictions "may ultimately harm rather than preserve [the] asset" (*Richter v Richter*, 131 AD2d 453, 455 [2d Dept 1987] ["Since the brokerage accounts maintained by the defendant are speculative and volatile investments, such a restriction upon the transfer of securities may ultimately harm, rather than preserve, this asset"].

Where is cryptocurrency held, how it may be earned?

Proving ownership of cryptocurrency is perhaps the first question that can stump spouses and their attorneys, especially if there is a concern about hidden or undisclosed assets. Knowing where to look for cryptocurrency holdings is important.

There are primarily two ways that an individual may hold or store cryptocurrency - and depending on the method used, attorneys will have to employ different discovery strategies to successfully uncover a spouse's holdings.

The most popular method for acquiring and holding cryptocurrency is by opening an account and setting up a wallet at a cryptocurrency exchange such as Coinbase, Kraken or Gemini. Like a brokerage firm, these exchanges require an individual to create an account using their identifying information.

The wallet is referred to as a "hot wallet" and it is controlled by the exchange. Gitlitz, Michelle (2023). Reimagining Payments: The Business Case for Digital Currencies. (Racket Publishing), pp. 118-119.

A straightforward way to discover if your spouse owns cryptocurrency (and how much) is to search for evidence of any accounts or leverage disclosure vehicles set forth in Article 31 of the Civil Practice Law and Rules ("CPLR") such as notices for discovery and inspection, interrogatories, depositions, and third party subpoenas to identify cryptocurrency holdings at these exchanges.

The second method used to store cryptocurrencies is a self-custody wallet. Self-custody refers to the idea that cryptocurrency owners store their cryptocurrency without relying on a third party exchange or custodian.

A "wallet" is a software program that manages the credentials (public and private key) required to transact the cryptocurrency. To receive cryptocurrency, a user simply needs to share their public key with a third party.

In order to send cryptocurrency, the user must use their private key. The owner of the private key typically is the owner of the cryptocurrency as they are the only ones capable of exercising control over the asset.

This gave rise to a common phrase in the cryptocurrency community "not your keys, not your coins."

Unlike cryptocurrency held at an exchange, individuals can create a self-custody wallet without providing any identifying personal information.

This makes it difficult to tie the ownership of that wallet to an individual. In addition, a spouse who is an experienced cryptocurrency user knows that they can create an infinite number of self-custody wallets - each holding any number of cryptocurrencies.

Locating all of these wallets, especially where a spouse refuses to cooperate with the discovery process can prove challenging. However, some blockchain experts can use relational transactions between various wallets to connect a wallet address to an identifiable party.

Adding to the complexity of how cryptocurrencies are stored, is how it is earned. While individuals typically use cryptocurrency exchanges to buy cryptocurrencies, they can also acquire cryptocurrencies through a process called "mining" or "staking."

Cryptocurrency mining involves using computing power to validate transactions and secure the blockchain network, while staking involves holding and committing cryptocurrencies to support network operations.

Both activities can generate rewards in the form of cryptocurrency - however, unlike wages from an employer, the only record of these rewards exists as transactions on the blockchain.

As with self-custody wallets, the lack of digital fingerprints can make identifying these assets difficult for those unfamiliar with the technical nuances of cryptocurrency and blockchain technology.

Tracing Cryptocurrencies

As mentioned above, brokerage firms, banks and cryptocurrency exchanges all generally maintain records of transactions and identifying information about their users. But what if a spouse is only using a self-custody wallet to transact with cryptocurrency?

Lawyers should consider discovery and evidentiary strategies such as blockchain tracing to track and identify cryptocurrency holdings. In short, blockchain tracing is the process of analyzing a blockchain for cryptocurrency transactions.

Conducting a blockchain trace often requires specialized software and a technical understanding of how blockchain data is structured.

However, there are free online databases known as block explorers that spouses and their attorneys can use to conduct an analysis of transactional data related to an individual's cryptocurrency activity.

For example, etherscan.io provides a free, simple and easy way to search the transaction history of a cryptocurrency wallet simply by providing the wallet's public key.

Block explorers show insights into, among other things, the current and past holdings of a wallet, its transaction history, and any wallet addresses it interacted with - potentially identifying if it interacted with a cryptocurrency exchange.

If it is known that one of the parties in a matrimonial action holds cryptocurrency, whether disclosed voluntarily, or undisclosed, serious consideration must be given early in the matter to the appointment of a neutral cryptocurrency tracing expert as well as the appointment of an e-discovery and/or computer forensic expert.

Cryptocurrency tracing experts have access to tools such as Chainalysis Reactor, the world's leading forensic tool for cryptocurrency and blockchain investigations.

A computer forensic can be particularly instrumental in uncovering cryptocurrency stored in cold wallets on a computer that may have never been connected to the internet.

Domestic Relations Law § 236(B)(4)(a) provides for "[c]ompulsory financial disclosure," as follows: "In all matrimonial actions and proceedings in which alimony, maintenance or support is in issue, there shall be compulsory disclosure by both parties of their respective financial states. No showing of special circumstances shall be required before such disclosure is ordered . . ."

Courts have held that the discovery of information stored on a laptop computer is equivalent of discovering information stored in a filing cabinet. In *Byrne v. Byrne*, 168 Misc. 2d 321, (Sup. Ct. Kings Co. 1996), Justice Rigler held:

> "The computer memory is akin to a file cabinet. Clearly, plaintiff could have access to the contents of a file cabinet left in the marital residence. In the same fashion she should have access to the contents of the computer. Plaintiff seeks access to the computer memory on the grounds that defendant stored information concerning his finances and personal business records in it. Such material is obviously subject to discovery."

The court ultimately directed that the parties appear with their computer experts at a mutually agreeable location for the purpose of forensically cloning the hard drive.

While other courts have cautioned against unbridled fishing expeditions into the contents of a litigant's computer or phone, certainly a narrowly tailored request to examine the computer of a litigant for the purposes of uncovering the existence of and/or for the tracing of cryptocurrency would pass muster.

Potential Red Flags

Lawyers and judges should be on high alert for common red flags that might indicate a spouse is hiding cryptocurrency assets from the matrimonial proceedings include the use of privacy coins like Monero, the use of mixers, lack of disclosure about cryptocurrency holdings, and the use of offshore cryptocurrency exchanges.

Privacy coins, also referred to as "Anonymity-Enhanced Cryptocurrencies" are cryptocurrencies like Zcash, Monero, and Dash which include native features that provide additional transactional privacy for their users. (FATF Report Virtual Assets Red Flag Indicators of Money Laundering and Terrorist Financing, Sept. 2020).

This generally means that transfers involving privacy coins would be difficult if not impossible to trace using blockchain tracing methods. In addition, individuals may leverage "mixers" or "tumblers" to obfuscate ownership of cryptocurrencies.

A mixer is designed to intentionally obscure the trail of a user's transactions by commingling cryptocurrencies with other user funds to obscure the origin and destination of the cryptocurrency.

This enhances privacy, avoids surveillance, and maintains financial confidentiality by breaking the link between the cryptocurrency and the ultimate beneficiary (Shojaeinasab et al, 2023).

While there may be some legitimate uses of these technologies, records showing purchases of privacy coins or transaction data showing wallets interacting with mixers can be evidence of attempts to hide assets from another spouse in a proceeding.

Spouses may also attempt to not disclose self-custody wallets or invent claims that they lost the private key to their wallet preventing courts from requiring a disposition of those assets.

Given the ease in creating, and hiding private keys, even a harsh sanction may not be enough to force a motivated contemnor to disclose. (Andrew M. Hinkes, 16 Nw. J. Tech. & Intell. Prop. 225 2019)

Using blockchain tracing or other digital forensics to show recent wallet activity could be used to undermine claims of a "lost" private key by an opposing party.

Conclusion

Cryptocurrencies have become an increasingly prevalent asset class, and their presence in divorce proceedings is likely to continue growing.

As of the writing of this article CoinMarketCap lists 16.88 million different cryptocurrencies with a collective market cap of $3.35 trillion.

Understanding the practical realities of cryptocurrencies and their unique characteristics will give attorneys a distinct strategic advantage.

While experts will become integral to the process of uncovering, and identifying cryptocurrency during the proceeding, attorneys and judges can mitigate bad faith attempts to use cryptocurrency as a means to avoid compliance with the law in matrimonial matters.

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