

Navigating cryptocurrency in family law property settlement

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E&A Lawyers has made the decision to no longer provide family law services. While we no longer take on any new family law matters, we are happy to assist by referring you to lawyers specialising in this area. Please don't hesitate to contact us if you would like a referral.

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Cryptocurrency is increasingly making its way into family law matters and cases in Australia. If you are about to start or have already commenced family law property settlement after separation, and you have cryptocurrency holdings, you may be wondering how the Federal Circuit and Family Court of Australia view these holdings. This blog looks at:

- the meaning of cryptocurrency;
- disclosure of digital currency in property settlement;
- valuing cryptocurrency; and
- tips for dealing with your cryptocurrency assets during family law proceedings.

What is cryptocurrency?

Cryptocurrency is a form of digital currency which relies on cryptography. Cryptography is a method of protecting digital information using codes so that only intended persons can read and process it.

Cryptocurrencies are decentralised and usually operate on blockchain technology. The most common cryptocurrencies you may have heard of are Bitcoin and Ethereum. However, there are thousands of various cryptocurrencies in existence.

Are cryptocurrency assets covered under the *Family Law Act 1975*?

Under the *Family Law Act 1975*, property of the marriage or relationship includes **any** assets of value such as the family house, any investment properties, cars, superannuation, bank accounts and the like. You can read more about how property settlement is determined in our earlier blog, "Negotiating property settlement – what's a fair share?".

The *Family Law Act* does **not** specifically name cryptocurrency. However, as digital currencies have the potential to be of significant value, they are now increasingly being considered like any other financial asset.

Because the *Family Law Act* was drafted long before cryptocurrency existed, Judges have had to interpret the law to address this new form of property. Generally, cryptocurrency is treated as part of the property pool when determining financial settlements. This means that any cryptocurrency assets owned by either party may be subject to division, much like other assets.

Disclosure requirements in family law proceedings

In family law matters in Australia, both parties are legally required to exchange full and frank disclosure of all their assets, liabilities, superannuation, and financial resources. This includes your cryptocurrency holdings.

Some individuals may think that they can place some or all of their cryptocurrencies into a digital wallet which isn't readily visible. This is strictly against the law, and there may be methods of tracing these transactions, such as by the use of forensic accountants. Failing to disclose cryptocurrency holdings can result in an array of penalties, including orders being made that favour the other party.

Challenges of valuing cryptocurrency during property settlement

A unique challenge with cryptocurrency in family law matters is its volatile nature compared to more traditional assets. Depending on market conditions, cryptocurrency can fluctuate wildly in value from one day to the next. This creates a difficulty in agreeing on a value to assign to the asset on the joint balance sheet.

Due to the nature of the cryptocurrency and the difficulty in holding the asset without the requisite knowledge, the party without the cryptocurrency may seek to be paid a cash adjustment in lieu of you retaining your cryptocurrency holdings in their entirety. Accordingly, obtaining a correct valuation of the cryptocurrency holdings is essential.

Tips for dealing with cryptocurrency in family law

1. **Keep records**: If you hold cryptocurrency, it's crucial that you keep accurate records of transactions, including purchase prices, sale prices and wallet information.

2. **Understand the valuation challenges**: Be prepared for fluctuations in the value of your holdings and understand that the Court will consider the valuation at or near the settlement date of your matter.
3. **Disclose everything**: Full and frank disclosure of **all** assets is **essential**.

Get help from a family lawyer

Dealing with cryptocurrency assets during property settlement can be complicated due to the inherent secrecy surrounding what assets are actually held and the difficulties associated with valuing such assets. Our family lawyers are able to guide you on how best to deal with your crypto assets (and any other digital assets you may hold) to ensure a fair and equitable property settlement.

Contacting E&A Lawyers

For more information or to arrange a consultation with a lawyer, you can call or email us.

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Further reading:

- How do I gift my digital assets in my Will?
- Use of a Search Order in family law property matters
- Inheritance and family law property settlement

This article is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact E&A Lawyers.