How is cryptocurrency treated in a family law property settlement?

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Cryptocurrency has become an increasingly common part of personal wealth, with many people investing in Bitcoin, Ethereum, Litecoin and other cryptocurrencies. As these investments become more mainstream, they are also appearing more frequently in family law property matters following the breakdown of a relationship.

If you or your former partner own cryptocurrency, it is important to understand how cryptocurrency is treated and dealt with in family law property settlements.

What is Cryptocurrency?

Cryptocurrency is a form of digital currency that operates using blockchain technology. Unlike traditional currencies issued by governments or central banks, cryptocurrencies are generally decentralised and are not controlled by any single authority. Instead, cryptocurrencies exist only in digital form and are stored in electronic or digital wallets. People may purchase cryptocurrency as an investment, receive it as payment, or acquire it through other means.

Is cryptocurrency considered property in a family law settlement?

The Court considers all of the property of the parties when it comes to property settlement. This requires identifying and valuing all assets, liabilities and superannuation interests held by either party, whether jointly, individually or, in some circumstances, through corporate entities or trusts.

Despite its digital nature, cryptocurrency is considered property for the purposes of a property settlement. It is treated no differently from other forms of property such as real estate, motor vehicles, shares, savings held in bank accounts or superannuation. Whether cryptocurrency is held in a personal digital wallet, through an online exchange, or as part of a broader investment portfolio, its value will generally be taken into account when determining the overall division of property between parties.

You can read more general information about property settlement in our earlier blog, "A guide to family law property settlement".

Valuing cryptocurrency in a property settlement

Property is valued at the time of the property settlement and not at the date of separation. One of the unique challenges associated with cryptocurrency is its volatility. The value of cryptocurrency can increase or decrease considerably over relatively short periods. This can create practical challenges where property negotiations or court proceedings extend over a lengthy period.

If the value of cryptocurrency changes significantly during the course of a family law property settlement, this may affect the overall outcome. Where cryptocurrency represents a significant portion of the parties' assets, careful consideration is essential when approaching and negotiating property settlement.

Do you have to disclose cryptocurrency in a property settlement?

During the property settlement process, both parties have an obligation to provide full and frank disclosure of their financial circumstances. This includes disclosing all property held in Australia and overseas, regardless of whose name the property is held in.

These disclosure obligations apply to any cryptocurrency held by you or your former partner. If a party owns Bitcoin, Ethereum, or any other digital asset, they are required to disclose that interest. Details that may be sought as part of the disclosure process can include the type of cryptocurrency held, the quantity of cryptocurrency owned, the exchange, platform or digital wallet where the assets are held, relevant transaction histories or ledgers, and the current value of the cryptocurrency holdings.

It is important to disclose cryptocurrency in family law property settlements as a failure to do this may have serious consequences, including fines or, in some cases, imprisonment.

How to divide Cryptocurrency in family law property settlements

Depending on the circumstances, parties may need to consider whether cryptocurrency should be retained by one party, transferred to the other party, or taken into account when dividing the other assets of the relationship. For example, one party may choose to keep the cryptocurrency and the value of those holdings may be considered when deciding how other assets, such as savings, investments or real estate, are divided.

Alternatively, the parties may agree to transfer some or all of the cryptocurrency between them, or to sell the cryptocurrency and divide the proceeds. In doing so, they may need to consider practical issues such as accessing digital wallets, transfer or sale arrangements and any potential taxation consequences.

Tax implications of dividing cryptocurrency

In Australia, cryptocurrency may be recognised as a personal use asset, a capital gains tax asset, or may be treated on revenue account depending on how the cryptocurrency is used.

The transfer or disposal of cryptocurrency may have capital gains tax implications. Whilst cryptocurrency may be treated as a capital gains tax asset, the applicable tax treatment will ultimately depend on the nature of the transaction and circumstances of the taxpayer.

Before finalising a property settlement involving cryptocurrency, parties should consider obtaining advice from an accountant and/or tax adviser to understand any potential taxation implications.

Get help from a family lawyer

Cryptocurrency is no longer a niche investment. As cryptocurrencies become more common, they are increasingly relevant in family law property settlements.

Whether you hold cryptocurrency yourself or believe your former partner may have invested in cryptocurrency, it is important to understand how these assets may affect your property settlement.

Our experienced family lawyers can provide clear advice tailored to your individual circumstances. Contact us today and arrange a consultation with one of our family lawyers.

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