



Cryptocurrency in family law property settlement

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When looking at how [property should be divided following a separation](#), one of the first steps is to identify the assets, liabilities and financial resources of you and your former partner and determine their value.

As the world becomes increasingly digitalised and the number of people who own cryptocurrency increases, cryptocurrency is becoming a more common feature in family law property settlements.

What is cryptocurrency?

Cryptocurrency is a form of “digital money”. Unlike normal currency (cash), cryptocurrencies are decentralised, meaning they are not controlled by a central authority such as a bank or government body. Common examples of cryptocurrency include Bitcoin, Ethereum, Binance and CoinSpot.

Cryptocurrency is stored in wallets that are either online (“hot” wallets) or offline on a physical device (“cold” wallets). Cold wallets present more of a challenge in family law property settlements as it can be difficult to prove their existence and value them.

Does cryptocurrency form part of the asset pool?

Although the nature of cryptocurrency is different from other traditional assets, such as houses or motor vehicles, it is treated as “property” under the family law. This means that the value of cryptocurrency should be included in the [asset pool available for distribution](#) between you and your former partner.

In some cases, where joint funds have been invested in cryptocurrencies, and those cryptocurrencies have decreased in value, the Court **may** treat the decrease in value as an “addback” to be included in the asset pool.

Case example – treatment of an addback

In the case of [Powell & Christensen \[2020\] FamCA944](#), the husband invested approximately \$100,000 in cryptocurrency, some of which were purchased after court proceedings had commenced and in breach of an injunction restraining the husband from dealing with or disposing of any property owned by him or in which he had an interest.

The husband asserted that the value of the cryptocurrency had decreased to \$47,000 and that this value should be included in the asset pool. The wife sought that the cryptocurrency be “added back” into the asset pool at the purchase price of \$100,000.

The Judge found in favour of the wife.

The result of this addback meant that the husband retained the cryptocurrency at a value of \$100,000 despite the fact that the cryptocurrency was now worth less.

It should be noted that in this case, the husband had failed to provide adequate financial disclosure in relation to the cryptocurrency, and the purchase took place in breach of an injunction and without consulting the wife.

Addbacks are rarely approved by the Court and each case will be dependent on its own facts.

Disclosure of cryptocurrency

You and your former partner have a [duty to provide full and frank disclosure](#) of your assets, liabilities and financial resources. Therefore, if you or your former partner hold any cryptocurrency, this will need to be disclosed to the other person.

Examples of documents that form part of your duty of disclosure

- Bank account statements – if you are unsure whether your former partner holds cryptocurrency, bank statements can be a helpful starting point, as withdrawals to and/or deposits from Australian cryptocurrency exchanges will generally list the exchange.
- Details of accounts held with any exchange, including the transaction history of the whole wallet.
- Details of how cryptocurrency is stored, including wallet addresses (a unique identifier for the wallet similar to a bank account number), passwords or security keys. As cryptocurrency transactions are recorded on a public ledger, having these details can assist with obtaining a history of transactions on the ledger.

Valuing cryptocurrency for property settlement negotiations

If ownership of cryptocurrency is known and agreed (for example, your former partner owns a specific number of Bitcoins), then the value can be determined by searching the current market value online and multiplying the value by the number of cryptocurrencies owned. That is, cryptocurrency can be valued in the same way that you would value shares.

Given the highly volatile nature of cryptocurrency, it is important to value cryptocurrency on a regular basis (including on the [day of mediation](#) or on the day of a court hearing), as the value fluctuates daily.

Other cryptocurrencies, particularly cold wallets, are more difficult to value, and it may be appropriate to engage an expert with specialised knowledge in this area to prepare a valuation.

Should I keep the cryptocurrency after separation?

Either party can seek to retain the cryptocurrency as part of their property settlement. Like shares, the party who retains the cryptocurrency takes on the potential risk/reward as the cryptocurrency may increase/decrease in value.

When considering whether you wish to retain the cryptocurrency after separation, you should seek accounting and financial advice alongside legal advice.

There can be various tax consequences when owning and dealing with cryptocurrency. For example, distributions from cryptocurrency (such as staking rewards and airdrops) will increase your gross annual income and should you decide to sell your cryptocurrency in the future, capital gains tax may be payable.

Obtain advice from an experienced family lawyer

If you have separated from your former partner and would like advice and assistance in relation to your property settlement, including advice and assistance in relation to cryptocurrency, please contact Emera Family Law to schedule a free initial consultation today.

This blog 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 us.