

But Who Gets the Bitcoin? Cryptocurrency in Divorce

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During the divorce process in New Jersey, all assets acquired during the marriage must be equitably split. For example, marital assets such as stocks, bonds, bank accounts, IRAs, 401(K)s, real property, and personal property are split between divorcing spouses. Now enters the era of cryptocurrency - a new type of asset that is premised, in part, upon anonymity and which is highly volatile.^[1]

What is cryptocurrency? “Crypto” is short for cryptography, or solving codes. “Currency” is a medium for exchanging goods and services. Put them together and you get cryptocurrency, a digital, universal, and partially anonymous way that people can engage in such transactions.^[2] The first and most well-known cryptocurrency is Bitcoin, however there are thousands of other cryptocurrencies that have been developed, such as Ethereum, Ripple, Litecoin, and Monero.^[3]

Cryptocurrencies are similar to the U.S. dollar because they are “not redeemable for another type of money or for a certain amount of a commodity, such as an ounce of gold.”^[4] Cryptocurrencies are unlike the U.S. dollar because they are not backed by the U.S. government or any other legal institution and they are digital rather than paper.^[5] In 2014, the IRS issued guidance stating that cryptocurrencies are treated as property for federal tax purposes.^[6]

Although New Jersey courts have yet to address the topic of cryptocurrency in the context of divorce, in the United Kingdom cases related to cryptocurrency already have emerged.^[7] In one case, an original investment by one spouse of 80,000 pounds in Bitcoin in November 2016 spiked to 1 million pounds in December 2017, settling down to around 600,000 pounds in October 2018.^[8] It is easy to see how the high volatility of cryptocurrencies is sure to be an issue in the context of divorcing spouses. This begs the question, what is the best way to value this digital asset to ensure fairness to both parties?

Certainly it would not be fair in the above scenario if Spouse A paid Spouse B 500,000 pounds in December 2017 in lieu of receiving 50% of the Bitcoin. That scenario would leave Spouse A out 500,000 pounds and with zero Bitcoin, while Spouse B has been essentially insured against future cryptocurrency price volatility. Parties could attempt to agree on a different value for the cryptocurrency that is perhaps not entirely based on the current market value, but there is still a risk because of the extreme nature of the volatility. Parties also could sell the entirety of the asset at market value and divide the proceeds. But again, the market volatility could lead to less than favorable results, which in turn may cause more acrimony between already feuding spouses.

Until cryptocurrencies become more stable (or disappear), the best option may be to deal with them by dividing the cryptocurrency itself. An in-kind division of the cryptocurrency is akin to dividing shares of stock between divorcing spouses. This resolution allows each party the ability to choose when and how to exchange his/her share of the cryptocurrency for good old fashioned U.S. dollars. Just remember that cryptocurrencies are taxable as property and gains and losses must be reported.

[1] Bloomberg. (2018, February 26). *Bitcoin Is Giving Divorcing Couples Something New to Fight About*. <http://fortune.com/2018/02/26/bitcoin-divorce/>

[2] Reuben Grinberg, Bitcoin: An Innovative Alternative Digital Currency, 4 Hastings Sci. & Tech. L.J. 159, 160 (2012).

[3] Paul, B. G., Hirschfeld, I., & Baker, K. (2018, January 22). *Cryptocurrency: The Hidden Risks*. <https://www.law.com/njlawjournal/sites/njlawjournal/2018/01/22/cryptocurrency-the-hidden-risks/>

[4] Reuben Grinberg, Bitcoin: An Innovative Alternative Digital Currency, 4 Hastings Sci. & Tech. L.J. 159, 162 (2012).

[5] Ibid.

[6] IRS Notice 2014-21.

[7] Bloomberg. (2018, February 26). *Bitcoin Is Giving Divorcing Couples Something New to Fight About*.
<http://fortune.com/2018/02/26/bitcoin-divorce/>

[8] Bloomberg. (2018, February 26). *Bitcoin Is Giving Divorcing Couples Something New to Fight About*.
<http://fortune.com/2018/02/26/bitcoin-divorce/>