



VALUATION SERIES: CRYPTOCURRENCY

Finding out the value of assets and liabilities is an important step when you are going through property settlement with your ex-partner. This fact sheet is about valuing cryptocurrency and digital assets.

What is cryptocurrency?

Cryptocurrency is the term for digital assets that are created on computers by cryptography and are not reliant on centralised institutions such as banks or governments. The common types of cryptocurrencies are Bitcoin, Ethereum, Monero, stablecoins, non-fungible tokens (NFTs) and others.

Cryptocurrency is a relatively new form of asset and how the law deals with it is still evolving.

How does the ATO treat cryptocurrency?

In Australia it is legal to own and trade cryptocurrency. The Australian Taxation Office (ATO) classifies cryptocurrency as an asset. The sale or transfer of cryptocurrency attracts Capital Gains Tax (CGT) just like shares or real property.

How is cryptocurrency stored?

Cryptocurrency can be stored in a secure digital wallet. Wallets can be stored online or offline (known as cold wallets). Different platforms will have different storage options, and it is common to have small amounts of cryptocurrency across different platforms.

Keeping a thorough record of purchases, trades and transfer of cryptocurrency is the most reliable way of tracking how much cryptocurrency you own and where it is stored. It is also important to keep a record of passwords and encryption keys as it may be impossible to deal with the cryptocurrency without it.

Cryptocurrency in Family Law

How do you find out the value of cryptocurrency?

The law says you must disclose the value of all assets you own during family law proceedings, including cryptocurrency. Valuing cryptocurrency can be trickier than other assets as the value can change a lot within days.

People generally have to agree on the value of cryptocurrency as at a certain date.

This could be the date of the mediation, court hearing, date of purchase, date of separation or another date.

If the parties cannot agree on a value, they may need to hire an expert such as a forensic accountant to value the cryptocurrency, but keep in mind that the unpredictable nature of cryptocurrency can make it difficult to assign a fair market value.

What if my ex-partner does not disclose their cryptocurrency?

Unlike a physical asset, the decentralised and digital nature of cryptocurrency means some people may try to hide the asset. If you suspect this is the case, you should obtain legal advice. You may be advised to hire a forensic accountant specialising in digital assets to help find the hidden cryptocurrency.

A forensic accountant will analyse bank statements to identify unexplained deposits or withdrawals to unknown bank accounts, unidentified apps or websites or storage devices. Depending on what information is uncovered, they may be able to analyse, track and trace cryptocurrency on wallets or exchanges. They can then provide detailed reports and expert testimony for court if required.

How do you divide cryptocurrency in a property settlement?

Cryptocurrency can be retained as part of property settlement, or transferred, or sold. If you are considering transferring or selling some of your cryptocurrency, be aware of CGT implications. The ATO treats cryptocurrency as an asset that attracts tax when sold based on the difference in purchase price and the value at the time of sale or transfer.

How can Legal Aid WA help?

Advice

Legal Aid WA provides general advice on property settlement if you are eligible. Call the Infoline on 1300 650 579 or Legal Yarn (for Aboriginal or Torres Strait Islander callers) on 1800 319 803.

amica

[amica](#) is a secure online tool that helps separating couples reach amicable agreements about property. amica uses artificial intelligence and can provide a suggested split of assets. amica can help you complete the forms you need to apply to the Family Court for consent orders for a property settlement.

Legal Aid WA website

You can also find a range of information, videos and fact sheets about dividing property and finances on the Legal Aid WA website.

Legal Aid WA contacts: Website + Chat www.legalaid.wa.gov.au
Infoline 1300 650 579, Legal Yarn 1800 319 803.

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