

## CRYPTOCURRENCY AND COMPLICATIONS IN DIVORCE

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In Illinois, one of the most important stages of a divorce is the equitable division of marital assets. This process requires the full disclosure, identification, and valuation of all assets and liabilities between the parties. Cryptocurrencies are a new asset class that is becoming an increasingly more common asset held by the parties going through divorce. With the rise of the cyberspace landscape and cryptocurrencies such as BitCoin, Ethereum, Ripple, as well as Facebook's new Libra, the process of identification and valuation of these assets has become increasingly complicated and therefore is making the equitable division of marital assets more challenging.

Before diving into the problems associated with identifying and valuing cryptocurrency, it is important to understand how cryptocurrency transfers work. The most commonly recognized cryptocurrency is bitcoin, which has redefined the traditional sense of "currency" because there is little regulation or central authority controlling it. When cryptocurrencies are transferred, there is a digital entry into a type of decentralized ledger known as a blockchain. The Wall Street Journal defines this blockchain as:

"A blockchain is a data structure that makes it possible to create a digital ledger of transactions and share it among a distributed network of computers. It uses cryptography to allow each participant on the network to manipulate the ledger in a secure way without the need for a central authority."

Essentially, a blockchain is a ledger of transactions. Each page of transactions is known as a block, these blocks are connected, or "chained" together on a ledger with other transactions. This allows for a completely public and decentralized system. Currently anyone is able to participate and contribute to the ledger.

Unfortunately, this decentralized network and blockchains have made it easier for people to hide assets coming from BitCoin or other cryptocurrencies, which poses serious problems in the identification stage of the division of marital assets when a cryptocurrency is involved. While there is little to no precedent on how to divide BitCoin and other cryptocurrencies in divorce cases, courts in Tennessee have held that spouses are entitled to all information regarding financial holdings and interests, including any information dealing with BitCoin. *Gallimore v. Gallimore*, 2017 Tenn. 4th Cir. Thus, Bitcoin and other digital currencies are still considered property, similar to a stock, divisible by the parties. However, because Bitcoin's value is readily known, valuation should not be an issue but for volatility in its price.

In order to ensure that all assets are disclosed, it is crucial that attorneys identify the existence of any cryptocurrencies through well-crafted 214 document requests. Governmental regulators such as the SEC and OFAC currently regulate and require all digital wallet vendors such as Coinbase to maintain various records including client identity. These requests can be sent to individuals or third parties, with suggested language requesting "a complete record of all digital wallets containing any and all crypto currencies and transaction history". While the use of this language does not guarantee the production of the requested material, it is an important step in ensuring that attorneys have covered their bases.

Conversely, Facebook's new cryptocurrency, known as Libra, operates much differently than BitCoin. While Bitcoin is largely decentralized and unregulated, Libra will be subject to heavy regulatory pressure across the globe since it will be operated by a consortium of large corporations. In fact, Facebook and Libra are already

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facing heavy pushback on the company's attempt to make a global digital currency. If rolled out, Libra will have actual identifiable parties and companies behind the network who may be targeted with regulation. As a result, Libra is significantly different than BitCoin because there is regulation and a central authority controlling it. However, this is also the reason it is easier to determine the Facebook cryptocurrency Libra's market volatility. The fact that Libra is more centralized than BitCoin allows the currency to operate as a bank, where the exchange for Libra will operate the same way as exchanging one national currency to another. The Atlantic describes this process:

"While Facebook advertises Libra as a cryptocurrency, and Libra uses some of the same technology as bitcoin, Libra is actually quite different from bitcoin. There is no bitcoin reserve. If you want to exchange your bitcoin for dollars, you need to find someone willing to buy it. This is the source of bitcoin's volatility: If people decide bitcoins are worth nothing, then no one will buy your bitcoin, and it is worth nothing. If people decide that Libras are worth nothing, they can trade them in for cash from the reserve. And because of this, people won't decide Libras are worth nothing. The problem of volatility is solved."

Accordingly, this would seemingly solve the BitCoin challenge of determining the value during the division of marital assets. Additionally, the fact that there is a reserve acting like a middle man in the transfer of Libra means that Libra will operate more like actual money. Unlike BitCoin and other cryptocurrencies, this creates a paper trail allowing for easier identification of the cryptocurrency in divorce cases. Nevertheless, Libra might not be as welcoming as it appears. While on its face the more centralized system Libra uses might seem beneficial, this centralized system will be controlled by a governance body that will certainly make major policy decisions that, much like a bank, could use currency from its reserve to take greater risks, and potentially face greater loss.

With BitCoin and other cryptocurrencies on the rise, it is crucial that attorneys stay on top of the new systems and have an understanding of just what type of asset clients are dealing with. As division of marital assets continues to become a more sophisticated topic with additional challenges and obstacles at every turn, divorce attorneys must ensure both that clients are fully disclosing their assets and liabilities and must also be doing the necessary research and discovery to help their client's fully identify, quantify and value all of their assets and liabilities.

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