

# Crypto: The new way to hide money under the mattress



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For those of us still figuring out how to manage our run-of-the-mill banking apps, cryptocurrency, a la Bitcoin or Tether, can seem like an impossible idea to wrap your head around.

However, cryptocurrency is becoming a popular a way to both grow assets during a marriage and to hide assets during a divorce. It is, therefore, very important that we family law practitioners know and understand cryptocurrency.

So, what is cryptocurrency?

Simply put, cryptocurrency (or “crypto”) is a type of currency that exists only in the digital and virtual realm. Cryptocurrency “coins” do not exist in a physical sense as they are really just numbers on a public ledger known as a blockchain.

Crypto is not held or backed by any bank or governmental body. Users send and receive payments anywhere in the world through a secured peer-to-peer system.

There are two ways in which to obtain cryptocurrencies. The first is through “mining.” Mining is performed by using specialized computer programs to validate

blockchain transactions in exchange for crypto currency and/or transaction fees. The second is through the ordinary monetary purchase of cryptocurrency.

Bitcoin is the most well-known and the first cryptocurrency to have arrived on the scene. Since its introduction, it has been joined by other cryptocurrencies such as Tether, Ripple, and Litecoin.

In a divorce, cryptocurrency can be very problematic from its anonymity to the day-to-day volatility of placing a value on it.

Cryptocurrency is as anonymous as the user wants to make it. Without the holder actually disclosing the cryptocurrency, there is almost no way to prove its existence.

The holder of the cryptocurrency possesses a private key to those coins. The private key is a password which permits the user to spend or trade those coins. This can give you a host of information as the blockchain logs every transaction ever that is associated with that key. However, if the private key is not known, there is no way to trace the cryptocurrency back to the user.

The crypto cannot be accessed without the private key. This also means that if it is lost that those funds are lost forever. There is no way to access the crypto without it and, after a certain number of attempts, your crypto wallet will lock you out forever.

Moreover, since crypto is not backed by a bank, there is no financial institution that holds related records that can be subpoenaed. The small glimmer of hope is that if the holder is using an exchange to purchase or hold their crypto, you may be able to subpoena that information. However, the user can just

as easily transfer the crypto into another exchange that is not easily accessible.

Courts are becoming hip to this game though. In one high-profile California divorce case, the court found that Francis deSouza had not been forthright with his bitcoin holdings and was ordered to turn over \$6 million of his bitcoin to his former spouse.

Other attorneys have turned to investigators and forensic accountants to trace the dissipation of funds and where they may currently be held. In the event that an exchange does turn over records, the investigator can track down the assets.

Once the decision is made to allocate the cryptocurrency between the parties, the decision is then how to effectuate that.

Parties may want to chance it and leave it in the virtual market to see if they can win big. The cryptocurrency market is also known for being particularly volatile. What was valued high on Wednesday may be valued low by Friday.

Others may wish to sell it, transfer it to their bank account or even cash out by selling the coins, through a third-party exchange or a peer-to-peer program, for cash. Whether your client is cashing out the crypto to pay an award or cashing out after having been awarded the crypto, this will result in fees and taxes needing to be paid by the seller.

Understanding cryptocurrencies is necessary to assess our clients' finances, risks and exposures.

**Elizabeth J. McInturff, Esq., a partner at JDKatz, PC, represents clients throughout Maryland and Washington, D.C., in complex family, civil and commercial disputes. For more information, visit [www.jdkatz.com](http://www.jdkatz.com).**

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