

Exclusive National Courts

The new financial battleground for divorcing couples



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Disputes over frequent flyer points and hidden cryptocurrency have emerged as battlegrounds in property fights between separating couples amid a rise in digital assets, family law experts reveal.

Kalus Kenny Intelex Lawyers partner Josephine Sergi, a family law specialist, said frequent flyer and other reward points were increasingly forming part of property settlements.



Frequent flyer and other rewards points are among the digital assets that may be divided when couples separate. STEPHEN KIPRILLIS

“It’s often an afterthought for a lot of people because when they’re giving details of their assets and liabilities they don’t think of those,” Sergi said.

Points ‘can be quite valuable’

Some rewards points could be cashed in or transferred, Sergi said, and “they can be quite valuable”.

[In a 2017 Family Court case](#), then Justice Robert Benjamin said a de facto couple’s “Qantas Frequent Flyer points are property and have some value”.

“[For] some inexplicable reason, the de facto husband had declined to provide full details of his Frequent Flyer account,” the judge said. But the husband had “a clear obligation to disclose that detail”, Benjamin said.

The points were said to total a combined 1.7 million at the time of the hearing.

The judge ordered the husband to transfer 200,000 points from his frequent flyer account to each of their children’s accounts, totalling 600,000 points. The wife was authorised to redeem the points for the children’s flights.

[In a 2013 case involving a wealthy couple and millions of frequent flyer points](#), a husband was ordered to transfer 1 million points to his wife.

Family law expert Jodylee Bartal, a partner at Schetzer Papaleo Family Lawyers, said it was important to note that, “unlike other assets, points don’t gain value over time – they are vulnerable to devaluation, expiry, and policy changes”.

“The value of accumulated points can depend on how and when they are used. Strategic redemption, such as during a ‘points promotion’, can ‘buy’ more. Put another way, points rarely have a set dollar-per-point conversion,” Bartal said.

Cryptocurrency

Sergi said cryptocurrency and NFTs (non-fungible tokens) were growing in popularity among “a younger cohort”, and this was the biggest growth area in digital assets in family law matters.

But she said that “actually finding [those assets]” was often a major issue. It was common in family law disputes “for people to try and ... hide assets that are not obvious”, she said, despite their legal obligation to provide full and frank disclosure of their financial circumstances.

“It’s often a bit of a forensic exercise in making sure we’ve captured everything,” Sergi said.

A person might withdraw cash and deposit it at a crypto ATM, for example, but it might be difficult for a lawyer acting for the person’s former partner to obtain records showing that transaction.

‘It can sometimes be an easy way [for a person] to potentially hide money.’

“There’s no central register, so finding those assets when they are not disclosed can be really hard,” she said.

Sergi had acted for the wife in a matter in which her client had only become aware her husband had cryptocurrency because she “spotted him at one of those ATMs ... in Melbourne”.

“We would never have known from looking at his bank statements, which only included cash withdrawals. It can sometimes be an easy way [for a person] to potentially hide money if you’re not asking the right questions or taking a forensic approach to documents which are disclosed,” she said.

In one Federal Circuit and Family Court case in 2023, a wife alleged her husband had invested some \$35,000 in cryptocurrency. He said he had invested, and lost, \$13,000. There was insufficient evidence before the court to make a finding.

“On the basis of this conflicted evidence, I will not include any sum referable to cryptocurrency in the parties’ pool of assets,” [Judge Stewart Brown said in his decision](#).

Jodylee Bartal said family lawyers “need to constantly upskill to keep up with changes to the definition and treatment of ‘property’,” which now included digital assets.

“[The Family Law Act](#) ... allows for the division of ‘property’ between separated couples. [It] does not specifically mention digital assets including ... cryptocurrency, but it is generally treated as a form of property,” she said.

‘PROPERTY’ IN FAMILY FEUDS

- The Family Law Act allows for the division of ‘property’ between separating couples.
- Under changes to the law this year, companion animals are now [a separate category of property](#).
- Digital assets including rewards points and cryptocurrency are also treated as property.

“Unlike traditional bank accounts, which can be readily traced to the owner, cryptocurrency ownership is anonymised,” she said. Forensic accountants could “help trace transactions and uncover hidden digital assets”.

Bartal pointed to a range of “practical challenges” relating to digital assets, such as market volatility.

“Other property, like real estate, usually only needs to be revalued every six months, whereas the value of cryptocurrencies can change much more frequently and much more dramatically,” she said.

“The cryptocurrency exchanges, such as Coin Base, Kraken and Bitstamp, sometimes assign different values to the same ‘coin’.”

Dividing or transferring digital assets might also be undesirable “if the other spouse has no interest in retaining a more volatile asset, and selling usually triggers tax considerations”, Bartal said.

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