

## **Key Points:**

- Bitcoin surges to \$150,000 AUD, creating unprecedented challenges in separation settlements
- One-third of wealthy Australians hold crypto, with median investments of \$130,000
- Crypto's extreme volatility forces courts to rethink traditional asset division approaches
- Asset Concealment is becoming an increasing issue during separation proceedings requiring the assistance of new crypto forensic experts
- Leading family law firm partners with crypto platform to secure digital assets during settlements

## **Bitcoin's Record Surge Creates New Complexities in Australian Separations**

The collision of Australia's separation rates with the cryptocurrency boom has created additional complexities to asset division in family courts. While divorce rates have moderated from their pandemic peak of 56,244 cases in 2021 to approximately 48,700 in 2023, digital assets are becoming increasingly prominent in property settlements. The ASX 2023 Australian Investor Study reveals that one-third of high-value investors now hold cryptocurrency portfolios, with median holdings of \$130,000 AUD.

As Bitcoin touches new heights of \$150,000 AUD, cryptocurrency is becoming an increasingly large portion of high-net-worth portfolios. For family law practitioners, this trend suggests that cryptocurrencies will play an increasingly prominent role in family law property settlements. When handling family settlements involving cryptocurrency, family lawyers are forced to confront new complex challenges in asset division and disclosure. Recognising the need for specialised guidance, Nicholes Family Lawyers has partnered with Elbaite to help clients manage digital wealth during family law settlements.

Nicholes Family Lawyers Partner Catherine Giles said: "Digital assets are adding new dimensions to family law property settlements. The Courts treat crypto like any other property, meaning it must be disclosed, valued, and factored into any family law property settlement where it is present."

To navigate these complexities, collaboration with local cryptocurrency experts like Elbaite ensures accurate identification and valuation of digital assets, tailored to Australian regulations.

## **The High-Stakes Challenge of Valuing Crypto Assets**

The volatile nature of cryptocurrency also presents unique challenges for courts and divorcing couples alike. With Ms Giles stating: "Crypto's volatility introduces a significant complication in family law proceedings. Courts may decide ownership and value based on the market price at the time of the settlement or at the time of the Final Hearing, but dramatic changes in value can impact the asset pool or have unintended consequences for a party who retains the crypto as

part of their settlement. For instance, Bitcoin's value surged past \$93,000 USD (~\$144,000 AUD) earlier this month but continues to fluctuate, raising concerns about achieving a fair and equitable settlement for both parties if the value of that asset were to rise or fall significantly."

"Nicholes Family Lawyers' collaboration with Elbaite helps when tracking the value of clients' digital assets with precision, making it easier for parties involved in family law property proceedings to provide full and frank financial disclosure, manage the risk in the volatility of the value of cryptocurrency and otherwise assist in the division or transfer of the cryptocurrency if required in the settlement."

"Crypto can appreciate or depreciate rapidly, which makes it essential to use real-time exchange data when attributed a value to the crypto asset."

When dealing with high-value digital assets, careful management is crucial to preserve wealth during liquidation. "Selling large amounts of cryptocurrency on the open market can lead to significant price slippage, potentially causing families to lose substantial value during settlement. Our team at Elbaite regularly handle high-value transactions and leverage our expertise to ensure minimal market impact, protecting our clients' interests." said Samira Tollo, Chief Technology Officer.

## **Family Law Settlements with Crypto: Navigating Complex Property Division**

Dividing cryptocurrency assets also presents unique challenges like determining ownership, custody, and control over private keys. Courts must assess who purchased the crypto, who controls the wallet, and whether the assets are jointly or individually owned. Nicholes Family Lawyers frequently advises clients in navigating property settlements involving cryptocurrency assets, and ensures their clients receive expert cryptocurrency support throughout the entire process.

For this reason, Elbaite plays a critical role in family law matters through its custody solution, Crypto Vaults, which provide security for crypto assets before, during and following property settlements.

"Imagine trying to split ten million dollars in Bitcoin between divorcing spouses - a neutral, secure intermediary is important for smooth proceedings." Tollo said. "Our custody solution acts as a digital escrow, much like putting the assets in a high-security bank vault where neither party can access them until the court gives the green light. When dealing with volatile digital assets during an already stressful time, this peace of mind is invaluable."

Elbaite's Crypto Vaults ensure Family Settlements can proceed through:

- Splitting the crypto between parties
- Selling the assets and distributing the proceeds
- Returning crypto to private wallets after final settlement

By collaborating with Nicholes Family Lawyers, Elbaite ensures transparency and compliance, making it easier for couples to manage digital wealth following separation and divorce.

## **Forensic Investigations to Track Hidden Crypto Assets**

A growing concern in crypto-related family law settlements is asset concealment. “In some cases, one spouse may try to hide digital assets,” said Catherine Giles. “Using advanced tracking methods and by working with platforms like Elbaite, we ensure all crypto holdings are identified and included in the asset pool.”

Australian Courts require full disclosure of all assets, including digital assets. Nicholes Family Lawyers has developed expertise in uncovering hidden crypto through forensic investigations, sometimes working with Elbaite and crypto tax specialists and forensic accountants.

The issue has gained attention following a recent U.S. case in 2023 where 12 Bitcoin (~AU\$1.65m) was hidden from a spouse and later uncovered through forensic investigation. This highlights the importance of specialised expertise in tracking digital assets during separation proceedings.

## **Preparing for the Future of Family Law and Crypto**

As crypto continues to gain traction, the legal landscape will evolve to accommodate it. Financial Agreements entered into prior to de facto relationships or marriage are now increasingly including cryptocurrency to ensure asset preservation, identification and inclusion from the outset.

Elbaite and Nicholes Family Lawyers are pioneering solutions that help couples manage crypto wealth fairly and transparently.

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