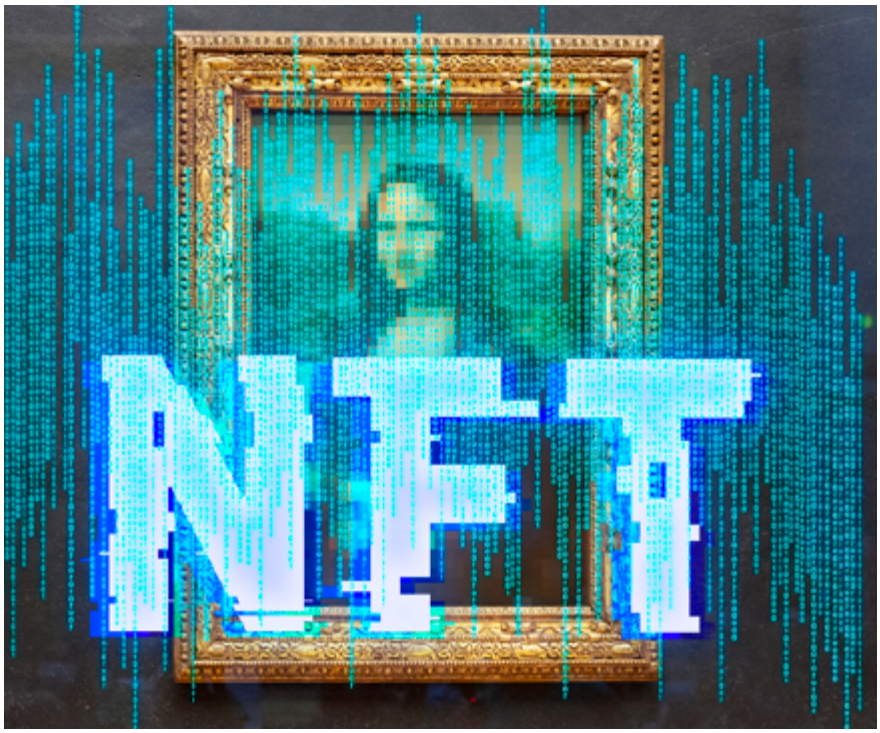
Tracing And Valuing Digital Assets In A Divorce



A spouse failing to truthfully disclose his or her assets, such as bank accounts, stocks, or even income, is commonplace in the divorce process. To safeguard the other spouse's right to the hidden asset, there are procedural mechanisms in place to handle such failed disclosure. With the emergence of digital assets, however, the task of tracking and valuing such undisclosed assets can prove difficult. Where a subpoena would likely uncover a centralized bank account that a spouse failed to disclose, a digital asset cannot be requisitioned by traditional means, as there is no central authority regulating the crypto industry.



The advent of digital assets – namely cryptocurrency and, most recently, NFTs (non-fungible tokens) – is essentially a digital reinvention of tangibly valuable assets. Cryptocurrency is a fungible digital asset, akin to the well-known tangible dollar. It is an interchangeable medium of exchange and is defined by the value it represents rather than by its own unique properties. An NFT is a tokenized digital asset that exists on a blockchain and is bought and sold with cryptocurrency. It can be likened to Leonardo Da Vinci's Mona Lisa in that, like the great artwork, the digital asset is unique and not defined merely by its value. Each NFT has a unique digital signature which makes it impossible for it to be exchanged for or equal to another (just like you cannot swap the Mona Lisa for Andy Warhol's Campbell's Soup Cans).

Discovering the digital asset, unfortunately, is not the only difficulty, as the valuation of this type of asset, specifically NFTs, poses significant complications.

Complicating the discovery of digital assets in the divorce process is the fact that their ownership is often shrouded in a layer of anonymity. If a spouse owns such assets, it is likely he or she stores them in a crypto wallet. These wallets typically do not have direct identification information linking their ownership to a specific individual. They also require a private key to access. While NFTs and the cryptocurrency used to purchase them are generally pseudonymously held, the purchase and sale of these digital assets tend to have a more traditional paper trail. Cryptocurrency is often purchased with fiat currency like the U.S. dollar, and many of the crypto exchanges where the cryptocurrency is purchased charge transaction fees. Both the underlying purchase and the associated transaction fees would likely create a record in traditional credit card or bank records, which can be subpoenaed.

The equitable distribution of cryptocurrency, like Bitcoin, is not necessarily an arduous task. Generally, courts divide the cryptocurrency similar to stocks, by utilizing an "in-kind" analysis. Unlike fungible cryptocurrency, however, NFTs cannot be divided due to their unique nature. Instead, divorcing spouses must have the NFT appraised for a buy-out or sell the digital asset and divide the proceeds. The value of an NFT can change by the minute and this market volatility complicates the valuation process tremendously.

As we move rapidly towards an increasingly digital society, we must account for and grapple with the everchanging ways in which people acquire and store their wealth. Understanding the world of digital assets – including how they operate and how to trace and value them – becomes crucial for divorce clients who have accumulated significant digital assets.

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