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METABANKRUPTCY

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METABANKRUPTCY: *Virtual assets and how to find them, disclose them, value them, get them turned over, and liquidate them*

With changes in technology, digital assets such as Cryptocurrency, NFTs, peer-to-peer payment apps are becoming increasingly widespread. With more consumers owning or using these digital assets it's becoming more and more necessary for Bankruptcy Attorneys to know about them. An attorney will need to know what they are, how to find them and once found, what to do with them depending on the attorney's role in the bankruptcy process, whether Debtor's counsel or Trustee. It is important for attorneys to keep up with the current changes in technology and what it might mean for their constituency, whether clients or creditors. In the case of digital assets, a basic understanding is necessary to properly advise clients as well as for proper administration of a bankruptcy estate by the Trustee.

This presentation will cover some of the basic types of virtual assets and explore some of the best practices for bankruptcy attorneys to properly find them, disclose them, value them, get them turned over, and liquidate them. While the topic can certainly be applied to both consumer as well as to business bankruptcy cases, this presentation will focus primarily on consumer bankruptcy cases, particularly Chapter 7.

I. <u>Types of Virtual Assets and Terms</u>

In order to properly discuss virtual assets, it is necessary to review some common types of these assets as well as some of the common terms used in their transactions. Because this is both a vast and evolving topic these terms is incomplete and only to reflect some of the most common examples of virtual assets utilized in the consumer bankruptcy context.

A. "Blockchain" is a decentralized ledger, essentially a cryptographic peer-to-peer system for tracking and recording transactions across computers. It refers to both the chain of information and the process by which each user in the network can be assured that any given transaction is valid. It is the technology that makes cryptocurrencies, NFTs, and DAOs possible.

B. "Cold storage" is a method of storing cryptocurrency private keys that is not connected to the internet, including normal USB drives and specialized drives such as Ledger, as well as paper or via image storage.

C. "Cryptocurrency" is an intangible digital unit of currency that is transferred via electronic means. A characteristic of most cryptocurrency is that it lacks an inherent value as it is not issued by a central bank nor is it pegged to an existing currency. There are thousands of types of cryptocurrencies, which may be reviewed on crypto price tracking websites such as coinmarketcap.com.

D. "Cryptocurrency Exchanges" are websites where cryptocurrencies may be purchased or sold. Among the largest current cryptocurrency exchanges as of this writing are Binance, MEXC, Deepcoin, Ecxx, BiONE, Hotcoin Global, and Coinbase.[1] Exchanges may be U.S.-based, such as Coinbase, or may be based in any number of foreign jurisdictions with varying degrees of U.S. presence. For example, Binance has an affiliate, Binance.us, for U.S.-based users.

E. "DAO" stands for "Decentralized Autonomous Organization," a decentralized, blockchain-based organization. DAOs can engage in revenue-generating activities, raise capital, invest, etc. Membership and governance are based on governance tokens acquired via purchase or services. Wyoming and Tennessee regulate DAOs and treat them as LLCs, and Vermont has created a new category of entity called a "Blockchain-based Limited Liability Company."[2]

F. "Digital Wallet is a software that stores and transmits payment such as Apple Pay, Google Wallet, Samsung Pay, Walmart Pay, as well as Paypal, Zelle, Cash App, Venmo, and store-specific wallets like the Starbucks card and app. A digital wallet can be used via a computer or a mobile device, in which case it is known as a "mobile wallet."

G. The "Metaverse" generally refers to the concept of a highly immersive virtual world where people gather to socialize, play, and work. Numerous companies are seeking to create a digital economy for the purchase of tangible and intangible/virtual goods.[3]

H. "Non-Fungible Token" or "NFT" is a unique digital record in a blockchain that is used to certify authenticity and ownership of a digital file. NFTs have been used to create a market in digital images, music, wearables, and even scents.[4] A variation, "governance tokens," are used to prove stake in DAOs.

I. A "Private Key" is a string of characters which proves ownership of crypto-assets on a blockchain. It is like a password and should be kept extremely secure.

II. Finding Digital Assets

One of the biggest difficulties involved with virtual assets is finding them. This is because a key feature of many virtual assets is their decentralization and anonymity. There are multiple reasons that virtual assets can be difficult to find. Virtual assets are typically bought and sold online and often with the use of a pseudonym. This can make it a challenge to determine ownership.[5] This feature has made cryptocurrency popular for use in criminal or illicit transactions as the currency is not regulated and can be more difficult to track. Ownership of digital assets is therefore not always apparent from a Debtor's typical financial records.

[1] https://www.statista.com/statistics/864738/leading-cryptocurrency-exchanges-traders/ (accessed 11/11/22)
[2] Wyo. Stat. Ann. § 17-31-101; Tenn. Code Ann. § 48-250-102; 11 V.S.A. § 4173
[3] https://www.wired.com/story/what-is-the-metaverse/ (accessed 11/12/22)
[4] https://www.forbes.com/sites/sharonedelson/2022/08/25/scents-of-wood-travels-to-the-metaverse-with-first-fragrance-nft/?sh=328f6367079c (accessed 11/11/22)
[5] Megan McDermott, *The Crypto Quandary: Is Bankruptcy Ready?*, 115 Nw. U. L. Rev. 1921, 1932 (2021). https://scholarlycommons.law.northwestern.edu/nulr/vol115/iss6/8 (accessed 11/13/22)

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