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The Future of Cryptocurrency and Real Estate Transactions

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THE FUTURE OF CRYPTOCURRENCY AND REAL ESTATE TRANSACTIONS

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ABSTRACT

Bitcoin and other cryptocurrencies are all the rage right now and are beginning to make their ways into everyday transactions—including real estate transactions. This article discusses whether using cryptocurrencies to complete real estate transactions will become the norm in the near future. Cryptocurrency laws in general are few and far between, but laws surrounding cryptocurrency and real property are even more sparse. Recent case law involving cryptocurrency is a major focus of this article, along with background knowledge about cryptocurrency and the meaning of "money" as we know it today. The article concludes with a discussion about the unlikelihood of real estate transactions being conducted through the use of cryptocurrencies when few are willing to put full trust in their long-term acceptance.

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I. INTRODUCTION

Real estate blogger Emile L'Eplattenier for *The Close* believes, "[n]o matter how much you fight it, bitcoin and the blockchain technology it runs on will revolutionize the real estate industry."[1] There are many interested in the thrill of the cryptocurrency market, but many others do not understand how cryptocurrencies work and do not trust them. Few laws protect parties in cryptocurrency-related litigation because remedies are not available at this time.[2] Traditional markets are beginning to see the use of cryptocurrency in some everyday transactions, such as real estate transactions.[3] This article considers whether the use of cryptocurrency to complete real estate transactions will become the norm as cryptocurrency has proven to be popular amongst many.

Section II of this article discusses the worth of money as it is known today. Section III defines the term "cryptocurrency" and terms related to it. Section IV discusses cryptocurrency in the legal world and recent notable lawsuits surrounding cryptocurrency issues. Section V discusses the process of purchasing real property in the traditional sense. Section VI delves into modern real estate transactions with the use of cryptocurrency. Section VII focuses on an example of a lawsuit involving the use of cryptocurrency to purchase real property. Section VIII discusses additional issues regarding purchasing real property with cryptocurrencies. Finally, Section IX considers whether real estate transactions using cryptocurrencies will become the norm.

II. WHAT IS THE WORTH OF MONEY TODAY?

Before delving into the world of cryptocurrency, it is necessary to first discuss money transactions as we know them. According to Black's Law Dictionary, "currency" means "[a]n item (such as a coin, government note, or banknote) that circulates as a medium of exchange."[4] "Fiat currency" means "[p]aper money that, in contrast to

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[1] Emile L'Eplattenier, *Bitcoin Basics for Real Estate Agents in 2022 (+ Expert Predictions)*, THE CLOSE (Feb. 4, 2021), https://theclose.com/bitcoin-real-estate/.
[2] *See infra* Section IV.
[3] *See infra* Section VI.
[4] *Currency*, BLACK'S LAW DICTIONARY (11th ed. 2019).

hard currency, is not backed by reserves but instead derives its value from government regulation or law declaring it legal tender."[5] Further, the term "money" means, "[t]he medium of exchange authorized or adopted by a government as part of its currency."[6] This definition of "money" is codified under the Uniform Commercial Code § 1-201.[7] Finally, "cryptocurrency" under the eyes of the law means, "[a] digital or virtual currency that is not issued by any central authority, is designed to function as a medium of exchange, and uses encryption technology to regulate the generation of units of currency, to verify fund transfers, and to prevent counterfeiting."[8]

An article entitled *Down the Rabbit Hole: Cryptocurrency and Blockchain* discussed understanding the value of cryptocurrencies and money in general:

> Why is a piece of paper produced by a slot machine with a bar code and numbers printed on it worth the stated value? Because people believe it is. Will the casino guarantee the exchange of that piece of paper for U.S. currency? In most cases, yes. Can you take that certificate to the gas station next door and trade it for fuel? No. The reason fiat currencies such as the U.S. dollar have been successful is because governments have convinced a critical mass of people that a rectangular piece of paper is worth the amount printed on the bill.[9]

Others, such as the New York Times, have agreed.[10] For example, in one opinion article that the Times published, the author posed the

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[5] *Money*, BLACK'S LAW DICTIONARY (11th ed. 2019).

[6] *Id.*

[7] U.C.C. § 1-201 ("'Money' means a medium of exchange currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries.").

[8] *Cryptocurrency*, BLACK'S LAW DICTIONARY (11th ed. 2019). For further definitions of and relating to "cryptocurrency," see *infra* Section III.

[9] Doug Fredrick, *Down the Rabbit Hole: Cryptocurrency & Blockchain*, WIS. LAW., Mar. 2019, at 22, 26.

[10] Peter Coy, *Can We Trust What's Happening to Money?*, N.Y. TIMES (Dec. 10, 2021), https://www.nytimes.com/2021/12/10/opinion/cash-crypto-trust-money.html.

question "[w]hat makes money money?"[11] In response, the author wrote:

> [Money is n]ot a government decree, a blockchain innovation or some inherent value. Cowrie shells, company scrip, tobacco and feathers of exotic birds have all served as money at various times. The only requirement is that the instrument has to function as a medium of exchange, and that role is socially determined. I will accept just about anything from you as payment if I trust that the next person in the chain will accept it from me.[12]

Following suit, some speculate on whether cryptocurrencies or commodities such as long-sought-after precious metals are worth more as better investments.[13] Precious metals and cryptocurrency are similar in the sense that both are finite, but precious metals have value beyond what people choose to believe they're worth—they require extraction costs and have "certain qualitative factors, such as luster and purity content."[14] The so-called "problem" with money today is that "fiat currency is issued by a government and not backed by any commodity, but rather by the faith that individuals and governments have that others will accept that currency."[15] So, "what makes money money?"[16] If "legal tender" is defined as "[t]he money (bills and coins) approved in a country for the payment of debts, the purchase of goods, and other exchanges for value,"[17] then what is cryptocurrency if it is not a legal tender?

III. CRYPTOCURRENCY DEFINED

Cryptocurrency or "crypto" jargon will be defined here based on the simple, understandable terms written by Antony Lewis in his

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[11] *Id.*
[12] *Id.*
[13] Nathan Reiff, *Gold vs. Bitcoin: Which Is Better?*, INVESTOPEDIA (Jan. 5, 2022), https://www.investopedia.com/news/should-you-buy-gold-or-bitcoin.
[14] John P. Kelleher, *Why Do Bitcoins Have Value?*, INVESTOPEDIA (Mar. 15, 2022), https://www.investopedia.com/ask/answers/100314/why-do-bitcoins-have-value.asp.
[15] *Id.*
[16] Coy, *supra* note 10.
[17] *Legal Tender*, BLACK'S LAW DICTIONARY (11th ed. 2019).

book, *The Basics of Bitcoins and Blockchains: An Introduction to Cryptocurrencies and the Technology that Powers Them*.[18] Cryptocurrency, generally, consists of "*assets* or items of value that exist digitally, not physically, and are created by software."[19] All sorts of cryptocurrencies exist and "can be exchanged for other cryptocurrencies, US dollars, or other global sovereign (or fiat) currencies."[20] These digital assets are moved from account to account and "are all recorded on their respective transaction databases . . . as blockchains."[21] Blockchains are a record database of sorts, where "all transactions related to [cryptocurrency], including their creation, destruction, changes of ownership, and other logic or future obligations, are recorded . . . ."[22] Blockchains such as bitcoin and Ethereum are public, "meaning that their list of transactions can be written to by anyone."[23] Further, "self-identification is not a requirement to create blocks or validate transactions."[24] An account must be opened in places such as e-wallets before any crypto exchanges occur between parties (or third parties).[25] These fully-digital e-wallets contain unique identifiers, or keys, which "are designed to send and receive payments."[26] The e-wallets are just like physical wallets, in the sense that "anyone who has the key to the e-wallet can access the e-wallet's funds."[27] Compared to cash money that "is an anonymous bearer asset which does not record or contain identity information," digital money, such as money used on a credit card, is regulated by law and requires forms of personal identification.[28] Cryptocurrency, and bitcoin specifically, has become "the very first asset of value that can be transferred over the internet without any specific third party having to approve the transaction or

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[18] *See generally* ANTONY LEWIS, THE BASICS OF BITCOINS AND BLOCKCHAINS: AN INTRODUCTION TO CRYPTOCURRENCIES AND THE TECHNOLOGY THAT POWERS THEM (2018).
[19] *Id.* at 14.
[20] *Id.* at 15.
[21] *Id.*
[22] *Id.* at 17.
[23] *Id.*
[24] *Id.*
[25] *Id.* at 22.
[26] Michael Alan Goldberg, *Estate Planning for Cryptocurrency*, 106 ILL. BAR J. 38, 39 (2018).
[27] *Id.*
[28] *See* LEWIS, *supra* note 18, at 24.

being able to deny it."[29] There are no third parties involved with the transfer of bitcoin from owner to owner,[30] and once written to the blockchain, the transaction cannot be reversed.[31]

IV. RECENT NOTABLE LAWSUITS SURROUNDING CRYPTOCURRENCY ISSUES

Cryptocurrency laws are left in the hands of regulatory agencies for the time-being.[32] Some states have enacted specific cryptocurrency laws, such as New York, which codify the definitions of "virtual currency" and "virtual currency business activity."[33] Cryptocurrency lawsuits became more prevalent in recent years as crypto gained popularity with virtually no laws protecting people's transactions. Litigated lawsuits have occurred in areas of the law surrounding criminal law, issues under the Security and Exchange Commission, insurance law, and trademark law.[34]

A. Cryptocurrency and Criminal Law

A recent lawsuit was brought by the United States against defendant Larry Dean Harmon when Harmon, under count one, "conspire[d] to launder money instruments," under count two, "operat[ed] an unlicensed money transmitting business," and, under count three, engaged in the unlicensed business of money transmitting.[35] Defendant violated several federal and District of Columbia statutes, including 18 U.S.C. § 1956(h), 18 U.S.C. § 1960(a), and D.C. Code § 26-1023(c).[36] These charges were a result of "his alleged operation of Helix, an underground tumbler for

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[29] *Id.* at 28.
[30] *Id.*
[31] Lisa Miller, *Getting Paid in Bitcoin Attorneys Accepting Cryptocurrency as Payment Should Be Sensitive to the Fact that the Regulatory Landscape Is Likely to Change in the Near Future*, L.A. LAW, Dec. 2018, at 18, 20.
[32] *See Cryptocurrency Laws and Regulations by State*, BLOOMBERG LAW (May 26, 2022), https://pro.bloomberglaw.com/brief/cryptocurrency-laws-and-regulations-by-state/.
[33] *See* N.Y. CODES RULES & REGULS. tit. 23, § 200.2 (2022).
[34] *See* discussion *infra* Sections IV.A–D.
[35] United States v. Harmon, 474 F. Supp. 3d 76, 80 (D.D.C. 2020).
[36] *Id.*

bitcoin."[37] A bitcoin tumbler is the use of "a third-party service or technology to launder bitcoins."[38] Defendant allegedly:

> Conduct[ed] financial transactions—namely, 'the sending and receiving of bitcoin'—that he knew involved the proceeds of illegal drug activity, and that he knew were designed to 'conceal and disguise the nature, the location, the source, the ownership, and the control of the proceeds of [the] unlawful activity.'[39]

Defendant first argued that "bitcoin is not money," and second, that his alleged laundering business "was not a 'money transmitting business' under 18 U.S.C. § 1960."[40] The United States District Court for the District of Columbia held that bitcoin is "a medium of exchange, method of payment, and store of value.[41] The court also held that Helix, defendant's business, "satisfie[d] the definition of 'unlicensed money transmitting business' at § 1960(b)(1)(B) because Helix's core business was receiving customers' bitcoin and transmitting that bitcoin to another location or person."[42] Ultimately, "defendant's motion to dismiss Counts Two and Three of the indictment [were] denied."[43]

B. Cryptocurrency Under Scrutiny by the Securities and Exchange Commission

Many lawsuits arose in recent years regarding whether cryptocurrency could be considered an investment contract under federal securities laws.[44] According to the *Howey* test,[45] "an investment contract results from (1) an investment of money (2) in a

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[37] *Id.*
[38] Scott Ferguson, *Ohio Man Admits to Operating Illegal Bitcoin 'Mixer' Service*, Bank Info Security, published Aug. 20, 2021, https://www.bankinfosecurity.com/ohio-man-admits-operating-illegal-bitcoin-mixer-service-a-17334.
[39] *Harmon*, 474 F. Supp. 3d at 83.
[40] *Id.* at 87.
[41] *Id.* at 89.
[42] *Id.* at 100-01.
[43] *Id.* at 109.
[44] *See* U.S. Sec. & Exch. Comm'n v. Kik Interactive Inc., 492 F. Supp. 3d 169 (S.D.N.Y. 2020); Sec. & Exch. Comm'n v. NAC Found., LLC, 512 F. Supp. 3d 988 (N.D. Cal. 2021); Shea v. Best Buy Homes, LLC, 533 F. Supp. 3d 1321 (N.D. Ga. 2021).
[45] SEC v. W. J. Howey Co., 328 U.S. 293, 298–99 (1946).

common enterprise (3) with the expectation of profits to come solely from others' efforts."[46]

In one 2020 example, defendant Kik Interactive Inc., creator of Kik Messenger, made and sold its own digital currency called "Kin."[47] In 2019, the Securities and Exchange Commission ("SEC") sued Kik Interactive Inc., alleging "violations of Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. § 77e(a), (c), based on Kik's alleged offering and sale of securities without a registration statement or exemption from registration."[48] The SEC sought "relief in the form of an injunction barring Kik from violating Section 5(a) and 5(c) Securities Act, disgorgement of ill-gotten gains, and monetary penalties under Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d)."[49] Kik Interactive Inc. argued that "the definition of 'investment contract' is void for vagueness as applied to Kik," and both parties moved for summary judgment.[50] The court held that the definition of an investment contract was not unconstitutionally vague as it applied to Kik Interactive Inc. because "the law regarding the definition of investment contract gives a reasonable opportunity to understand what conduct and devices it covers," and "the law provides sufficiently clear standards to eliminate the risk of arbitrary enforcement."[51] Therefore, the SEC's motion for summary judgment was granted.[52]

Similarly, the SEC sued another entity in 2021 for "the fraudulent and unregistered sale of digital securities in violation of the 1933 Securities Act and 1934 Securities Exchange Act."[53] In that case, NAC Foundation—a blockchain development company—and other defendants "sought to introduce AML BitCoin: a regulatorily compliant digital asset."[54] Although defendants traded their newly-created tokens on online platforms, these tokens were never registered with the SEC.[55] The main contention between parties was whether the

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[46] *Shea*, 533 F. Supp. 3d at 1332.
[47] *Kik Interactive Inc.*, 492 F. Supp. 3d at 173.
[48] *Id.* at 176.
[49] *Id.*
[50] *Id.*
[51] *Id.* at 183.
[52] *Id.*
[53] Sec. & Exch. Comm'n v. NAC Found., LLC, 512 F. Supp. 3d 988, 992 (N.D. Cal. 2021).
[54] *Id.*
[55] *Id.* at 993.

digital assets created by defendants constituted "securities" under federal securities law.[56] The court held in favor of the SEC, stating that while their tokens "could be redeemed for AML BitCoin at some future point, they were, at the time of the transaction, solely objects for trading."[57] Therefore, the court decided that "the SEC adequately ha[d] pled the defendants' sale of an unregistered security."[58]

C. Cryptocurrency as it Applies to Insurance Contracts

In 2018, a lawsuit arose before the Court of Common Pleas of Ohio, where the plaintiff James Kimmelman sued defendant Wayne Insurance Group for refusing to honor his homeowner's insurance contract after Kimmelman reported that $16,000 worth of big-name cryptocurrency, bitcoin, were stolen from him.[59] Defendant determined the bitcoin was considered "money" within the scope of the insurance contract, and awarded plaintiff $200 in recovery.[60] Plaintiff successfully sued defendant for breach of contract and bad faith because "[t]he only legal reference [d]efendant makes to support its conclusion that BitCoin is money, is a limited reference to a document the Internal Revenue Service released directly relating to the taxation of BitCoin."[61] One source speculates that "[i]f Wayne Insurance Company had defined money to include cryptocurrency within the policy, then it would have had a stronger argument that Kimmelman was limited to only recovering $200, rather than the $16,000."[62]

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[56] *Id.*
[57] *Id.* at 997.
[58] *Id.*
[59] Kimmelman v. Wayne Ins. Group, No. 18 CV 1041, 2018 WL 7252940, at *1 (Ohio Com. Pl. Sept. 25, 2018).
[60] *Id.*
[61] *Id.*
[62] Mallory Stone, *What Even is a Bitcoin? Comment on How Defining Cryptocurrency Will Have Different Implications for Coverage Under a Homeowners Policy*, 27 CONN. INS. L.J. 581, 588 (2021).

D. Cryptocurrency and Trademark Law

A 2021 lawsuit regarding alleged trademark violation of plaintiff's "Safex" cryptocurrency occurred when "defendants created Safeth Ltd., designed to create a cryptocurrency to compete with Safex's two currencies, which cryptocurrency Safeth called 'Safex Platinum.'"[63] Safeth created a website that featured the name "Safex" to promote Safex Platinum, and used a logo that, aside from the color, was identical to that of Safex.[64] Further, "Safeth also announced the development of a marketplace, called 'Safex Platinum Market Place,' which was functionally similar to Safex Marketplace."[65] In 2020, "defendants filed a trademark application at the USPTO for 'Safex Platinum' and the Safex Platinum logo . . . ."[66] At nearly the same time, plaintiffs filed for their USPTO trademark application for Safex.[67] Five days after filing their trademark application, plaintiffs "mailed defendants a cease and desist letter, requesting that defendants cease (1) infringing plaintiffs' trademark, (2) publicly stating that plaintiffs were infringing defendants' trademark, (3) making misrepresentations to the USPTO, and (4) making other defamatory statements about plaintiffs."[68] Defendants did not respond to the cease and desist letter, but still posted publicly about it on social media.[69] Plaintiffs brought suit against defendants alleging trademark infringement under the Lanham Act.[70] The Lanham Act codifies the rules and regulations for registering trademarks and the protections trademark owners are granted under the law.[71] Plaintiffs further sought "a permanent injunction of plaintiffs' trademark infringement and defamation, a declaratory judgment that defendants have infringed their trademark, damages, and attorneys' fees."[72] In order for a trademark infringement claim to be successful, the court explained that plaintiffs would need to show that: "(1) they own a valid trademark;

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[63] Safex Found., Inc. v. Safeth, Ltd., 531 F. Supp. 3d 285, 294 (D.D.C. 2021).
[64] *Id.*
[65] *Id.*
[66] *Id.*
[67] *Id.*
[68] *Id.*
[69] *Id.* at 295.
[70] *Id.* at 296.
[71] *See* 15 U.S.C. §1051.
[72] *Id.* at 296.

(2) their trademark is distinctive or has acquired a secondary meeting [sic]; and (3) there is a substantial likelihood of confusion between the plaintiffs' mark and the alleged infringer's mark."[73] The court found that all factors were in favor of plaintiffs as to their injunctive relief for the trademark infringement claim.[74] As to the defamation claim, the court found that "plaintiffs have failed to show that they will likely prevail on the part of their defamation claim concerning the category of defendants' statements warning about the criminality of Safex's products,"[75] and therefore "[f]ailure to demonstrate likelihood of success on the merits forecloses the possibility of a preliminary injunction . . . ."[76] Ultimately, the District Court for the District of Columbia decided that defendants were to be "preliminarily enjoined from both infringing plaintiffs' trademark and publicly stating that plaintiffs are infringing defendants' trademark," but also that "plaintiffs have failed to show that they will likely prevail on their defamation claim."[77]

V. THE PROCESS OF PURCHASING REAL PROPERTY TRADITIONALLY

Lawyers, bankers, and brokers have long been an integral part of purchasing real property. Traditionally, a foundational awareness for the process of purchasing real property is necessary before determining the pros and cons of purchase or sale of real estate with cryptocurrency.

A. Players in the Real Estate Transaction Game

There are many individuals and entities involved in real estate transactions, generally including the real estate agents and brokers, the title company and title brokers, the bank and mortgage brokers, the real estate attorney, and the closing agent. In real estate agencies, buyers work with agents who are supervised by brokers.[78] Some of the roles

[73] *Id.* at 298.
[74] *Id.* at 301.
[75] *Id.* at 314.
[76] *Id.*
[77] *Id.* at 315.
[78] ILONA BRAY ET AL., NOLO'S ESSENTIAL GUIDE TO BUYING YOUR FIRST HOME 101 (5th ed. 2015).

of the real estate agent are to suggest neighborhoods, find prospective homes, and explain the process of purchasing real property.[79] A mortgage broker compiles and filters through different options for obtaining financing and essentially acts as a middleman between the purchaser and the lender—typically a bank.[80] Real estate attorneys specialize in negotiating real estate contracts, title searches, checking for liens or encumbrances on the property, and reviewing closing documents.[81] Some roles of the closing agent include arranging title insurance, establishing an escrow or trust account, and recording the deed to the property.[82]

B. To Mortgage or Not to Mortgage?

According to Rocket Mortgage, "[a] cash buyer is someone who is using their own funds to cover the full purchase price of the home, meaning they aren't taking out a loan."[83] Today, "buying a home with cash is an increasingly uncommon occurrence, especially as rising home prices outpace income growth."[84] According to the National Association of Realtors 2020 Profile of Home Buyers and Sellers, 87% of buyers use a loan to cover the cost of their purchase.[85] A cash purchase on real property means a faster closing process and no interest, which significantly lowers closing costs.[86] Conversely, a cash purchase means no tax deductions, thus reducing the taxable income that would ordinarily come with some mortgages.[87] The decision of whether or not to seek mortgage financing is a personal preference, but seeking a loan secured by cryptocurrency may be risky at the moment.[88]

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[79] *Id.* at 102-03.
[80] *Id.* at 114.
[81] *Id.* at 122.
[82] *Id.* at 133-34.
[83] *See* Victoria Araj, *Pros and Cons of Buying a House with Cash*, ROCKET MORTG. (Mar. 11, 2022) https://www.rocketmortgage.com/learn/buying-a-house-with-cash.
[84] *Id.*
[85] *Id.*
[86] *Id.*
[87] *Id.*
[88] *See infra* Section VIII.C.

VI. MODERN REAL ESTATE TRANSACTIONS USING CRYPTOCURRENCY

Undoubtedly, modern real estate transactions using cryptocurrency are taking place more often than one would imagine. According to Property Onion, "[i]n a survey published by Mansion Global, almost 12% of respondents claimed that their crypto investments helped them get the down payment to purchase their first home."[89] Property Onion lists ways cryptocurrency is used in real estate today, including the use of "cryptocurrency in the rental game," buying and selling by "quickly [completing] your closing with the click of a few buttons," and "tokenizing real estate [which] is much more secure and less expensive when created on the blockchain."[90] In one opinion, IBM blog reporter Kyle Schlapkohl stated:

> Blockchain is a shared, immutable ledger that facilitates the process of recording transactions and tracking assets in a business network. By having a single, public version of records, the trust needed between a buyer and seller is decreased since the seller can immediately prove their ownership of a property and the buyer can immediately prove their funds on hand.[91]

There is speculation that cryptocurrency and real estate transactions will become the norm through the use of smart contracts. According to IBM, "smart contracts are lines of code that are stored on a blockchain and automatically execute when predetermined terms and conditions are met."[92] In the real estate world, for example, "[i]nstead of the complicated process currently in place, with each party involved increasing the price of a piece of property through their commission, trust could be assured between participants through a single version of the truth."[93] The perk of smart contracts is that there is no middleman,

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[89] William Haynes, *Cryptocurrency and Real Estate Are a Thing?*, PROP. ONION (Mar. 22, 2022), https://propertyonion.com/education/cryptocurrency-and-real-estate-are-a-thing.
[90] *Id.*
[91] Kyle Schlapkohl, *Blockchain in Real Estate: How Technology is Changing the Industry*, IBM SUPPLY CHAIN & BLOCKCHAIN BLOG (Sept. 16, 2019), https://www.ibm.com/blogs/blockchain/2019/09/blockchain-in-real-estate-how-technology-is-changing-the-industry.
[92] *Id.*
[93] *Id.*

and all necessary data is stored on the blockchain.[94] Kyle Schlapkohl further states that:

> With your identity stored on a blockchain, mortgage lenders can quickly make a decision about credit. Then, a smart contract could be issued between the bank, the agent and the mortgage lender so that once the funds have been released to the agent, the mortgage lender will hold the property and repayment will be initiated based on the agreed terms. The transfer of ownership could be automatic as the transaction gets recorded to a blockchain and is shared among the participants who can check the process at any time.[95]

A comparison of real estate purchases using cryptocurrency versus cash transactions must be discussed along with modern examples of the former in order to understand the intersection between real estate transactions and cryptocurrency.

A. Comparing Crypto Real Estate Transactions with Cash Purchases

According to the New York Times, "Bitcoin and other volatile cryptocurrencies, while popular as speculative investments, by and large, aren't useful for everyday transactions, making them more akin to financial assets than to money."[96] Cryptocurrencies are "certainly not legal tender or fiat currency issued by a sovereign," but rather they are "a purely private creation."[97] Further, "[t]he 'coin' part [of 'Bitcoin'] is metaphorical and aspirational, reflecting the hope that Bitcoin would become a common system for payment."[98] In terms of Bitcoin, for example:

> If you own 12.47 BTC, you effectively have a bookkeeping entry, but nothing else. You have the right to transfer some or all of those units to another person, and the Bitcoin system makes this transfer simple and

[94] *Id.*
[95] *Id.*
[96] *See* Coy, *supra* note 10.
[97] Eric D. Chason, *How Bitcoin Functions as Property Law*, 49 SETON HALL L. REV. 129, 137–38 (2018).
[98] *Id.*

> direct. You might be able to receive non-Bitcoin value (dollars, goods, services) in exchange for Bitcoin. You would not, however, be able to receive value directly from the Bitcoin system.[99]

Although not fiat currency, cryptocurrency real estate transactions can be somewhat akin to real property cash purchases. In a typical real estate transaction, transferors must sign, and in some jurisdictions, notarize written instruments.[100] In a real property transaction using cryptocurrency, crypto "relies on cryptographic functions known as digital signatures that replace handwritten signatures and acknowledgments."[101] When making a cash purchase of real property, it "eliminates the need to pay interest on the loan and any closing costs . . . [and] [p]aying with cash is usually more attractive to sellers, too."[102] Cash purchases typically cut out the lender, which could mean faster closings and less of a chance for the buyer to back out.[103] Cash purchases likely appeal to the general real estate seller as much as crypto purchases appeal to the fellow crypto enthusiast.

B. Recent Examples of Real Estate Purchased Using Cryptocurrency

As of August 2014, the most expensive real estate transaction completed using cryptocurrency cost the equivalent of $1.6 million in bitcoin at the time.[104] The undisclosed purchaser of the property, located in Lake Tahoe, California, received a "1.4-acre home site in the Martis Camp's Lodge Estates section."[105] The home is situated

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[99] *Id.*
[100] *Id.*
[101] *Id.*
[102] Christina Majaski, *Buying a Home: The Difference Between Cash vs. Mortgage*, INVESTOPEDIA (May 20, 2022), https://www.investopedia.com/articles/personal-finance/111214/buying-home-cash-vs-mortgage.asp#toc-cash-vs-mortgage-an-overview.
[103] *See generally* Holden Lewis, *Buying a House With Cash: What to Know Before Skipping the Mortgage*, NERDWALLET (Apr. 29, 2021), https://www.nerdwallet.com/article/mortgages/buying-a-house-with-cash.
[104] *See* Ben Lane, *Lake Tahoe Real Estate Deal Breaks the Bank…in Bitcoin*, HOUSINGWIRE (Aug. 13, 2014, 4:28 PM), https://www.housingwire.com/articles/31026-lake-tahoe-real-estate-deal-breaks-the-bankin-bitcoin.
[105] *Id.*

within "a private, gated community that is spread across 2,177 acres. Its residents have private ski access in the winter and access to a Tom Fazio-designed 18-hole golf course in the warmer months."[106] To complete the transaction, "an invoice was sent and the buyer's bitcoin was easily transferred into U.S. dollars to complete the sale."[107] Interest in using cryptocurrency as a means to purchase property increased with time. In October 2017, a mansion in London was listed for sale for £18 million—approximately $23.9 million at the time—but there was a caveat: the seller of the property would only accept payment in bitcoin.[108] As recently as December 2021, the most expensive home to be purchased with cryptocurrency sold for $22.5 million.[109] The property was an oceanfront Miami Beach penthouse.[110]

VII. RECENT LAWSUITS SURROUNDING REAL ESTATE TRANSACTIONS PAID THROUGH CRYPTOCURRENCIES

In 2021, Mary Shea sued Best Buy Home, LLC and Mike Cherwenka in the Northern District of Georgia "seeking declaratory relief and damages arising out of a real estate transaction" partially purchased with cryptocurrency.[111] Plaintiff listed her house for sale in 2020, and defendant Cherwenka contracted to purchase the house for $125,000 with a stipulation that "30% of purchase price [was] to be paid with Troptions.Gold Cryptocurrency (POC)."[112] Defendant attached to the contract information about Best Buy's "proof of funds" and information about the cryptocurrency Troptions.[113] On the day of the closing, plaintiff was instructed to open a "cryptocurrency wallet" in order to receive the funding for the real estate transaction, but alleged that no one assisted her with understanding how the crypto-

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[106] *Id.*
[107] *Id.*
[108] *Id.*
[109] *See* Nick Maffi, *This Miami Beach Home is the Most Expensive Ever to be Bought with Cryptocurrency*, ARCHITECTURAL DIG. (June 9, 2021), https://www.architecturaldigest.com/story/miami-beach-home-most-expensive-bought-cryptocurrency.
[110] *Id.*
[111] Shea v. Best Buy Homes, LLC, 533 F. Supp. 3d 1321, 1329 (N.D. Ga. 2021).
[112] *Id.*
[113] *Id.*

portion of the transaction worked.[114] Rather than finalizing the closing, plaintiff sought advice from an attorney who advised her that securities fraud may be at issue.[115] Upon plaintiff's refusal to complete the closing per the contract, "[d]efendant Best Buy filed a contract action against [p]laintiff and a lis pendens with respect to her property in Georgia state court."[116] Plaintiff removed the action to the Northern District of Georgia court.[117] In plaintiff's action, she "assert[ed] claims for declaratory judgment, fraud, negligent misrepresentation, promissory estoppel, litigation expenses, and violations of the Georgia Uniform Securities Act (the "GUSA") and the Georgia RICO Act."[118] In response, "defendants filed a Motion to Dismiss the Complaint for failure to state a claim."[119] The court ultimately decided that the contract was void for illegality because "performance would have required the unlawful sale of unregistered securities."[120] The court reasoned that "Troptions meet the definition of an 'investment contract' and thus are a security under Georgia and federal law."[121]

VIII. FURTHER ISSUES WITH REAL ESTATE TRANSACTIONS PAID THROUGH CRYPTOCURRENCY

As of now, purchasing real estate through the use of cryptocurrency is likely before its time. There are many real estate-focused blogs with speculation on the future of cryptocurrency and real estate transactions. For example, one post compared whether bitcoin or real estate is a better investment.[122] Some cons of investment in bitcoin include lack of insurance protection and lack of universal acceptance.[123] Some cons of investment of real estate include high transaction costs and prolonged downturns.[124] When combined

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[114] *Id.* at 1329-30.
[115] *Id.* at 1330.
[116] *Id.*
[117] *Id.*
[118] *Id.*
[119] *Id.*
[120] *Id.* at 1334.
[121] *Id.*
[122] Jeff Rose, *Bitcoin vs. Real Estate: Why Bitcoin (Crypto) is a Better Investment*, GOOD FIN. CENTS (May 4, 2022), https://www.goodfinancialcents.com/bitcoin-vs-real-estate.
[123] *Id.*
[124] *Id.*

together, however, some speculation issues with real estate transactions paid through cryptocurrency include the worth of cryptocurrency at any given time, the impact on the real estate job market, and future impacts on mortgages.

A. What is the Worth of Cryptocurrency at Any Given Time?

Just like with daily stock market fluctuations, "cryptocurrency can go up and down without notice."[125] Factors such as "perceived value and supply and demand" affect the crypto market, because "[i]f people believe that [crypto] is worth a specific amount, they will pay it, especially if they think it will increase in value."[126] Only 21 million will ever be created, and "[t]he closer Bitcoin gets to its limit, the higher its price will be, as long as demand remains the same or increases."[127] The "volatile" prices of crypto could affect the real estate market negatively if purchases are made using crypto due to these constant fluctuations. Many people are in the business of flipping houses, and purchasers could likely take advantage of purchasing real property when prices of crypto reach daily lows. There could also be issues of fluctuation before closing. In some cases, the parties may agree on one crypto price, but the price drastically changes before the deal is sealed. Crypto-to-crypto real property transactions will likely cause only headaches in the real estate market for those not prepared to understand the worth of cryptocurrency at any given time.

B. Cutting Out Middlemen Will Destroy the Job Security of Many

According to Investopedia, cutting out the middlemen will be a positive for the real estate market.[128] There will be little-to-no intermediary or commission fees and the possibility of lowered inspection, registration, loan fees, and taxes that all come with

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[125] Haynes, *supra* note 89.
[126] John Edwards, *Bitcoin's Price History*, INVESTOPEDIA (June 13, 2022), https://www.investopedia.com/articles/forex/121815/bitcoins-price-history.asp.
[127] *Id.*
[128] Joe Liebkind, *How Blockchain Technology is Changing Real Estate*, INVESTOPEDIA (Mar. 22, 2020), https://www.investopedia.com/news/how-blockchain-technology-changing-real-estate.

purchasing or selling real estate.[129] The Investopedia article states that, intermediaries and fees "can be reduced or even eliminated from the equation as platforms automate these processes and make them part of the system."[130] But what about the jobs of all those "middlemen" and those collecting the aforementioned fees? Will their jobs still be needed at all if there is a fully digital shift in real estate transactions? Those questions remain unanswered for the moment, but, like present-day highway toll booths that made human toll collectors obsolete, a fully digital real estate transaction may be possible in the future.

C. Mortgages and Cryptocurrency

Taking out loans with cryptocurrency is possible, but not realistic. Interest rates on loans with startups like Unchained Capital are 10-14% and loan terms only range from three months to three years.[131] A pro of securing mortgages with crypto is that "you don't have to cash out of your crypto investments to buy a house with a crypto mortgage. This is important because selling your investments would incur capital gains taxes."[132] The downside of crypto-financed mortgages, however, is that "[w]hen the price of the digital assets you have put up as collateral drops, the lender may require you to add more of your investments to the collateral."[133] Additionally, for the time-being, few cryptocurrencies are accepted by mortgage providers.[134] It is uncertain whether crypto mortgages will become the norm in future years, but for now real estate transactions will likely be stuck in their foundational ways.

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[129] *Id.*
[130] *Id.*
[131] L'Eplattenier, *supra* note 1.
[132] Krisztian Sandor, *Crypto Mortgages: How You Can Buy a House Using a Crypto-Backed Loan*, COINDESK (May 23, 2022, 11:06 AM), https://www.coindesk.com/learn/crypto-mortgages-how-you-can-buy-a-house-using-a-crypto-backed-loan.
[133] *Id*.
[134] *Id*.

D. The Problem with Pride

One real estate blogger on *The Close* is in it for the business attention.[135] He writes that, "[i]n today's market, [crypto] may not be ready for prime time, but there is one thing that is undeniable. Offering your listing for sale in [crypto] will get you instant free press."[136] He further states that going through the hassle of transferring bitcoin to dollars and finding players in the real estate transaction game who accept cryptocurrency as payment is a headache in current times.[137] Emile L'Eplattenier reiterates his point in the post by stating, "[a]t this point, most people will avoid actually paying in bitcoin, but the free press [for real estate agents] might be a good trade-off."[138]

IX. WILL PURCHASING REAL PROPERTY WITH CRYPTOCURRENCY BECOME THE NORM?

Forbes believes automated real estate transactions will become the norm through the use of blockchain and "its use has already gone beyond the project stage."[139] According to Forbes, blockchain platforms will allow "speed and safety that can considerably reduce the risk of fraud," and there are "implications for simplifying the transmission of data and reducing the time between the signing of the preliminary sales agreement and the deed of sale before the notary.[140] Further, Adam Redolfi of Forbes speculates, "[w]e can consider blockchain a tool to visualize the status of properties and deeds, granting full access to the history of the property or land."[141] There is also the potential to cut out consultation of middlemen to access the property's history.[142] While there are certainly pros of purchasing real property with cryptocurrency, the reality of its continuous usage is uncertain. The purchase and sale of real property using cryptocurrency

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[135] L'Eplattenier, *supra* note 1.
[136] *Id.*
[137] *Id.*
[138] *Id.*
[139] Adam Redolfi, *The Future of Real Estate Transactions on the Blockchain*, FORBES (Oct. 27, 2021), https://www.forbes.com/sites/forbesbizcouncil/2021/10/27/the-future-of-real-estate-transactions-on-the-blockchain/?sh=5b113e694938.
[140] *Id.*
[141] *Id.*
[142] *Id.*

would certainly shake up the traditional ways of conducting real estate transactions. Crypto real estate transactions are viable alternatives to traditional real estate closings if all parties involved understand the pros, cons, and processes of using cryptocurrency. However, not everyone trusts or believes in the value of cryptocurrency, and thus there is likely a slim chance that real estate transactions using cryptocurrency will become the norm anytime soon.

X. CONCLUSION

The use of cryptocurrency to purchase real property is likely before its time, and—depending on how volatile the crypto market continues to be—may not continue to have an impact in the future. "Volatile" is a word incessantly used when describing cryptocurrencies. Many see or hear the word in relation to crypto and decide to stay far away from it. Some who wholeheartedly believe in the value of crypto have no problem using it for everyday purchases or selling transactions. However, when it comes to real estate transactions, the current lack of protection offered by the law has diminished the pool of parties who wish to complete their transactions exclusively using crypto. The real estate market is already somewhat volatile—adding cryptocurrency into the equation will only cause eruptions for the time-being.