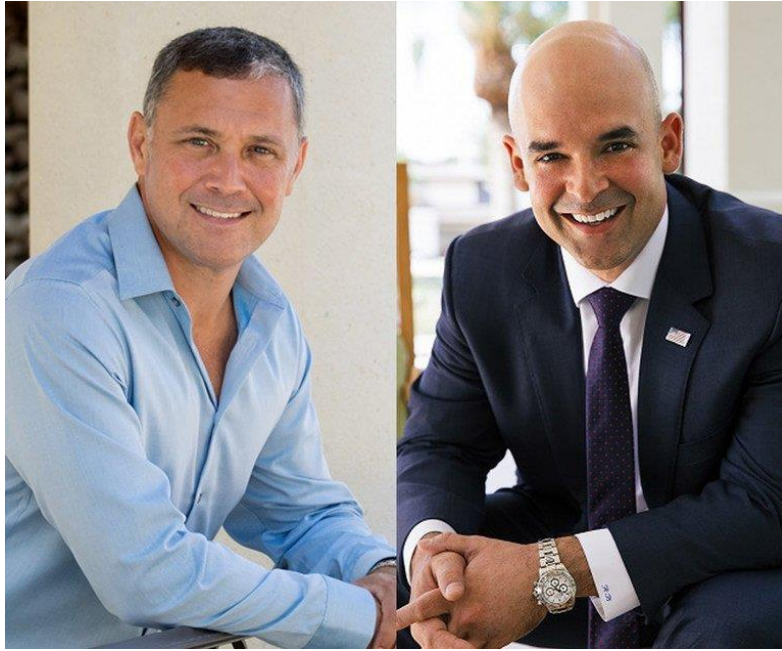




Jonathan Asbell(L) of Keller Williams and Richard L. Barbara(R) of Richard L. Barbara, P.A. Courtesy photos

COMMENTARY

Making Crypto Less Cryptic: How to Safely Buy and Sell Real Estate

With Cryptocurrency

For anyone looking to buy or sell real estate in Florida using cryptocurrency, it's imperative that they first equip themselves with up-to-date knowledge on current requirements and the right professional guidance.

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By Jonathan Asbell and Richard L. Barbara

From NFTs to Bitcoin and Ethereum, digital coins and tokens have become increasingly popular and mainstream investments. Far removed from the creation of the first decentralized cryptocurrency in 2009,

digital currency is now easy to acquire and widely recognized. What is not so clear-cut, however, are the proper procedures for making traditional purchases with this asset class.

For anyone looking to buy or sell real estate in Florida using cryptocurrency, it's imperative that they first equip themselves with up-to-date knowledge on current requirements and the right professional guidance. By exercising due diligence before any crypto changes hands, mishandled transactions and the potential for problematic consequences can be avoided altogether. Lack of knowledge can't be used as an excuse—the IRS certainly won't accept that when they're looking into why payments weren't properly reported or taxed.

With norms and limits for cryptocurrency payments still being defined, how can one be certain that their transaction is properly executed, reported, taxed or even legal? The following guidance can help ensure that any Florida real estate deal funded with cryptocurrency is made in accordance with current legal and tax parameters, and won't come back to haunt you down the road.

- **Tap into industry expertise.**

Your first step in executing a cryptocurrency transaction should be to identify an attorney and a CPA with experience in this arena. In the ill-defined environment of purchasing real estate with digital currency, if something goes wrong, you want to have someone professional “on the hook” to defend your actions and position. Whether a public institution determines that some aspect of the transaction was done improperly and they want details, or worse, they accuse you of an unlawful or taxable act, you will need to show you took precautions, have the evidence and

have the right pros on your side to guide you. If you aren't already working with an attorney who has been involved in crypto deals and familiar with what can go wrong, any assets you have (including crypto, cash or hard assets) may be exposed in a dispute.

- **Amend standard contracts with crypto-specific terms.**

While standard offer contracts can be utilized for real estate deals paid for with cryptocurrency, the following must be added in the form of an addendum or additional terms:

- How much U.S. dollars will be contributed, by who, when and how? Or, by a specified future deadline, the transfer of a certain amount in the appropriate currencies must be determined.
- The wallet used by the seller and buyer are with a “reputable crypto exchange,” for example, one that is also a public company.
- In the absence of escrow, the attorneys of the seller and buyer are party to the agreement and charged with helping the seller confirm transfer using a service, and some definition as to how the transfer will be confirmed.
- **To pay cash costs with crypto, curb volatility through exchange or conversion.**

Even if you're funding a transaction with crypto, not all parties to the transaction will accept it. The day will come when a mortgage can be paid off and satisfied with crypto—but not today. Closing costs, registrations, tax authorities, associations and commissions all need to be paid in USD, even when the seller and buyer are using crypto.

If you plan to convert cryptocurrency to U.S. dollars to fund any cash expenses, there are two strategies that can be employed:

- Before converting cryptocurrency to USD, first convert digital coin into a nonvolatile intermediary cryptocurrency. Also known as stablecoin, this digital asset was created as a cryptocurrency alternative that does not

fluctuate or have gains or losses against the value of the U.S. dollar. USDC and USDT are the two most known and used stablecoins. Conversion into stablecoin is used as a mechanism to “freeze” the value of the crypto currency brand you are holding, much like a decision to convert and currency into U.S. dollars.

- Utilize a reputable crypto exchange, such as Coinbase or Kraken. Participating parties may also be looking to transact using more reputable crypto currencies such as Ethereum or more mainstream cryptowallets. Behind the scenes, the exchange handles the conversion and fluctuation by promising an exchange rate.
- **Forego traditional escrow.**

Florida law does not explicitly permit escrow agents to have a crypto wallet into which they take the buyers’ cash to close. Until things change, the existing escrow language inside the standard offer contracts must be crossed out and replaced with new clauses or an addendum. As a consequence, the parties involved may not have the same protections, the same requirements, or be able to utilize the same mechanisms as they would with a traditional cash escrow.

In place of escrow, attorneys should be utilized to follow and observe the steps of the transaction until all parts are finalized. With this oversight, proceeds can go directly between buyer and seller crypto accounts.

- **Have your attorney present at closing.**

As evidenced by the above escrow advice, when it comes to crypto transactions, having a lawyer with up-to-date insight by your side is crucial. Crypto real estate transactions occur within constantly evolving restrictions and uncustomary procedures, potentially carrying unexpected costs and unintended risks. Having an officer of the court present ensures that someone with a legal foundation can bear witness and responsibility for the guidance and actions taken should they be

called into question down the road. The right legal counsel will also be instrumental in preparing for your closing, advising you on what to prepare, what to pay attention to, what to agree to, what to refuse, what to expect, what to send when and how much and, overall, how to make the best decisions. Remember, crypto closings aren't yet standard procedure, so an attorney without expertise in digital currency may not have the proper background to advise you.

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