

Real Estate Tokenization in Canada: Legal Considerations for Owners, Developers, and Investors

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Introduction

Canadian real estate owners, developers, investors, and technology companies are increasingly exploring tokenization as a potential way to modernize how real estate investments are structured, accessed, and administered.

Tokenization involves creating a digital representation of a legal or economic interest associated with an asset and using blockchain-based technology to record and administer certain transactions involving that interest. In a real estate context, tokenization may create opportunities to improve investment administration, facilitate participation in specific real estate assets, and develop new approaches to raising and managing capital.

The interest in tokenization has increased as financial markets explore new digital infrastructure, investors seek more efficient investment processes, and technology platforms develop new methods for administering ownership and investment interests. However, tokenization remains a legal and commercial structuring exercise supported by technology, rather than simply a technology implementation project.

The potential benefits are significant. Real estate is a high-value asset class that has traditionally involved substantial barriers to entry, limited liquidity, complex transfer processes, and significant transaction costs. By combining blockchain technology with established legal structures, tokenization may allow market participants to create more efficient methods for offering and administering interests in real estate assets.

However, successful real estate tokenization requires much more than issuing digital tokens. A token does not create a new form of ownership under Canadian law. Instead, it provides a technology-enabled method of representing and administering existing legal and economic rights. The effectiveness of a tokenized structure depends on the legal rights represented by the token, the ownership structure supporting those rights, compliance with applicable securities and regulatory requirements, tax planning, technology architecture, and operational systems.

For property owners, developers, investment managers, and other organizations considering tokenization, the central question is not simply whether blockchain technology can be applied to a property. The more important question is whether tokenization creates meaningful commercial advantages while maintaining legally enforceable investor rights and regulatory compliance.

A properly structured tokenization project requires coordination among multiple disciplines, including real estate law, securities regulation, tax planning, corporate structuring, privacy compliance, technology implementation, and operational management.

This article outlines key legal considerations and practical steps for parties evaluating real estate tokenization opportunities in Canada.

Understanding What a Real Estate Token Represents

The first step in any real estate tokenization project is determining what the token represents from a legal and economic perspective.

A token derives its value from the rights attached to it and the legal structure through which those rights are created. Depending on the transaction design, a real estate token may represent an equity interest in an entity that owns real property, a limited partnership interest, units of a trust, an interest in debt secured by

real estate, or contractual rights to participate in income generated by a property.

In most Canadian structures, investors do not acquire direct legal title to the underlying real estate through a blockchain token. In Ontario and other Canadian provinces, legal title to real property continues to be governed by the applicable provincial land registration system. Blockchain records do not replace provincial land registries.

Instead, real estate tokenization is generally achieved through a legal entity or contractual arrangement that owns or controls the property. Investors acquire tokens representing interests in that structure or the economic rights associated with it.

For example, a corporation, limited partnership, or trust may own a commercial property. Investors may acquire tokens representing shares, partnership interests, trust units, or other economic rights associated with that ownership structure. The property itself remains owned and administered through the applicable legal framework.

This approach allows blockchain technology to enhance transparency, transfer administration, reporting, and recordkeeping while preserving the certainty of established Canadian property, corporate, partnership, trust, and securities law frameworks.

The token itself is only one component of the broader investment structure. The enforceable rights of investors arise from the governing agreements, corporate records, partnership agreement, trust document, subscription materials, disclosure documents, and applicable laws.

A well-designed tokenization structure should ensure that investors have clear and enforceable rights regardless of the technology used to record those interests. Blockchain technology should enhance the administration of those rights rather than replace the legal framework that creates them.

When Real Estate Tokenization May Make Sense

Tokenization is not necessarily appropriate for every real estate investment. Its value depends on the objectives of the property owner or manager, the nature of the asset, the investor base, the regulatory environment, and the operational requirements of the proposed structure.

Real estate tokenization may be relevant where a property owner, developer, manager, or other project sponsor, seeks to provide investors with economic exposure to a specific real estate asset, improve investor administration, create a more efficient process for managing investment interests, develop a digital investment platform, or create a structured approach for multiple investors to participate in a real estate opportunity.

Potential applications may include commercial properties, development projects, income-producing real estate portfolios, private real estate investment vehicles, and other structured real estate investments.

Tokenization may also be relevant where a project sponsor wants to modernize administrative processes. For example, blockchain-based systems may assist with investor onboarding, recordkeeping, reporting, transfer approvals, and other compliance-related functions.

However, tokenization does not automatically create liquidity, reduce investment risk, or eliminate the need for traditional legal and regulatory structures. In some circumstances, existing investment structures may already operate efficiently without the additional complexity of tokenization.

Tokenization may provide limited advantages where the investor group is small, transfers are unlikely, existing administrative processes are effective, or the costs associated with technology implementation exceed the expected benefits.

Organizations considering tokenization should therefore begin by identifying the commercial objective. The relevant question is not simply whether an asset can be tokenized, but whether tokenization creates meaningful value for the property owner, investors, and other stakeholders.

Private Offerings and Broader Investment Platforms

The legal and regulatory considerations associated with tokenization may differ significantly depending on the intended investor base and distribution model.

A tokenized real estate interest may be structured as a private investment opportunity involving a limited group of investors, or it may form part of a broader platform intended to facilitate participation by a larger investor base.

Private offerings may involve a smaller number of investors and may rely on established securities law exemptions, subject to the specific circumstances of the transaction. Broader investment platforms may involve additional considerations relating to securities regulation, investor onboarding, registration requirements, marketplace activities, technology infrastructure, and ongoing compliance obligations.



The intended scale and nature of the investor base should therefore be considered at the earliest stages of planning. A structure designed for a single private real estate investment may require very different legal and operational considerations from a platform intended to support multiple properties and investors.

Establishing the Appropriate Ownership Structure

The legal structure is the foundation of any successful real estate tokenization project.

In Canada, provincial land title systems remain the authoritative source of legal title to real property. Tokenization therefore generally does not replace existing land registration systems. Instead, Canadian real estate tokenization is typically achieved through a special-purpose vehicle or other legal structure that holds legal title to the property.

The ownership structure may involve a corporation, limited partnership, and/or trust, depending on the objectives of the transaction. Investors then acquire tokens representing interests in that structure or the economic rights associated with it.

The choice of structure can have significant implications for governance, taxation, investor rights, financing arrangements, reporting obligations, transfer restrictions, and regulatory requirements. The appropriate structure should be determined before developing the technology architecture.

The governing documents supporting the structure are critical. They should clearly establish investor rights and responsibilities, including economic entitlements, distribution rights, voting rights where applicable, investor eligibility requirements, transfer restrictions, procedures for approved transfers, treatment of inaccessible digital accounts, and mechanisms for reconciling blockchain records with official legal records.

Governance arrangements should also clearly establish the relationship between investors, the entity owning the property, the property manager or operator, and any other person responsible for decision-making. Issues such as refinancing, asset sales, major capital expenditures, and other significant decisions should be addressed through appropriate governance provisions.

The strongest tokenization structures begin by ensuring that investors have clear and enforceable rights under traditional legal frameworks. Blockchain technology should operate as an efficient administrative layer supporting those rights rather than as a substitute for the legal foundation of the investment.

A Practical Roadmap for Organizations Considering Tokenization

A properly structured tokenization project typically begins with identifying the commercial objective. Organizations should determine whether tokenization is intended to raise capital, create investment opportunities tied to specific real estate assets, improve investor administration, facilitate permitted transfers, or support a broader digital investment strategy.

Once the commercial objective has been established, the organization should determine the appropriate legal structure, define the rights represented by the token, prepare offering and governance documents, establish investor compliance procedures, select appropriate technology providers, and implement systems for custody, reporting, and ongoing administration.

Legal, tax, securities, privacy, and technology considerations should be addressed together from the outset. Developing a technology solution before establishing the legal framework may create unnecessary complexity and may result in a system that does not accurately reflect the rights intended to be provided to investors.

A tokenization project generally requires coordination among real estate counsel, securities counsel, tax advisors, technology providers, compliance professionals, cybersecurity specialists, custodians, and other service providers. Early alignment among these stakeholders can reduce execution risk and improve implementation efficiency.

Organizations should also consider whether tokenization is intended as a solution for a single asset or as part of a broader investment platform. A structure designed for one property may require different considerations from a platform intended to support multiple properties, investor groups, or future offerings.

Aligning Blockchain Records with Legal Ownership Records

One of the most important considerations in real estate tokenization is ensuring that blockchain records align with legally recognized ownership and investment records.



Blockchain technology can provide advantages, including transparent transaction histories, automated compliance functions, efficient transfer administration, and improved recordkeeping. However, legal certainty depends on the relationship between digital records and established legal registers.

For real property, the relevant authority remains the applicable provincial land title registry. For interests in an entity holding real estate, the authoritative records are generally the issuer's records and registers.

Successful tokenization structures therefore use blockchain technology as an operational layer that supports functions such as investor onboarding, transfer approvals, compliance verification, distributions, reporting, and permitted secondary transfers.

The legal documentation should establish how blockchain activity corresponds with official records and should address procedures to follow if any discrepancy arises. The objective is legal reconciliation: ensuring that the digital representation accurately reflects enforceable legal rights.

Organizations should also consider practical issues such as incorrect transfers, unauthorized transactions, lost access credentials, changes in investor information, and circumstances where a digital record does not accurately reflect the underlying legal position. Clear procedures should exist for resolving these issues while maintaining consistency between technology systems and legally recognized records.

Securities Law Considerations

Real estate tokenization frequently involves securities law considerations in Canada. Whether a particular token constitutes a security depends on the specific facts and circumstances of the transaction, including the rights attached to the token, the expectations of investors, and the economic substance of the arrangement.

Canadian securities regulators generally apply a substance-over-form approach when assessing digital assets and tokenized instruments. The use of blockchain technology does not remove the need to consider traditional securities law requirements.

A token may constitute a security where investors acquire an interest that involves an expectation of profit derived from the efforts of others. Accordingly, the analysis depends on the actual economic relationship between the parties rather than the terminology used to describe the token. Describing an instrument as a "digital asset," "membership interest," or other label does not determine its legal classification.

Where securities laws apply, issuers must consider applicable prospectus requirements, available prospectus exemptions, registration obligations, and marketplace considerations. For many private offerings, reliance on available exemptions may form part of the regulatory strategy, but the appropriate approach will depend on the structure of the offering, the characteristics of investors, and the activities being conducted.

Securities considerations may extend beyond the initial issuance of tokens. Organizations should consider the regulatory implications of investor transfers, secondary trading arrangements, custody solutions, marketing activities, investor communications, and any platform used to facilitate transactions.

Ongoing disclosure and reporting obligations should also be considered. Depending on the structure, investors may require information regarding property performance, financial results, material developments, changes to the investment structure, and other matters relevant to their investment decisions.

Investor protection remains central to the design of any tokenized offering. Clear disclosure documents, appropriate governance mechanisms, transparent reporting, effective compliance procedures, and reliable administration systems are essential to establishing investor confidence.

Tax and Cross-Border Considerations

Real estate tokenization may raise important tax considerations. The tax treatment will depend significantly on the legal structure selected and the rights represented by the token.

Depending on the arrangement, issues may arise regarding income distributions, capital gains, partnership or trust taxation, indirect taxes, financing arrangements, and participation by non-resident investors.

For example, a token representing an interest in a corporation may have different tax consequences from a token representing a partnership interest, trust unit, debt instrument, or contractual right.

Cross-border participation may introduce additional considerations, including withholding taxes, foreign investor restrictions, reporting obligations, and potential tax implications in other jurisdictions.



Tax planning should therefore be considered alongside legal structuring and securities compliance. Early consideration of tax implications can help organizations avoid restructuring challenges after implementation.

Financing and Lender Considerations

Organizations considering tokenization should also evaluate how the proposed structure interacts with existing financing arrangements.

Mortgage lenders, secured creditors, and other stakeholders may require review of consent rights, transfer restrictions, security arrangements, reporting obligations, and other contractual requirements before a tokenized structure is implemented.

Financing documents may restrict transfers of ownership interests, changes in control, or the admission of new investors. A tokenization structure that permits transfers without appropriate controls could create issues under existing lending arrangements.

Early engagement with financing stakeholders can help identify potential issues and ensure that the tokenization structure remains compatible with existing lending arrangements and commercial objectives.

Designing the Token and Smart Contract Architecture

Automated blockchain-based systems, often referred to as smart contracts, can assist in administering rights and restrictions established in the underlying legal documents.

Depending on the structure, these systems may facilitate investor eligibility verification, transfer restrictions, ownership tracking, distribution calculations, reporting functions, and other compliance-related processes.

However, smart contracts should not be viewed as replacements for legal agreements. The rights and obligations of investors should first be established through the relevant legal documentation, including subscription agreements, shareholder agreements, partnership agreements, trust documents, offering materials, and governance arrangements.

Technology should then be designed to accurately reflect and administer those rights.

Organizations should carefully consider how smart contract functionality interacts with real-world legal requirements. A blockchain system may technically permit an automatic transfer of a token, but the legal documents may require investor eligibility verification, regulatory compliance checks, approvals, or other conditions before that transfer is valid.

Distribution calculations and administrative processes may be automated or assisted by technology, but they remain subject to applicable legal, tax, financing, and commercial requirements.

The most effective structures are those where legal documentation and technology architecture are developed together from the beginning. A well-designed system should provide operational efficiency while maintaining consistency with applicable Canadian property, corporate, securities, privacy, and contractual frameworks.

Privacy, Compliance, and Operational Considerations

Real estate tokenization introduces operational considerations that extend beyond the initial issuance of tokens.

Organizations must consider investor onboarding procedures, know-your-client requirements, anti-money laundering compliance, sanctions screening, recordkeeping obligations, cybersecurity measures, and ongoing investor communications.

These requirements remain important regardless of whether investment interests are represented through traditional records or blockchain-based systems.

Privacy considerations are also increasingly important. Blockchain systems may create persistent transaction records, and organizations must carefully evaluate how investor information is collected, stored, accessed, and disclosed.

Personal information should be managed in accordance with applicable privacy requirements and the intended functionality of the technology platform.

Organizations should carefully consider whether personal information is recorded directly on a blockchain, stored through related systems, or managed through traditional databases linked to the blockchain infrastructure.



A successful tokenization structure therefore requires not only a technology solution but also a sustainable operational model capable of supporting investor administration over the life of the investment.

Valuation, Reporting, and Investor Considerations

Real estate tokenization structures should carefully consider how investment interests are valued and reported.

Unlike publicly traded securities, private real estate interests generally do not have continuous market pricing. The value of a tokenized real estate interest may depend on factors such as the value of the underlying property, income generated by the asset, financing arrangements, market conditions, and the methodology used to determine value.

Governance documents should address valuation processes, appraisal requirements, reporting frequency, and the methodology used for investor communications and potential transfers. Clear valuation procedures can help manage expectations and provide investors with transparency regarding the performance of their investment.

Organizations should also consider the information investors will receive throughout the life of the investment. Depending on the structure, investors may expect information regarding property performance, financial statements, distributions, material changes, refinancing activities, changes in management, and other developments affecting the investment.

Investors considering tokenized real estate opportunities should evaluate not only the technology platform but also the underlying real estate asset, ownership structure, governance rights, financial information, regulatory compliance, and the experience of the parties responsible for managing the investment.

The technology supporting a tokenized investment should be considered one component of the investment analysis. The quality of the underlying asset and the legal rights attached to the investment remain fundamental considerations.

Custody, Platforms, and Secondary Trading

Tokenization requires an ecosystem that extends beyond the initial creation of tokens. Organizations must consider digital asset custody, investor management systems, transfer administration, cybersecurity controls, reporting obligations, and ongoing operational processes.

Digital asset custody arrangements should address the safeguarding of investor interests, security procedures, access controls, segregation of holdings where appropriate, and operational risks. These considerations become increasingly important as digital securities infrastructure develops and institutional participation expands.

If secondary trading is contemplated, additional regulatory considerations may arise. A platform facilitating transactions involving tokenized securities may be subject to applicable marketplace, dealer, registration, or other regulatory requirements depending on its activities and structure.

Organizations should carefully evaluate the intended purpose and feasibility of any secondary trading mechanism. Creating a system that allows tokens to be transferred does not necessarily create an active market. Meaningful trading activity depends on several factors, including investor demand, regulatory clarity, market infrastructure, transaction costs, and the attractiveness of the underlying investment.

Any transfer mechanism should also incorporate appropriate restrictions and compliance controls. Transfers may need to be limited based on investor eligibility requirements, contractual restrictions, regulatory obligations, financing arrangements, or other considerations.

Exit Strategies and Long-Term Planning

Organizations considering tokenization should consider the full lifecycle of the investment structure, including the eventual exit strategy.

A tokenized structure may require planning for events such as the sale of the underlying property, refinancing, investor redemption mechanisms, restructuring, transfers of management responsibility, or the eventual winding up of the investment vehicle.

The governance documents should address how significant decisions are made, including decisions regarding asset sales, refinancing, major capital expenditures, and other matters affecting investors.



Tokenization should therefore be viewed as part of a broader investment structure rather than as a standalone issuance event. The long-term administration, governance, and eventual conclusion of the investment should be considered at the time the structure is created.

Managing Expectations About Liquidity

One of the most common misconceptions about tokenization is that creating a digital representation of a real estate interest automatically creates liquidity.

Tokenization may improve accessibility, transparency, administrative efficiency, and transfer processes, but it does not guarantee that buyers and sellers will participate in a market.

Meaningful liquidity depends on a number of factors, including investor demand, regulatory certainty, custody arrangements, market infrastructure, valuation processes, transaction costs, and the characteristics of the underlying real estate asset.

Real estate has historically been considered an illiquid asset class because of its size, transaction costs, valuation complexity, financing considerations, and limited transferability. Tokenization may reduce certain administrative barriers, but it does not eliminate the fundamental characteristics of real estate markets.

Organizations should therefore view tokenization as a tool to modernize investment structures, improve administration, and potentially expand participation, rather than as a standalone solution for liquidity.

Conclusion

Real estate tokenization has the potential to introduce new approaches to how real estate investments are structured, accessed, and administered in Canada.

For property owners, developers, managers, and technology companies, tokenization may create opportunities to improve investment administration, develop new investment structures, and provide investors with more efficient methods of participating in real estate opportunities.

However, tokenization is not simply a technology project. It is a legal and commercial restructuring exercise supported by technology.

The strongest tokenization models begin with clearly defined ownership structures, enforceable investor rights, appropriate governance arrangements, regulatory compliance, tax planning, and sustainable operational systems. Blockchain technology can enhance a well-designed investment structure, but it does not replace the legal framework that creates and protects investor rights.

Organizations considering whether tokenization is appropriate for a particular real estate asset should begin with an assessment of their commercial objectives, ownership structure, regulatory requirements, financing arrangements, technology needs, and long-term plans before selecting a technology solution.

Legal counsel can assist organizations in evaluating whether tokenization is appropriate, designing the ownership and governance structure, preparing transaction documentation, addressing securities and regulatory requirements, coordinating with tax and technology advisors, and implementing systems that align digital infrastructure with enforceable legal rights.

For Canadian real estate owners, developers, investors, and managers, early legal and strategic planning is essential to building a tokenization structure that is commercially attractive, technologically effective, and legally enforceable. A PDF version is available for download [here](#).

If you are interested in learning more about Gardiner Roberts LLP and its ability to assist you with navigating the evolving regulatory framework concerning the tokenization of real-world assets, including real estate, or other capital markets initiatives, including corporate financings, corporate governance or any other securities law matters, please contact the authors.

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