

DILENDORF
KHURDAYAN



BLOCKCHAIN PRACTICE GROUP

Real Estate Tokenization

Advantages, challenges and the process
of tokenizing real estate

DILENDORF KHURDAYAN

Dilendorf & Khurdayan is a New York-based law firm specializing in issuing, marketing and re-selling digital tokens in the US, tokenizing assets (real estate, equity, fund interests, etc.), structuring private funds and operating blockchain projects. Among our clients - blockchain startups and established FinTech firms, funds, family offices, real estate owners and operators, art collectors and high net worth individuals.

[DILENDORF.COM](https://dilendorf.com)

SECURITIZE

Securitize is a compliance platform for issuing and managing digital securities on the blockchain, including dividends, distributions, and share buy-backs. Securitize's innovative Digital Securities Protocol (DS Protocol) enables seamless, fully compliant trading across multiple markets simultaneously. Securitize actively partners with exchanges, broker-dealers, custodians of crypto, escrow services, and other financial infrastructure for digital securities.

[SECURITIZE.IO](https://securitize.io)

TOPICS

- **Why** tokenize real estate?
- **Key considerations** of a real estate tokenization strategy
- **How** to tokenize a real estate project: **practical steps & cases**

TOPICS

- ① **Why tokenize real estate?**
- ② **Key considerations of a real estate tokenization strategy**
- ③ **How to tokenize a real estate project: practical steps & cases**

REAL ESTATE TOKENIZATION

- Process of creating a digital asset (token) to represent ownership of an interest in real estate, either directly or indirectly
- Real estate tokenization will involve forming a type of digital security and digital security offering (DSO)

REAL ESTATE & DSOs

- ① **DSO** is a new method of financing real estate projects, key legal component of tokenization
- ① **DSO** is an offering of digital securities implemented on a blockchain in compliance with US securities laws and regulations

WHY TOKENIZE REAL ESTATE?

LIQUIDITY, MANAGEMENT & CONTROL

- **Access to capital** on a global scale
- **Fractionalization** of ownership
- **Access to assets** with traditionally high barriers to entry
- **Retention of control** over management decisions
- **Reduction of operating costs**
- **Simplified** investor communications and management
- Assets **attractive** to both traditional and crypto investors

TYPES OF TOKENIZED R/E INTEREST

- Ownership of an underlying real **asset**
- Equity** interest in a legal entity that owns a real asset
- Interest in a **debt** secured by a real asset
- Right to share in **profits** arising from use of a real asset

COMMON TOKENIZATION STRUCTURES

Currently, several models of real estate tokenization exist, such as:

- Ownership of LP interests in real estate funds
- Tokenized REITs
- Ownership of real estate through a special-purpose vehicle/entity (SPV/SPE)
- Investments in and loans to development projects
- Timeshares

TOPICS

- Why tokenize real estate?
- **Key considerations** of a real estate tokenization strategy
- How to tokenize a real estate project: practical steps & cases

KEY CONSIDERATIONS: REGULATIONS

○ U.S. Securities Regulations

Registered vs. exempt offering

Accreditation

Secondary trading compliance and cap table restrictions

Necessary disclosures

○ Anti-Money Laundering Regulations

KYC/AML checks

○ Broker-dealer Regulations

Marketing, advisors, finders & team compensation

○ Global Securities Regulations

SALE OF DIGITAL SECURITIES IN THE US

- **General Rule:** You must register a security with the SEC before you can offer or sell it.
 - Consequence of selling unregistered securities: **Strict liability.**
- **However:** Even if a token is a security, it may qualify for **an exemption from registration.**
 - As a practical matter, there is usually no need to register because you can almost always structure a DSO to qualify for an exemption.

MOST COMMONLY USED EXEMPTIONS:

- 506(c) under Regulation D
- Regulation S

REGULATION D – 506(c)

- **Overview of Reg. D - Rule 506(c)**
 - No restrictions on advertising—**general solicitation** is permitted
 - **No prospectus required** (although issuers generally release a PPM)
 - Issuers can raise an **unlimited amount of funds**
 - **No financial reporting requirements** for the issuer
 - State securities laws are **pre-empted** (no need to seek registration or exemption on a state level)
 - Only **accredited investors** may participate in the sale
 - Purchasers **cannot transfer their securities for one year** (subject to certain exceptions)
 - **Form D must be filed** with the SEC 15 days after the first sale

REGULATION S

Overview

- Rule 901 says that “offers and sales that **occur outside the United States**” don’t have to be registered.

BEWARE: The SEC has never clearly explained when an offer and sale occur outside the United States, so you shouldn’t rely on Rule 901 alone.

- Fortunately, Rule 903 provides a **safe harbor**—if an offer and sale satisfy the following requirements, they are deemed to occur outside the United States:
 - Offer and sale made in an **offshore transaction**;
 - No **directed selling efforts** are made in the United States; and
 - **Certain other requirements** described in 903(b) are satisfied.

CONCURRENT REGULATION D + S

- Token issuers can structure a **concurrent offering under Regulation D** (U.S. investors) **and Regulation S** (non-U.S. investors).
- Advantage:** Non-U.S. investors under Regulation S do not have to undergo the same accreditation process as U.S. investors under Regulation D.
 - If you don't use Regulation S for non-U.S. investors, **you must accredit all your investors** under Regulation D—not just U.S. investors.
- Advantage:** Non-U.S. investors who are not **distributors or affiliates** of the issuer or its distributors can either **resell** to other non-U.S. investors **subject to lower holding requirements** (depending on the category of Regulation S securities and issuer's status and operations).

KEY CONSIDERATIONS: PLATFORM

- Securities law compliance measures must be discussed with experienced attorneys and implemented in life – usually by a tokenization platform.
- All of the key tokenization practices must be maintained by a chosen tokenization platform, including:
 - KYC/AML/Accreditation process
 - Token issuance with a compliance protocol
 - Maintaining cap table
 - Secondary trading integration
 - Reporting and investor management

SECURITIZE PLATFORM

Securitize offers an end to end tokenization services that includes:

- Integration with several fiat escrow providers and crypto custodians
- KYC/AML/Accreditation process supporting over 40+ jurisdictions
- Investors Management and support through all process with multiple reports options
- Document viewing and document signature integration for subscription agreements
- Individual secure wallets for crypto investors
- Security token issuance using Securitize's Digital Securities compliance protocol
- Smart contract creation supporting multiple securities models
- Integration with multiple marketplaces for secondary market liquidity
- Post issuance services and lifecycle management

SECURITIZE liquidity options

- Securitize has agreements to support its Digital Securities compliance protocol to provide liquidity to its tokens with the following security token marketplaces:

 SHARESPOST

 BNK TO THE FUTURE.COM[®]



AIRSWAP



Blocktrade.com



SLICE



HYPERION

ADDITIONAL CONSIDERATIONS

- 🕒 Asset type
- 🕒 Current corporate structure
- 🕒 Type of interest to be tokenized
- 🕒 Multijurisdictional (multi-regimen) treatment of tokens
- 🕒 US and global tax compliance
- 🕒 Location (real estate situs)
- 🕒 Tokenization ratio
- 🕒 Mortgage

TOPICS

- Why tokenize real estate?
- Key considerations of a real estate tokenization strategy
- **How to tokenize a real estate project: practical steps & cases**

STAGE 1: PREPARATION

🕒 What's involved? At a minimum:

- Determination and implementation of the corporate structure, offering structure & token features
- Valuation and Financials
- Preparation of a private placement memorandum, token purchase agreement/subscription agreement & necessary questionnaires
- Contracting with providers (tokenization platform, etc.)
- Whitelisting (advance AML/KYC/investor accreditation)
- Compliance with marketing restrictions

🕒 How long does it take? 4-8 weeks (excluding marketing)

OFFERING TERMS AND DISCLOSURES

- Company overview, projections, financials and risks
- Rights attached to a token (e.g., common/preferred equity, distributions, profit-sharing, management/voting rights)
- Buyback / redemption rights
- Transfer restrictions
- Token price/soft cap/hard cap
- Accepted currencies and conversion rates
- Use of proceeds
- Management team

STAGE 2: TOKEN SALE

- ① KYC/AML/Accreditation
- ① Implementing sales/returns/burns/ transfer restrictions on smart contracts
- ① Collection and custody of crypto/fiat
- ① Issuance of tokens (compliant with regulations)

STAGE 3: LIFE CYCLE

- Communications with investors
 - Informing about material changes
 - Periodic reporting
 - Announcing dividends, buyback programs, etc.
- Cap table management
 - 2,000 shareholder rule (debt vs. equity)
- Secondary trading & anti-flowback

OVERVIEW OF DSO PROCESS (REG D+S)

Pre-DSO

- Corporate structure
- Structuring the offering
- Structuring the token
- Preparation of the offering documents
- Marketing

Token Sale/DSO

- Direct or via a platform
- KYC/AML/Accreditation
- Implementing sales/returns/burns/transfer restrictions on smart contracts
- Collection and custody of crypto/fiat funds
- Issuance of tokens to qualified investors

Post-DSO

- Communications with investors
- Cap table management
- Secondary trading & anti-flowback measures

USE CASE 1: THE ST. REGIS ASPEN RESORT



Source: Google

USE CASE 1:

THE ST. REGIS ASPEN RESORT

- Reg D – Rule 506(c)
- DSO financing: up to \$18,000,000
- Tokens represent 18.9% indirect ownership in the St. Regis Aspen Resort through ownership in the corporation (to be qualified as REIT) that acts as the GP and LP in the operating partnership that owns the asset – St. Regis Resort
- Tokens represent common shares in REIT with voting rights (tokenized common equity)
- Fund raising done, compliance protocol to be used for the tokens to be announced shortly

USE CASE 2: U.S. REAL ESTATE FUND



Source: resolute.fund

USE CASE 2:

U.S. REAL ESTATE FUND

- Resolute.Fund is a diversified U.S. real estate fund, managed by experienced professionals, with digital shares.
- Resolute.Fund will issue digital securities to investors and will invest in a diversified portfolio of multi-family properties and distressed mortgage debt across the U.S.
- Experience team lead by Ruben Azrak and Andy Strott with 30 years average experience and more than 100 properties across the U.S. invested with a value of more than \$1 billion.
- The RESOLUTE digital security aims to pay regular dividends to investors, which are earned from the fund's real estate investments. Upon exits from investments, capital will be reinvested into additional real estate investments.
- Target fund size is \$100 million, currently fund raising.

SUMMARY

- **Why** tokenize real estate?
- **Key considerations** of a real estate tokenization strategy
- **How** to tokenize a real estate project: practical steps & cases

DISCLAIMER

This presentation outline and the presentation itself are for *general* educational purposes only and are not intended to provide *specific* guidance or legal advice about what to do or not to do in any particular case. You should not rely on this general information and should seek the assistance of an attorney to help you resolve any issues.

Thank you.

THANK YOU!



Rika Khurdayan, Esq.
rk@dilendorf.com

Dilendorf Khurdayan
Partner



Carlos Domingo
carlos@securitize.io

Securitize
CEO/Co-Founder



Max Dilendorf, Esq.
md@dilendorf.com

Dilendorf Khurdayan
Partner