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The First Real Estate Token Directory

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Real Estate Tokens and Ownership: What Investors Actually Acquire

Why an on-chain transfer is not automatically a land-register transfer - and when MiCAR, securities law, company law or investment-fund rules may govern the structure.

SCOPE
European Union regulatory law and Austrian private law, with selected legislation and decisions of the Austrian Supreme Court. Legal position considered as of 21 June 2026.

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THE CENTRAL MISCONCEPTION

A token can represent a right without being the right itself

Tokenization is often described as turning a building into digital fractions. Technically, however, the blockchain stores and transfers a digital representation. MiCAR defines a crypto-asset as a digital representation of a value or right that can be transferred and stored electronically using distributed-ledger technology or similar technology.[1]

That definition deliberately leaves the decisive private-law question open: *what value or right does the token actually represent?* A real estate token may be linked to direct co-ownership, a share in a property company, a loan claim, a right to rental distributions, a fund interest or merely a contractual access right. The token's legal effect therefore follows from the underlying legal design, not from the token label alone.[2]

KEY TAKEAWAY

The transfer of a real estate token to a wallet changes the on-chain allocation of that token. It transfers the building, a company share or a payment claim only where the applicable law and the project documentation make that additional legal transfer effective.

1. The three-layer model

A sound legal analysis separates three layers that marketing language frequently merges:

1. **The token layer**: the blockchain entry, token standard, wallet address and smart-contract logic.
2. **The rights layer**: the enforceable legal position attached to the token - for example, ownership, membership, debt, revenue participation or access.
3. **The asset layer**: the underlying building, land, shares, receivables or portfolio to which the rights refer.

The layers can be tightly connected, but they are not automatically identical. A smart contract can block transfers to unverified wallets, calculate distributions or record votes. It cannot, by code alone, disapply mandatory land-registration, corporate-form or investor-protection rules.

Structure	What the investor may acquire	What is not automatic
Direct co-ownership	An ideal share in the real estate, if all property-law requirements are fulfilled	Ownership merely because the token moved on-chain
SPV equity	A share or membership interest in the entity that owns the property	Direct title to the building
Debt or revenue token	A claim for interest, repayment, rent-linked distributions or sale proceeds	Corporate membership or land ownership
Fund or collective structure	An interest in a collectively managed investment vehicle	Control over a specific apartment or building
Utility or access token	Booking, access, discount or service rights	An investment or ownership position unless separately granted

1 Regulation (EU) 2023/1114 on markets in crypto-assets (MiCAR), Art 3(1)(5), official English text on EUR-Lex.

2 See, in the Austrian literature, Völkel in Piska/Völkel (eds), *Blockchain rules*[2] (2024), paras 3.84 ff and 3.100 ff; Pillinger, ibid., paras 4.17-4.53; Blocher in Kellner/Oppitz/Riss, *Bankvertragsrecht*, Part VIII, ch 1, paras 1/107 ff. These authorities are also reflected in the source material supplied for this article.

2. Why a blockchain transfer does not replace the land register

Under Austrian property law, derivative ownership of real estate generally requires both a valid legal title and the legally prescribed mode of acquisition. Sections 425 and 431 of the Austrian Civil Code (ABGB), read together with section 4 of the General Land Register Act (GBG), make registration in the land register the decisive mode for the acquisition or transfer of registered rights in land.[3]

The Austrian Supreme Court stated the point clearly in *5 Ob 91/13p*: for a derivative acquisition of land, neither the contract plus factual possession nor registration without a valid title is sufficient on its own; both title and registration are required.[4]

PRACTICAL CONSEQUENCE

A wallet-to-wallet transfer can be the technical event that triggers a closing workflow. It can also provide evidence that the parties intended a transfer. But unless the legally required land-register act takes place, the on-chain event alone does not normally make the buyer the registered owner of Austrian real estate.

A project promising *direct property ownership* must therefore explain whose name appears in the land register, how each transfer is reflected there, who bears notarial and registration costs, and what happens if the token ledger and the land register diverge. Without a legally robust reconciliation mechanism, the token may be tradable while the underlying title remains where it was.

3. The SPV model: owning the company is not owning the building

Most scalable real estate token structures avoid registering hundreds or thousands of investors as co-owners. Instead, a special-purpose vehicle (SPV) owns the property. The token then refers to a legal position in or against that SPV.

This distinction matters. The SPV owns the land; the token holder may own a share in the SPV or hold only a contractual claim against it. The economic exposure may resemble fractional property ownership, yet the legal position can be very different in relation to voting, information rights, costs, distributions, enforcement and insolvency.

A useful reading order is therefore:

- the land-register extract and the identity of the registered owner;
- the articles of association and shareholder register;
- the token terms, subscription agreement and smart-contract specification;
- distribution, reserve, valuation and property-management rules;
- transfer restrictions, whitelisting and secondary-market arrangements;
- security, segregation and insolvency provisions.

A conventional Austrian GmbH share requires more than a token transfer

Where the token is intended to represent a conventional share in an Austrian limited liability company (GmbH), section 76(2) GmbHG requires a notarial deed for an inter vivos transfer and for an agreement obliging a shareholder to transfer a share in the future.[5]

The Supreme Court's settled case law applies the notarial-form requirement to both the obligation and the disposition transaction.[6]

[3] ABGB sections 425 and 431, RIS section 425 and RIS section 431; GBG section 4, RIS official text.
[4] Austrian Supreme Court (OGH) 6 June 2013, 5 Ob 91/13p, RIS decision and legal propositions. See also OGH 30 July 2015, 8 Ob 71/15x, confirming that land-register entry is the acquisition mode under section 431 ABGB and section 4 GBG.
[5] Austrian GmbH Act, section 76(2), official consolidated text on RIS. Other corporate forms and specially regulated participation instruments may follow different transfer rules.
[6] OGH 17 December 2020, 6 Ob 240/20t, RIS; see also OGH 6 March 2014, 1 Ob 14/14m, RIS.

In *6 Ob 66/23h*, the Court further held that even the transfer of the beneficial position behind a trust-held GmbH share falls within section 76(2)'s form requirement.[7]

The implication for token design is straightforward: the project must identify the legally effective corporate transfer act and show how it is coordinated with the blockchain event. Calling the token an "equity token" does not remove the statutory form requirement.

4. MiCAR is not the default answer for every real estate token

MiCAR is a major part of the EU framework, but it is not a universal legal wrapper. Article 2(4)(a) expressly excludes crypto-assets that qualify as financial instruments.[8]

ESMA's 2025 guidelines require a technology-neutral, substance-over-form assessment. A token does not cease to be a financial instrument because it is issued on a blockchain, and an issuer cannot determine the regime merely by choosing labels such as "utility", "property" or "NFT".[9]

Indicators that may point toward a transferable-security analysis include:

- participation in company capital;
- voting, dividend or liquidation rights;
- a repayment obligation with fixed or variable remuneration;
- standardisation into interchangeable units;
- negotiability or intended trading on a capital market.

If the token is a financial instrument, the relevant framework may include MiFID II, national investment-services law and, for an offer to the public or admission to trading, the Prospectus Regulation - subject to the applicable exemptions and thresholds.[10]

CLASSIFICATION SEQUENCE

First: identify the investor's legal rights. **Second:** test whether those rights constitute a financial instrument or fund interest. **Third:** only then determine whether MiCAR applies and which MiCAR title, disclosure or service-provider rules are relevant.

Where MiCAR does apply to an offer of a crypto-asset other than an asset-referenced token or e-money token, Title II can require a crypto-asset white paper and impose rules on marketing communications, liability and the offer process, subject to statutory exemptions.[11]

5. The NFT label does not create an automatic safe harbour

A real estate token may be marketed as a non-fungible token because it refers to one identified property. MiCAR excludes crypto-assets that are unique and not fungible with other crypto-assets, but the exclusion is narrower than the marketing term "NFT" suggests.

Recitals 10 and 11 explain that fractional parts of a unique crypto-asset should not be treated as unique and non-fungible; issuance in a large series or collection can indicate fungibility; and a unique identifier is not sufficient by itself. The represented assets or rights must also be unique and non-fungible.[12]

Consider 100,000 economically identical tokens, each carrying 0.001 per cent of the net rental income and sale

7 OGH 21 February 2024, 6 Ob 66/23h, legal proposition RS0134718, RIS.
8 MiCAR Art 2(4)(a), official text.
9 ESMA, *Guidelines on the conditions and criteria for the qualification of crypto-assets as financial instruments*, ESMA75453128700-1323, published 19 March 2025, especially paras 11-18 and Guidelines 1-2, official PDF.
10 Directive 2014/65/EU (MiFID II), Art 4(1)(44), official text; Regulation (EU) 2017/1129 (Prospectus Regulation), in particular Art 3 and the exemptions in Art 1, consolidated text as of 5 June 2026.
11 MiCAR Arts 4-15 and Annex I. A MiCAR white paper is not a prospectus and does not replace any prospectus required under securities law; see MiCAR Art 6(3)(d).
12 MiCAR Art 2(3) and recitals 10-11, official text; ESMA Guidelines ESMA75453128700-1323, paras 61-73.

proceeds of one building. The building is unique, but the investor units are standardised and interchangeable. The project's use of individual token IDs does not settle the regulatory classification.

Even a genuinely unique token may still qualify as a financial instrument if its legal and economic characteristics meet the relevant test. The correct question is therefore not "Is this token called an NFT?" but "What rights are represented, and how are those rights structured and traded?"

6. Could the structure be an alternative investment fund?

Real estate token projects often pool money from multiple investors, purchase or manage property and distribute a pooled return. That fact pattern requires a separate AIF analysis.

Under Article 4(1)(a) of the Alternative Investment Fund Managers Directive (AIFMD), an AIF is a collective investment undertaking that raises capital from a number of investors to invest it according to a defined investment policy for their benefit and that is not a UCITS.[13]

Not every property company or SPV is an AIF. ESMA's key-concepts guidelines require all elements of the definition to be present and distinguish collective investment from an undertaking with a general commercial or industrial purpose. Relevant indicators include pooled capital, a pooled return, the absence of day-to-day investor control and a defined investment policy.[14]

The assessment is again functional. Placing the investment logic in a smart contract or issuing tokens instead of paper certificates does not eliminate the fund-law question.

7. Worked example: the tokenized Vienna apartment company

Assume an Austrian SPV owns an apartment building in Vienna. It issues 50,000 tokens. Each token provides:

- a pro rata claim to annual net rental distributions;
- a pro rata claim to the net sale proceeds at exit;
- no land-register entry for the token holder;
- no voting right in the SPV;
- no notarial transfer of a GmbH share.

The investor is not, on those facts alone, a co-owner of the building. The more plausible starting point is a contractual or security-like claim against the issuer or SPV. The exact classification then depends on the enforceable terms, transferability, standardisation, maturity, risk allocation and governance.

Now change one fact: the token is intended to transfer a conventional GmbH share. The project must address section 76(2) GmbHG and the notarial transfer process. Change another fact: each investor is entered in the land register as a co-owner. The land-register process becomes central. Change the structure again so that investor capital is pooled under a defined property-investment policy without day-to-day investor control. An AIF analysis becomes necessary.

The economic slogan - "fractional ownership of real estate" - may remain the same across all three versions. The legal outcome does not.

8. Investor due diligence: ten questions that reveal the legal structure

1. **Who is the registered owner?** Obtain the land-register extract or equivalent official record.
2. **What exact right does the token carry?** Ownership, equity, debt, profit participation, fund interest or access?
3. **Against whom is the right enforceable?** The property owner, issuer, SPV, trustee, platform or another entity?

[13] Directive 2011/61/EU (AIFMD), Art 4(1)(a), official text.
[14] ESMA, *Guidelines on key concepts of the AIFMD*, ESMA/2013/611, especially paras 4-5 and 12-19, official PDF.

4. **What legal act transfers the right?** Is the blockchain transaction sufficient, or is registration, assignment, notarisation or an update to a corporate register also required?
5. **What happens if the blockchain and off-chain records conflict?** Which record controls and who must correct the mismatch?
6. **How are distributions calculated?** Check management fees, reserves, maintenance, taxes, leverage and related-party payments.
7. **What rights exist in insolvency?** Is the investor asserting ownership, a security right, segregation or only an unsecured contractual claim?
8. **Which regulatory regime applies?** MiCAR, MiFID II, prospectus law, AIFMD/national fund law or another regime?
9. **Are transfers actually possible?** Review whitelisting, KYC, lock-ups, securities restrictions, platform dependency and market liquidity.
10. **Which law and courts apply?** The issuer's seat, property location, investor residence and contractual governing law may all differ.

Conclusion

Tokenization can make real estate interests easier to administer, divide and transfer. It can automate distributions, improve audit trails and reduce settlement friction. But it does not abolish the legal rules that create, transfer and protect property rights.

A real estate token is therefore not automatically a digital land-register entry. It is a digital representation whose legal value depends on the enforceable rights connected to it. Investors and issuers should ask one question before all others:

> **What legally enforceable position moves when the token moves?**

A project that can answer that question precisely - and show how the answer survives transfer, insolvency and regulatory scrutiny - has moved beyond token marketing and toward legally credible tokenization.

Selected primary authorities

- Regulation (EU) 2023/1114 on markets in crypto-assets (MiCAR), especially Arts 2-3 and 4-15 and recitals 10-11.
- ESMA, Guidelines on qualification of crypto-assets as financial instruments, ESMA75453128700-1323 (19 March 2025).
- Austrian Civil Code (ABGB), sections 425 and 431; General Land Register Act (GBG), section 4.
- OGH 6 June 2013, 5 Ob 91/13p; OGH 30 July 2015, 8 Ob 71/15x.
- Austrian GmbH Act, section 76(2); OGH 17 December 2020, 6 Ob 240/20t; OGH 21 February 2024, 6 Ob 66/23h.
- Directive 2014/65/EU (MiFID II) and Regulation (EU) 2017/1129 (Prospectus Regulation).
- Directive 2011/61/EU (AIFMD) and ESMA Guidelines on key concepts of the AIFMD, ESMA/2013/611.

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Explore tokenized real estate. Understand the structure behind the token.