

**WHY SECURITIES LAW, RATHER THAN REAL PROPERTY
LAW, SHOULD GOVERN REAL ESTATE-BACKED CRYPTOS**

John M. Beaman *

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*Mr. Beaman is a J.D. candidate at Texas A&M University School of Law, where he serves on the *Journal of Property Law*. He holds an M.B.A. from Liberty University and previously served as Chairman of the Board for the Royse City Chamber of Commerce and as a City Councilmember in Heath, Texas. His professional experience includes a background in private equity and various legal internships. Mr. Beaman's article, *Why Securities Law, Rather Than Real Property Law, Should Govern Real Estate-Backed Cryptos*, examines the emerging intersection of blockchain and property law. It argues that applying securities law to real estate-backed cryptocurrencies better promotes regulatory coherence and market stability, and it urges legislators and regulators to develop a unified framework for this new class of digital assets.

ABSTRACT

Currently, it is unclear which area of law applies to real estate-backed cryptocurrencies: real property law or securities law. Depending on which area of law applies, various effects will follow that impact the crypto industry, including property tax administration, virtual real estate rights, digital rights, and regulation. Until legislators or regulators, or possibly both, decide otherwise, it is most advantageous to apply securities law, because regulatory frameworks and infrastructure exist. Surprisingly, very little research has been conducted in this area, especially relating to regulation administration. This paper calls for further research into the specific industry of real estate-backed cryptos and encourages legislators and regulators in the federal government to assert regulatory dominion over this sector to promote cohesiveness, consistency, and efficiency. This paper raises four specific areas that demonstrate why federal legislators or regulators should apply securities law: (1) property tax administration, (2) virtual real estate rights, (3) digital rights, and (4) regulation.

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I. INTRODUCTION

[1] Cryptocurrencies (“cryptos”) bring new, relevant, and exciting technologies to a variety of industries and areas of law.¹ However, it is imperative that the right laws apply. In the context of real estate-backed cryptos, courts should apply securities law rather than property law because serious issues arise when applying property law, including but not limited to, local property tax administration, virtual real estate rights, digital rights, and regulations. As with the vast majority of innovations, there is often underdeveloped law. One underdeveloped area of law is the relationship between cryptos and real property. More specifically, cryptos backed by real property highlight an area of law that requires additional research.

[2] Most cryptos derive value from a source other than real property, and the courts have considered such cryptos as security-based swap products.² The federal government has yet to establish, through the Internal Revenue Service (IRS), the Securities and Exchange Commission (SEC), or Congress,³ clear guidelines and regulations for cryptos, especially real estate-backed cryptos. At the time of this publication, the federal government has been disappointingly vague regarding real estate-backed cryptos, specifically. Until these guidelines are established, it is distinctly possible that the courts could treat cryptos as assets other than securities.⁴ Crypto experiments suggest that real estate-backed cryptos are beginning to be treated under real property law, under the idea that such crypto is actually fractional ownership in the real property

¹ See generally William J. Magnuson, *Regulating Fintech*, 71 VAND. L. REV. 1167 (2018).

² See Sec. & Exch. Comm'n v. Terraform Labs Pte. Ltd., 684 F. Supp. 3d 170, 192 (S.D.N.Y. 2023).

³ See William J. Magnuson, *Financial Regulation in the Bitcoin Era*, 23 STAN. J.L. BUS. & FIN. 159, 193–94 (2018).

⁴ Jacob G. Stanley, *A Disruptive Ripple in the SEC's Regulation of Crypto Assets*, 28 N.C. BANKING INST. 467, 470–71 (2024).

upon which the crypto is based.⁵ Although applying real property law may look and sound appealing at first, a deeper analysis reveals that applying real property law to real estate-backed crypto causes significant problems and highlights areas the law simply does not address, especially regarding property tax administration, virtual real estate rights, digital rights, and regulations pertaining to the real property backing the crypto.

[3] This article discusses cryptos, the use of cryptos, the backing of cryptos, and the relationship between cryptos and real property law and securities law. Subsequently, this article analyzes challenges that arise when applying real property law to real estate-backed cryptos, challenges pertaining to property tax administration, virtual real estate rights, digital rights, and regulations, specifically. Finally, this article concludes by recommending that legal scholars and experts continue to research this new and emerging niche market, and that securities law, rather than real property law, should apply to real estate-backed crypto unless and until federal legislators or regulators expressly provide otherwise.

II. CRYPTOCURRENCIES BACKED BY REAL PROPERTY

[4] Cryptocurrencies are a digital form of currency which rely on cryptography and operate independently of a central bank.⁶ Cryptos have a

⁵ See Lindsay Sain Jones, *Beyond the Hype: A Practical Approach to CryptoReg*, 25 VA. J.L. & TECH. 175 (2022); *Frequently Asked Questions on Virtual Currency Transactions*, INTERNAL REVENUE SERV., <https://www.irs.gov/individuals/international-taxpayers/frequently-asked-questions-on-virtual-currency-transactions> (Apr. 23, 2025) [<https://perma.cc/3ADJ-QXHV>].

⁶ Patrick A. Wright, *Cryptocurrency Explored*, 49 TXCLE ADVANCED. FAM. L. 1, 1 (2023).

variety of functions, including mediums of exchange, units of account, value storage, and more.⁷

[5] Consequently, cryptos have both benefits and consequences. The benefits include, among others, enhanced security, increased privacy, reduced transaction costs, and easier tracking; the consequences include, among others, extreme price volatility, financial vulnerability (such as inflation and deflation), and values often based on raw supply and demand, rather than proprietary technology or a hard asset.⁸

[6] Some of the more common cryptos include crypto assets, digital assets, digital currency, tokens, and virtual currency.⁹ These types of cryptos can be further divided into digital non-fungible tokens (NFTs), metaverses, and virtual real estate, among others.¹⁰ Given the diverse use of these technologies, cryptos are likely a permanent part of the economy.¹¹

[7] Entrepreneurs and innovators push the boundaries of known and traditional methodologies to enhance and create value. In doing so, some investors have purchased and sold real property using cryptos.¹² However, using cryptos as legal tender becomes very problematic, especially because of vagueness issues, undeveloped areas of law, and monetary policies,

⁷ *How Does Crypto Compare to Traditional Currency?* TRADESTATION, <https://www.tradestation.com/learn/market-basics/cryptocurrencies/the-basics/how-does-crypto-compare-to-%20traditional-currency/> [https://perma.cc/ZE8K-QUEJ].

⁸ *Id.*

⁹ *See generally id.*

¹⁰ Patrick A. Wright, *II. Definitions and Types of Digital Assets*, 2023 ADVANCED FAM. L. 11-II (2023).

¹¹ Patrick A. Wright, *Introduction*, 49 TXCLE ADVANCED FAM L. 11-I (2023).

¹² *See, e.g.,* Joanna S. Kao, *Crypto Real Estate: The Property Market Built on Digital Assets*, FIN. TIMES (Sep. 5, 2022), <https://www.ft.com/content/51e207fa-8ecb-4068-82f9-74a789375524> [https://perma.cc/2P4N-45EU].

among others.¹³ Consequently, investors began experimenting by basing a crypto's value on real property, thus giving the owner of the crypto fractional ownership in the real property.¹⁴ Crypto investors find this concept intriguing because the real property backing provides much-needed stability to the crypto's value. Additionally, buying and selling real property is easier because the fractional pricing reduces the investment burden, thus catering to a much broader investor pool.¹⁵

[8] Even the SEC noted the significance of real estate-backed crypto and confirmed that the concept is already in use.¹⁶ Two examples of real estate-backed cryptos include Propy and Bee Token.¹⁷ Given that the SEC taxes real estate-backed cryptos as real property, one might naturally assume real property law applies to real estate-backed cryptos.¹⁸ This assumption, however, raises dichotomies and inconsistencies in areas such as property tax administration, virtual real estate rights and liabilities, digital rights, and regulations, among others.¹⁹

¹³ Sally McDonald Henry, *Annual Review of Texas Law: Commercial Law*, 8 SMU ANN. TEX. SURV. 43, 47–48 (2022).

¹⁴ GSB Gold Standard Bank LTD DBA GS Smart Fin., Order No. ENF-23-CDO-1879 (Tex. State Sec. Bd. 2023).

¹⁵ Ross Peili, *Top 5 Physical Asset-Backed Cryptocurrencies*, COINCODEX (Nov. 9, 2019), <https://coincodex.com/article/5812/top-5-physical-asset-backed-cryptocurrencies> [<https://perma.cc/S7HW-PPJP>].

¹⁶ See generally, Ben Lane, *SEC Says “First Ever Cryptocurrency Backed by Real Estate” is a Fraud*, HOUS. WIRE (Oct. 2, 2017, 1:45 PM), <https://www.housingwire.com/articles/41463-sec-says-first-ever-cryptocurrency-backed-by-real-estate-is-a-fraud/> [<https://perma.cc/RF9T-QEU4>].

¹⁷ Peili, *supra* note 15.

¹⁸ Jones, *supra* note 5.

¹⁹ See generally Patrick A. Wright, *Virtual Property Ownership*, 49 TXCLE ADVANCED FAM. L. 11-VI (2023).

III. HOW A CRYPTO'S BACKING IMPACTS THE CRYPTO

[9] Almost every investment derives value from a specific source that gives that investment value. For land, that source is often land use, like farming or forestry, or development, whether commercial or residential. For a business entity, the source is often income or some other related financial metric related to income.²⁰ For digital platforms, the source is often the number of users or user engagement.²¹ For cryptos, the sources are much more variable; real property, precious metals, raw supply and demand, and platform-regulated monetary policy, among others, can all give any given crypto value.²² Three key areas impact the value of any given crypto: valuation (or backing), stability, and regulation.

A. Value of the Crypto

[10] Various factors influence the value of a crypto and often increase its price, including but not necessarily limited to, utility, market sentiment, competition, governance, tokenomics, liquidity, and technical analysis.²³ Conversely, factors usually reducing a crypto's value include high inflation rates, negative market news, hacks or rug pulls, regulatory actions, and, of course, raw supply and demand.²⁴ With over 50% of cryptos failing, crypto

²⁰ 4 BRETT R. TURNER, *EQUITABLE DISTRIBUTION OF PROPERTY* § 7:27 (4th ed. 2024).

²¹ See generally Magnuson, *supra* note 1.

²² See generally Magnuson, *supra* note 1.

²³ Dhiraj Nallapaneni, *What Determines the Value of Crypto? (Beginner's Guide)*, COINLEDGER, <https://coinledger.io/learn/how-does-a-cryptocurrency-gain-value> [<https://perma.cc/PF2X-Z74C>].

²⁴ *Id.*

investors are unsurprisingly exploring alternative ways to stabilize cryptos.²⁵

[11] One company attempted to base the value of its crypto by pegging it to the dollar. In a subsequent court case, the court held that crypto was, in fact, a security when the company attached its value to a fixed price, a price based on a specified dollar value.²⁶ Consequently, some investors are shifting away from the dollar as the base of cryptos.²⁷ Some investors have argued that cryptos are and should be treated as currencies; however, the IRS continually refuses to accept this proposal.²⁸ Despite these efforts, courts have held that crypto-related assets are securities because they are investment contracts.²⁹

[12] Most cryptos derive their value from a source other than real property and are usually classified as security-based swap products.³⁰ Hypothetically, however, if a crypto based its value on real property, it is theoretically possible for the courts to analyze this real estate-backed crypto under real property law.³¹ Applying real property law to cryptos would have significant ramifications, particularly regarding the stability of the crypto investment.

²⁵ *Id.*

²⁶ Sec. & Exch. Comm'n v. Terraform Labs Pte. Ltd., 708 F. Supp. 3d 450, 457, 471 (S.D.N.Y. 2023).

²⁷ See Sec. & Exch. Comm'n v. Binance Holdings Ltd., 738 F. Supp. 3d 20, 60–61 (D.D.C. 2024).

²⁸ See Anne Kelley Russell & Tom Zamadics, *Profiles in Digital Assets A Primer on Estate Planning for Crypto, NFTs, and Social Media*, 34-MAR S.C. LAW. 50, 52 (2023).

²⁹ *Terraform Labs*, 708 F. Supp. 3d at 471.

³⁰ Sec. & Exch. Comm'n v. Terraform Labs Pte. Ltd., 684 F. Supp. 3d 170, 192 (S.D.N.Y. 2023).

³¹ See generally *Binance Holdings Ltd.*, 738 F. Supp. 3d at n. 4 & 6.

B. Instability in the Crypto's Value

[13] As with any investment, investors and buyers will always consider what may negatively impact the investment's value. Cryptos, like any investment, face various challenges, particularly instability, also referred to as volatility.³² Nevertheless, crypto instability is often far more severe than other investments.³³ The instability, however, can swing both ways. In 2017, the price of one Bitcoin started at \$963 and ended the year at \$20,089, while, in 2018, Ethereum's price increased from \$7.98 to \$1,432.³⁴ Conversely, on the other end of the spectrum, in 2022, one crypto suffered a market valuation loss of fifty billion dollars in three days.³⁵ These examples demonstrate the volatility that threatens investments into cryptos and prompts investors to seek alternative asset bases to provide financial stability to the crypto.

[14] Cryptos often suffer such massive instability, in part, due to their lack of backing. More specifically, for the vast majority of cryptos, no asset gives it concrete value; precious metals, jewels, or any source of the like do not back most cryptos.³⁶ As a result, for all but a few cryptos, the only asset that gives a crypto value is the value another investor is willing to trade.³⁷ To be clear, there is nothing inherently wrong with an investment based

³² See generally N.Y.C. Bar, Fintech 2022: A Regulatory Overview of Blockchain, Cryptocurrencies, Digital Coins & Tokens, Presentation at the New York City Bar CLE (Mar. 11, 2022).

³³ Magnuson, *supra* note 1, at 1171–72.

³⁴ Magnuson, *supra* note 5, at 167.

³⁵ Stanley, *supra* note 4, at 467.

³⁶ Nicole Lapin, *Explaining Crypto's Volatility*, FORBES, <https://www.forbes.com/sites/nicolelapin/2021/12/23/explaining-cryptos-volatility/> [<https://perma.cc/659S-DTXK>] (Apr. 21, 2022, 9:32 AM).

³⁷ *Id.*

purely on supply and demand; however, the value of that investment is subject to extreme instability when it is backed by nothing more than the subjective value placed on the investment by a prospective buyer.

[15] Basing a crypto on land greatly reduces the threat of instability without limiting the crypto's benefits. By basing a crypto on real property, the crypto has an inherent value, an inherent utility, and provides an asset buffer to the crypto which, in turn, improves the crypto's stability.³⁸ Although the value of the land may fluctuate and thus force the value of the crypto to fluctuate as well, there is still a hard asset upon which the crypto is based. Furthermore, no regulation inherently prohibits the land from being used in other aspects as well, such as farming, development, or even forest preservation.³⁹ Theoretically, such additional uses would add value to the land and may add value to the crypto as well, thus supporting the idea that basing a crypto on real property adds much needed stability.

[16] From an investment perspective, basing a crypto on real property is not inherently flawed. As noted above, there are a host of potential benefits to doing so.⁴⁰ Furthermore, there is no inherent issue, from a regulatory perspective, with a crypto deriving value from real property. The problems arise in scenarios when a real estate-backed crypto operates under real property law, under the theory that an owner of that crypto actually owns a very small piece of the real property upon which the crypto is based and thus owns the associated real property rights associated with that very small piece of real property.

³⁸ Magnuson, *supra* note 1, at 1190.

³⁹ Rob Nelson, *How Tokenized Real Estate Offers New Investment Opportunities*, THESTREET (July 22, 2024, 6:09 PM), <https://www.thestreet.com/crypto/innovation/tokenized-real-estate-offers-new-investment-opportunities> [https://perma.cc/659S-DTXK].

⁴⁰ *See Tokenized Real Estate on Blockchain*, WEB3 INSIGHTS (Oct. 24, 2024, 10:26 PM) <https://www.web3insights.io/2024/10/24/tokenized-real-estate-on-blockchain/> [https://perma.cc/ZD6Y-5M5N].

[17] Operating under real property law, at first glance, seems to be a logical decision. Undoubtedly, real property enhances the crypto's value and provides much needed stability. Investors continually look for this outcome. However, as this article will demonstrate, there are a host of issues that arise if real property law governs real estate-backed cryptos, so much so that the challenges outweigh the benefits.

C. Regulation of the Crypto

[18] Another factor that can greatly influence the value of a crypto is the regulatory environment in which the crypto operates and trades.⁴¹ The regulations surrounding a given crypto can impact its valuation in several ways, one of which is the competitive nature of regulation. Countries, and sometimes states, compete to attract businesses by using their respective regulatory agencies; more specifically, different jurisdictions will regulate in specific ways to encourage or discourage certain investments, in this case crypto.⁴² This trend is important because the laws could impact the crypto itself and, in the case of real estate-backed cryptos specifically, it would almost certainly impact the crypto's backing.

[19] Another important aspect of regulation is the burden of regulation. If the regulation is too lenient, it could be bad for investors and too risky, but if the regulation is too overbearing, it likely becomes too costly to earn a reasonable profit given the risk, especially for smaller market participants.⁴³ This delicate balance demonstrates the need for subject matter experts to be involved in developing the regulations of real estate-

⁴¹ Magnuson, *supra* note 1, at 1206.

⁴² See generally Magnuson, *supra* note 1.

⁴³ See generally Magnuson, *supra* note 3.

backed cryptos and in determining which area of law provides the most just outcomes for the parties involved.

[20] Finally, another key component of regulating cryptos is the clarity of regulations. Given the digital nature of cryptos, regulators must consider the international dynamics involved, considering almost anyone can, in theory, purchase and sell cryptos.⁴⁴ Establishing clarity in such a complex regulatory environment is extremely difficult, but it can be done. Additionally, uniformity is also beneficial in a regulatory environment and can contribute to the clarity of the regulation, so it is ideal for crypto regulations to be as uniform as possible.⁴⁵

[21] While the various interests involved in regulations will almost certainly conflict in varying degrees at different times, regulators can collaborate to provide a steady regulatory environment for real estate-backed cryptos. If this nuanced industry is to exist and create value, a steady regulatory environment is essential.⁴⁶

IV. PROBLEMS ARISING WHEN REAL PROPERTY LAW GOVERNS REAL ESTATE-BACKED CRYPTOS

[22] Basing the value of a crypto on stable real estate presents various and exciting opportunities. However, this concept also presents significant challenges in fundamental areas: underdeveloped areas of law requiring additional research and consideration, including, but not limited to, local property tax administration, virtual real estate rights, digital rights, and regulations.⁴⁷ Although any one of these factors may not determine the

⁴⁴ Magnuson, *supra* note 1, at 1223.

⁴⁵ *Id.*

⁴⁶ See generally Magnuson, *supra* note 1, at 1224.

⁴⁷ Wright, *supra* note 22.

answer to the question this article addresses, these factors are, undoubtedly, fundamental to the analysis determining which area of law to apply to real estate-backed crypto and present a high-level perspective of the issue, thus giving strong deference to the proper solution.⁴⁸

A. Property Tax Administration

[23] Property taxes vary widely across the country. However, this section will use Texas as an example. Texas grants municipalities, among other local government entities, authority to tax real property.⁴⁹ In Texas, property taxes average around 1.88% of the property's value, differing from other states like Colorado where the property tax averages approximately 0.54%.⁵⁰ However, the municipality is merely one of the local government entities that collects property taxes; school districts, county governments, and other local governments collect property taxes as well.⁵¹

[24] Improving a property, commonly by developing and extracting minerals or other natural resources, usually increases the property's value because more value is created by using that property, rather than simply

⁴⁸ Wright, *supra* note 22.

⁴⁹ TEX. TAX CODE ANN. § 302.001 (West 2025).

⁵⁰ Artistotle Kumpis, *Are There Any States with No Property Tax in 2024?*, DREAM HOMES MAG. (July 9, 2024), <https://www.dreamhomesmag.com/articles/article~articleid~1642.htm> [<https://perma.cc/9PUQ-BZWJ>]; Rich Fettke, *Are There Any States with No Property Tax in 2025?*, REALWEALTH, <https://realwealth.com/learn/states-with-no-property-tax/> [<https://perma.cc/A8PW-X65S>].

⁵¹ See *Property Tax System Basics*, TEXAS COMPTROLLER, <https://comptroller.texas.gov/taxes/property-tax/basics.php> [<https://perma.cc/ZY6T-2YU7>].

leaving it vacant.⁵² Basing a crypto on real property may increase the value of that property because that property is being used in an additional manner to create value without necessarily restricting the use of the property.⁵³ Therefore, the property tax owed to government entities is almost certain to increase significantly, barring a drastic decrease in the property tax rate. The question that arises, however, is who retains liability for the property tax owed to the various governmental entities, particularly as the property value increases? Does liability fall to each fractional owner for his or her portion, the crypto exchange, the crypto developer, or an entirely different party?

[25] If the property tax liability remains with the larger entity, the taxing entity's burden to administer the property taxes remains largely unaffected because there is one or a small number of entities to tax. Consequently, administering the property tax would not be excessively burdensome. If, however, the fractional owner is liable for the property taxes, the taxing entity's burden increases dramatically because there are far more property owners to record. Furthermore, local governments would necessarily have to track each transaction, even if it represented only fractional ownership, thus requiring the taxing entity to acquire the resources to be able to track these extensive records.⁵⁴

[26] The latter is far more likely. As stated previously, the underlying idea of real estate-backed crypto is for the investor to purchase a very small

⁵² See Christopher Nichols & Reid C. Wilson, *V. Negotiation of Development Agreements*, 34 TXCLE ADV. REAL EST. DRAFTING (2023).

⁵³ See generally Steve Streetman, *The Ultimate Guide to Investing in Tokenized Real Estate*, HONEY BRICKS, <https://www.honeybricks.com/learn/tokenized-real-estate-investing> [<https://perma.cc/2QM4-KQQF>] (discussing the benefits of the tokenization of property).

⁵⁴ See generally 11 TEX. PRAC. §13:13 *Recording Instruments After Real Estate Closing*, Westlaw (database updated July 2025) (discussing proper recording for properties in question).

piece—a fractional piece— of the real property.⁵⁵ Because this is the purpose, it is incredibly unlikely that a larger entity, such as a crypto exchange, would retain full ownership rights to the real property. As a matter of fact, one exchange, FTX, includes in its terms of service an express provision that specifies the exchange does not own the crypto, but rather the person who owns the crypto.⁵⁶

[27] Consequently, a massive issue arises: the idea that fractional ownership in real estate-backed cryptos is an ownership interest in the real estate itself. In the context of a corporation, owning shares in a business creates a fractional ownership interest in the corporation, but the corporation retains ownership of the assets.⁵⁷ In the context of real estate-backed cryptos, however, courts have not yet ruled, nor have regulators stated, what ownership of a real estate-backed crypto means. From one perspective, it seems analogous to the business entity; owning the crypto does not grant rights in the real estate but rather the token. From another perspective, it seems that real estate-backed cryptos are not similar to corporate shares because the entire idea is owning a fractional piece of the asset buffer itself, which here is the real estate.⁵⁸ The former would make sense if the regulatory agencies acknowledged cryptos as legitimate currencies, since it would be analogous to trading currencies like the U.S. dollar and British pound, but the regulatory agencies have already stated that cryptos are certainly not currencies.⁵⁹ This would naturally lead one to think that the ownership interest of a real estate-backed crypto actually

⁵⁵ See Jones, *supra* note 5.

⁵⁶ Joseph Cioffi et al., *Clawback to the Future: Avoidance Actions in Crypto Bankruptcies*, Reuters, <https://www.reuters.com/legal/litigation/clawback-future-avoidance-actions-crypto-bankruptcies-2023-01-11/> [<https://perma.cc/JZ2K-JRNF>] (Jan. 11, 2023).

⁵⁷ 18A AM. JUR. 2D *Corporations* § 623 (2024).

⁵⁸ See generally *Tokenized Real Estate on Blockchain*, *supra* note 40.

⁵⁹ Henry, *supra* note 13.

creates an interest in the real property itself, but this means real property law should apply, particularly because no regulatory agency or court has expressed otherwise. Furthermore, while the Texas Property Code limits the number of occupants, it does not limit the number of persons who can own the property.⁶⁰ If real property law applies to real estate-backed cryptos, the issues this article discusses become significantly more important.

[28] In addition, if real property law applies to real estate-backed crypto, local governments would necessarily be intricately involved in the creation of the regulations because it relates to land use, and local governments have extensive authority in the realm of land use.⁶¹ More specifically, Texas municipalities have wide-ranging discretion regarding the subdivision of land.⁶² Taking this logic one step further, if real property law applies, it is a distinct possibility that municipalities could regulate real estate-backed cryptos. Essentially, local governments would be regulating, potentially on extremely short notice, a market based on niche technology with international implications. It would be far more advantageous to carefully craft and assign the regulatory responsibilities, rather than thrust such a complex topic onto local governments with little or no notice.

[29] This situation becomes even more complex when considering the financing of land developments in communities. Traditionally, land developments are financed through equity or, more commonly, debt.⁶³ However, developers may sell real estate-backed cryptos backed by the land

⁶⁰ TEX. PROP. CODE ANN § 92.010 (West 2025).

⁶¹ See TEX. LOC. GOV'T CODE ANN. § 211.003 (West 2025).

⁶² See TEX. LOC. GOV'T CODE ANN. § 212.002 (West 2025).

⁶³ See Matt Marsh, *Development Financing: How to Finance Your Next Real Estate Development Venture*, MARSH & PARTNERS (Aug. 17, 2021), <https://marsh-partners.com/blog/development-financing-how-to-finance-your-next-real-estate-development-venture> [<https://perma.cc/KW7F-4RRY>].

they develop, thus bypassing traditional financing institutions.⁶⁴ This would bring into play the asymmetric information and instability issues and, most likely, present an unfair negotiating advantage favoring the developer, since the local government is almost certainly not knowledgeable of the intricacies of cryptos. The local government would, hopefully, consider negotiating the financing terms in the development agreement, which can be highly flexible.⁶⁵ However, if a local government is unaware of the dynamics of cryptos, as most local governments are not aware, developers could gain a substantial advantage, particularly if real property law applies. If real property law applies in this situation, the local government is arguably in the most influential regulatory position. Therefore, the land developer could easily “outplay” the regulator, which is clearly most undesirable. If real estate-backed cryptos operate under securities law, however, local governments can rely on and use federal guidelines and enforcement provisions to support their efforts, thus shifting some of the burden to governmental units much more equipped to deal with issues like this.

[30] Additionally, if real property law applies to real estate-backed crypto, local governments will have to address asymmetric information within the property tax context. One of the major issues in financial technology (“fintech”), especially cryptos, is the asymmetric information among market participants.⁶⁶ Unless local governments commit significant investments to adopt and manage blockchain technology, there will likely

⁶⁴ See Guneet Kaur, *ICO 101: A beginner’s guide to raising capital using cryptocurrencies*, COIN TELEGRAPH: THE FUTURE OF Money (Aug. 2, 2023), <https://cointelegraph.com/learn/articles/initial-coin-offering> [<https://perma.cc/G7XJ-6V39>] (discussing how cryptos can be used to raise capital without sacrificing equity or acquiring debt).

⁶⁵ See generally JENNIFER M. BRAGAR, *ZONING & PLANNING DESKBOOK* § 11.13, Westlaw (2d ed. 2024) (discussing how the split characterization of development agreements as either contractual or regulatory in nature implicates the enforceability of such agreements, despite their benefit to developers and local governments).

⁶⁶ Magnuson, *supra* note 3, at 179.

be constant asymmetric information. For example, by the time the local government actually records the property transaction, it has likely changed hands many times. This asymmetrical information can cause massive issues.⁶⁷ The vast majority of local governments are not ready to bear such a complex responsibility with massive implications.

[31] In addition, how local governments, especially in rural communities, will value real property when that value is tied to digital activity has not been demonstrated. The vast majority of local governments are ill-equipped to monitor, analyze, and measure the digital activity stemming from real property. Larger municipalities, such as Dallas,⁶⁸ and growing municipalities, such as Plano,⁶⁹ likely have the resources or can acquire the resources necessary to solve this problem. For example, Cook County, Illinois has already tested, and continues to test, blockchain technology for use in real estate transactions.⁷⁰ However, smaller communities, such as Denison, Forney, and Weatherford, lack the resources and the ability to acquire the necessary resources in the foreseeable future due to simple budgetary constraints.⁷¹ Consequently, these smaller

⁶⁷ Magnuson, *supra* note 3, at 179.

⁶⁸ See generally JACK IRELAND, ET AL., CITY OF DALLAS, FY 2024-25 AND FY 2025-26 BIENNIAL BUDGET UPDATE, CITY COUNCIL BRIEFING (2024) (discussing the budget development process with information about revenue and expenditures).

⁶⁹ CITY OF PLANO, CITY MANAGER'S RECOMMENDED BUDGET 2024-25 (2024).

⁷⁰ *The Real Estate Deal, Decluttered: Blockchain and Deed Recording*, DEEDS.COM (Jan. 28, 2019), <https://www.deeds.com/articles/the-real-estate-deal-decluttered-blockchain-and-deed-recording/#:~:text=Blockchain%20removes%20the%20need%20for%20a%20third%20party,changing%20records%20or%20inserting%20false%20records%20almost%20impossible> [https://perma.cc/V9QU-622R].

⁷¹ See generally CITY OF FORNEY, FISCAL YEAR 2025 OPERATING BUDGET (2024); CITY OF DENISON, AMENDED OPERATING BUDGET FY 2024/2025 (2024); CITY OF WEATHERFORD, FISCAL YEAR 2025 ADOPTED BUDGET (2024).

municipalities are immediately placed at a massive disadvantage, and this situation likely incentivizes real estate-backed crypto ventures to invest in or near already well-developed communities. While this result may not necessarily be a bad or wrong result, this increased development of already well-developed communities only increases the infrastructure problems Texan municipalities currently face.⁷²

[32] Even if local governments could adopt the technology required, there are continued challenges. For a variety of reasons, cryptos tend to attract criminal activity.⁷³ Local governments, specifically municipalities, prosecute various crimes, many of which may be considered common nuisances and relate to property.⁷⁴ As a result, local governments would almost inevitably need to acquire additional resources to monitor, prosecute, and enforce. Because a real estate-backed crypto is based on real property, local governments would likely become involved in criminal cases related to real estate-backed crypto in their respective jurisdictions. This would result in additional costs for the local governments. To compensate for these additional costs on relatively short notice, the vast majority of local governments would need to increase property taxes. While local governments may be able to plan for and adopt solutions in the future, applying real property law to real estate-backed cryptos would likely require local governments to increase property taxes to respond quickly.

[33] Conversely, one commonly cited benefit to real estate-backed crypto is the potential ease of recordkeeping.⁷⁵ Undoubtedly, this benefit is of particular interest to local government entities, due to the extensive

⁷² See Sarah Asch, *Texas is Growing – and Fast. But that Growth is Not Evenly Distributed Across the State*, TEX. STANDARD, (Mar. 31, 2023, 12:36 PM), <https://www.texasstandard.org/stories/texas-population-growth-us-census/> [<https://perma.cc/MA24-QE8G>].

⁷³ Magnuson, *supra* note 3, at 182.

⁷⁴ See generally TEX. CIV. PRAC. & REM. CODE ANN. § 125.0015 (West 2025).

⁷⁵ Wright, *supra* note 10.

property records. Other potential benefits include reporting, registration, and reducing conflicts of interest, among others.⁷⁶ In the long run, these benefits may help local governments achieve more of their goals, largely due to the increased efficiency.

[34] However, the increased number of parties or, in this case, fractional owners, is another disadvantage.⁷⁷ The theory is that a buyer of a real estate-backed crypto acquires fractional ownership and, consequently, also acquires a deeded title to his or her piece of property.⁷⁸ Furthermore, the goal for these real estate-backed cryptos is for them to be both sellable and willable.⁷⁹ As previously demonstrated, this concept requires local governments to invest significant resources to acquire the means to utilize this technology. While this does not mean that local governments should not pursue this technology, it does mean that this potential venture will require additional investments.

[35] This does not mean that real estate-backed cryptos should be abandoned or ignored, or that the free market cannot resolve the various issues associated with real estate-backed crypto. This does not even mean that state and local governments should have no input into crypto regulations. This does, however, mean that the vast majority of local governments are not prepared to manage and regulate real estate-backed cryptos, particularly on short notice. Furthermore, even if local

⁷⁶ Sec. & Exch. Comm'n v. Bittrex Inc., No. 2:23-cv-00580-RSM, 2023 WL 4866373 (W.D. Wash. July 13, 2023).

⁷⁷ Streetman, *supra* note 53.

⁷⁸ *The Pros and Cons of Fractional Ownership*, EQUITY ESTATES (Feb. 13, 2020), <https://equityestatesfund.com/the-pros-and-cons-of-fractional-ownership/> [<https://perma.cc/GJ2F-RHBD>].

⁷⁹ *The Definitive Guide to Fractional Ownership*, FRACTIONAL GROUP (Feb. 28, 2025), <https://fractionalgroup.com/fractional-ownership-guides/fractional-ownership-definitive-guide/> [<https://perma.cc/968K-QPVA>].

governments regulate real estate-backed cryptos, this would almost certainly result in a wide variety of differing regulations, thus increasing costs and decreasing efficiency in the market, or perhaps even pushing the industry offshore.⁸⁰ While almost all of these challenges can be remedied in the long run, they likely will not be remedied on short notice via court ruling. From a property tax administration perspective, it is much more feasible for real estate-cryptos to operate under securities law rather than real property law, especially if given little notice of this great responsibility.

B. Virtual Real Estate Rights

[36] One of the key underdeveloped areas of law regarding real estate-backed crypto is virtual real estate rights. Property owners, specifically in Texas, can sever the mineral rights to their real property and their air rights as well.⁸¹ However, can landowners in Texas sever their virtual real estate rights? Do rights to virtual real estate stemming from real property even exist? If so, virtual real estate rights must be one of the rights included in real property, just like surface and mineral rights. If not, the SEC and other experts risk applying real property law where it should not be applied. Legal experts agree: underdeveloped areas of law requiring additional research and consideration include, among other things, virtual property ownership, virtual property disputes, and taxation.⁸²

[37] If virtual real estate rights are among the rights included in the proverbial “bundle of sticks,” these rights must be defined.⁸³ Thus far,

⁸⁰ See Magnuson, *supra* note 1, at 1223–24.

⁸¹ See Brent Doré, *Teaching an Old Dog New Trick: Examining the Intersection of the Accommodation Doctrine and Groundwater Rights Through the Lens of City of Lubbock v. Coyote Lake Ranch, LLC*, 3 TEX. A&M. L. REV. 853, 856 (2015).

⁸² Wright, *supra* note 19.

⁸³ Ryan Mitchell, *Pokemon Go-es Directly to Court: How Pokémon Go Illustrates the Issue of Virtual Trespass and the Need for Evolved Tort Laws*, 49 TEX. TECH L. REV.

courts have recognized rights regarding intellectual property and virtual real estate, but these rights remain somewhat vague.⁸⁴ Intellectual property rights continue to become more defined as platforms attract innovators and creators, because the parties often form contracts specifying who owns what, but key questions remain.⁸⁵ For example, copyright protection and the platform's enforcement of internal protections remain weak and ineffective, which is a significant issue because virtual platforms invite users to create various items, such as avatars, avatar accessories, and digital designs.⁸⁶ Another issue that arises pertains to trademark protections.⁸⁷ While Congress has taken steps to improve these situations, one example being the Digital Millennium Copyright Act of 1998 (DMCA), Congress should continually revisit intellectual property issues arising under virtual real estate, because virtual real estate is a fast-moving industry that is becoming much more popular and economically significant.⁸⁸

[38] While there are many issues regarding virtual real estate rights that have yet to be resolved, one of the most significant issues is shockingly basic. Essentially, in one court case, the issue was who owned the real property rights, the user building his or her property in a virtual world, or

959, 960–62 (discussing ownership of virtual space and virtual trespass in a gaming context).

⁸⁴ Sharon K. Lowry, *Property Rights in Virtual Reality: All's Fair in Life and Warcraft?*, 15 TEX. WESLEYAN L. REV. 109, 132 (2008).

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.* at 132–36

⁸⁸ *Id.* at 127–28.

the platform upon which the property was built.⁸⁹ The parties ultimately settled the case, so this issue remains significant and unclear.⁹⁰

[39] Conversely, there is reason to be optimistic about this vagueness: it presents the perfect opportunity for Congress or the various regulatory agencies to assume authority over this field and regulate the industry in a manner that encourages value creation. This scenario is ideal because it allows people with intention to regulate the industry, whereas if the courts establish law via holdings, they will do so out of necessity. The intentional regulation will be far more advantageous because regulators will be able to encompass various aspects that are extremely important in the crypto space, especially regarding consistency, competition, jurisdiction, and even experimentation.⁹¹

[40] In conclusion, although real property law may provide avenues to establish and dictate virtual real estate rights, it is more advantageous and appropriate to reach such conclusions through securities law. Regulatory infrastructure exists to regulate virtual real estate rights, acquire the expertise needed to regulate effectively and efficiently, and to create new avenues of regulation. It is much more difficult to regulate virtual real estate rights effectively and efficiently, especially in the context of real estate-backed cryptos, through real property law than it is securities law.

C. Digital Rights

⁸⁹ Sharon K. Lowry, *Property Rights in Virtual Reality: All's Fair in Life and War?*, 15 TEX. WESLEYAN L. REV. 109, 123–25 (2008).

⁹⁰ *Id.*

⁹¹ See generally Magnuson, *supra* note 1, at 1178, 1187, 1206, 1215, 1222 (discussing the importance of competition, jurisdiction and experimentation regulation in the fintech industry).

[41] Basing a crypto on real property also raises issues regarding potential digital rights. The first issue that arises pertains to traditional digital rights areas, such as trademarks, copyrights, patents, trade secrets, and other traditional intellectual property areas.⁹² Traditionally, property refers to tangible things while intellectual property refers to intangible things.⁹³ Using this framework, cryptos based on real property could fit into either category depending on how the crypto is built and operated.

[42] However, it is more likely that cryptos would be categorized under intellectual property rather than traditional property because of the way cryptos operate as well as their usual nature. The underlying goal or purpose of cryptos is often to make something more efficient. By leveraging blockchain technology specifically, cryptos often complete various goals or tasks faster and more efficiently than non-digital means.⁹⁴ If the crypto was built and operated via something tangible, such as a real coin, the idea of leveraging that crypto would be moot, because it would be operating via that tangible thing, thus eliminating the need for digital technology. Therefore, it is almost certain that the digital rights of cryptos based on real property would fall under intellectual property.

[43] If, however, the crypto is digital and intangible, which is far more likely given the usual nature and goals of cryptos as discussed above, cryptos based on real property align more closely with intellectual property. At first glance, this seems to remedy the issue regarding digital rights associated with cryptos. Upon further analysis, however, the issue is not resolved, but rather becomes even more complicated.

[44] If the digital rights associated with cryptos based on real property operate under intellectual property law, several issues arise. First, under

⁹² See Howard G. Zaharoff, *Protecting Proprietary Information*, ADVISING A MASS. BUS. § 2 (1st ed., 2011).

⁹³ *Id.*

⁹⁴ See Wright, *supra* note 10.

intellectual property law, there is no independent category established for digital rights specifically; traditional intellectual property rights pertain to copyrights, trademarks, patents, and trade secrets.⁹⁵ Furthermore, it is possible that someone could create or use the crypto, or the property upon which the crypto is based, in such a way that it does not fit into these traditional categories of intellectual property law. Consequently, it is more logical to create a new, carefully crafted area of law via regulation or legislation rather than force the court system to adapt new, innovative technology to existing laws where it simply does not fit well.

[45] Another dilemma that requires additional legal research pertains to the digital rights associated with real property. Generally, digital rights and digital assets are defined and contrasted by function.⁹⁶ Digital rights include things like online privacy and freedom of expression, whereas digital assets include digitally-stored content.⁹⁷ This definition and comparison, however, is far too narrow. For example, fractional ownership in real estate is not simply a digitally-stored asset; ownership in real property, even on a small, fractional scale, is more significant than mere digital storage – it is ownership in real property.⁹⁸ Therefore, that real property owner possesses certain rights. The law is silent regarding whether these certain rights include digital rights tied to real property.

[46] For example, not only can proprietors restrict their visitors' and clients' use of the proprietor's internet and network, but experts highly

⁹⁵ See Zaharoff, *supra* note 92.

⁹⁶ See Lance McKinney, *Special Property Problems of Guardianships*, in FLA. GUARDIANSHIP PRAC. § 17 (12th ed. 2023) (discussing what digital rights include with how digital assets are used).

⁹⁷ *Id.*

⁹⁸ See Jones, *supra* note 5, at 176, 184–85, 205, 240.

recommend doing so for security reasons.⁹⁹ This accepted practice demonstrates that proprietors, including landowners, possess certain digital rights stemming from the real property. Initially, this appears to align cleanly with the previously defined digital right of privacy; however, this apparent alignment quickly becomes convoluted when the proprietor restricts access and content that interferes with geolocation targeting, which allows entities to target individuals based on an exact geographic location with additional filters.¹⁰⁰ Restated, can an individual restrict other entities' geolocation targeting efforts towards that individual's visitors or clients? This issue has not been legally addressed, but it has massive ramifications, ranging from criminal law to expansive marketing efforts.¹⁰¹

[47] These issues become increasingly complex and intricate due to the international component involved. There are potentially two broad issues to resolve: jurisdiction, and technical requirements.¹⁰² Jurisdictional issues can be relatively easily resolved, as jurisdiction will usually be determined by contract, but can be determined by common law as well.¹⁰³ Technical requirements, however, are far broader, more difficult, and more impactful.

[48] Resolving the digital rights issue via technical requirements is possible, but unlikely to succeed if created via common law for several

⁹⁹ Ryan Peppin, *Six Best Practices for Guest Wi-Fi Security*, CISCO SPACES (May 30, 2024), <https://spaces.cisco.com/six-best-practices-for-guest-wi-fi-security/> [<https://perma.cc/VDL2-S393>].

¹⁰⁰ Lucas Elliott, *Facebook Location Targeting: A Detailed Guide*, JON LOOMER, <https://www.jonloomer.com/facebook-location-targeting/> [<https://perma.cc/EY5Y-4PFS>] (last updated Mar. 1, 2025).

¹⁰¹ *Id.*

¹⁰² See, e.g., G. Walker, *Digital Property Law-New Structure and New Reconciliation*, 55 INT'L L. 251, 327–29 (2022).

¹⁰³ *Id.*

reasons.¹⁰⁴ First, it is unlikely to succeed via common law because there are a variety of technical requirements to use. For example, it is possible to require certain encryptions to indicate the geographic location of the crypto's base, thus making the issue more about jurisdiction, which common law can then resolve. This, however, requires the courts to proactively require crypto innovators to build cryptos with specific requirements. This is not ideal for a host of reasons, one of which is that the courts would have to pick the most appropriate technical requirement(s). This is an extremely difficult decision with multiple aspects of analysis, including but not limited to, economics, build-out, and operation. Such an impactful decision is much more suited for a government body that can carefully craft the requirements by working with crypto experts.

[49] Second, another essential reason why the courts should not require specific technical aspects is because courts are not experts on cryptos. Allowing non-experts to implement technical requirements via common law for something as new and nuanced as real estate-backed cryptos is problematic and unnecessary, especially given that other governmental bodies may implement such regulations, if needed. Creating technical requirements out of common law not only sets a dangerous precedent, but would also put cryptos on an extremely volatile and uncertain path forward. Such a volatile and uncertain path would massively, and almost certainly negatively, impact the crypto market because the crypto market is international, thus requiring more careful consideration in the crafting of the law applying to cryptos, especially real estate-backed cryptos.¹⁰⁵

[50] Additionally, as briefly discussed previously, another major issue is who truly owns the crypto, its real estate backing, and the associated digital rights: the exchange, the one who purchased the crypto, or someone/something else entirely? It is possible to apply legal analysis to each category and predict a court's decision based on common law and

¹⁰⁴ *Id*

¹⁰⁵ See Walker, *supra* note 102, at 327–29.

existing statutes, but an opportunity exists to create new and specific laws for new and specific technology. One of the many reasons why it is ideal for legislatures and/or regulators to craft the laws rather than the court system is because they can establish what digital rights exist, especially in transactions, and which digital rights apply in situations pertaining to real estate-backed cryptos, specifically.

[51] Furthermore, allowing legislatures or regulators to establish the law for real estate-backed cryptos encourages creativity, which is essential for successful innovations. For example, real estate-backed cryptos and its underlying technology can be used in a variety of ways for a variety of purposes, which is why one might purchase such a crypto for an investment, while a government agency might use the underlying technology for records.¹⁰⁶ Determining which digital rights exist in and how they function, specifically regarding real estate-backed cryptos, will impact the value, viability, function, and other key aspects of the crypto, thus further reiterating the importance of careful regulation, subject matter expertise, and the overall uniqueness of the situation.

[52] It is important to note that applying securities law to real estate-backed cryptos is likely to have some kind of impact, just as applying real property law would have some impact. However, one fundamental difference between the two is the burden of regulation, which this article addressed previously under Property Tax Administration. Another fundamental difference between applying securities law or property law is the existence of rights, specifically digital rights. While digital rights broadly include online privacy and freedom of expression,¹⁰⁷ applying securities law to real estate-backed cryptos tends to imply more financial-oriented rights rather than traditional property rights. While this may favor investors, it may be less appealing to the common crypto purchaser,

¹⁰⁶ See *The Real Estate Deal, Decluttered: Blockchain and Deed Recording*, *supra* note 70.

¹⁰⁷ McKinney, *supra* note 113.

particularly if the common crypto purchaser envisions a use other than solely financial gain.

[53] In conclusion, it remains unclear whether digital rights exist and stem from real estate-backed cryptos. Further, it is unclear what those digital rights constitute. It is also unclear who owns those digital rights, if they exist. Finally, it is unclear who or what establishes, regulates, or protects those rights, if they exist. While common law can bring us to an answer, doing so is far from ideal; it is much better to use existing systems and infrastructures temporarily and allow legislatures and regulators to establish whether digital rights exist, what those digital rights constitute, and how those digital rights will be protected. This path leverages existing resources and reduces volatility for the crypto industry.

D. Regulation

[54] A logical question that arises pertains to the regulation of cryptos, specifically from a logistical perspective. In a field that is both new and nuanced, who and what should regulate cryptos based on real property? Does the market demand a new regulatory agency or set of laws to sustain a healthy market? Under securities law, no; in a regulatory context, almost everything could remain the same. Under securities law, federal agencies and legislation can guide the market, as these do currently to other security-type markets. Under real property law, however, there is not a clear and definitive answer, other than that the existing regulatory infrastructure is likely unprepared.

[55] If treated as securities, the IRS, the SEC, and securities-related legislation may apply. Existing systems can be used to regulate new types of securities, despite the current vagueness plaguing this regulatory field.¹⁰⁸ Yes, a new and nuanced investment may exist, but it can fit into the existing regulatory systems already operating. Training and education may be

¹⁰⁸ See Magnuson, *supra* note 3, at 194.

required to regulate in a manner that fosters the most effective and efficient market possible, but the infrastructure to regulate this field exists.

[56] If, however, real estate-backed cryptos are treated as real property, states have a strong argument to regulate the field as sovereigns over real property. This leads to several additional issues. First, if states regulate cryptos independently, that means there could be at least fifty different regulatory environments. This could dramatically increase the cost of cryptos based on real property from legal and regulatory compliance alone. Further, the thought of wide-ranging regulations is perhaps the greatest fear and threat that crypto investors face.¹⁰⁹ Second, state regulation of real estate-backed crypto will likely create regulatory variations, which reduce consistency. This will also compound the difficulty of utilizing real estate-backed crypto and may discourage the development of the concept altogether.¹¹⁰

[57] While this might seem like a natural and perfect fit for states' rights, by allowing the states to operate as regulatory laboratories, giving this field of regulation to the states will likely not succeed for several reasons. First, differences and variances exist at such a basic level that even terminology differs.¹¹¹ Second, varying state regulations already exist, and these variances are hindering the crypto industry.¹¹² As mentioned previously, diverse regulations greatly hinder the crypto industry and drive cryptos and

¹⁰⁹ See Magnuson, *supra* note 1, at 1223.

¹¹⁰ See Magnuson, *supra* note 1, at 1223.

¹¹¹ *Cryptocurrency Regulation: Where are We Now, and Where are We Going?*, WORLD ECON. F. (Mar. 28, 2022), <https://www.weforum.org/stories/2022/03/where-is-cryptocurrency-regulation-heading/> [<https://perma.cc/C9NB-WF35>].

¹¹² See *Cryptocurrency Laws and Regulations by State*, BL (Jan. 18, 2022), <https://pro.bloomberglaw.com/insights/technology/cryptocurrency-laws-and-regulations-by-state/> [<https://perma.cc/8KSW-JSAS>].

their investors to other jurisdictions.¹¹³ Third, regulating fintech, which includes cryptos, involves a very important international dynamic, a dynamic that cannot be encompassed in local regulations.¹¹⁴ Further, in a market that expects regulators to consider other countries' regulations and practices, regulations can easily lead to extremely complex jurisdictional issues.¹¹⁵ Thus, leaving crypto regulations to the states and their subdivisions would greatly hinder the crypto market.

[58] Furthermore, while state and local governments may eventually regulate cryptos based on real property, these entities would, however, be placed at a massive disadvantage if the courts applied real property law to real estate-backed cryptos. Local government officials with little to no knowledge or experience with cryptos would be forced to implement and enforce regulations quickly. This could be disastrous for real estate-backed cryptos and the real property upon which the cryptos are based. If state and local governments wish to regulate real estate-backed cryptos, they should do so with a long-term plan that incorporates education for the regulators so that the regulators understand the fundamental impacts of their regulations, particularly beyond the local community, or even the state.

[59] In conclusion, many issues arise when real estate-backed cryptos operate under real property law rather than securities law through the courts without express guidance from regulators or legislatures. There are far more questions than answers. If real estate-backed cryptos operate under securities law, infrastructure exists to regulate the industry like other cryptos and investments, even though training and education may be necessary for regulators to effectively and efficiently regulate real estate-backed cryptos specifically. If real estate-backed cryptos operate under real property law, however, the infrastructure to regulate does not exist, and the

¹¹³ See Magnuson, *supra* note 1, at 1223.

¹¹⁴ See Magnuson, *supra* note 1, at 1222.

¹¹⁵ See Magnuson, *supra* note 1, at 1223.

state governments or their subdivisions will likely regulate the industry which, in turn, will likely result in far more expensive, inefficient, and inconsistent regulations. Although it is theoretically possible that multiple areas of law could apply to real estate-backed cryptos in different situations, securities law, rather than real property law, should apply until regulators expressly provide otherwise.

V. CONCLUSION

[60] This article should not be read as a criticism against real estate-backed cryptos; on the contrary, real estate-backed cryptos provide a wide variety of opportunities, and the free market will help resolve key challenges. However, one problem the free market is not built to solve is the application of law. Real estate-backed cryptos raise unique challenges pertaining to the mixing of technology and different legal concepts. Although it is possible that multiple areas of law apply to real estate-backed cryptos presently and perhaps in the future, courts should currently apply securities law, rather than real property law, to real estate-backed crypto. Until federal legislators or regulators expressly provide differently and can account for the extraordinary uniqueness of real estate-backed cryptos, this type of crypto should operate under securities law, where systems and laws already exist to maintain healthy markets. Moreover, applying property law to real estate-backed cryptos opens the door to massive and sudden shifts in property tax administration, virtual real estate rights, digital rights, and regulation, shifts that give rise to perilous and inefficient situations. Additionally, legal scholars and experts should further research real estate-backed cryptos to help clarify what area of law should apply to this technology and whether new subdivisions of law need to be created. While time and technology change many things, legal scholars and experts should ensure the challenges discussed throughout this article are fully addressed and resolved before advocating to apply real property law to real estate-backed cryptos.