

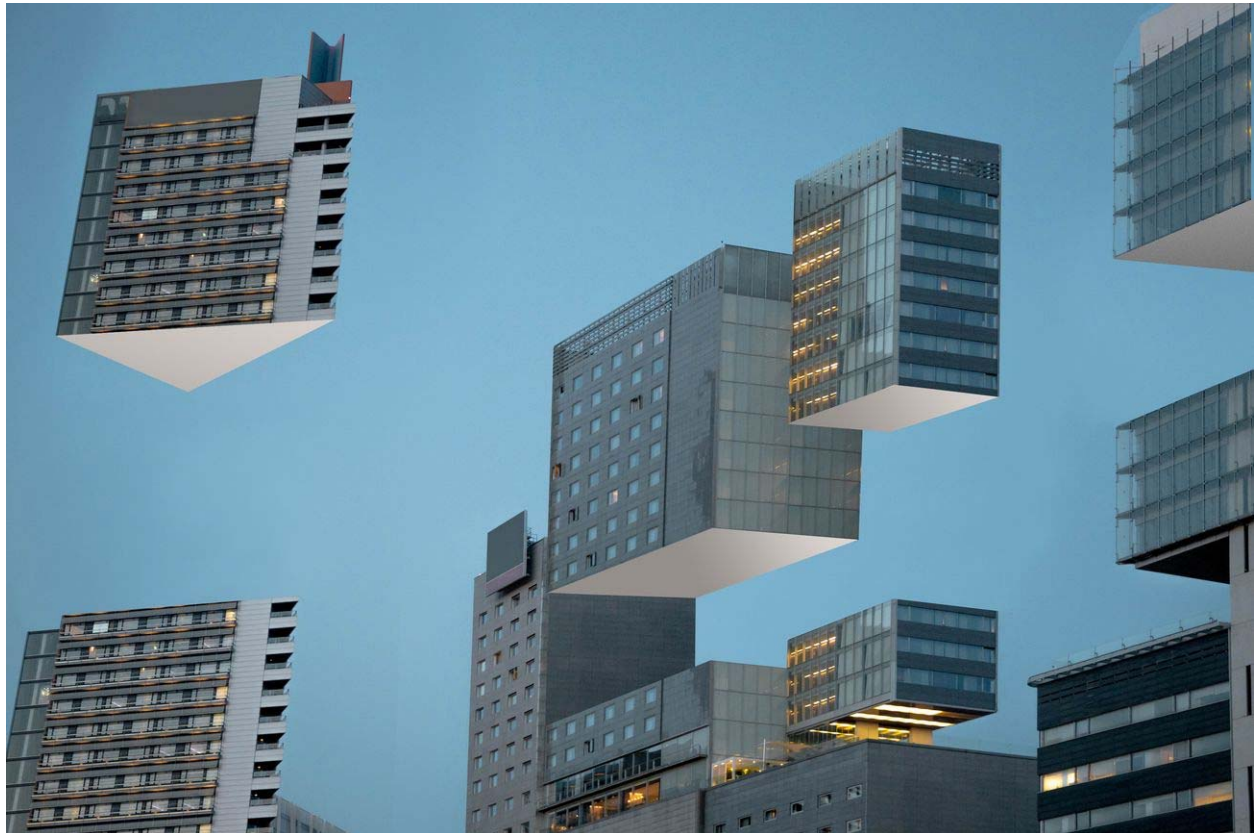
MANSION GLOBAL

THE TAKE

When Purchasing a Real Estate NFT, What Are You Really Buying?

NFT home sales may be the next step for cryptocurrency's boom in the real estate market, but the legalities remain murky

BY [VIRGINIA K. SMITH](#)# | ORIGINALLY PUBLISHED ON DECEMBER 10, 2021 | [MANSION GLOBAL](#)#



As cryptocurrency has exploded into the mainstream, luxury real estate has felt the effects, with developers looking to grab headlines by listing properties for Bitcoin and other digital currencies, and buyers looking to [convert some of their valuable digital assets](#) into real property. In recent months, real estate's crypto craze has reached its inevitable next phase: The race to figure out how to buy and sell homes via non-fungible tokens, commonly known as NFTs.

For the uninitiated (or those who still find the concept a bit baffling), NFTs are unique digital tokens (purchased with cryptocurrency) that securely confer sole ownership of a digital asset via the blockchain, where ownership can then be publicly tracked and easily sold, often for speculative price increases. NFTs are most commonly used to buy and sell digital assets—such as digital art or music—but can also be used to trade ownership rights to physical objects, so long as the object's title or ownership contract is somehow tied to the NFT. Theoretically, this could hold true for real estate as well, and crypto enthusiasts are eagerly eyeing the possibility of trading deeds and property titles at the touch of a button.

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In May, TechCrunch founder Michael Arrington [listed his apartment in Kiev, Ukraine, as a real estate-backed NFT](#) via the real estate platform Propy, after initially purchasing the property using Ethereum in 2017. (An NFT that would transfer ownership of the property was listed at auction for a starting bid of \$20,000, and sold for over \$93,000. Propy has touted the sale as “the world's first real estate NFT” and now features a [form on its website](#) for sellers interested in the option to “NFT your property.”) More recently, developer [Prometheus sold two luxury homes in Portugal](#) for Cardano cryptocurrency, and also made ownership available via NFT, “allowing future owners to resell the properties at the click of a button via Blockchain tech.”

Stateside, a California real estate broker attempted to auction a property as an NFT in April (the sale of the property was to be bundled with the NFT), but [failed to attract a single bidder](#). (The minimum bid was set at \$2 million, well over the home's assessed market value.)

Even for a successful NFT property sale like the recent Prometheus deal, the transaction comes with a heavy amount of caveats, and some fundamental questions, such as: How can an NFT legally confer property ownership “at the touch of a button,” when legal transfer of a home generally involves slower processes such as the title transfer? And how can a buyer picking up a property on the blockchain guarantee the usual due diligence in order to protect themselves?

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“Utility is the key for NFTs, being able to convey ownership of something through transfer of the NFT,” said New York City-based Compass agent Jason Haber. “Where we’re at now is that we’ll transfer the NFT, but also do the steps [involved in a traditional home sale]. So where’s the utility of the NFT besides, ‘That’s a really cool novelty?’”

In the case of the two Portugal homes, a key aspect of the deal was the agreement that Prometheus’s legal team will ensure property transfers and title deed registrations are handled in line with local laws until blockchain technology becomes a regular part of the legal process.

“As with buying property with any cryptocurrency, the old-fashioned deeds and recording process is the same,” said Robert W. Wood, a San Francisco-based tax lawyer. “In that sense, it is more of a gimmick than a fundamental change, at least for now.”

In short, buying an NFT of a property isn’t likely to mean much in the real world unless all the standard-issue paperwork, such as title transfers, is handled alongside the digital sale.

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“An NFT is essentially a digital right to anything,” said Benjamin Goldburd, partner at New York City-based Goldburd McCone LLP. “An NFT to a property is essentially worthless unless it conveys that sort of ownership.”

Still, some digitally savvy buyers are itching for the opportunity to trade properties at the touch of a button, while sellers and developers are rushing to find feasible ways to make it happen. If you’re considering a real estate deal tied to an NFT, here are some key points to consider:

Tax and Title Transfer Headaches

The most glaring consideration for a buyer in an NFT property deal is whether your digital purchase will truly confer legal ownership of a home through all the traditional channels.

“What’s interesting right now is it’s a case where laws haven’t caught up with the technology,” Mr. Haber said. “Laws across the [U.S.], and state municipalities, would have to change how deeds get recorded. Right now, you go to the county clerk’s office, you don’t go to the blockchain.”

Additionally, buyers or sellers could run into legal concerns about who and what exactly is on the other end of their deal. For Prometheus's NFT sale, the company reportedly developed protocols to conduct the deal while still complying with local Know Your Customer (KYC) laws. (Representatives for Prometheus did not respond to a request for comment for this story.)

"For a company to do this, they need to be mindful of securities regulations when issuing these NFTs," said Max Dilendorf, a partner at New York City-based Dilendorf Law Firm. "The biggest priority [for a U.S. deal] is compliance with the U.S. Bank Secrecy act. You can't be selling anything to anyone without knowing who they are, let alone real estate that will be traded on secondary markets."

"There's a lot to unpack. Just imagine I get an NFT of a property, what does it really mean," Mr. Dilendorf continued. "What exactly do I own? What if the property has three mortgages and one of them defaults, what if the real estate taxes aren't up to date? What if I'm sending payment to someone in North Korea or Iran or other sanctioned jurisdictions? No one is telling me this if I'm just buying a token."

For buyers, this means a high level of due diligence, and for sellers or developers, it likely means extra work to handle the legal details while making the process feel "touch of a button" seamless for buyers.

"What's going to happen for the foreseeable future is we'll need to do double duty," said Nicholas Chavez, a Corcoran agent who also owns Silicon Title, a tech company that utilizes blockchain to transfer real estate titles. "Meaning we'll need to close title and escrow in the standard way, and also close it on the blockchain."

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In addition to the usual tax concerns that may [come with trading properties for cryptocurrency](#), depending on how an NFT home sale is structured, the end result could potentially be a higher tax bill for buyers.

"To use an NFT to track ownership of a property, you'd have to wrap it in a legal entity, typically something like an LLC," Mr. Goldburd said. "The NFT has to essentially convey just ownership through ownership of the U.S. entity. The problem with that is you run into tax issues, and may be trading convenience for a possibly larger tax and transfer bill."

Mr. Wood added, "I always think it's useful to remind people that if they are buying something with appreciated crypto, the act of buying something is also a

sale of the crypto, for tax purposes, so they have tax to pay on the disposition of the appreciated crypto.”

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Searching for Seamless Sales Method

Logistical and tax hurdles aside, crypto enthusiasts are still eager to find a way to make NFT home sales a workable reality, and see blockchain as a potentially safer, more efficient avenue for sensitive transactions like title transfers.

“The technology is there to do it, and to do it in a way that’s probably safer for consumers than the county clerk’s office,” Mr. Haber said. “You read all the time about people who run these scams where they sell buildings they don’t even own.”

Mr. Goldburd added, “The only way this is going to become normalized is when and if local land laws are amended to allow for NFTs to certify title. Which might be a great idea because it would probably ease a lot of the recording issues that happen at title companies, and possibly even make title insurance cheaper.”

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Some buyers have already inquired about options to use NFTs as a way for investors to fractionalize and sell off pieces of a home’s ownership, Mr. Haber said. Elsewhere, Mr. Chavez’s firm is beta testing a sale of an NFT that would convey the right of first refusal to buy a property, giving the purchaser the option to buy the home at a set, agreed-upon price for a certain period of time.

“Buying an option on anything is a hedge against downside and a hope for an upside,” Mr. Chavez said. “So the price of the real estate and the time period of the option are the two key components of that contract.”

“Nobody is going to tell you they’ve got an ironclad foolproof plan [for NFT property sales],” Mr. Chavez added. “But I believe [eventually] all real estate is going to be transferred this way, period, end of sentence.”

By necessity, real estate as an industry will continue to be slower than other corners of the economy when it comes to adapting to cryptocurrency and NFT technology.

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“We’re in the first inning of the technology,” Mr. Haber said. “What you’re seeing around the industry are canaries in the coal mine. Real estate tends to lag because it’s a highly regulated industry, which isn’t a bad thing. But it doesn’t mean that it’s not going to be disrupted, because it will.”

For now, structuring a real estate deal around an NFT primarily comes with a much more old-fashioned upside.

“We have seen over and over again that when a company announces that it will accept payments in crypto, people take notice,” Mr. Wood said. “I think it is a little intoxicating.”