Tokens Are Leases: Structural Subordination in Crypto's Dual Equity–Token Architecture

Part I of II: The Token Continuity Framework Series

David T. Kuhn

tcframework.com · December 2025

ABSTRACT

Crypto-centric startups frequently raise early capital through token issuances—often via SAFTs or similar instruments—while retaining equity ownership of the corporate entity that controls the system's intellectual property, governance, and revenue streams. Although prior scholarship has documented that this dual equity/token structure often results in value accretion to equity rather than tokens, existing analyses tend to frame the problem as one of disclosure, market immaturity, or opportunistic behavior. This Article advances a different account. Drawing on established principles of property and finance law, it argues that the dominant dual equity/token structure is economically equivalent to a ground lease: a deliberate bifurcation of ownership that structurally subordinates token holders unless affirmative legal protections are implemented. In real estate finance, leasehold interests are protected through recognition agreements, non-disturbance rights, and cure provisions precisely because ground owners retain termination and reversionary rights that pose existential risk to the leasehold. Token holders, by contrast, receive no analogous protections. This Article proposes a Token Continuity Framework drawn from leasehold mortgagee doctrine as a model for structural protection of token holder interests.

I. INTRODUCTION

The question of whether crypto tokens can be used to raise capital is largely settled. Through enforcement actions, judicial opinions, and legislative proposals, U.S. regulators and lawmakers have moved beyond the initial novelty of token fundraising to grapple with more refined issues of classification, disclosure, and market integrity. Yet a persistent and largely unresolved problem remains: even when tokens are lawfully issued and widely adopted, they frequently fail to capture the economic value generated by the systems they finance.

This phenomenon is commonly attributed to misaligned incentives or opportunistic behavior by founders and early equity holders. While such explanations may describe individual cases, they do not explain the consistency of the outcome across projects, market cycles, and jurisdictions. Equity holders of token-issuing companies almost invariably capture the residual value of successful crypto systems, while token holders—often the earliest providers of risk capital—are left with attenuated or speculative upside.[1]

This Article advances a structural account of that outcome. It argues that the dominant dual equity/token architecture is not merely a symptom of misaligned incentives but a predictable consequence of a deliberate ownership bifurcation that property law has long recognized and addressed. The vehicle for that recognition is ground lease doctrine, and the solution it offers is not disclosure but design.

II. THE KNOWN PROBLEM OF EQUITY–TOKEN BIFURCATION

Academic literature has increasingly recognized that the separation of token ownership from equity ownership creates incentive misalignment.[2] Equity holders retain control over intellectual property, governance, and revenue routing, while token holders are left to rely on expectations of future utility or decentralized governance. Empirical work has shown that this separation often leads to decisions that favor equity value maximization at the expense of token economics.

The standard policy response has been disclosure: require issuers to describe the risks, and let markets price them. That response is insufficient. Structural subordination cannot be disclosed away. A ground owner who discloses that she retains termination rights has not thereby eliminated the risk that termination poses to the leasehold tenant. The disclosure is accurate; the risk remains existential.

III. GROUND LEASES AS A MODEL OF STRUCTURAL SUBORDINATION

A ground lease is a long-term lease—often extending 50 to 99 years—in which the owner of land leases the land to a tenant who develops and operates improvements on it.[3] The fee simple estate is intentionally bifurcated into a ground estate and a leasehold estate. Although the leasehold tenant may invest substantial capital, the ground owner retains a reversionary interest and, critically, termination rights.[4]

Because termination of the ground lease would extinguish the leasehold estate, leasehold lenders face existential collateral risk. For this reason, ground-lease financing evolved a robust set of legal protections, including recognition agreements, non-disturbance clauses, notice requirements, and cure rights.[5] These protections are structural, not informational. Disclosure alone is insufficient to mitigate termination risk. The lender who finances a leasehold interest requires enforceable constraints on the ground owner's discretion—not merely a description of that discretion.

These protections exist along a recognized spectrum. At the minimum end, notice of default and cure rights give the leasehold lender an opportunity to step in before the ground owner terminates. At the middle tier, non-disturbance agreements prevent automatic wipeout of the leasehold interest on default. At the maximum end, replacement-lease rights allow the lender to obtain a new lease directly from the ground owner, preserving the collateral entirely. None of these protections confer ownership, residual upside, or managerial control. Their function is narrower and more powerful: they convert discretionary termination risk into rule-bound enforcement risk.

IV. TOKENS AS LEASEHOLD INTERESTS

Issuing a token while retaining equity ownership of the issuing company's intellectual property, governance, and revenue streams is economically equivalent to creating a leasehold interest without a recognition agreement.[6] Token holders provide capital and bear risk, but their interest is subordinated to the equity holders' residual control.

Just as a ground owner can refinance, redevelop, or terminate a lease in ways that impair the leasehold, equity holders can redirect value, modify token economics, or render tokens obsolete—all without breaching any contractual duty to token holders.[7] The analogy is not merely rhetorical. In both settings, the subordinated party provides capital, assumes risk, and depends for economic return on the continued good faith of a party that retains structural superiority.

The analogy does not require that tokens be classified as debt instruments or that token holders be treated as creditors. The ground-lease comparison operates at the level of economic structure, not legal classification. What matters is the pattern: capital deployed in reliance on a system controlled by another party that retains the discretion to reshape, redirect, or terminate the economic relationship.

V. WHY VALUE PREDICTABLY ACCRUES TO EQUITY

The predictable flow of value to equity arises from four structural features: ownership of intellectual property, control over revenue routing, centralized governance authority, and asymmetric optionality.[8] Equity holders can pivot business models, license technology, or sunset token functionality. Token holders cannot compel alignment.

This dynamic is not unique to crypto. It is the same dynamic that ground-lease doctrine was designed to address. When a single party controls the inputs, infrastructure, and governance of a system, economic returns will tend to flow toward that party regardless of how capital was initially structured. The leasehold mortgagee protection toolkit exists precisely because market participants recognized that disclosure of this dynamic was not sufficient to protect subordinated capital.

The implication for token design is direct. Projects that issue tokens while retaining equity control of core infrastructure are making a structural choice with predictable distributional consequences. Policymakers and market participants should evaluate that choice using the same analytical tools that property law has long applied to analogous bifurcated ownership structures.

VI. POLICY IMPLICATIONS

The ground-lease analogy demonstrates why disclosure-based regulation cannot solve tokenholder risk. Structural subordination cannot be cured by better warnings.[9] Nor does the problem require reclassifying tokens as securities. Instead, policymakers should recognize tokenholders as a subordinated capital class and consider whether baseline structural protections are warranted.

The current regulatory debate tends to present two options: either tokens are securities subject to full registration requirements, or they are not and receive little structural protection. The ground-lease analogy suggests a third path. Leasehold interests are not equity. They are not debt. They are a recognized category of subordinated interest protected by structural mechanisms

calibrated to the risks they face. Token holder interests could occupy an analogous position without requiring reclassification of tokens as any existing instrument.

This framing also responds to the argument that sophisticated token purchasers can protect themselves through contractual negotiation. Leasehold mortgagee protections did not develop because individual lenders lacked negotiating sophistication. They developed because the risks of unprotected leasehold lending were systemic and recurring. Market-wide adoption of baseline structural protections created a more stable and financeable asset class. The same logic applies to tokens.

VII. TOWARD TOKEN RECOGNITION FRAMEWORKS

Borrowing from ground-lease doctrine, policymakers and market participants could explore token recognition frameworks that provide economic non-disturbance, intellectual property stability, and governance transition mechanisms.[10] Such frameworks would not guarantee token profitability, but they would address the structural asymmetry that currently defines token ownership.

A minimum-protection tier might include notice and cure rights: token holders or their representatives would receive notice before material changes to token economics and an opportunity to respond before those changes take effect. A middle tier might include non-disturbance agreements: commitments by the equity-holding entity not to take actions that would extinguish token utility without providing transition mechanisms. A maximum-protection tier, analogous to replacement-lease rights, might include intellectual property licensing commitments that survive corporate restructuring or acquisition.

Part II of this series—*From Disclosure to Design: Constraining Endogenous Risk in Structurally Subordinate Tokens*—develops these frameworks in greater detail, situating them within securities law's core concern with endogenous risk and the Digital Asset Market Clarity Act's emerging framework for token classification. The full practitioner elaboration of the Token Continuity Framework, including the 18-issue design taxonomy, theater-identification protocol, and skeletal no-action letter template, is set forth in the companion white paper, *Token Continuity Framework: Designing Structural Protections for Token Holders Under Existing U.S. Securities Law*, also available at tcframework.com.[11]

VIII. CONCLUSION

Crypto's dual equity/token structure has recreated, without acknowledgment, a form of leasehold subordination long recognized in property law. The outcome—value flowing predictably to equity rather than to token holders—is not a market anomaly or a product of fraud. It is the expected consequence of an unprotected bifurcated ownership structure.

Until tokenholders receive protections analogous to those demanded by leasehold lenders, value diversion to equity will remain the rule rather than the exception. Ground-lease doctrine did not solve this problem by disclosing it. It solved it by building structural constraints into the ownership relationship itself. Token design should do the same.

NOTES AND AUTHORITIES

1. Lukas Gruber & Ashley Kim, *The Bifurcation of Equity and Tokens in Cryptocurrency Markets* (2024).

2. *Id.*; see also Miles Jennings et al., *Control-Based Decentralization* (a16z Crypto, Mar. 13, 2025).

3. Grant S. Nelson & Dale A. Whitman, *Real Estate Finance Law* § 13.6 (6th ed. 2014); Joshua Stein, *A Practical Guide to Ground Leases* (multi-part treatise).

4. *Id.*

5. Nelson & Whitman, *supra* note 3; Stein, *supra* note 3. The tiered structure of leasehold mortgagee protections—minimum (notice and cure), middle (non-disturbance and step-in rights), and maximum (replacement-lease rights)—is documented in Joshua Stein's practitioner-focused work and represents market convention in institutional ground-lease transactions.

6. See Thomas W. Merrill & Henry E. Smith, *Property: Principles and Policies* 108–15 (Foundation Press 2017).

7. Gruber & Kim, *supra* note 1.

8. See generally Oliver E. Williamson, *The Economic Institutions of Capitalism* (1985).

9. See Frank H. Easterbrook & Daniel R. Fischel, *The Economic Structure of Corporate Law* 15–18 (1991).

10. Nelson & Whitman, *supra* note 3; Stein, *supra* note 3.

11. David Kuhn, *From Disclosure to Design: Constraining Endogenous Risk in Structurally Subordinate Tokens* (Part II of II: The Token Continuity Framework Series) (Dec. 2025), available at SSRN, https://ssrn.com/abstract=[PART II SSRN ID] (also available at tcframework.com). The framework is elaborated in practitioner form in David Kuhn, *Token Continuity Framework: Designing Structural Protections for Token Holders Under Existing U.S. Securities Law* (2026), available at SSRN, https://ssrn.com/abstract=[WHITE PAPER SSRN ID].

***** *David T. Kuhn is a digital assets and venture capital attorney and General Counsel. He is barred in New York and Pennsylvania. He earned his J.D. from Boston College Law School and B.A. from the University of Pennsylvania. He can be reached at tcframework.com and on X at @gr8day4this.*