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- [About Space](#)
- [About Money](#)
- [About People](#)
- [About Offices](#)

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- [ARIDO](#)
- [BOMA](#)
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[Top 25 Management Firms](#)

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Annual Real Property Audit Provides Protection and Peace of Mind

By Gabor J. Horvath & Terrance P. Clark

Spin-offs, amalgamations, acquisitions, divestitures, restructurings and name changes are a normal part of today's corporate landscape but they are having increasingly serious implications for those who manage real property assets.

Compliance requirements (internal, Sarbanes/Oxley, IDA, OSFI, IRS QI, etc.) are an ever increasing burden and are becoming more costly to meet.

What's more, real estate fraud is usually committed without the true owner's knowledge and is a lucrative source of revenue for organized crime in Canada. Title Insurers report that fraudulent conveyance and mortgage activity accounts for a large percentage of title insurance claims.

Proper Info Can Help Close a Deal

A real property asset manager is often charged with acquiring, disposing of, leasing, renting, maintaining and otherwise dealing with the property under control of an enterprise. Performing these tasks, in light of the above impediments, is becoming an increasingly arduous and expensive task. Sometimes, it can make the difference between a deal closing and not closing.

It's important to make certain your interests are protected when your enterprise commits to a mortgage, an Agreement of Purchase and Sale, an Agreement to Lease, a listing with a Realtor, or a maintenance or renovation contract.

If the CFO, a board member, or a regulator demands a current list of real property assets along with an up-to-date schedule of ownership and encumbrances can you comply quickly and accurately?

These are the sorts of issues that keep professional asset managers awake at night. The solution is to identify potential problems, verify information on a regular basis, and take appropriate action when discrepancies are found. Increasingly, corporate real estate



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professionals are turning to annual Real Property Audits for assurance and peace of mind.

What a Comprehensive Audit Provides

Some professional services firms offer annually updated audits of an organization's real property assets. Offerings can vary but should include a report that identifies problems and recommends actionable solutions. A comprehensive audit should provide:

- A definitive listing of all real property holdings within an organization
- Distinguish between freehold and leasehold holdings.
- Identify the name of the legal entity currently registered as owner.
- Identify and provide details of all registered mortgages and other encumbrances such as construction liens.
- Search for personal property liens, judgments, executions, and civil litigation against the titular owner. (These items are often not registered on title but can affect the owner's ability to deal with the real property.)
- Update all of this information on an annual basis.

Why third parties use Real Property Audits

A real property audit provides detailed information but it is important to note that it is all a matter of public record; consequently, anyone can order a Real Property Audit. While in most cases the client of a Real Property Audit is an organization wanting to verify its own assets, it is increasingly common for other interested parties to order these reports. Third parties that make regular use of Real Property Audits include,

- Lenders
- Brokers
- Investment Banks
- Independent Directors
- Major Shareholders
- Competitors
- A Potential Suitor or Acquisitor
- Regulators and Government agencies
- Litigants

The list of clients for these services is growing. Often, accounting firms will order a Real Property Audit as part of the annual tax audit engagement to verify the accuracy of a client's balance sheet. Since many jurisdictions now require the Chief Executive and/or a director to sign-off on financial statements, these individuals increasingly use Real Property Audits prepared by an outside professional services firm, as a form of protection against errors that might create a liability for the company.

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