

# Real Estate Investment Trusts (REITs)



## Things to know

- REITs are trusts that passively hold interests in real property.
- REIT is governed by and established pursuant to a declaration of trust. Trustees of the REIT hold legal title to and manage the trust property on behalf of the unitholders of the REIT.
- Trustees of the REIT are generally subject to fiduciary duties similar to those applicable to directors of a corporation.
- There is no legislation governing the organizational structure of a REIT. Principles of contract law and trust law govern.
- Benefit from preferential tax treatment — trust income is permitted to flow through the trust into the hands of the unitholders and, consequently, income is not taxed at the trust level.
- To qualify as a REIT, a trust needs to be a publicly traded unit trust that is resident in Canada and must meet tests set out in the [Income Tax Act](#) (Canada) (the “ITA”) based on, among other factors, the nature and quantity of real estate assets owned and the sources of trust revenue.

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- [Investment limited partnerships: Federal Budget 2018](#)

# Things to do

## STRUCTURING

- Structuring of subsidiaries needs to be done in way that minimizes risk of failing to meet any of the REIT tests set out in the ITA.

## DRAFTING

- Declaration of trust needs to set out, among other things, the duties of trustees, the process for electing trustees, procedures governing conflicts of interest, the terms applicable to amendments to the declaration of trust and the process for calling unitholder meetings.

## M&A

- In addition to securities laws, the declaration of trust governs the terms applicable to an acquisition of, or merger with, a REIT.

### RELATED TOPICS

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### Need more info?

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