

# Market Dynamics of East Asia

## Japan's Real Estate Legal and Finance System

**Yasushi Kinoshita, Esq., CRE, FRICS**

Representative Member and Founder

Eminence Partners G.K.

# Real Estate Legal Rights: The Foundation

## Land and Building as Separate Entities

Unlike many Western jurisdictions, Japanese law treats land and buildings as independent subjects of legal ownership. Therefore, registration for land and building is done separately. This fundamental distinction creates unique ownership structures and rights that must be carefully navigated during acquisitions and development projects.

## Registration System Overview

Real estate rights are registered in the Real Estate Registry ( *Fudosan Toki* ) at the Legal Affairs Bureau ( *Homu Kyoku* ) operated by the Ministry of Justice. This system encompasses nine distinct legal rights, including ownership, superficies, easements, mortgages, and leasehold rights.

## Major Ownership Classifications

Japanese law recognizes three major ownership rights: Fee simple ( *Kanzen Shoyuken* ), Strata ownership ( *Kubun Shoyuken* ), and Tenancy in common ( *Kyoyu* ). Additionally, two primary leasehold rights exist: Superficies ( *Chijyo Ken* ) as a real right and Leasehold ( *Shakuchi Ken* ) as a contractual right.

Please note that there are no major restrictions on foreigners acquiring real estate in Japan unlike some other APAC countries.

# Real Estate Registration System (Fudosan Toki)

## 1 Computerized National Registry

Japan operates a sophisticated, nationwide computerized legal registry system covering real estate ownership, liens, vessels, and legal entities. This comprehensive system began computerization in 1988, with major implementation completed by 2008, though continuous refinements continue. Due to privacy concerns, resident and family registers remain separate systems with stricter access controls.

## 2 Land-Parcel Identifier System

The Japanese registration system employs a unique land parcel identification number called 'Chiban' as the primary property identifier. Registration certification documents detail the historical chain of ownership and other real estate -related rights and legal events for specific land parcels and registered buildings using this Chiban system.

## 3 Registry Structure

The real estate registry consists of two main sections: the 'Title Division' (Hyodai Bu), documenting physical attributes like land area and building structure, and the 'Rights Division' (Kenri Bu), recording all registered legal rights associated with the property. This dual structure creates a comprehensive record of both physical characteristics and legal entitlements.

# Real Estate Registration System: Critical Aspects

## Rights Assertion Requirements

The Japanese registration system requires property rights to be registered to assert them against third parties. Without registration, your rights may be subordinated to claims by bona fide third parties. While registration provides public credibility, it doesn't offer absolute protection to third parties relying on registered information, making simultaneous registration of ownership upon purchase payment essential for protecting your rights.

## Kozu Map Limitations

The Legal Affairs Bureau maintains cadastral maps known as "Kozu" showing land parcel shape, location, and boundary points. However, these maps lack conclusive legal effect in determining boundaries and, due to age and potential inaccuracies, may not accurately reflect current land divisions, creating potential complications for property transactions.

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## Modernization and Title Deed Abolition

Significant amendments in 2005 modernized the registration system, introducing online registration and discontinuing physical "title deeds" ( *Kenrisho* ). These were replaced by a 12 -character alphanumeric "Registration Identification Information" ( *Toki Shikibetsu Joho* ) password system, while reinforcing requirements for submitting documentation verifying registration causes.

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# Boundary Confirmation: Mitigating Disputes

## Boundary Confirmation Memorandum

Institutional property acquisitions typically require obtaining a boundary confirmation memorandum (Kyokai Kakunin - Sho) signed by all adjacent landowners. While not strictly legally binding, this document serves as crucial evidence of boundary agreement based on a licensed land and house surveyor's (Tochi Kaoku Chosa - Shi) determination following detailed surveys and on -site confirmation with all relevant parties.

## Boundary Agreement for Encroachments

When structures or features like walls, trees, or fences encroach across legal boundaries, executing a boundary agreement or memorandum with adjacent landowners represents common prudent practice. This proactive approach effectively mitigates the risk of future boundary disputes that could otherwise complicate property ownership and development.

## Official Boundary Determination

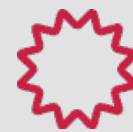
The "Hitsukai Tokutei" system provides an administrative alternative to court proceedings for resolving boundary disputes. Either party can request the Legal Affairs Bureau's assistance in determining boundaries based on maps, records, site visits, and witness testimony. While not a judicial ruling, this determination carries significant weight and offers a faster, more cost -effective resolution mechanism.

# Compliance with Building Codes: Documentation



## Certificate of Inspection

Building code compliance verification primarily occurs through the 'Certificate of Inspection' ( *Kensa Zumi Sho* ) issued alongside the 'Building Construction Confirmation Application' ( *Kenchiku Kakunin Shinsei Sho* ). These critical documents establish a property's compliance with building regulations at the time of construction.



## Issuing Authorities

Local governments or designated private inspection agencies issue these certificates after conducting thorough application reviews and on-site inspections. This dual verification process helps ensure buildings meet all structural, safety, and zoning requirements before they can be legally occupied and used.



## Certificate Replacement

While original Certificates of Inspection cannot be re-issued if lost or destroyed, a 'Certificate of Issuance' (Kofu Shomei Sho) can be obtained as official proof that the original certificate was properly issued. Without this documentation, confirming building code compliance becomes challenging, making most institutional investors reluctant to acquire properties lacking proper verification.

# Acquisition/Disposition Closing Procedures

## In-Person Closing Requirements

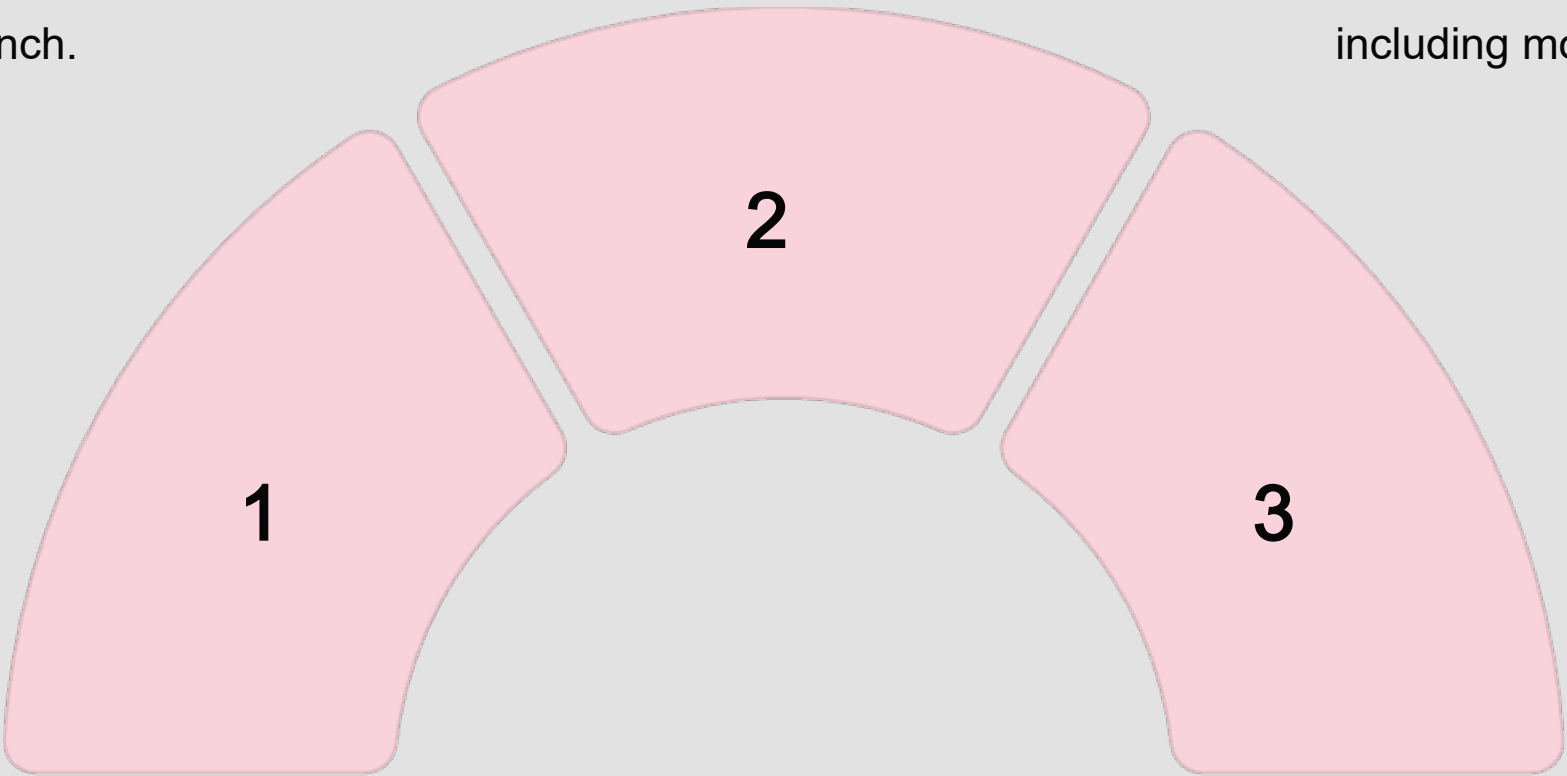
Unlike countries with established escrow systems, Japanese real estate closings typically require all parties to gather in person at a designated location, often a commercial bank branch.

## Bank Timing Constraints

The standard bank closing time of 15:00 necessitates early morning closing meetings, typically between 9:00 - 10:00, to ensure timely fund transfers.

## Judicial Scrivener's Role

The judicial scrivener ( *Shiho Shoshi* ) handles all registration processes, including mortgage releases and title transfers.



Japan's lack of an escrow system creates a distinct closing process that relies heavily on in-person meetings and direct fund transfers. Commercial banks provide convenient venues for these transactions, allowing immediate wire transfer confirmation. While concerns about potential conflicts of interest might suggest using multiple judicial scriveners, standard practice employs a single scrivener for all registration tasks, with review by additional scriveners being uncommon.



# Taxes Associated with Real Estate Transfer

Transaction Element	Tax Rate/Amount
Contract Price: 100 - 500 million yen	Stamp Duty: 60,000 yen
Contract Price: 500 - 1,000 million yen	Stamp Duty: 160,000 yen
Contract Price: 1 - 5 billion yen	Stamp Duty: 320,000 yen
Contract Price: Over 5 billion yen	Stamp Duty: 480,000 yen
Registration of land title via sales	Registration Tax: 2% of Property Tax Assessment Value
Registration of building title via sales	Registration Tax: 2% of Property Tax Assessment Value
Land Acquisition	Real Estate Acquisition Tax: 3% of Property Tax Assessment Value
Residential Building Acquisition	Real Estate Acquisition Tax: 3% of Property Tax Assessment Value
Other Building Acquisition	Real Estate Acquisition Tax: 4% of Property Tax Assessment Value

Real estate transactions in Japan incur three primary types of taxes: Stamp Duty on sales and purchase agreements, Registration Tax on Tax paid during registration, and Real Estate Acquisition Tax levied on buyers. While this table outlines standard rates, various exemptions and special discounts may apply to specific transactions. Consultation with a qualified tax advisor is essential for determining exact applicable amounts for your specific transaction circumstances.



# Tenant Lease Structures in Japan

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## Ordinary Leases (Futsu Shakuya Keiyaku)

Following World War II's housing shortage, Japan enacted tenant -favorable Ordinary Lease Law. Under this system, landlords face significant eviction restrictions, requiring narrowly defined 'Justifiable Reason' (Seito Jiyu) plus substantial eviction fees. Though typical terms last two years, mere expiration doesn't constitute grounds for termination. When tenants maintain market rent payments, leases effectively continue indefinitely, making eviction extremely difficult.

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## Fixed - Term Leases (Teiki Shakuya Keiyaku)

Introduced in 2000 to promote higher -quality rental housing development, Fixed -Term Leases automatically expire on agreed dates without requiring "Justifiable Reason." With certain residential lease exceptions, these arrangements can be structured as non -cancellable with fixed rental terms, offering landlords greater certainty and control.

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## Market Adoption Patterns

Despite landlord -favorable characteristics, Fixed -Term Leases remain uncommon in residential markets, accounting for only 3.6% of residential leases between 2010 -2014 according to MLIT surveys. However, they've gained significant traction in commercial office and retail properties, where lease structures respond more directly to occupancy trends and business requirements.

# Tax Conduit Structures for Institutional Investors



## GK/TK Structure

Employs 'Tokumei Kumiai' (TK) silent partnerships offering flexibility in investment structuring and profit distribution. While tax -efficient for foreign investors, TK investors have limited operational involvement.

## TMK Structure

Initially designed for asset liquidation, now evolved for real estate investment. Offers advantages in limited liability and asset segregation but with higher establishment costs.

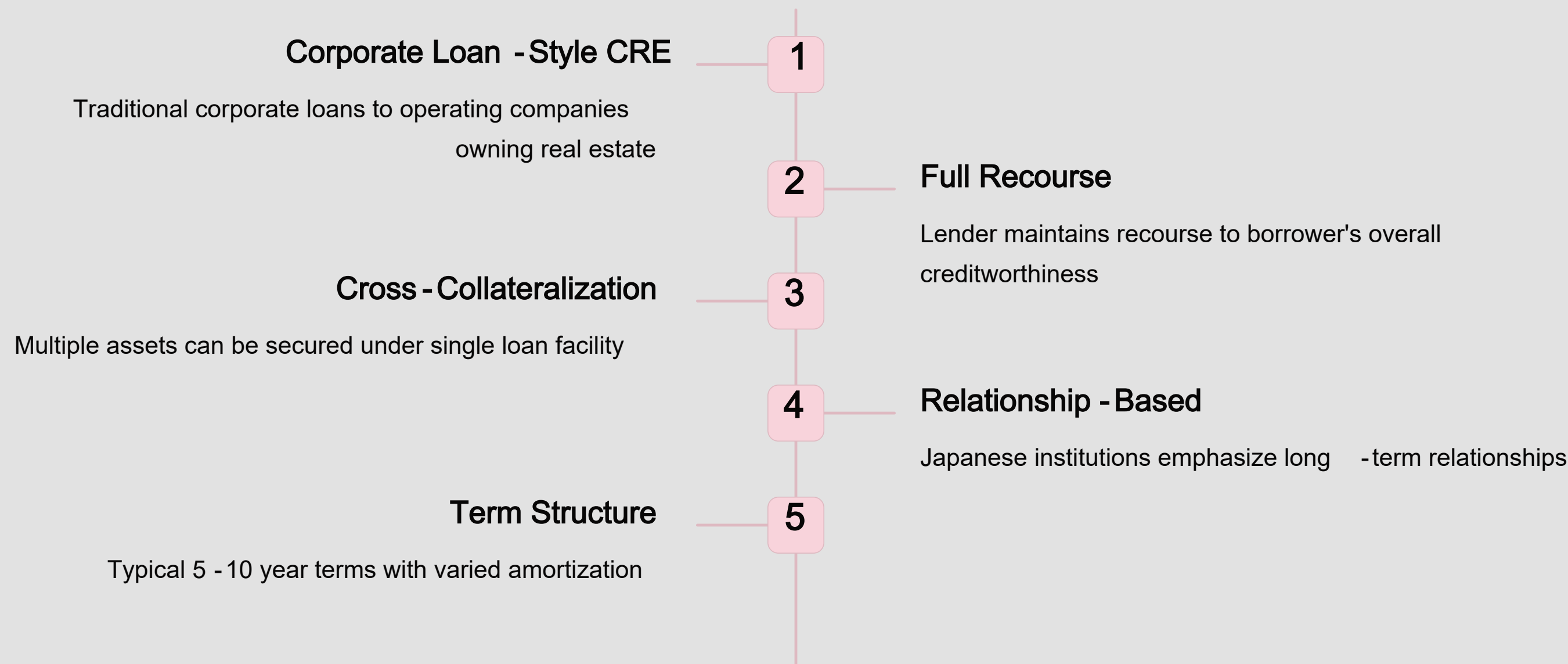
## J-REIT Structure

Regulated platform for collective real estate investment, suitable for multiple asset aggregation into listed or private funds. Operates under stricter regulatory requirements.

Institutional investors in Japanese real estate typically utilize one of three primary tax -transparent structures to mitigate double taxation: the 'Tokumei Kumiai' (TK) structure under the Commercial Code, the 'Tokutei Mokuteki Kaisha' (TMK) structure under the Asset Liquidation Law, or the J -REIT structure regulated by the Investment Trusts and Investment Corporations Act.

The GK/TK structure has become particularly popular among foreign investors due to its flexibility and tax efficiency. While TK investors enjoy limited liability, they must remain "silent partners" with restricted operational involvement. TMK structures , while offering clearer tax positions and asset segregation, involve higher establishment costs that typically limit their use to larger-scale investments. J -REITs, with their stricter regulatory requirements including leverage limits and disclosure obligations, remain focused on creating diversified portfolios suitable for both institutional and retail investors.

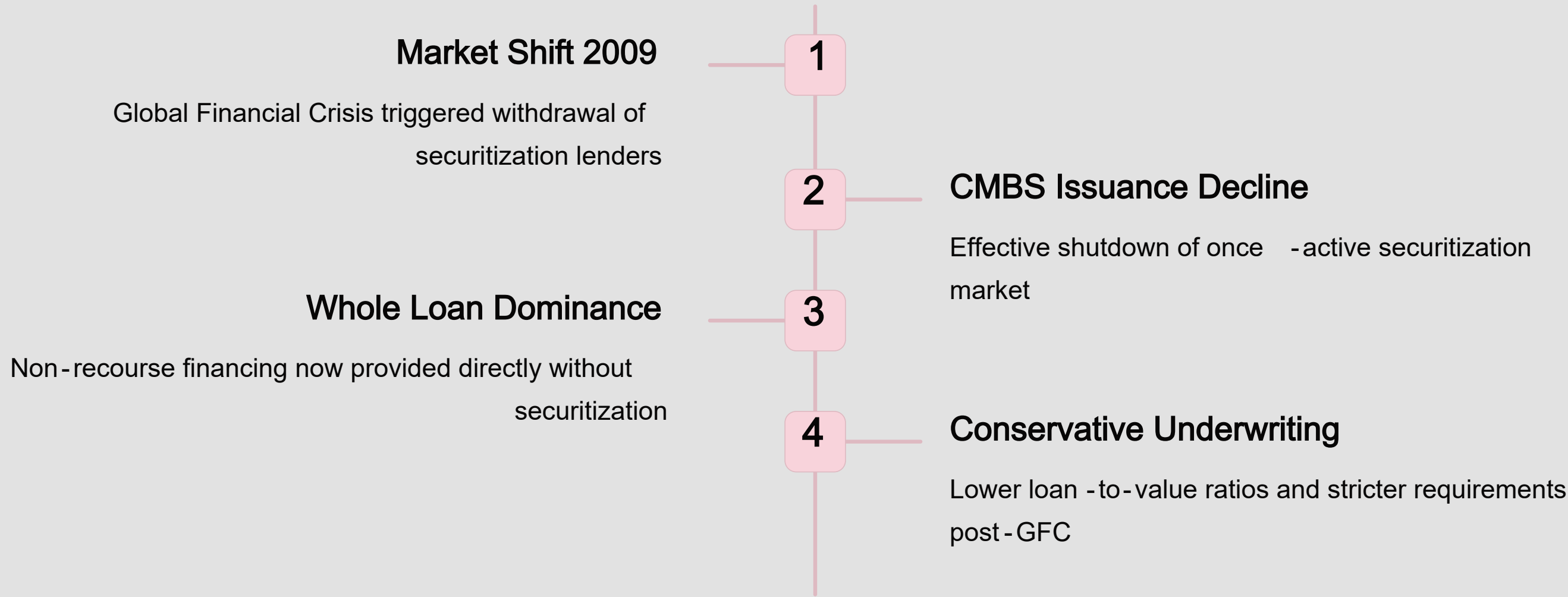
# Real Estate Loan Market: Corporate Loans



Japan's real estate loan market divides broadly into two categories: corporate loan -style CRE loans and non -recourse loans using bankruptcy -remote entities. Corporate real estate loans follow traditional lending structures where operating companies directly own and finance real estate assets. These arrangements create full recourse against both the property and the borrower's broader financial position.

This lending approach emphasizes relationship banking, with domestic and regional banks focusing on long - term client relationships rather than purely transactional financing. While offering flexibility for established corporate borrowers, this structure exposes the borrower's entire financial position to real estate market risks, potentially constraining operational flexibility.

# Real Estate Loan Market: Non -Recourse Lending



Non-recourse loans represent the sophisticated segment of Japan's real estate finance market, utilizing special -purpose entities (SPEs) to isolate financial risk. These structures feature bankruptcy -remote vehicles with operations limited to owning specific assets, limiting lender recourse solely to the property itself. Sponsors typically provide only limited guarantees covering b ad-boy acts or environmental risks, with underwriting based on project metrics rather than sponsor financials.

The market underwent significant transformation following the Global Financial Crisis, when most global securitization condui t lenders withdrew from Japan amid heightened risk aversion and tighter regulations. This retreat effectively collapsed the commercial mortgage -backed securities (CMBS) market, shifting non -recourse lending to whole loans provided directly by domestic banks and specialized international lenders. Today's landscape remains dominated by bank lending with more conservative terms, reflecting post -crisis caution in commercial real estate finance.