



TENANCY-IN-COMMON (TIC)

In an exchange, the taxpayer must be able to take title to a specific interest in the property (that is, the taxpayer must be on the deed). For example, purchasing an interest in a partnership does not qualify. Thus, many properties involving co-owners are purchased as “tenants-in-common” with each co-owner on the deed.

For a number of years there has been a need for developers of large commercial properties to provide 1031 exchangors a way to purchase an interest in the commercial property as a tenant-in-common. In March 2002, the IRS released “Revenue Procedure 2002-22” to address fractional ownership interests as replacement property in a like-kind exchange. These are known as tenancy-in-common interests or TIC interests. As a result, a number of commercial real estate companies are now offering TIC interests to exchangors in order for them to complete their like-kind exchanges.

Basically, a real estate project sponsor owns one or more commercial properties in which they will sell a Tenancy-In-Common fractional interest to a number of co-owners. The sponsor has a master lease with a management company for a fixed monthly amount. The master lease is typically a triple-net lease so that the property owners need not worry about the day-to-day operation of the property.

The Revenue Procedure did not provide “safe harbor” provisions but authorized project sponsors to request a Private Letter Ruling on their specific offerings and listed 15 specific requirements to be met for a favorable ruling, such as: each co-owner takes title as a tenant-in-common; the number of co-owners cannot exceed 35; co-owners must unanimously agree on major decisions such as sale, lease, and financing; co-owner activity is limited; revenues and expenses must be shared according to interest owned; and each co-owner retains the right to transfer, partition, or encumber their interest with other co-owner approval.

Occasionally, an exchangor cannot complete an exchange because: 1) they are unable to find and identify replacement property within the 45-day identification period; 2) a desired property cannot be placed under contract or the contract falls out sometime before the 45th day; or 3) they cannot find a desirable property for the equity, value, and debt that must be replaced. The TIC type commercial offering helps solve these problems. The great advantages are the large number of properties available and both the size of the TIC interest and the date for closing are very flexible. Normally, the cash equity to be invested is only \$100,000 or greater.

If, within the 45-day identification period, an exchangor is unable to identify a replacement property or is uncertain about the suitability of an identified replacement property, they can quickly identify a TIC property as an alternative. They will then have up to a total of 180 days to close on their interest in the TIC property and complete the exchange. As with any investment, the exchangor needs to investigate fees, return on investment, and resale opportunities.

Contact Realty Exchange Corporation for information on firms selling TIC interests.

This publication is designed to provide accurate information on tax-deferred exchanges. The publisher is not engaged in rendering legal or accounting services. If legal or tax advice is required, the services of a competent professional should be sought.

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