

# Securitized TIC Offerings—Not Just for 1031 Investors

By: Eric Perkins, Esq., Hirschler Fleischer PC

# A

A primary driving force behind the growth and development of the securitized tenant-in-common (“TIC”) industry is to provide a feasible replacement property solution for real estate investors trying to consummate

Section 1031 like-kind exchanges. In some respects, the TIC industry emerged to service a captive audience of taxpayers who were planning to sell or had already sold investment real estate and were facing strict deadlines to identify and acquire replacement properties in order to enjoy the tax-deferral benefits afforded by Section 1031 of the Internal Revenue Code.

While industry professionals estimate that 1031 investors comprise anywhere from 80 to 99 percent of the investors in any given TIC offering, consummating a 1031 exchange is not a prerequisite to investing in a TIC offering. In fact, many of the well-publicized and promoted advantages of TIC investing have nothing to do with the tax-deferral benefits of a Section 1031 exchange. These non-1031 benefits include:

- (i) ownership of institutional-grade real estate,
- (ii) diversification across different asset classes and geographic areas,
- (iii) non-recourse financing;
- (iv) professional property management, and
- (v) stable cash flow, among others.

Analyzing 1031 issues is just one of many factors registered representatives take into account when making suitability determinations and investment recommendations for their clients. Individual investment goals, portfolio concentration, asset diversification, and deal-specific analysis are all relevant factors that come into play and apply equally to all investors.

Registered representatives active in the TIC industry are quick to confirm that TIC investments can be an appropriate investment vehicle for non-1031 investors in a variety of contexts. David Waal, principal owner of Presidio Exchange Advisors in Walnut Creek, California and a registered representative with OMNI Brokerage, has observed an increasing demand for TIC investments from non-1031 investors in recent years. He notes that among his clients who have invested in TIC offerings in 2008 so far, approximately 25 percent were not completing a 1031 exchange. Waal suggests that, “as more sponsors focus on deals that are true value plays, more non-traditional TIC investors take notice.”

Kathy Heshelow, owner of Legacy Real Estate & Investments in Seminole, Florida and a registered representative with CapWest Securities, explains that, while not a significant percentage of the TIC-investing population, non-1031 investors may be motivated to invest in TIC programs for various reasons. The most common fact pattern she has observed in this context is the “busy professional who wants real estate in his/her portfolio, but has neither the time nor interest in day-to-day management responsibility and prefers an institutional grade property as opposed to something local.” Heshelow notes, “I have a few of these investors each year. Some end up investing in REITs instead, but others prefer direct ownership and the associated tax benefits.”

Speaking of tax benefits, regardless of whether an investor is doing a 1031 exchange coming into a TIC offering, the benefit of being able to consummate a like-kind exchange at the “back-end” of the deal (i.e., when the TIC property is ultimately sold) should not be ignored. TIC investment marketing efforts are more typically directed toward investors searching for replacement properties to complete 1031 exchanges, but arguably those marketing efforts could be

effectively directed toward also educating non-1031 investors about the tax-deferral benefits afforded by Section 1031 and how those benefits can be enjoyed later—assuming no intervening change in the law—upon the sale of the TIC property at the end of the holding period. This unique compatibility with Section 1031 is a major factor that differentiates TIC programs from syndicated real estate partnerships, limited liability companies, and REITs.

On the other hand, there are valid reasons why a securitized TIC program might not be the most appropriate choice for a non-1031 investor looking to invest in real estate. Dr. Gary Ackerman, a registered representative with CapWest Securities and a licensed real estate agent with Whittle & Roper Real Estate in Glen Allen, Virginia, explains why he rarely recommends a TIC investment to a non-1031 investor.

“I am almost always able to gain greater diversification—and therefore less risk—through a syndicated LLC or REIT that owns a portfolio of properties than through a single TIC property,” observes Ackerman. “In addition, investment minimums for real estate partnerships and REITs usually are significantly lower than in TIC offerings, and these lower minimums can provide investors opportunities for greater exposure to different sponsors, property types, and investment styles for the same amount of money required to purchase a single TIC interest.”

In conclusion, securitized TIC programs can be a viable investment option for all real estate investors and merit consideration as part of a well-balanced investment portfolio regardless of whether completing a 1031 exchange is a current objective.

#### TICA CERTIFICATION STUDY RESULTS CONTINUED FROM PAGE 5

- These factors could potentially create a situation where a new certification program would grow very slowly and perhaps only be attractive to a relatively small number of participants. TICA leadership needs to consider the broader strategic question of whether a low-volume program is worth a significant investment of association time and money even if this program is quite popular with a limited number of certificates.

Having cited the preceding concerns, TICA could still decide to develop a certification program even though launching this initiative might require a perpetual financial subsidy. Focus group participants seemed comfortable with this possibility, but the TICA Board should give this matter careful consideration. Michael Hamm & Associates can help develop a cost-effective program with minimal development costs, but we could not guarantee that the anticipated volume of applicants would offset a “bare-bones” program budget.

TICA members have expressed interest in additional education/training in this study and in previous TICA membership surveys. Meeting this need would appear to be a higher priority from the point of view of a larger

portion of the membership. Although a formal curriculum certificate was not as popular as certification, TICA could still develop a package of well-designed, high-quality courses which could be bundled into a certificate in the future in order to help address some of the need for a credential of some type.

#### Next Steps

The TICA Board of Directors and Education & Marketing Committee feel that it would make sense to table this effort at least until the economy improves somewhat and the future demand for TIC specialists shows some sign of stabilizing or increasing.

TICA plans to pursue an expanded education program, which includes high-quality, TIC-focused courses that could be bundled into a future certificate program or offered on a “cafeteria” menu basis to meet the varying needs of TICA’s diverse membership. The committee is currently working on TICA’s first educational webinar.

If you have any questions, contact Kathy Finley at [kmfinley@ticassoc.org](mailto:kmfinley@ticassoc.org) or 317.663.4173.