



TICA

TENANT-IN-COMMON ASSOCIATION

March 2, 2007

Honorable Rick Metsger  
Chairman  
Senate Business, Transportation and Workforce Development Committee  
State Legislative  
900 Court St. NE., S-307  
Salem, OR 97301  
Email: [sen.rickmetsger@state.or.us](mailto:sen.rickmetsger@state.or.us)

**RE: Senate Bill 449**

Dear Senator Metsger:

On behalf of the members and Board of Directors of the Tenant-In-Common Association ("TICA"), I am writing to oppose Senate Bill 449 ("The Bill").

**Who is the Tenant-In-Common Association?**

TICA is a national trade association for professionals involved in all aspects of group real estate investment programs.

Professionals involved in TICA include, but are not limited to Sponsors of Tenant-In-Common ("TIC") programs, Lawyers, Accountants, Realtors, Financial Advisors, Broker-dealers, Qualified Intermediaries, and Title Companies.

TICA exists to advance, promote and protect the TIC industry by:

- Protecting the interests of investors.
- Promoting the quality and integrity of programs offered to investors.
- Promoting high standards of professional conduct, including legislative and regulatory compliance.
- Providing members with quality education, information resources and networking opportunities.

**Key Historical Events that Shaped the TIC Industry**

- **Revenue Procedure 2002-22**  
TICA members served as advisors and a resource to the Internal Revenue Service and Treasury Department in the development of Revenue Procedure 2002-22. This Revenue Procedure clarified the difference between a multiple owner, real estate partnership and an offering to multiple owners of undivided, fractional interests in real estate. Its conclusion was that given that certain conditions are met, the offering of undivided, fractional interests is deemed valid "like-kind" property under Section 1031 of the Internal Revenue Service Code. At the time of the Revenue Procedure's development, it was acknowledged that the TIC Program

Offerings were considered real estate for 1031 exchange purposes and securities for the protection of investors.

(Reference TICA White Paper entitled "Treatment of Tenancy-In-Common Interests as Securities" which is enclosed)

- **Revenue Ruling 2004-86**

TICA members were also instrumental in working with the IRS and Treasury Department on Revenue Ruling 2004-86 which permitted, under certain conditions, the use of the Delaware Statutory Trust ("DST") for TIC offerings and like-kind exchange replacement property. Under this format, investors receive an assignment of beneficial interest in a trust. This Revenue Ruling, which is stronger guidance than the Revenue Procedure, provides greater credence to the acknowledged securities format.

- **NASD Notice to Members 05-18** (Included in Best Practices which is enclosed)

The National Association of Securities Dealers ("NASD") called upon members of TICA for input in the development of "Notice to Members 05-18" regarding private placements of TICs. A primary emphasis of this notice was a reminder of the prohibition on advertising and general solicitation. In addition to working with TICA, it was communicated that the NASD also received input from the SEC, IRS and Treasury.

- **TICA Alert 06-01 - Guide to Certain TIC Best Practices** (Enclosed)

Beginning in 2003, numerous meetings of broker-dealers, sponsors, attorneys and third-party due diligence professionals were held to develop recommended practices to better serve the needs of investors in TIC and DST programs. The collaborative effort among industry participants resulted in the preparation of this guide which addresses TIC interests sold by sponsors in a securities format.

- **TICA Builds Alliance with the National Association of Realtors ("NAR")**

In 2005, the NAR published a white paper that acknowledged that the vast majority of TICs are offered in a securities format. (Enclosed) TICA and NAR worked in alliance to defeat a proposal in the 2006 Budget Reconciliation Act which posed a threat to TICs and 1031 exchanges. TICA is supportive of NAR's initiative to gain SEC approval for the payment of TIC transaction based fees to realtors.

### **Why TICs Offered as Securities Provide Investors Greater Protection**

The typical profile of the tenant-in-common investor cries out for the protections of a securities format. These investors are aging and retiring baby boomers who bought and actively worked real estate, such as farms, ranches, rental duplexes or smaller rental or retail properties. Their current desire is to move from being an active real estate participant to a passive real estate participant, as well as, to parlay their appreciation into