

NAR Issue Summaries

Commercial / Tenants in Common

NAR Committee:

Commercial Federal Policy Committee

What is the fundamental issue?

Tenant in Common is a form of co-ownership in real estate which, due to a 2002 IRS ruling, has increasingly been sold as private placement securities offerings. In 2002, the IRS provided guidance on how the TIC ownership structure, which is often used by sponsors to attract investors to own a partial interest in real property, may be used in section 1031 tax deferred like kind exchanges. Those TICs sold as securities generally meet the Supreme Court's definition of an investment contract. Though TIC securities are real estate, securities laws and regulations prohibit securities broker dealers from either directly or indirectly compensating non broker dealers.

I am a real estate professional. What does this mean for my business?

The TIC product blurs the line between real estate and securities. NAR has asked the Securities and Exchange Commission to allow real estate professionals to represent their clients' real estate interests in the brokerage of TIC products.

NAR Policy:

The sale of Tenant in Common interests are fundamentally real estate transactions and as such NAR believes that consumers are best served by having the opportunity to use and rely on the expertise of real estate professionals, REALTORS, and the protections of state real estate laws. In some instances the sale of Tenant in Common interests may also constitute the sale of securities. In such cases, securities professionals must also be involved to advise consumers on the securities issues as well as to comply with applicable state and federal securities laws.

Opposition Arguments:

Opponents of NAR's position may argue that TIC securities do not need the advice of a real estate professional, as all real estate related information is contained in the offering documents of the transaction. They may also argue that involving a real estate professional will only serve to increase commissions.

Current Legislation/Regulation (bill number or regulation)

No actions at this time.

Legislative Contact(s):

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