Reinhart

What Is a TIC and Why Are TICs More Common in Real Estate Deals Than They Were Ten Years Ago?

POSTED:

Jan 12, 2009

RELATED PRACTICES:

[Real Estate](https://www.reinhartlaw.com/practices/real-estate)

https://www.reinhartlaw.com/practices/real-estate

RELATED PEOPLE:

[Nathan J. Wautier](https://www.reinhartlaw.com/people/nathan-wautier)

https://www.reinhartlaw.com/people/nathan-wautier

In Revenue Procedure 2002-22, 2002-1 C.B. 733, the Internal Revenue Service set forth parameters for using tenancy-in-common (TIC) interests in tax-deferred exchanges under Section 1031 of the Internal Revenue Code. Since that time, the TIC market has become a significant part of the real estate industry. TICs offer a means of gaining passive exposure to the real estate market. A TIC interest is a concurrent ownership interest in real estate, under which multiple parties can own a direct and an undivided interest in real property. Subject to contrary provisions in a tenancy-in-common agreement, each TIC member is entitled to share with the other TIC members in possession of the whole parcel and has the associated rights to a proportionate share of rents, to transfer its interest separately from other TIC members and to demand partition (i.e., a division of property ownership based on proportionate ownership interests). The distribution of the income stream, indemnifications between the TIC holders, rights of first refusal in the event a TIC holder decides to sell her interest and other relationships among the TIC holders should all be governed by a tenancy-in-common agreement.

There are essentially two different types of TICs: (i) those involving a small number of investors who have banded together themselves; and, (ii) those involving a large number of unrelated investor tenants brought together by a developer (Syndicated TICs). A passive real estate investor under each scenario would own his TIC interest and receive his pro-rata portion of the income produced by the property minus any costs for the management of the property.

Since a TIC interest is an ownership interest in a particular property, TICs do not provide investors with the same diversification of owning shares in, for example, a REIT that owns a portfolio of multiple properties. However, TICs are especially appealing for both the passive and active investor because of their utility in completing tax-deferred exchanges. An attorney representing a purchaser of a TIC interest can greatly assist a client in evaluating the economics of the proposed transaction. For example, an attorney reviewing a prospectus for a Syndicated TIC who understands how the net operating income (NOI) was computed and whether the capitalization rate is reasonable can greatly help the client. Similarly, understanding the underlying leases and how they might impact on NOI is very important. Reinhart attorneys have significant experience in creating TIC structures and reviewing TIC investments.

These materials provide general information which does not constitute legal or tax advice and should not be relied upon as such. Particular facts or future developments in the law may affect the topic(s) addressed within these materials. Always consult with a lawyer about your particular circumstances before acting on any information presented in these materials because it may not be applicable to you or your situation. Providing these materials to you does not create an attorney/client relationship. You should not provide confidential information to us until Reinhart agrees to represent you.