



## Breaking News in the Real Estate Industry

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### 1st Quarter 2008 TIC Highlights<sup>(1)</sup>

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Forty Tenant-in-Common (TIC) programs closed the 1st Quarter 2008. Twenty-five percent (10 programs) of the programs were located in the State of Texas. The remaining 30 programs closed in the States of Arizona, Florida, Georgia, Illinois, Indiana, Iowa, Louisiana, Massachusetts, Minnesota, New York, Ohio, Pennsylvania, North Carolina, South Carolina, Tennessee and Wisconsin. Office buildings constituted 48.7 percent of the equity closed, followed by 20.2 percent in apartments, 19.6 percent in retail, 5.3 percent in hospitality, 3.4 percent in industrial properties, and 2.36 percent in oil and gas programs. The 40 programs constituted \$443M in closed equity from 21 different sponsors who packaged the offerings.

Industry experts report that obtaining attractive financing continues to impact the industry, limiting the number of programs brought to the market. TIC sponsors are becoming more creative and searching for alternative sources of financing through regional banks, balance sheet and portfolio lenders.

<sup>(1)</sup> TIC Talk, 2nd Quarter 2008

### TICs: Recourse versus Non-Recourse Financing

Non-recourse financing has been a fundamental building block for the prospective TIC investor. With the virtual shut-down of the CMBS market, a few sponsors have started to examine the benefits and risks of recourse and partial recourse financing.

In many instances, a recourse loan will provide both the sponsor and investor some significant benefits. In recourse financing, portfolio lenders may be willing to provide more leverage and better pricing, thus increasing the cash-on-cash return to the investors and giving the benefit of a lower interest rate.

If properly structured, a recourse loan may provide more flexibility than a non-recourse loan in the form of more favorable repayment terms and even no prepayment penalties, yield maintenance provisions or defeasance costs associated with an early payoff. Additionally, such terms may give the sponsor the opportunity to search for more favorable financing on behalf of the investors one week or one year after the loan is funded. This strategy can provide the opportunity for TIC investors to take cash out, tax favorably on a refinance and potentially increase the internal rate of return and current cash flow due to more favorable loan terms. The underlying asset, the market and the sponsor all play an important role in this strategy. Lenders are more likely to provide more favorable terms upon refinancing, if the net income meets or exceeds projections and the sponsors successfully executes the TIC programs business plan.

An added benefit to recourse financing is that portfolio lenders like sponsors to have some "skin in the game", effectively investing alongside the TIC owners as a TIC owner. Such a scenario more closely aligns the sponsor's goals with the TIC owners, as the sponsor also has vested financial interest in the performance of the asset.

While recourse financing may have some added benefits, there are risks that the investor should consider. To the extent the lender suffers a loss, the investors may be personally liable for their pro rata portion of the loss. In some instances, investors may be liable for said loss, both jointly and severally, in which case it would be plausible that the lender could seek indemnification from all the TIC investors or one individually.

Though both recourse and non-recourse financing each come with their own set of benefits and risks, certain key principals for TIC investing hold true whether considering recourse or non-recourse financing:

1. Is the investment good real estate?
2. Is it located in a viable market?
3. Is there room for NOI growth that will add value to the property?
4. Are the assumptions reasonable?
5. Can the sponsor execute the business plan?
6. Is the property well capitalized?
7. Is the sponsor a quality company with a track record of performance?
8. Is there a viable exit strategy?

Understanding the benefits and risks of the financing is important. However, nothing is as important as the underlying real estate and the quality of the sponsor.

Source: Recourse or Non-Recourse That is the Question, Aaron Cook, CORE Realty Holdings, TIC TALK, 2nd Quarter 2008.

### Status of the NAR Exemption

On May 16, 2008, the Tenant-in-Common Association (TICA) held a joint conference call with National Association of Realtor's (NAR) attorneys and TICA Board Members in which they outlined changes and answered questions surrounding the pending exemption that has been on the SEC's docket since 2005.

The discussion revisited the initial exemption proposal that was published in November 2007 for a 30-day public comment period. NAR's representatives addressed proposed changes that they believe will help facilitate the passage of the exemption in its final form. Below is a summary of the substantial differences from the initial exemption to what is being considered today:

1. Considering a "true" referral fee in addition to the advisory fee previously proposed in which there would be no substantial commercial experience required
2. Real Estate Professional will have a choice between referring the client or advising the client on the real estate aspect of the TIC deal throughout the entire transaction; this will determine whether a referral fee or an advisory fee will be paid
3. Broker/Dealers will be in control of determining the suitability of a client, referral or advisory fee amount to be paid, and other aspects of the transaction
4. An Acknowledgement Letter must be signed by investors acknowledging the fee being paid to the Real Estate Professional.

This exemption is good news because Real Estate Professionals potentially may:

1. Help clients potentially defer capital gains taxes.
2. Obtain listings from reluctant clients who are concerned about identifying suitable replacement properties.
3. Have the ability to offer clients alternative solutions in markets with fewer replacement property options.
4. Work with a leading TIC Broker/Dealer with professional due diligence & product inventory.
5. Receive compensation for advising or referring clients on the purchase of TICs.

It looks like there may be some light at the end of this very long tunnel. Currently, the SEC is conducting a comment period in regard to the final exemption which is expected to conclude in 2008. When a representative with NAR was asked on the call about the timing of the exemption, they responded by saying, "This is a front-burner item; not next year but this year."

Source: Treavor Mosbaugh, Welton Street Investments

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