CONNECTING REAL ESTATE IN THE NORTHEAST
NORTHEAST REAL ESTATE BUSINESS

TICA BEST PRACTICES

Best practices ensure smooth, transparent transactions.

Joe Colia

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As the Tenant In Common business expands, implementing methods to streamline the 1031 exchange process and make it uniform throughout the industry is essential to keep the high standards that are expected. While SEC regulations apply to TIC sponsors as we identify and market our properties, there are some areas of the TIC processes that go unaddressed by those standards. Thanks to a set of "Best Practices" established by the Tenant In Common Association, sponsors, broker-dealers and attorneys have an important list of guidelines to look towards while negotiating all the ins and outs of this relatively novel environment that is TIC investing.

TICs, which offer a group of up to 35 investors the ability to purchase a share of institutional quality real estate, are typically utilized by those carrying out a 1031 exchange to defer capital gains taxes. TIC properties offer management-free ownership and flexibility in the amount invested. Because of that, they are a popular choice for those looking to utilize that section of the federal tax law. A 1031 exchange provides for the capital gains taxes from appreciated real estate to be deferred if the funds are put back into another real estate investment of like kind. By deferring the tax, the investor has more money to put into another property, allowing them to maximize on the return.

The myriad of tax advantages, combined with other attributes like management-free ownership and flexibility in investment size, have resulted in the increasing popularity of TICs. But, with any flourishing business, it is important to establish uniform guidelines throughout the industry. In 2003, TICA responded to this need. The organization worked with experts in the field to develop a set of guidelines, known as the Best Practices. These standards are key in fostering the trust and confidence of investors and maintaining transparency in our processes.

Best Practices From the Start

The roles and responsibilities of broker-dealers, sponsors and attorneys are addressed by the TICA Best Practices, which have been created to make the processes transpire smoothly for all associated parties.

These practices are found in each step of the TIC process, starting with the initial Private Placement Memorandum (PPM). The initial PPM provides full disclosure of all aspects of the TIC offering, including a summary of the property, the risks associated with the investment and who may participate. The PPM must represent all costs and should be communicated clearly to increase transparency and allow for a clear comparison of costs.

As per the TICA Best Practices, the PPM is prepared by our attorneys once we, as a sponsor, identify a property that we will purchase and market as a TIC investment. The initial PPM is distributed to the due diligence officers who represent our associated broker/dealers. Those due diligence officers then review the offering and decide if they present the offer for their representatives to sell. If the offer is accepted by the broker/dealer, final PPM kits with more explicit property information are then distributed to each broker/dealer.

From there, the Best Practices provide a timeline that ensures all associated parties have a chance to review and assess the offering. For example, the broker dealer has at least 5 days to conduct due diligence on the offering. This is called the "broker/dealer due diligence cooling off period." If the broker/dealer decides to market the offering, they will share pertinent information with their registered representatives during the marketing cooling off period. The sponsor can then accept investor paperwork for the offering after the marketing cooling off period, which is no less than 5 business days.

Seeing the Investment Through

The Best Practices encourage the sponsor to be prudent when determining who is an appropriate investor. In addition to proving they are a qualified investor through paperwork, the sponsor also does credit and background checks to make sure the investor is financially sound.

The Best Practices also lay out guidelines for sponsors to follow during the subscription process, which occurs once investors are committed to a specific property. We prepare our subscription documents in accordance with all regulations and aim to get the investor closed on the property within 2 weeks of receiving complete subscription documents. During this process, we communicate all pertinent information to our investors and their registered representatives so they are aware of each step of the process, from initial subscription documents to financing and post-closing.

Once the investor closes on the property, Best Practices calls for them to receive a comprehensive closing binder or CD that includes all files pertinent to the investment. This way, the investor has easy access to important information about his or her purchase.

Communication is Key

From there, TICA Best Practices call for the monthly distributions to be sent out promptly as specified in the TIC agreement. If the distributions are delayed, we, as a sponsor, must notify the investor with an explanation. Also, if the distribution varies by more than 10 percent of the project amount, the sponsor must provide the investor with a detailed explanation for the reason.

Because communication is key to a satisfied investor, TICA Best Practices also calls for quarterly reports to be distributed to the investors so they have up-to-date information about the performance of their property. This is in addition to a more detailed annual report. Our firm has also implemented a quarterly conference call to allow our investors to touch base and communicate directly their comments or questions about their investment and the property.

As the industry continues to expand, Best Practices can be counted on to provide a level of overall continuity that results in a efficient and transparent transaction. In turn, all investors can be assured that they are part of a well-planned investment.

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ADVERTISERS' INDEX