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The NAR Exemption: Registered representatives and commercial R.E. pros working together?

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There has been quite a buzz within the TIC industry lately. The NAR has submitted a proposed exemption to the SEC that would allow commercial real estate professionals to participate in the security side of the TIC industry. The proposed exemption allows for CCIM and SIOR designees, as well as others that meet certain thresholds of commercial transactions, to be compensated when clients are put into a security via a broker/dealer network. There has been outspoken opposition to this proposal from many securities professionals; however we feel this could be a positive for the industry, and especially for the client considering the investment.

The exemption certainly tip-toes a fine line. We can understand some of the opposition from securities professionals but we feel a properly structured exemption can provide tremendous benefits to investors and the overall TIC and real estate markets. Tenant-in-common offerings need to continue to be offered in accordance with Regulation D of the Securities Act of 1933 to accredited investors* only. These stringent requirements must be met to be sure the offering is suitable for the investor. The baby-boomer generation is retiring in coming years with estimates of \$1 trillion of real estate holdings. Many are seeking passively managed properties and tenant-in-common could provide a sizable share of the future marketplace of investment real estate

Professionals with the CCIM and SIOR designations are the best in the business. They know the commercial world inside and out, they understand real estate and where the value lies in real estate.

Registered representatives have a fiduciary responsibility to analyze their clients overall financial position in hopes of providing a stable financial future. Under the proposed exemption, clients would have professionals from two different arenas working toward one common goal, rather than competing against each other for business. We feel this is a tremendous positive for investors.

While a majority of TIC offerings have been structured as a security, some sponsor firms have syndicated them as a straight real estate transaction to investors. Some firms that were setting up deals as pure real estate transactions had requested no action letters from the SEC, to no avail. Because of that, we are now seeing an even greater increase in the number being offered as a security. If the exemption were to pass, it would leave the door open for real estate professionals to continue to participate in the industry and not have a feeling of being left out in the cold. Additionally they would not have to obtain securities licenses that they have no desire or time to test for.

Were the exemption not to pass, real estate professionals would have no incentive to refer suitable investors to tenant-in-common. This would limit the options of the investor and limit TIC to a much smaller slice of the overall real estate market. With the full disclosure and due diligence required to structure a security the hope is that investors will have more high quality deals to choose from. Certainly the investor will have more geographic markets to choose from if the CCIM or SIOR has the ability to work in conjunction with registered representatives. Typically CCIM and SIOR

designees are experts in their local market, and focus on offering property there. TIC allows investors to take advantage of real estate outside of their local market and diversify holdings.

In conclusion, while we may be in the minority with respect to our security professional peers, we feel the NAR exemption is a good concept. At the end of the day, the real estate investor needs to benefit. Tenant-in-common will play a vital role to the overall real estate economy as suitable replacement property becomes harder to find. A properly outlined exemption provides the means for us as registered representatives to work together with real estate professionals toward the common goal of satisfying investor needs.

TIC investments involve various degrees of risk, including the speculative nature of the real estate market and financing risk associated with fluctuations in the real estate market. This information is not intended to be tax or legal advice. You must consult with your own tax advisor before considering whether a 1031 TIC exchange will work for you. This material does not constitute an offer to sell or a solicitation to buy any security. Such offers can be made only by private placement memorandum to accredited investors. These investments involve a high degree of risk and are not suitable for all investors.

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