Investors facing ticking clock
Rescued by tenants in common

Ken Roberts
Senior Representative
JRW Investments
949-552-6488

As a real estate professional, you pride yourself in providing unique real estate solutions for your clients. One of the powerful tools you have used with your clientele is the 1031 exchange. So you receive a phone call from that client who is following your advice, asks your help to find a replacement property to complete their 1031 exchange.

The client has sold property, placed the proceeds with a qualified intermediary and their tax advisor estimates taxes to be in excess of 15% due to the additional state taxes and 25% depreciation recapture. Your client is in one of the fasting growing demographics in the nation; aging baby boomers that prefer passive to active ownership.

This appears to be the ideal set of circumstances for a 1031 exchange, except one small detail, the amount of your client's exchange equity is $500,000.

Knowing that this amount of equity may limit your client's choices, you begin your search for a suitable replacement property. Your client wants what everyone wants, predictable income with minimal maintenance. The best solution would be a single credit worthy tenant, net lease property.

Continuing your search you find properties in this price range involve tenants with low or no credit, less than desirable lease terms, and difficult if any financing arrangements. Not the ideal solution. And one other small detail, the 45 days for property identification is running, putting pressure on both you and your client to make some serious decisions.

You don't want to settle for less than predictable property, because this exchange represents a portion of your client's retirement. If you and your client settle for mediocre replacement property, it could fall short of your client's expectations.

Common Law

Along comes a TIC, a Tenant in Common replacement property. You've heard rumors about TICs, but unsure about the specifics, you contact a friend who mentioned doing exchanges using TICs.

You are informed that TIC exchanges allow investors with similar amounts of equity as your client to join together, enabling them to upgrade and purchase larger investment properties than they could on their own. You learn further that the range of TIC properties available include; retail, office, multi-family and industrial, and are located across broad geographical locations.

More than 25 real estate companies across the country are providing TIC replacement properties, mostly institutional in nature. Many TIC programs boast of a master lease situation or involve a single tenant, credit net lease. Included in the TIC program is professional property and asset management, relieving your client of these responsibilities. Many times TIC properties are leased to credit worthy tenants under long leases terms.

And to comfort your client's concerns about whether these TIC exchanges conform to IRS rules, you learn that these TIC programs come with tax opinions from qualified attorneys based upon a recently released IRS revenue ruling. It appears the

TIC replacement property may be a possible solution for your client.

Banking Goodwill

There's one problem. Most TICs are sold as Regulation D private investment offerings requiring a licensed security professional like your friend to do the work. Furthermore, just as it is inappropriate for you to share a real estate commission with an unlicensed person who refers business to you, likewise, your security broker friend cannot pay you a commission or referral fee if you refer this business to him.

But who and what really matters here? Isn't this all about your client and his needs? By doing the right thing, won't your business increase over the long run? Wouldn't your ability to list client's properties increase given this replacement property alternative? Moreover, isn't this amount of equity an awkward size for you to satisfy in your traditional 1031 exchange business? Maybe referring this size of equity trade to a TIC professional is the right thing to do.

So what does the current TIC market look like? Reinvesting as tenants in common is increasing in popularity, growing to nearly $1 billion equity transacted in 2003. More and more property owners with exchange equity inadequate to purchase sole ownership, or the desire to diversify into multiple properties, are electing tenant in common replacement properties.

Is there a catch? These TIC properties, professionally packaged to include institutional grade properties, credit tenants and non-recourse financing come at a cost. But why wouldn't they?

A successful co-ownership program requires many things, not the least of which include; a solid tax opinion, a reasonable co-ownership agreement, and the ability to purchase an appealing property. For an investor to complete the extensive due diligence that is conducted on each TIC investment property offered to tenants in common within the time frame allotted would be difficult, if not improbable.

The arena of TIC programs involves levels of investment professionals, each having a contributing role. The real estate provider who finds, negotiates and commits for the purchase of the property. The institutional lender who underwrites property financing to accommodate multiple co-owners. The securities industry and professionals, who complete yet another independent level of due diligence before determining which TIC properties to offer for client consideration.

So, is there a market for TIC? The market is growing and all around you. Are you in the market for a TIC? If you're not, your client may be.