

Episode #18

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Experts to Detail Process for REALTORS to Earn Commission on TIC Securities Deals

Peter: Real estate, if purchased well continues to be the single best investment one can make. Welcome to Income Property Investment Talk, a program dedicated to providing investors, eager to invest well in real estate, with the knowledge, the resources and the tools to generate increased wealth. Each week we bring the powerhouses of commercial and residential real estate to our show for you to learn from and to call at 1-866-472-5790. My name is Peter Mosca and my co-host, a commercial powerhouse in his own right, Dean Essa is attending to family business and if I can at this particular time let me just say the collective thoughts and prayers of this show are out to the families in Tennessee, Kentucky, Arkansas, and Alabama who are suffering after tornadoes devastated that region last night and this morning. Let's get back to our exciting news. We have exciting news for both realtors and the real estate investing public. A new SEC, Securities and Exchange Commission exemption, which may be released as early as March of this year, 2008, will allow commercial real estate professionals to receive a fee for opining on the real estate aspects of the securitized TIC or tenant in common deal. Demand for TIC deals is increasing and now realtors who serve as professional real estate advisors and consultants to many families and individuals looking to invest in property outside their primary residence will potentially be able to provide TICs as an investment opportunity. Equally exciting is that today's guests helped lead as volunteers of the 1.3 million member National Association of Realtors and the association's efforts to be heard by the SEC and that they consider this exemption. Our guests today are Adrian Arriaga

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CCIM CIPS, the 2008 chairman of the NAR Legislation and Regulatory Subcommittee for the Realtor Commercial Alliance, and H. Blaine Walker chairman of the NAR TIC Workgroup and 2007 chair of the NAR Realtors Commercial Alliance Legislative and Regulatory Subcommittee. Now, these two gentlemen have files as long as a city street, so if you want to learn more about these two gentlemen and what were talking about here today, please go to incomepropertyinvestmenttalk.com, incomepropertyinvestmenttalk.com and you can learn more about them. Gentleman, knowing that the NAR or knowing the NAR and the CCIM Institute as I do, I know you are both given significant help by the staffs at each of those organizations. So when I say you helped lead this, rest assured I know you were helped by the very best professionals in the industry. That said tenant in common is now about a \$6 billion industry and with the new SEC regulations, if they go through, it is prime for significant growth. The way I see it, many savvy realtors will be able to supplant and in some cases, if not most, earn more money via this exemption; this ability to opine on tenant in common type deals. Adrian, do you see this as a major moneymaker for realtors and of course, the real estate investing consumer?

Adrian: Thank you Peter for having us, and absolutely. Thanks to the leadership of the National Association of Realtors and the RCA, Realtor Commercial Alliance, we've opened a door for real estate professionals in the commercial area to really have an upside. With that said, that also brings a big upside to investors that have never had the opportunity to invest in something called a TIC or tenant in common. As we know, tenant in common industry is highly regulated industry with a lot of rules to follow.

Peter: Blaine, let's take a look at that tenant in common industry. We know there are many benefits and TICs help solve a problem for investors who want to reinvest in a better class of real estate, aggregate their portfolios, and ultimately, one I think is the biggest reason is deferred taxes until they're done with their real estate portfolios. Can you elaborate on any of those that I just mentioned or some of the other benefits of the tenant in common type deal?

Blaine: Thank you, I think, Peter, and let me just echo the comments of Adrian, and also state that reiterating what you had said we have some great staff at the National Association of Realtors and they worked very hard in working with the SEC to provide this exemption. If I may, let me just say what the exemption does before I answer your other questions. The exemption allows for a commercial real estate professional to be exempt from registering as a broker/dealer or securities rep and be able to opine on the real estate aspects of the transaction for their client. So the benefits of this is to the client, he can now, he or she can now access the expertise of their commercial specialist to opine on the real estate aspects of the transaction, of course they can't get into the securities issues but they can opine on that aspect of it. The beauty of the tenant in common offering is it basically offers another arrow in the quiver of a commercial broker. As they present properties for a 1031 exchange, many of the buyers are moving out of smaller apartment complexes where they've been unable to higher professional management because of the size of the property. It doesn't justify it. With the tenant in common offering, they're now able to be involved with a class A type property and have professional management, which removes some of the day-to-day problems of tenants, toilets, trash etc. By affording this professional management and being able to move their

money from a smaller property into a class A property still receive the tax benefits of depreciation and interest deductions and also take advantage of any appreciation that occurs over a long-term hold for the property, investor now has opportunity to be a small investor in a large property.

Peter: Adrian, a lot of the rules and regulations that you mentioned earlier in and around the tenant in common type deal basically put some pressure on an investor to find properties within certain time periods. How does a professional like yourself help those types of investors find those properties and get into the types of properties that Blaine was talking about?

Adrian: That's the challenge that an investor has. When you sell a piece of property you're going to find out that you cannot read about tenants in common in the newspaper, or a magazine, or a website. Usually, people that get access to websites have to be pre-qualified for their suitability and accreditation. Now real estate professionals in the commercial area are going to be able to assist, which means that real estate professionals like ourselves, Blaine and I, if we're not doing TIC or tenants in common, we can find really quickly what occurs. The biggest challenge and obstacle is you got a 50,000 or half a million dollars, you can not buy one property because of the lending restrictions that's on right now with the slowdown of the real estate economy, but TICs in common is extremely beneficial for someone that wants to get in and have the benefit that Blaine just described.

Blaine: Well I think to just playing off of that Adrian and Peter, is that 45 day period you're talking about that when you sell the property and want to do the exchange you have a 45 day period in which to identify a target property or a property to exchange into.

Where the tenant in common sponsors have already identified the property, they've already done all the due diligence, and they've had the opportunity to review the property, a lot of the work has already been done for the tenant in common investor. So they can now move into that TIC property and have an assurance of being able to close.

Peter: Yeah there's a lot of those regulations that are involved and on our site at incomepropertyinvestmenttalk.com we do have a lot of the qualified intermediaries that do this type of work. We've had them on our show, so you can go back to some of the archives of the programs and listen to those. Blaine, I'm thinking that there's going to be, if this exemption does go through and I had mentioned earlier about a March, 2008, do you still think of that's right around the time frame we expect to hear?

Blaine: Well I wish that we could be able to tell how long the SEC will take in reviewing the comments that have been put in during that comment period, but of course the SEC has to do their own due diligence and review all of the comments and then they have to make their decision as to when to move the exemption forward. While we remain hopeful that it's done by sometime around March, it could stretch into April.

Adrian: In late March, or in late January Blaine, you probably saw we had 2908 comments made, of which 2758 were positive on behalf of the exemption that was proposed by NAR.

Blaine: Yeah, that's a very good point.

Peter: And I think this is one of the areas that maybe goes unnoticed. I know the National Association of Realtors does a great job with their public image campaign for realtors but I think one of the greatest things that they do as an association is they help to maintain a marketplace so investors like us and professionals like you can actually buy, own, and

transfer real estate in a way that really is emulated globally. I think that goes by the wayside sometimes and I believe that their work in this effort is also a major positive to the general public and investors out there.

Adrian: That's correct, and the main thing is as an investor, if you have no idea how TICs work, the real estate professional will not be able to tell you how it works. They'll be able to show you where you can actually, if it's in your own area, how the properties compare to what's being offered. It's going to be a bit more challenging than people think. Like Blaine, who did a great job as last year's leader of the NAR's Realtor Commercial Alliance Legislative and Regulatory Subcommittee, the next step for us Peter, is to educate the real estate professional to be up-to-date to be able to help their investors.

Blaine: The national association is in the process now, as Adrian has indicated, in putting together an educational piece that will help the commercial practitioner on the issues that they need to be aware of, and the pitfalls. I think a critical issue is that now if this exemption is granted, the real estate investor can have their real estate professional, who they had just finished in most cases working with and selling their what is commonly called the down leg, or selling their liquidated property, they now have the opportunity to use that same professional in analyzing another property for them to invest in. While the real estate broker can't opine on anything that has to do with the securities aspect of the transaction, they can review the real estate aspects, they can show them comps to the property, and discuss the net operating income with them, the cash flow analysis review, the types of leases that are included in the transaction, those types of things where you really need a real estate professional to look at those aspects of the transaction.

Peter: Let me do this because we're coming up on a break; we got about 20 to 30 seconds before our first break. When we get back what I want to do is I want to ask you guys about TIC providers and the fact that they're going to be, I would think, they're going to be reaching out to these commercial real estate professionals across the country looking for their business. So one of the things I want you to think about is what are some of the due diligence items a realtor or an investor in TIC should consider before putting her or his reputation on the line. So we'll be right back with Blaine Walker and Adrian Arriaga.

BREAK

Thanks for tuning in today to Income Property Investment Talk. If you have a question for Peter or Dean call now, listener lines are open. The toll free number is 1-866-472-5790. That number again is 1-866-472-5790. Now back to Peter and Dean.

Peter: Welcome back, we are here with Adrian Arriaga and Blaine Walker. Blaine, before we left on break I talked a little bit about the fact that once this exemption goes through, whether it's late March, April, May whenever it is this coming year, I believe there's going to be an influx of tenant in common providers or TIC providers who are going to go after a lot of the commercial realtors and they are going to say to them "well we're the best, no we're the best" and you know how that goes and when someone sees an opportunity to increase their business. We do live in a society that encourages that, obviously, we all believe in that. So what type of due diligence should a commercial real estate practitioner, a realtor CCIM, or a real estate investor do in terms of looking at a TIC provider? What's important? We all know the steps, and we all communicate these steps to a home buyer when they're looking to work with a realtor, and of course they should look to a realtor, what are the steps in your mind a commercial real estate

professional investor should look at when looking to partner with or work with a tenant in common provider?

Blaine: Well I think that's a good question and it's somewhat of a loaded question, but at any rate, as you start looking at; I guess the best thing to say is we're hopeful that the securities TIC providers will look to the real estate industry as the experts they are to tap their sources of business, their clients that are coming out of other properties, so we would hope that they would be contacting real estate brokers to let them know that they are in a tenant in common business. I think from the standpoint of a commercial specialist or an investor some of the questions that they should be concerned with are the length of time that a sponsor's been in the business, their financial strengths, their ability to obtain financing on the properties, what their experience is in the tenant in common industry and in real estate in general. Many of these sponsors are real estate professionals in and of themselves and have been in the business for a number of years. They've purchased real estate over the years and now they're providing them as tenant in common offerings, so check that experience. The types of properties they're offering, and the reason I say the types of properties, that plays back to the interest of the client and what type of properties they are familiar with, comfortable with, also what type of properties are performing currently in the marketplace. I think a client needs to understand the ups and downs of the real estate market as a whole and the various risk factors involved in different types of properties. As an example, an office building compared to an apartment building, an industrial complex or retail complex; there's differences in each one of those types of products. So I think that it's important to know what type of product a sponsor is familiar with and has expertise in. So those are some of the things that I think needs to be done in

the due diligence. Also, what type of due diligence the sponsor has done on the property to make certain that they've done all the environmental testing, and the structural issues, and the civil engineering issues, those types of things. So there is a lot of due diligence that needs to be done and you need to look at the experience of that sponsor in providing real estate products as a whole.

Peter: So Adrian do you think that different commercial property types are important to this type of a transaction and it would appear that due diligence is very similar to any other type of due diligence when you're talking about experience, years in the business, things of that nature?

Adrian: Blaine is exactly correct but in choosing your TIC provider the best place to go would be one that is involved with a TIC or tenant in common association. I am sure if when people are looking for realtors, they're going to have one that, real estate professionals, they are going to look for a realtor because they follow code of ethics and certain guidelines that you don't want to play with. Having knowledge in the area you want to be in is important and that's why you have real estate professionals to assist you. Keep in mind that not every Tom, Dick and José can actually become an accredited investor. SEC defines an accredited investor as an individual that has a net worth of at least \$1 million and then some more guidelines that go along with that.

Blaine: Those are important issues in the securities area and of course that's one of the things we've talked about and is up in the air right now as far as in the Buyer's Agency Agreement, which has to be prepared prior to being able to show a buyer a tenant in common offering. A real estate professional has to have entered into a Buyer's Agency

Agreement with that buyer and the question now is should we attach to that agreement some type of a certification that the buyer is accredited.

Peter: That's basically one of the aspects of and I think one of the things that you're waiting to hear back from the SEC on with the exemption, is it not?

Blaine: Well I'm not sure that they will get into that area totally but we'll just have to see what happens when they issue the final exemption.

Peter: Do you think that that Buyer's Agent Agreement is going to add more regulation to the transaction? I mean I'm sure some commercial real estate practitioners might be hearing that and saying "Oh my gosh not another piece of paperwork that we have to worry about."

Blaine: Well that's an interesting question because actually Peter, that's the reason that the SEC published the exemption request. It has to do with the Federal Reduction in Paperwork Act and the fact that the Buyer's Agency Agreement was included in the exemption triggered that very issue. That's why they published the exemption because they have to under federal law and yeah, there will be some people that say that's another piece of paperwork, but it's an essential piece of paperwork just like any other agency agreement, whether it's a listing agreement, or the Buyer's Agency Agreement it's important and an integral part of all real estate transactions. It's truly not adding any big additional paperwork, it's just following through on what professional real estate brokers and agents do today.

Adrian: This conversation, Peter, is probably going to shock certain people that are saying that's not true I can actually do, I have a real estate license and I actually have done a TIC transaction before. Those people are the ones that this exemption is made for.

In order to qualify to become, to collect the real estate advisory fee to a TIC transaction, you have to qualify as a commercial real estate professional and there are certain guidelines that are very strict. The SEC is requiring that they be able to be able to perform when they do fill out the agreement.

Blaine: And I think the important thing here, it's a very good point Adrian, the important thing here is this is on a securitized tenant in common offering. If it's not a securitized tenant in common offering it's strictly a real estate tenant in common offering then, of course things are a little different. The exemption specifically is directed at those that are securities type transactions.

Peter: So we have both a real estate type TIC and a securities type TIC. Blaine, can you maybe explain, and I know you did a good job of doing that up until this point in the show, but let's see if we can condense it a little bit, what is specifically the difference between a real estate TIC and a securities TIC?

Blaine: Well, I'm going to have to clarify that this is somewhat personal opinion but the basic legal premise for a securitized TIC is based on the Supreme Court decision under **Howley** and **Howley** was a case that dealt with an orange grove in Florida where an individual had sold off individual rows of orange trees and sold them on a meets and bounds issue and this contract agreed to harvest the oranges, do all of the basic farming that's required in that type of transaction and then split the profits with the owners of the property. It basically came down to that the money is invested with the expectation of profits and that those profits come solely from the efforts of others. I think that's the key issue, is whether or not it comes solely from the efforts of others. As a security is defined, if the profits or the expectations of those profits that come from the transaction are solely

from the efforts of others, then that's where it becomes a security. The question is defining solely from the efforts of others and I don't want to get into that to a great extent but, at any rate, that's kind of the definition and that's what the SEC looks at in determining whether or not a particular product is a security. There are legal opinions out there that some of the sponsors have that they are in fact not securities and I think it just depends on the strength of the law firm that has issued those and the strength of those opinions. We'll never know that unless it goes to court. The interesting thing is usually unless one of these transactions were to have problems nobody files any complaints. So until a complaint actually occurs we are probably not going to get a definitive answer from the courts unless somebody presses that issue. At any rate, at the end of the day these **are** real estate transactions because you get a deed and that's the key. Whether it's security or whether it's a real estate transaction, it falls as a real estate transaction because the deed is done and that's why it can qualify for a 1031 exchange and it falls under the jurisdiction in most states of the securities division and the real estate division because according to **Scaban Arbs**, NAR's attorneys, at least 39 to 42 of the states would require a real estate license to sell these TICs whether they are a security or a pure real estate transaction.

Peter: Well bottom line is there's a lot of complexities, there's a lot of information and both Blaine and Adrian are sharing their knowledge with us here on Income Property Investment Talk. When we get back we'll further get into this issue and many others.

BREAK

Thanks for tuning in today to Income Property Investment Talk. If you have a question for Peter or Dean call now, listener lines are open. The toll free number is 1-866-472-5790. That number again is 1-866-472-5790. Now back to Peter and Dean.

Peter: Welcome back. We're with Adrian Arriaga and Blaine Walker. Gentlemen, a lot of the focus has been on the investor, has been on the TIC as a security, one of the things I want to do because I know we have a lot of realtors, commercial realtors, commercial real estate agents, listening to us, when this SEC exemption goes through Adrian, whether it's six weeks, eight weeks, four weeks, whatever the case may be, I'm sure there's a lot of upfront information a realtor needs to know to take advantage of this exemption. What are some of the things that you would like to tell those realtors, those commercial real estate agents, listening to us right now?

Adrian: Not anybody that has a real estate license Peter, will be able to participate as a selling broker/dealer and get this Buyer's Agent Agreement signed. It has to be a commercial real estate professional that has had "substantial experience" involved, which means, this exemption talks about designations, CCIMs, SIORs or ALCs, or any kind of education and transaction experience that is described by this exemption.

Peter: Adrian, I thought I was told or read about something regarding restrictions on conduct. Is that something that you feel comfortable talking about?

Adrian: Restrictions are the best part that the SEC is really hanging their head on. We have to be very; very careful we do not get into the other side of this industry. We are glad that we're able to work; the NAR was able to work out an agreement with SEC to get this done. And specifically, Blaine can help me with this, is we cannot list or

advertise that we have securities available. That's number one. Do you have some of the others Blaine?

Blaine: Well, I think the key here is that the SEC, first of all these are all, the securitized tenant in common offerings are all Reg. D offerings, which means they're exempt from registration under the SEC Act, under the Reg D. exemption. That's why you have to have an accredited investor investing in the property. As a result of that exemption under Reg. D, an exemption from registration with the SEC, they have some specific areas that basically are cannots, and that is solicitation; you can't solicit a buyer you have to have a prior existing relationship with them. You cannot advertise a specific property; you can show properties that you've sold already but you can't advertise a specific property, those types of things. Those are the areas that a real estate broker cannot get into. Also, they cannot put themselves out to be an expert in tenant in common securities. So they basically, what it is, as I mentioned earlier, is the exemption provides for or allows a commercial real estate professional to have an additional arrow in their quiver.

Peter: Let's talk about those commercial real estate professionals and obviously, just based on what we've heard so far, this is a complex issue and if you're looking for, if listeners are looking for additional information they can go to our show web page at incomepropertyinvestmenttalk.com. Adrian mentioned Blaine about experience and educational aspect to this exemption. He mentioned the CCIM. We know what it stands for, Certified Commercial Investment Member, SIOR; Society of Industrial and Office Real Estate, and ALC, which I believe is Accredited Land Consultant. Are these the only folks who would be able to take advantage of this exemption or is this just a general guideline for that experience that's been bandied about?

Adrian: It's very specific Peter and if I might be able to just go over the fine items. The question would be, I'm a real estate practitioner, how do I participate in doing TIC transactions if I'm not a CCIM, SIOR, or ALC. Number two is you have education or transaction experience equivalent to those designations. Number three is you need to have participated in at least five commercial real estate transactions and the aggregate value of \$3 million in the last five years, or in the last 10 years, you need 10 commercial real estate transactions with the aggregate value of \$10 million.

Peter: Let me ask you this guys, who is going to regulate that? Who's going to know whether or not Peter Mosca for example has done those requirements and who's can prevent me from putting a sign on the door stating that I can do this for investors?

Blaine: Well I think the important thing here is, I want to come back just a minute to the commercial real estate practitioner so that the listeners understand clearly that you do not have to have a CCIM, SIOR, or ALC designation. The purpose of putting those in the exemption was to let people know that if you had those types of designations or the equivalent you'd be considered to be a commercial practitioner or a commercial real estate professional. That's the actual term that's used, commercial real estate professional. However, if you've had classes similar to those types required for those designations and then as Adrian pointed out, or you have done a certain volume of commercial transactions you would qualify. Now to your point, who's going to watch over that? It's like any other regulation or rule that's out there, if you're found that you don't qualify and you've participated in one of these transactions, you then fall outside the exemption. Once you fall outside that exemption, you have then put yourself under the jurisdiction of the SEC and the SEC can come after you for violation of the Securities Exchange

Commission rules regs and laws. Which means now you would have had to have a broker/dealer license or be a licensed rep. If you're not then you're going to get fined and you fall under the jurisdiction of the SEC.

Adrian: You would also begin Peter, with the Buyer's Agent Agreement that should spell out if you can participate in this transaction by giving the guidelines of a "substantial experience". But also on the receiving end, the lead placement agent that's in charge of selling the TIC will also be able to police that.

Blaine: They'll be given a copy of that agency agreement. That's correct. And then the agency agreement, the broker would certify that he or she is a commercial real estate professional and has the proper credentials, as Adrian has mentioned.

Peter: What are some of the other things that a commercial real estate professional should know about this exemption that we haven't touched on just yet?

Adrian: I'd like to continue with the restrictions if I may. One of the tasks that we have is real estate agents is to assist people to get financing when they purchase real estate. When you become a participant in TIC transaction you cannot, you cannot assist a person in obtaining financing. You can provide a list of potential lenders, but not assist them. You should not have the authority to close the transaction pretty well regulated, you cannot handle any of the funds for the customer, and you cannot negotiate any terms and conditions.

Blaine: Very good. That's absolutely correct. I think another thing that is important for realtors to remember and that is if you look at the code of ethics, in Article 11, it basically states that a realtor shall not undertake to provide any specialized professional services concerning any type of property or service that's outside their field of competence. If

they're going to be getting engaged in those types of things they should involve someone that has the experience and the competence to help them. So that's what Adrian is pointed out is exactly correct.

Peter: You know what guys we're talking about lending and we're talking about money involved and right now that music right there from Pink Floyd "Money" indicates that we have our mortgage minute and joining us on the program right now is Stan Hanks from RealSource Commercial. Stan, are you there? Or maybe he's not there. Hello, are you there?

Stan: Hello this is Stan.

Peter: Hey Stan what's going on? Say hello to Blaine and Adrian.

Stan: Hello Blaine and Adrian I've enjoyed listening the last few minutes. It sounds like a topic that there's a lot of issues with and fortunately we have some experts that know all about it.

Peter: Stan, one of the things that we've been just now talking about is lending requirements, lending situations in and around the tenant in common type investment, is that something you can talk to us about?

Stan: You bet. In fact we specialize in that. I just spent two days working with lenders who do a lot of that. We've been working putting together programs extensively to help, whether it's a small tenants in common deal or a large tenants in common deal. We've done about 38 of them over the last three to four years. So there's some nuances to it but I'll tell you the key components of the lending we do on the TIC deals, non-recourse, which for the tenants in common is really key so that the lender can't go after their personal wealth. The other component is we try and get some interest only for our clients.

We just close on a five year fixed rate at 6.1% on a TIC deal and we had about 22 TICs in that deal. So we know the nuances of how to get these tenants in common deals financed.

Peter: So while we keep hearing in the news today about a much needed correction in the financial markets that commercial real estate financing might be tightening up, you're saying that there's a lot of good programs out there for investors; whether they're investing in TICs or general commercial real estate type property.

Stan: Yes and know that when you invest in a tenant in common structure there's actually a couple lenders that don't play in that field. But, even without those key agencies, which is Fannie and Freddie Mack right now, they've stayed on the sidelines in sponsored tenants in common deals, there's still some great programs. I have four really exciting programs out there for those that might be listening. If you're buying any type of a property and there's two or three partners going in on it or yourself, you can get a 10-year fixed at about 5.63% and that's a good Fannie or Freddie Mac. And we can provide that. The other is a fixed for five years interest only program that's just around 6% and that could be a tenants in common deal or just on your own and that's also non-recourse. Those are a couple options of money that's out there. If you end up doing a small deal you have a \$500,000 apartment that you want to buy, you need a 350 or \$400,000 loan. I have a 6% rate fixed for three years or 6 1/4 fixed for five years so, that's always been a challenge, is those smaller loans and we have those.

Peter: Excellent, Stan Hanks from RealSource commercial, we thank you for coming on Income Property Investment Talk.

Stan: Thank you.

Peter: Gentlemen, we'll be back with Adrian and Blaine right after this break to further look at the tenant in common SEC exemption.

BREAK

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Peter: Welcome back to Income Property Investment Talk. Gentlemen, when we left we were talking about this exciting news, the SEC exemption for tenant in common type investments. Both of you gentlemen have experience with, volunteered with, and are members of the Realtor Commercial Alliance. How does the Realtor Commercial Alliance or RCA go about enhancing not only the commercial practitioner, Blaine, but also real estate investors as well? How does it work? What does it do?

Blaine: Well, the Realtor's Commercial Alliance was set up to encourage those members who are interested in being involved in the commercial field to be active in NAR and the RCA in cooperation with NAR does a lot of lobbying on commercial issues. That's the purpose of the Legislative Regulatory Subcommittee and they lobby on issues like the terrorist insurance, the interest deductibility, capitalization of improvements on the properties, those types of things. So anything that has to do with the commercial market they lobby on and take a stand on. I think the thing that the tenant in common issue has brought to a forefront is the opportunity to bring SIOR, the CCIMs, and the ALCs together with RCA to discuss this issue and how it's going to benefit all commercial practitioners. We are in the process, both Adrian and I, in working with the RCA

leadership to put together a meeting with those groups to discuss the TIC issue and kind of where we go from here and what to expect with the issue in some of the exemptions.

Peter: Adrian, what do you see for an investor? For me I would think that if all these groups are working together, one of the things that I know about this industry and I'm in no way saying I'm the professional like you two are, but it appears to me knowing what I do know that most 1031 exchanges fail because the exchanger is unable to identify appropriate replacement property and I would think that if everyone were working together that maybe that might become a non-issue sometime in the future.

Adrian: The biggest problem that an investor has when they sell a piece of property and want to defer their taxes in a 1031 property exchange is they only have 45 days to identify three properties to be considered. In rushing this element, you create a lot of problems and people then close on the property not completing all due diligence that they have after they put the property on the contract. TICs through NAR we believe is a solution where everybody is going to win. As you know, the National Association of Realtors is very conscious of protecting private property rights and doing exactly what is correct for the investor or the homebuyer. In this case we have 90,000 commercial real estate practitioners out of 1.3 million that are doing real estate.

Peter: And right now this is going to, well this program I think is going to serve to help them better understand what this issue is, right Blaine?

Blaine: Hopefully. Hopefully those that are listening in and we are going to try to get this distributed among the RCA members and make it available to them as well as the CCIM, SIOR, and ALC groups.

Peter: Now let me do a quick plug here just for the program itself. This will rebroadcast 12 hours from now and we will have a transcript of the program and an MP3 pod cast of the program available about an hour after we're done right here. So Adrian, a lot of what is happening is good news for the commercial real estate practitioner but the investors who are listening to us right now people who are interested in getting into tenant in common might have an avenue to do so now.

Adrian: Times are tough and getting tougher this coming year because of the economic real estate crisis. This is one element that I think people can take advantage of, absolutely.

Peter: Go ahead Blaine.

Blaine: Adrian and I of course are on the same page on this issue and the opportunity it affords to the investor I think we've discussed it to a very good degree but it provides them that opportunity to get into a professionally managed class A type property and hopefully their risks are minimized. Obviously it's real estate. You still have risks but if they look at the property carefully and they use a professional real estate broker to look at the real estate aspects of the transaction, the intent is to minimize the risk factor.

Peter: Speaking of that risk do you guys want to talk a little bit about helping the realtor in terms of with this new tenant in common offering, there's something called a Private Placement Memoranda. Is that something that affords or opens up or provides transparency to the transaction itself and instead of caveat emptor, buyer beware, it adds a little bit more disclosure for all parties involved?

Blaine: Well, Adrian I don't know if you want opine on it or if you want me to. The Private Placement Memorandum of course is a disclosure document that basically tells

what's taking place in the transaction as well as gives all the information on the property and all of the property disclosures. It's a document that when read and understood will help the investor to make a good decision. Of course an investor run that Private Placement Memorandum by their tax consultant and their attorney to make certain that it fits into their investment goals and desires and also to review it that it's done properly and that it actually does qualify for a 1031 exchange and that's where their tax advisor comes into play. But yes the PPM or Private Placement Memorandum is an integral part in a securitized tenant in common offering and I think it's very important to the transaction.

Peter: Yeah I just wanted to throw it out there because I wasn't sure if you were new to this type of transaction that you were aware of that memorandum. Now again I'm not a professional, you two are so

Blaine: We'll interestingly if you look at the property disclosures that are provided by real estate professionals like CCIM, SIOR, etc., those property discbsures are fairly complete. There's obviously disclosures in there because we can only obtain the information from sources we believe to be reliable but they're pretty good disclosures. We always advise clients to have their accountants review all the property information, the tax returns, the net operating income reports.

Peter: Well Blaine, times flies when you're having fun. So let me do this, we have about a minute and a half left. Adrian, let me start with you and then we'll throw it to Blaine.

What's the last nugget we want to leave with the listening audience today?

Adrian: You're so kind and your program is extremely worthwhile for us real estate professionals Peter. More than anything else, investors, if they tune in its the best way to really create wealth. We appreciate everything you do for us.

Peter: Thank you Adrian I appreciate that.

Blaine: Yeah I'm real pleased with your program also Peter and appreciate the opportunity to be on the program and to talk about the tenant in common industry and we're excited about the proposition of the exemption being issued. We think that it will benefit in fact, the investor as well as the commercial real estate broker.

Peter: Gentlemen, I thank you again for coming on. Adrian Arriaga, Blaine Walker, if you want to learn more about these gentlemen or about the issue we've been discussing in detail here today with today's program go to incomepropertyinvestmenttalk.com. Next week's show were going to focus on property management and not looking beyond the property manager when investing in income properties. We thank you and we look forward to hearing from you next week on Income Property Investment Talk.