



Tenant in Common Interests for 1031 Exchange Transactions

Approximately \$150 billion of 1031 Tax Deferred Exchanges are initiated each year in the United States and approximately \$10-15 billion of initiated Exchanges fail each year, causing unintended tax payments of approximately \$3 billion per year. One Solution to this problem is Syndicated Tenant in Common Interests. This article will provide the reader with a brief outline of the nature, benefits and risks of syndicated Tenant in Common Interests.

Why choose Tenant in Common Interests?

Tenant in Common interests serve those investors seeking passive real estate ownership instead of active management or those changing from the active-management stage of their life to the passive-management stage. Tenant in Common interests may also be a good choice for investors seeking safety and security in their real estate investment and/or investors changing from the wealth creation stage of their life to the capital preservation stage, for example, investors thinking about retirement/estate planning. They may also be a good choice for investors seeking steady, predicable cash flow or strong current cash returns versus significant potential future appreciation. Lastly, Tenant in Common interests may help serve investor's desire to diversify their portfolios.

Basic Tenant in Common Characteristics

Division of Ownership Interests	Any number of ownership interest, equal or unequal, although the IRS guidelines limit the number of tenancy in common investors to not more than 35 in any single offering.
Title	Each co-owner has separate legal title to their undivided interest.
Possession	Each co-owner has an Equal right of possession.
Conveyance	Each co-owner's interest may be conveyed separately by its owner.
Subsequent Purchaser's Status	Purchaser of a co-tenant's interest will become a tenant in common with the remaining co-owners.
Status upon Death of Interest Holder	On co-owner's death, their interest passes by will to their devisees, or to their heirs if there is no will.
Successor's Status	Devisees or heirs become tenants in common with remaining co-owners.
Creditor's Rights	Co-owner's interest may be sold on execution sale to satisfy creditors. Creditor becomes a tenant in common with remaining co-owners.

Tenant in Common History

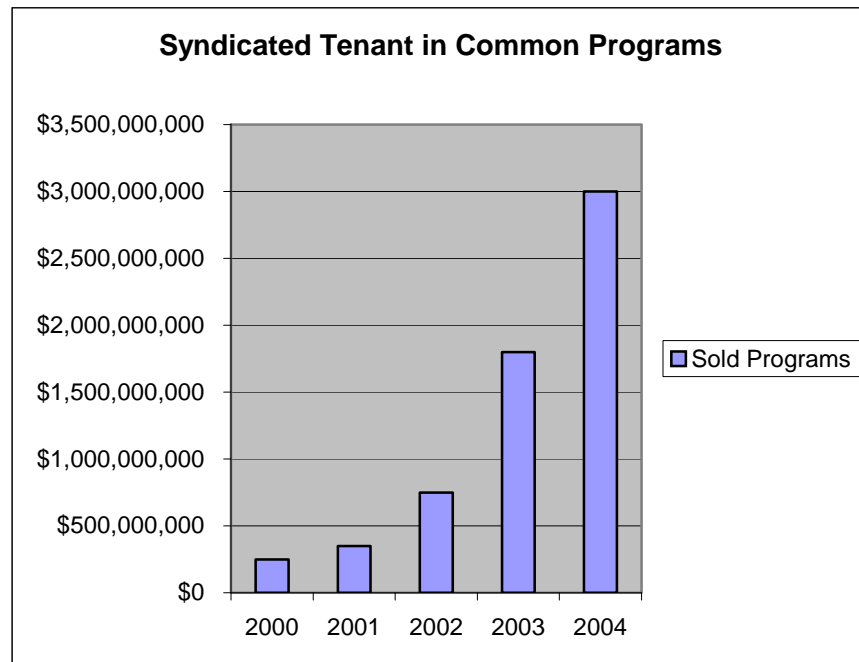
It is well established that Tenant in Common interests may be used in a 1031 Exchange. Small groups of investors have been using Tenant in Common Interests for many years in order to complete their 1031 Exchange. Small investment groups started syndicating Tenant in Common interests about 10 years ago.

By 2000 the number of syndicated Tenant in Common programs had grown dramatically and was catching the attention of the IRS, the capital markets and the broker/dealer community. In September 2000 the IRS issued Rev. Proc. 2000-46, which ended the ad hoc issuance of private letter rulings for Tenant in Common programs while the IRS examined the use of syndicated Tenant in Common Interests as replacement property in a 1031 Exchange.

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On March 19, 2002 the IRS issued Rev. Proc. 2002-22, which provided guidelines for the issuance of private letter rulings regarding the syndication of Tenant in Common Interests to investors using a 1031 Exchange. This Rev. Proc. provided guidelines for approval, but not safe harbor, for syndicated Tenant in Common Interests. The Rev. Proc. Listed 15 conditions required for the consideration of such a private letter ruling. A number of sponsors have submitted requests for private letter rulings. As of this date, only one (AEI Fund XVII, Inc.) has received a ruling (for a non deal-specific structure).

The issuance of Rev. Proc. 2002-22 started an explosion of interest in syndicated Tenant in Common interests during 2002. Numerous sponsors came into the marketplace and program structures went through a hyper-evolution stage. The following chart shows the estimated growth of syndicated Tenant in Common interests for the past four years:



There are over 45 currently active sponsors of syndicated Tenant in Common product, with more coming every month. We saw several large real estate operating companies and publicly traded REITs enter the Tenant in Common market during 2005 and we expect a number of additional institutional sponsors will emerge in 2006 as well. As a result of the enormous growth in this area, many interested parties (prospective sponsors, capital providers, rating agencies, 'B'-piece buyers, broker/dealers, qualified intermediaries and real estate brokers) are exploring the market for syndicated Tenant in Common Interests.

How do I acquire Syndicated Tenant in Common Interests?

Although when properly structured, syndicated Tenant in Common interests are real estate for tax purposes, they are generally considered to be a security for sales purposes. While this may sound confusing, it is due to the difference in the definition of the word 'security' in the tax world compared with the definition in the securities world.

As a result, most syndicated Tenant in Common offerings are sold through Registered Representatives who are licensed with the NASD (National Association of Securities Dealers), not through real estate licensees. Most offerings are sold through a Private Placement Memorandum and are offered solely to 'Accredited Investors' (individual investors with a minimum income of \$200,000 in each of the past two

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years and a reasonable expectation of the same in the current year (or \$300,000 for joint filers) and/or a minimum net worth of \$1,000,000).

Please contact CapHarbor for additional information on this subject.

What are the risks?

Investors have generally identified four areas of risk that may exist with an investment in a syndicated Tenant in Common offering.

- Tax Risk
- Sponsor Risk
- Closing Risk
- Real Estate risk

Tax Risk: The risk that the Tenant in Common interests will be deemed to be a 'partnership' interest, not a Tenant in Common interest. Appropriate legal guidance in the structuring of the program can mitigate this risk. The top-tier structures are receiving 'Will' level legal opinions and are applying for a private letter ruling. The minimum standard (in our humble opinion) is the 'Should' level legal opinion.

Sponsor Risk: The risk that the sponsor will not treat the investors fairly and in good faith and/or will not apply the appropriate resources and expertise to the properties in order to deal with issues in the best interests of the Tenant in Common investors. CapHarbor is working with several of the nations leading real estate institutions in order to create sponsorship entities that mitigate this risk.

Closing Risk: The risk that the Tenant in Common sponsor will not be able to close the purchase of the property (or, on an individual Tenant in Common interest in the property), putting the investors 1031 Exchange at risk. While closing risk is inherent in all investments in real estate, choosing a sponsor who already owns the real estate, or who has the ability to close on the purchase with the Tenant in Common equity can mitigate this risk.

Real Estate Risk: All real estate investing contains some element of risk. Unfortunately, in their headlong rush to defer the payment of taxes, some investors ignore the real estate risk and acquire a non-controlling interest in a property that they would not consider on a sole-ownership basis. Choosing institutional-quality real estate, with risk factors that match the clients risk profile can mitigate this risk.

Other significant issues considered by the Tenant in Common industry include:

Are Tenant in Common Interests a 'security' for distribution purposes, even though they may not be a 'security' for tax purposes? What does the capital markets think about syndicated Tenant in Common Interests? The CMBS lenders? The portfolio lenders? The rating agencies? The 'B' piece buyers? CapHarbor is one of the industry leaders helping to resolve these issues.

What kinds of properties work best in a syndicated Tenant in Common offering?

Fully leased, stable properties, with low risk of vacancy, disruption of cash flow, or future capital requirements. 'B+' to 'A-' properties in major metropolitan markets seem to work best. Office, Retail, Apartment and Warehouse/Distribution properties work well and are highly desired.

Alternative Structures

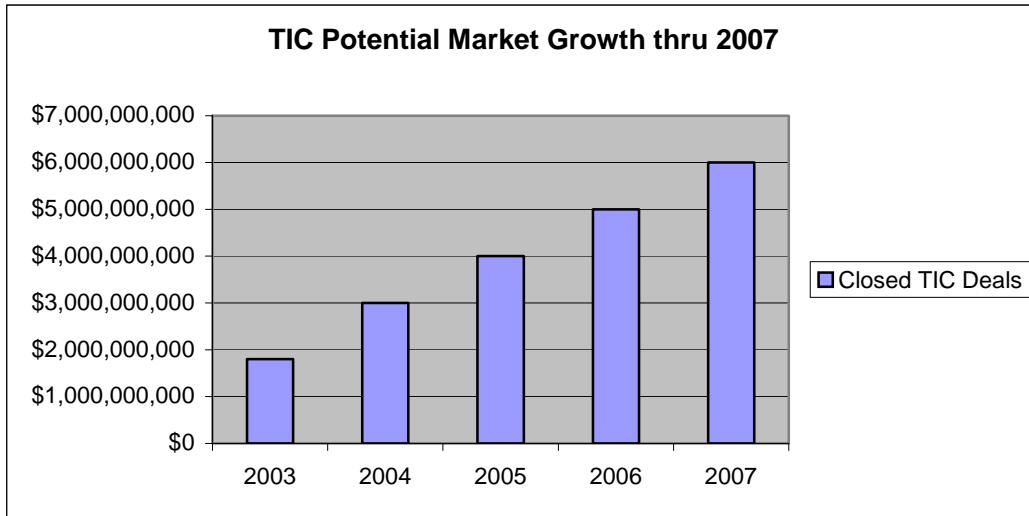
On July 20, 2004, the Treasury Department and the IRS issued Rev. Ruling 2004-86, which, under certain limited circumstances, allows the use of a Delaware Statutory Trust (DST) in connection with a 1031 exchange. While the limitations imposed on any trust under existing trust law limits the practical use of a DST to net leased or master leased properties, the advantages of lower cost, ease of financing and ease of

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resale of investor interests has caused great interest in this structure. While several sponsors had introduced DST offerings as of the beginning of 2005, the jury is still out as to whether investors, lenders and sponsors will embrace the DST structure as a broad alternative to a TIC structure, or, whether it will be an interesting, but little used method for fractionalizing real estate interests.

The Future?

While it is impossible to predict the outcome of the various issues concerning syndicated Tenant in Common interests, our bold prognosticators think that the market may look like this over the next several years:



CapHarbor is a real estate brokerage company serving the needs of 1031 investors who are seeking passively managed replacement properties (Single-Tenant, NNN-Leased properties by the whole through our real estate licenses and tenant in Common (TIC) interests on a fractional basis for accredited investors through our securities licenses). Visit us at www.capharbor.com or call 877-886-1031 to learn more about our services.

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