

# NET LEASE forum

From the editors of *Real Estate Forum* and *GlobeSt.com*

## TOP STORY:

### Securities Vs. Real Estate Issue Heats Up TICA Conference

By Michelle Napoli

The issue of whether or not tenant-in-common investments are securities for securities law purposes was, perhaps not surprisingly, the hot topic at the Tenant-in-Common Association's annual conference last Wednesday and Thursday, held at the MGM Grand Hotel on the famed Las Vegas strip. While most experts acknowledge that TIC deals can be structured and sold as either securities or real estate, vocal industry participants also insist that most TIC deals out there today should be treated as securities.

As reported in the previous issue of NET LEASE forum, the National Association of Securities Dealers recently requested information on TIC deals from member broker-dealers. But the scrutiny from securities regulators isn't just taking place at the national level. "Let's just say there are state division of securities people who are looking at this issue," Greg Paul, president of Salt Lake City, UT-based Omni Brokerage Inc., recently told NET LEASE forum. "They're no longer oblivious to this."

The speaker at last week's conference who arguably generated the most buzz was Michael Hines, director of enforcement for Utah's securities division, who, with other speakers, may have struck some fear in attendees by talking about prison terms for violating securities laws.

"I can envision this transaction being sold as real estate," Hines said in his speech, "but the way I see it [being] sold, it's a security. . . The securities industry does not have an open mind if you are violating the law. . . If you are the example the state takes, your freedom is in jeopardy."

Hines also said that "states have a really good relationship with the NASD," with tips of possible violations being passed on for state-level investigation. "They do talk, they work together," added Kevin Bradburn, chief compliance officer and COO of Omni Brokerage. Two factors complicating the whole issue: Each state defines securities differently, and there can be considerable turf battles between states' securities and real estate divisions, each of which might want both the control and the income associated with governing these deals.

Beyond the securities vs. real estate debate is the issue of who can be properly compensated for referring or placing clients into TIC deals ( see separate story below, "TIC, QI Industries Await Rulings" ). But again, the possibility of securities law violations loom, which is why industry members are asking appropriate authorities for guidance on these issues. "Someone is breaking the law one way or another," said Rob Hannah, president and CEO of Chicago-based sponsor TSG Real Estate LLC and a TICA board member. "If someone doesn't go and get guidance, people in this room are going to start going to jail," he told a standing-room-only TICA conference audience.

Hannah and fellow TICA board member Tim Snodgrass, president of San Juan Capistrano, CA-based sponsor Argus Realty Investors LP, were among those who also discussed various aspects of the TIC business at the Federation of Exchange Accommodators annual conference, which immediately followed the TICA meeting on Friday and Saturday. They urged the qualified intermediary audience to scrutinize the acquisition criteria, business models and expertise of TIC sponsors when assisting a client.

Joining them was Gary Beynon, founder and CEO of Omni Brokerage, who noted that securities broker-dealers "operate in a highly regulated world." Not only must sellers of securities be licensed, he said, but investors must be accredited. That said, he added that accreditation does not necessarily mean an investor is suitable for a tenant-in-common investment.

Further, Beynon warned that QIs need to be careful about being inserted into the TIC sales process when representing their clients. "There is a possibility of regulators looking into that," he said. ✽

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