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## Ending on a High Note

~ Greg Paul

The third quarter of 2004 ended on a high note in Las Vegas where a larger than expected crowd attended the first annual Tenant In Common Association (TICA [www.ticassoc.com](http://www.ticassoc.com)) conference. Those in attendance represented a broad cross section of the industry. I was particularly impressed by the number of individuals representing lending institutions; perhaps a sign that lenders may be easier to work with in the future.

In one session of the conference light was shed and/or shadows cast, depending on which attorney you listen to, on the use of the Delaware Statutory Trust (DST). I look forward to some creative TIC sponsors to come up with a DST structured program that will be blessed by a major law firm with a "should" tax opinion.

In other sessions the securities verses real estate and referral fee/commission sharing issues were brought to the front burner. There was little doubt left that "syndicated" TIC offerings should be sold as securities. Also, a "No Action" letter request, currently being reviewed by the SEC, has both the securities broker dealer and real estate brokerage communities speculating a convergence of the two groups with respect to TIC offerings. Some feel that if the request is granted it will be a gold mine for the industry while others feel it would be a mine field.

TIC's have hit the NASD radar screen evidenced by a letter sent out by the NASD in September requesting several broker dealers to provide them with an exhaustive amount of information regarding the firm's TIC activity. In subsequent discussions with the NASD it became apparent that they were impressed by the growth of the industry and are concerned by a number of things such as due diligence, referral fees, general solicitation, disclosure, and client suitability.

What can we expect over the next few months? More competition among sponsors resulting in more responsiveness to the needs of broker dealers, reps and their clients; better data from sponsors regarding performance of existing TIC programs; more than one sponsor rolling out a DST program; fewer sponsors doing non-securitized TIC deals; and an NASD "Notice to Members" regarding TIC's. My eight ball just stopped working, so your guess is as good as mine as to what the SEC will do with respect to the "No Action" letter they are reviewing.

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