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GlobeSt.com EXCLUSIVE: SCI Cites Support for Its TIC Structure

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(To read more on the ***TIC market****, click here.)*

LOS ANGELES-Recent legal advice solicited by SCI Real Estate Investments confirms that tenant-in-common deals can be structured and sold not only as securities, as most TICs now are, but also as real estate deals, according to company officials. Marc Paul, president and co-chairman of SCI, tells GlobeSt.com that the company sought the legal guidance because of ongoing discussion and debate in the TIC industry about whether TIC investments should be classified as securities or real estate. Based on opinions the company has received from top TIC legal experts, Paul says, the answer is that TIC deals can be offered either as real estate or as securities, depending on how the specific offering is structured.

Although the apartments, office buildings, shopping centers and other properties acquired by TIC investors obviously are real estate, about 90% of the TIC offerings in the US are classified as securities because the way they are structured requires them to comply with securities laws. This means that most TIC investors buy their interests in the properties through securities broker-dealers rather than through real estate brokers. SCI prefers to structure its TIC offerings in such a way that they can be sold as real estate and not as securities. Paul emphasizes, however, that the company does not oppose the sale of TIC interests as securities. "We are not saying to the securitized sponsors or the broker dealers that they are doing anything wrong. We are only saying that these deals can also be executed under a real estate structure," Paul tells GlobeSt.com.

The SCI president says the chief differences between the securities model and the real estate model has to do with control. In most of the big securitized TIC deals, the sponsor remains as the property manager, the asset manager, the leasing broker, the leasing manager and an adviser to the TIC investors on when to sell or refinance, Paul explains. "In SCI's model, we absolutely do not participate in any of those activities once the deal closes," he says. After the TIC deal closes, SCI passes all of the property management, leasing and other control of the property over to institutional third-party property managers, asset managers and leasing brokers. Paul says the difference between retaining control and surrendering it is more significant than it might appear. "It sounds simple, but it actually can be quite complex to execute," he says.

Whether TICs are structured as securities offerings or as real estate carries significant implications, according to Paul. For one, the difference in fees can be significant. SCI typically pays a 3% commission on the equity referred to one of its deals by a broker, but broker-dealer charge a fee of 7% and there are some additional fees generated by the securities model, Paul says. Another difference is that government regulations restrict securities advertising but companies selling real estate are free to advertise. That means that TIC sponsors structuring their offerings as real estate "have an advantage in being able to advertise that securities dealers don't have," Paul points out. He adds that the pool of real estate brokers is far larger than the universe of securities broker-dealers, citing National Association of Realtors membership of more than one million compared with a broker-dealer universe numbering in the hundreds.