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Sunday, August 22, 2004

San Francisco Chronicle**CHRONICLE SECTIONS**

Tenant-in-common exchanges can be a minefield

Editor -- People reading the article regarding tenant-in-common exchanges ("Change is good -- exchange is better," Aug. 15) should be aware of the following risks:

-- Valuation problems: The sponsor of the TIC often flips the property to the investors for substantially more than the fair market value.

Rarely will the sponsor provide the investors with the appraisals used to acquire the property, or any other appraisals. In contrast, the investor in an ordinary exchange will receive an appraisal and is unlikely to pay substantially more than the fair market value.

-- Liability risks: The TIC investor has a fractional interest in the land and building. Thus, the investor is a potential defendant in any lawsuit filed to enforce mechanics lien claims, serious personal injury claims, environmental claims and claims by lenders for deficiency judgments in the event of foreclosure.

This is true regardless of whether the master tenant defaults on the master lease. The day-to-day management responsibility is shifted to the master tenant or sponsor of the TIC. However, the investor will still be named a defendant because of the fee ownership.

Moreover, the investor remains liable if the sponsor or master tenant defaults.

-- Insurance issues: Often the sponsor fails to name all the investors as additional insured on all the liability policies. Thus, the investor will not receive a defense from counsel for the insurance carrier when named as a defendant. Also, some risks are not covered by insurance. The obvious one is a default on the senior liens.

-- Tax issues: Only exchanges of interests in real estate qualify for deferral under Rule 1031. Transferring an interest in real estate for an interest in a corporation trust or other entity will not qualify for deferral under Rule 1031.

If the group of investors is large, or the investors lack the incidents of ownership, the IRS may deny

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exchange treatment. In other words, the investor has exchanged real estate for a security instead of like-kind real estate.

-- Management issues: After the passage of time, investors will want to sell or exchange their fractional interests. The sponsor may have restrictions. Also, the sponsor may want to sell, while the investors want to hold the property.

One must review the TIC documents closely to determine how such disputes are resolved. Often, the sponsor will select an inconvenient forum and require the investors to pay substantial fees.

For example, the American Arbitration Association will require the investors to pay many thousands of dollars up front. These arbitration fees may exceed the court costs.

GLEN L. MOSS

Hayward

Raring to party in rural Cotati

Editor -- In reference to your article, "Cotati cottages sell country charm" (Aug. 15), as a San Francisco refugee, I would like to offer a few comments.

First, in the city, the large combined living space that includes the living, dining and kitchen would be considered a loft and would be considered affordable.

Second, the drive north has averaged only 45 minutes during noncommute hours, and the exit for Highway 116 is well below the real bottleneck of Santa Rosa. On most days, it requires more than 45 minutes just to get across town in San Francisco.

Third, the aroma that abounds in San Francisco is usually that of a human kind, from all the open latrines that are commonly known as city streets.

When our move-in date arrives, this is one San Francisco refugee who, after 25 years in the city, will be glad to own a three-bedroom, 2 1/2-bath home in beautiful Sonoma County, nature and all.

M.T. McCALL

San Francisco

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Page G - 3



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