

# LEGISLATIVE Update



## SEC considers TICs as real estate

Earlier this year, NAR President Al Mansell met with the Securities and Exchange Commission's Office of Market Regulation to discuss how real estate professionals might be compensated when they participate in securitized tenants-in-common (TIC) transactions. TICs are fractionalized, fee-simple interests in real property, which have been increasingly used in 1031 tax-deferred exchanges since a 2002 IRS guideline was issued. While the purchase of TIC interests is technically a real estate transaction, TICs are increasingly sold as securities. In such cases, National Association of Securities Dealers and SEC rules allow for compensation only to those

holding securities broker-dealer licenses.

President Mansell requested that the SEC take steps that would allow real estate professionals to participate in and derive compensation from the marketing and sale of securitized TIC interests. He noted that

- because all TIC interests, including those that are securities, are conveyed with a deed, the laws of 42 states require persons selling TICs to hold a real estate license.

- because of their training, real estate professionals are uniquely qualified to advise clients on the real estate aspects of the property underlying a securitized TIC transaction, a service a broker-dealer cannot offer.

- the SEC had previously allowed broker-dealers and real estate professionals to share commissions in securitized condominium transactions when the involvement of the real estate professional was limited to discussing real estate aspects of the condo and ensuring that the transaction complied with state real estate law.

In response to this argument, the SEC asked NAR to suggest a framework whereby real estate professionals could participate with broker-dealers in the sale of securitized TIC interests.

As NAR was preparing its response, the NASD issued a notice to members explicitly stating that broker-dealers

must adhere to NASD Rule 2420, which prohibits broker-dealers from sharing compensation with a real estate professional who participates in the sale of a securitized TIC interest. Although the NASD is not a government agency, its rules are intended to apply federal securities law as implemented by the SEC. Therefore, this notice has dampened hopes that real estate professionals will be able to derive compensation for participating in securitized TIC transactions. Nevertheless, NAR is still working to develop a framework whereby real estate professionals may be compensated from the securitized TIC transaction within the scope of applicable NASD and SEC rules.