

## Tenants in common interests stay in the spotlight

Tenants-in-common transactions, in which a group of investors each owns a fee-simple fractional ownership interest in real property, have grown exponentially since 2002 when the IRS issued guidelines permitting TIC shares to be used in Section 1031 tax-deferred exchanges. While the purchase of TIC interests are technically real estate transactions, they may also constitute securities transactions. In such cases, the transaction would be subject to federal and state securities regulation, including, in some cases, the requirement that persons promoting the purchase of TIC interests hold a securities license. Because a TIC interest involves the ownership

of real property interests, its sale also appears to be subject to state real estate license laws. This duality creates uncertainty regarding the nature of TIC transactions as well as whether real estate brokers who do not also hold a securities license may participate in the promotion and sale of the interests and be paid a fee for that service. Those in the TIC industry are confronted with having to comply with two sets of laws and regulations—those that pertain to securities and those that pertain to real estate.

In an effort to provide its members with the most relevant and accurate information about TICs, the RCA Committee extended the man-

date of its Tenants-In-Common Work Group and charged it with providing resources to educate the membership about the TIC marketplace. To achieve this goal, the Work Group will:

- Undertake efforts to address and clarify the circumstances under which real estate brokers may participate in the marketing and sale of TIC interests that qualify as securities under federal or state securities law without having to hold a license as a securities broker-dealer.
- Provide guidance to members on when TIC interests can be brokered as real estate and when they must be brokered as a security.

- Provide risk management guidelines to all REALTORS® on best policies for participating in TIC transactions.
- To the degree necessary, defend existing exemptions in securities laws for sponsors of TICs and other real estate investments and maintain the ability of real estate brokers to sell and receive commissions for the TIC interests sales.

By providing guidance for real estate professionals, the Work Group seeks to decrease the likelihood that commercial practitioners will run afoul of securities laws and to ensure that real estate licensees will be able to derive compensation from their involvement in the sale of TIC interests.