June 2007

Legal Update

A WRA Publication Exclusively for the Designated REALTOR®

Please Route to:

__ _____
__ _____
__ _____
__ _____
__ _____
__ _____
__ _____

Inside This Issue

Ownership and Title Pointers for Brokers

The styles and types of real estate ownership interests are varied and may involve a single person, groups of individuals and various sorts of entities in many different combinations. In a real estate sales transaction, these forms of ownership will dictate who must sign the offer to purchase, the deed and other documents needed for a valid and binding conveyance of real estate interests.

The general rule in Wisconsin is that all persons shown as titleholders in the local register of deeds records must be named in and sign any conveyances and contracts pertaining to the property including offers to purchase, deeds, mortgages and leases. Whenever all titleholders and their spouses sign a conveyance as grantors, all legal requirements have been met. However, this is not always as easy as it may sound and REALTORS® should become familiar with some of the twists and wrinkles in this broad principle found in Wisconsin law.

Each section in this *Update* shall briefly explain some of the different types of real property ownership, indicate who generally must sign an offer to purchase and deed for the ownership form, and indicate whether REALTORS® may comfortably work with this type of ownership or whether attorney assistance is recommended. Some of the forms of ownership that are discussed include single ownership; joint tenancy; tenancy-in-common; marital property; survivorship marital property; life estates; trusts; and condominium, time-share and cooperative ownership. Transfers of title to real estate upon death, both probate and non-probate, are reviewed. Transactions involving the sale of stock or other entity ownership interests in lieu of a real estate sale are examined, including investment or commercial tenant-in-common interests (TICs) utilized predominantly in deferred exchange transactions.

The information in this *Update* is not intended to make REALTORS® title experts and ownership gurus, but rather to make them more knowledgeable and comfortable when confronted with some of the more unusual title and ownership issues, and to provide basic guidance for handling these situations in a prudent manner.

REALTORS® should never provide legal advice to clients and customers regarding title and ownership or any other legal issues. While general information concerning the different forms of ownership may be provided to the parties, an agent should not presume to advise a buyer, for instance, concerning what choice is most beneficial in the buyer's personal situation. Such advice is not only beyond the scope of the REALTOR®'s training, expertise and duty, but also constitutes the illegal practice of law forbidden by Wis. Admin. Code § RL 24.06.

Single Ownership

What is it?

Single ownership is the simplest form of ownership. An unmarried person or an organization with sole record title to real estate owns it.

Contacts

EDITORIAL STAFF

Author
Debbi Conrad

Production
Terry O'Connor

ASSOCIATION MANAGEMENT

Chairman
Roger Rushman

President
William E. Malkasian, CAE

ADDRESS/PHONE

The Wisconsin REALTORS® Association,
4801 Forest Run Road,
Suite 201
Madison, WI 53704-7337
(608) 241-2047
(800) 279-1972

LEGAL HOTLINE:

Ph (608) 242-2296
Fax (608) 242-2279
Web: www.wra.org

Who must sign the offer to purchase and the deed?

To grant full title, the unmarried person who is record owner must be named as grantor and sign the conveyance.

Multiple Owners: Tenants in Common and Joint Tenants

Where two or more persons or entities are co-owners, they may be either tenants in common or joint tenants. This discussion relates to unmarried persons – the Wisconsin Marital Property Act has some specific rules relating to the ownership by married persons.

Tenants in Common

What are they?

Each co-owner is entitled to possession of the property equally with the other owners, and no one owns or is entitled to exclusive possession of any particular area. Instead, each tenant in common owns an undivided fractional interest rather than the whole property. Wis. Stat. § 700.20 provides that a tenancy in common is presumed to be in equal shares unless different percentages are designated on the deed, bill of sale or other title document. For example, when five brothers and sisters inherit hunting land from a parent, they would each own an undivided one-fifth interest. Each sibling could convey his or her one-fifth interest, and each sibling may bequeath his or her interest by will. If there were no will, the one-fifth interest would pass to his or her heirs under the rules of inheritance.

Tenants in common need not necessarily own equal interests. For instance, a parent may will a one-fourth interest to each of three sons and only a one-eight interest to each of two daughters. Unequal shares may also result when one tenant in common buys the interests of another. For example, if one of the brothers buys the interest of one of his sisters, he will then have a three-eights interest.

Each owner is expected to contribute his or her proportionate share of the property taxes. Except possibly in an extreme emergency, no tenant-in-common owner can force another to make repairs or to contribute to the cost of repairs without mutual agreement. It is important for tenants in common to have a prior written agreement regarding their respective rights and duties.

Who must sign the offer to purchase and the deed?

A tenant in common may convey only his or her undivided interest in the property. Any tenant in common may sell, mortgage, place liens on, gift or otherwise convey his or her respective individual share during the co-owner's lifetime. However, most purchasers will want complete ownership. This means that every tenant in common must convey his or her interests in order to sell the buyer a complete fee simple absolute ownership interest.

Will the parties need an attorney?

Yes, if the owners can't agree. It is easy to contemplate that a group of co-tenants may not always see eye to eye and may vigorously disagree over what should be done with a parcel. Any co owner can at any time bring a partition action in court to force either a physical division of the property (i.e., a large farm that can be divided into four 25-acre tracts) or a sale of part or all of the property where physical division is impractical. In such an instance, the proceeds of the sale would be divided and the broker would no longer have a property to sell. Such a lawsuit may be expensive and time consuming.

Powers of Attorney

Whenever one of the co-tenants/sellers is not readily available to personally execute a document, the document may instead be signed on the absent seller's behalf with a duly authorized power of attorney (POA). Authority

to sign for another should be given in writing – preferably notarized – with the detailed instructions from the party authorizing it. When executing documents to comply with the requirements of Wis. Stat. § 706.03(1m), the POA should ensure that both the party's name and the POA's name appear with an indication of authority (such as "seller X by POA, as authorized agent" or "POA as agent on behalf as seller X"). A POA should not just sign the name of another person.

Whenever a deed or other recordable document is going to be executed by POA, a copy of the POA document may need to be reviewed by the title company and perhaps recorded. It is prudent to have the title company review any POA document as early on as possible to permit sufficient time to correct any problems.

For further discussion of POA, see the May 2004 *Legal Update*, "Avoiding Liability When Signing and Making Referrals," online at www.wra.org/LU0405.

Joint Tenants

What are they?

The distinguishing feature of joint tenancy is the right of survivorship that exists between the joint tenants; on the death of either, the survivor becomes the sole owner. During the lifetime of both, however, their rights are substantially the same as those of tenants in common. In legal theory, joint tenants own 100 percent, but they own it together. As long as the property remains owned in joint tenancy, no owner can dispose of his or her share by will. This inflexibility is one of the disadvantages of survivorship property.

On the death of one joint tenant, the sole survivor becomes sole owner and the normal rules for single ownership then apply. If three or more persons own property as joint tenants, when one dies the remaining owners continue to own as joint tenants.

Who must sign the offer to purchase and the deed?

Joint tenants should normally sign all documents. A joint tenant may convey his or her undivided interest alone without the signatures of the other joint tenant(s), but the result is to destroy the joint tenancy and its accompanying right of survivorship, and to leave a tenancy in common in its place.

Will the parties need an attorney?

If one joint tenant has sold his or her joint tenancy interest, or if a creditor has forced a sale of one joint tenant's interest, an attorney may be needed to sort out the apparent tenancy in common left behind. An attorney may also be needed if the joint tenants cannot agree – an action for partition in court may be needed to divide their interests before any sales can be accomplished. A partition judgment under Wis. Stat. Ch. 842 will either divide the property into equal parcels or sell the entire property at sheriff's sale and divide the proceeds, if an equitable division is not possible.

Legal Hotline Questions – Tenants in Common and Joint Tenants

One of the sellers/spouses has Alzheimer's disease. Does only one spouse need to sign the offer?

No, to create a valid real estate conveyance such as an offer to purchase, the contract must be signed by all the parties or by someone with actual authority to sign for the party. The seller may need to execute a POA, if he is sufficiently competent to authorize another to act on his behalf, or the court may need to appoint a guardian for him. The sellers should confer with legal counsel for advice on how they can complete the transaction.

Three siblings own a property in equal shares as tenants in common. Their relationship is somewhat acrimonious, and each sibling wants his or her attorney to review all contracts before signing. How many listing contracts should the listing agent prepare?

Technically, only one seller would need to sign the listing contract, but, given the situation, the best practice would be to name all three siblings as parties to one listing contract.

The listing agent may consider using counterparts. Wisconsin case law recognizes that contracts may be signed in counterparts (that is, no one piece of paper has all the original signatures, but taken together, all parties have executed the same contract). It is the assent of the parties to the same terms that makes a contract; the signed writings evidence this assent, and courts try to effectuate the parties' intent.

In other words, the listing agent could draft a single listing contract or offer to purchase with all three siblings as parties and forward an identical copy to each sibling for his or her signature. Once all parties have signed identical copies, the collective effect would be the same as if they each signed one contract. This may make the process more efficient because the parties could obtain their attorneys' review simultaneously.

Two friends are purchasing a cottage together. Title will be in both of their names. How should title be held – as tenants in common or joint tenancy?

It's up to the buyers to decide. Each tenant in common owns an undivided fractional interest rather than the whole property. The interest is called undivided because there is no physical division of the land between the co-owners. A tenancy in common is presumed to be in equal shares unless different percentages or fractions are designated on the deed.

The distinguishing feature of joint tenancy is the right of survivorship that exists between the joint tenants; on the death of either, the survivor becomes the sole owner. During the lifetime of both, however, their rights are substantially the same as those of tenants in common.

A closing is scheduled and all contingencies have been satisfied. Mr. Seller may pass away prior to closing. Mr. Seller has signed the deed and Mrs. Seller says they still intend to close. Please advise.

A pre-signed deed by a deceased seller is not effective without delivery and would be void upon death. Perhaps the title company will accept an escrow agreement and delivery of the deed. If the seller passes away, the joint tenant spouse can file a Termination of Joint Tenancy form with the register of deeds and sell at once. However, an original death certificate is needed with the form.

Homestead

What is it?

"Homestead" refers to the home or residence of a married person. Even though part of the premises is rented (i.e., a duplex) or used for commercial purposes (i.e., an upstairs flat over a store), a property may still be a homestead. In rural areas, the homestead consists of the house and surrounding land necessary for use of the dwelling as a home, but not less than one-fourth acre and not more than 40 acres. If a couple were to move away from their residence, intending never to return, the homestead status would be abandoned.

Who must sign the offer to purchase and the deed?

One spouse cannot transfer homestead property without the other's consent. Both spouses' signatures should be obtained on all conveyance documents. Note that homestead status does not only apply to residential property where both spouses live together – it also applies to a residence where one spouse lives alone, such as where each spouse has a separate residence in a different city. The one exception occurs when there is only one spouse on title and the document to be signed is a purchase money mortgage – even if the property is homestead, only the spouse on title is required to sign.

Will the parties need an attorney?

Problems with homestead rights most often arise when there is only one spouse on title, the property is homestead, the conveyance is not a purchase money mortgage and the other spouse will not sign. The second spouse has homestead rights in the first spouse's home that cannot be waived. If an absent spouse wishes to abandon his or her homestead rights, he or she may join in the conveyance or execute a separate conveyance of his or her homestead rights.

Legal Hotline Questions – Homestead

The seller married after she bought the property. She and her husband live in the home. She listed the home and she does not want her husband's signature on any of the documents for listing or selling the property because of a tax lien issue. The cooperating broker working with the buyer wants the husband to sign. Must the husband sign the offer and other documents?

The listing contract must be signed by someone agreeing to pay the commission. The law does not require that all owners sign a listing contract in order for the listing contract to be enforceable against the owner who does sign. Therefore, technically a wife signing a listing can be liable for a commission to a broker who successfully procures a buyer, even if the husband is also on title. However, in the real world, a listing contract without the signature of all owners is a disaster waiting to happen. Prior to accepting a listing signed by fewer than all sellers, counsel should be obtained regarding the myriad of potential problems including disclosure duties owed prospective purchasers, homestead law, marital property law, etc.

In Wisconsin, Wis. Stat. § 706.02 provides that both spouses must sign all documents conveying an interest in any homestead property, including the offer to purchase and the deed or land contract. Generally speaking, a "homestead" is the home or dwelling of a married person. The definition is intended to be broad and covers a property as long as one or both of the spouses lives there. The brokers may work together and with the

title company to determine the status of the property and whether it is homestead requiring both signatures.

Marital Property

The Wisconsin Marital Property Act, found in Wis. Stat. Ch. 766, is based on the premise that everything that a married couple residing in Wisconsin acquires during their marriage belongs to them equally. The act is important in determining (1) ownership, which affects, among other things, how the couple's property passes at the death of one or both spouses and the rights of creditors and (2) management and control, which determines who has the authority to sell, lease or mortgage the spouses' real estate. These rights are based upon the wording used in the deed to the property.

The act classifies a married couple's property acquired after (1) the couple's marriage, (2) the couple's establishment of domicile within Wisconsin or (3) January 1, 1986, whichever occurs last. This is called the "determination date." Property acquired by the spouses before the determination date is called "predetermination date property" and is treated as a separate category for probate purposes.

What is it?

The act classifies property acquired by spouses as either individual property or marital property. All property of Wisconsin spouses is presumed to be marital property unless it can be proved to be individual property or predetermination date property. All income earned by a spouse or a spouse's property during marriage is also marital property, as stated in Wis. Stat. § 766.31. Mixing marital property with individual property or predetermination date property in such a way that the individual or predetermination date property cannot be traced reclassifies all of the property that was mixed as marital property, as indicated in Wis. Stat. § 766.63. Each spouse generally has an undivided one-half interest in each item of marital property without regard to the monetary value of a spouse's actual contribution to the asset. A spouse cannot convey his or her one-half interest in a marital property asset as a separate interest, as could a tenant in common with his or her undivided one-half interest in a property. However, Wis. Stat. § 766.51 provides that a spouse with management and control over a marital property asset (for example, a cottage titled in the name of one spouse alone) may sell the property, but the other spouse will have an interest in the sale proceeds because the asset was marital property. At death, one half of all marital property assets, with some exceptions, becomes part of the deceased spouse's estate and may be distributed pursuant to the will of the deceased spouse.

Individual Property

A spouse's individual property generally is property that the spouse owned before the determination date. Property acquired by a spouse during marriage may also be individual property, as provided in Wis. Stat. § 766.31, if the property was acquired:

- By gift or inheritance from a third person or a trust to only one spouse
- In exchange for, or with the proceeds of, a spouse's individual property
- From appreciation of the spouse's individual property except to the extent that the appreciation results from the application of the other spouse's labor or skill, which might cause the property to become mixed property (Wis. Stat. § 766.63)
- By a court decree or a marital property agreement designating it as one spouse's individual property

Income from a spouse's property may be classified as individual property if the spouse executes a unilateral written statement stating such classification – otherwise it generally would be marital property.

Survivorship Marital Property

Upon the death of a spouse, survivorship marital property goes to the surviving spouse without probate and is not subject to the provisions of the deceased spouse's will, as is the case with property owned in joint tenancy. Survivorship marital property is created when a deed or another document conveying title names both spouses and states that the property is "survivorship marital property." For example, a deed may convey property to "husband and wife as survivorship marital property." In addition, if a deed or other title document states the intent to create a joint tenancy between spouses (i.e., by stating "husband and wife as joint tenants"), Wis. Stat. § 766.60 provides that they hold the property as survivorship marital property. If a husband and wife acquire a homestead after the determination date, it is automatically classified as survivorship marital property by Wis. Stat. § 766.605 unless a different classification is expressed in the deed or in a marital property agreement. For example, a conveyance to husband and wife "as marital property" demonstrates a contrary intent and would eliminate the survivorship feature.

Marital Property Agreements

Under the act, married couples or couples about to marry may enter into a variety of marital property agreements classifying all presently owned assets or future assets as individual property, marital property or some combination of classifications. Some couples enter into agreements making asset-by-asset classifications or classifying different categories of assets in different ways. Marital property agreements may also change the spouses' management and control rights with respect to some or all of the couples' assets. Marital property agreements that are recorded with the register of deeds become part of the chain of title.

Ownership, Management and Control

Management and control is the right to buy, sell or otherwise deal with property as if it were property of an unmarried person. Management and control determines who can convey a married couple's real estate other than homestead property.

When non-homestead property is held in the names of both spouses, management and control depends on the conjunction between their names on the deed or other title document. For example, if a deed was in the names of "John Smith *or* Mary Smith, husband and wife," either spouse acting alone has management and control. If the deed granted title to "John *and* Mary Smith, husband and wife," they must both jointly exercise management and control.

Who must sign the offer to purchase and the deed?

The authority of spouses to convey real property is based on management and control rights, subject to homestead requirements.

- Homestead: Both spouses must sign even if record title is held in the name of only one spouse.
- Non-Homestead – Only One Spouse on Title: Only the spouse holding record title is required to sign the offer or deed.
- Non-Homestead – Spouses on Title Jointly: Both spouses must sign the deed or other conveyance if the property is held as "husband and wife as survivorship marital property."
- Non-Homestead – Spouses on Title in the Alternative: Only one spouse is required to sign if the property is held as "husband or wife as survivorship marital property." This holds true regardless if the property is held as marital property or survivorship marital property. Either spouse can convey full title with his or her signature alone and without the other spouse joining in because each spouse has full management and control.

Will the parties need an attorney?

In cases where spouses are divorcing or have unrecorded marital property agreements or other issues clouding the picture, REALTORS® should not hesitate advising the party to discuss the issue with his or her attorney.

Legal Hotline Questions – Marital Property

The buyer is in the process of a divorce that is expected to be final prior to closing. The buyer told the listing agent he has borrowed the money outside of marital property. The ex-wife found out about the purchase and wants to try to stop it. What should be done?

Although, as a general rule, married persons may purchase property and take title in one of the spouse's names alone, this buyer's situation and divorce may impose limitations on the purchase of real property. Often preliminary orders in a divorce prohibit both spouses from entering into any significant economic obligations during the pendancy of the divorce. The listing agent should refer the buyer to his divorce attorney or other legal counsel to evaluate the impact of the divorce and marital property issues upon the acquisition of the property. The listing agent may proceed with the transaction in accordance with advice of the buyer's attorney.

The seller is divorced and the seller and his ex-wife had a marital property agreement. The seller says that his ex- wife gets 30 percent of the proceeds less $10,000 because of a loan. The title commitment shows nothing with respect to this. The seller wants the proceeds check in his name. The listing agent told the title company about the divorce and they say as long as it has not shown up on title, the agent can put the check in the husband's name. What is the agent's responsibility?

The husband is the listing broker's client. Absent anything to the contrary on title, the agent should make out the proceeds check as the husband directs. The husband, and not the listing office, will be responsible for fulfilling any legal obligation he may have with respect to his ex-wife.

The seller is going through a divorce and owns the listed property as survivorship marital property with her husband. The property is also the couple's homestead property. The husband's signature is not on the contract and the wife says there is no quitclaim deed. Must the husband sign the offer?

Both spouses are titled owners of the marital homestead, so both must sign any deed conveying the property. It appears the current offer is incomplete if it only contains the signature of one spouse. The listing or buyer's agent may consider drafting an amendment between the buyer, the wife and the husband that adds the husband as a party to the offer to purchase. Alternatively, the title company might request a quitclaim deed from the husband to remedy the situation.

A married buyer wants to purchase a two-unit in his name only. Is that appropriate?

Property of married persons may be held in the name of one or both spouses, so there is no legal impediment to the transaction. The buyer, however, should be referred to private legal counsel for a full analysis of homestead rights, marital property rights, survivorship rights, ownership and control rights, and tax issues regarding this property in light of this buyer's specific circumstances.

The husband is a builder, and his company built the property for sale. This house is not a homestead property and is titled solely in husband's name. Can the wife sign a counter-offer?

If the property were homestead, Wis. Stat. §§ 706.01(7) & 706.02(1)(f) would require both spouses to sign an offer or counter-offer regarding the property. While the wife may have some ownership interest in the property under marital property law, the spouse having management and control of the property must sign any conveyance, including acceptance of an offer or counter-offer. If the property is solely titled in the husband's name, this is strong evidence of his management and control rights. Unless the husband gave his wife express authority to sign on his behalf (i.e., a POA), he must sign the conveyance documents.

The title work indicates that the listed property is held as survivorship marital property. Can the husband sell it without the wife's signature?

This will depend upon whether the property is homestead and which spouse(s) has management and control. If the property is not homestead property and the property is titled as, "Mr. Seller or Mrs. Seller, husband and wife, as survivorship marital property," then either Mr. Seller or Mrs. Seller could exercise management and control and convey title. If the property is titled as, "Mr. Seller and Mrs. Seller, husband and wife, as survivorship marital property," or if the property is homestead, then both spouses must execute any offer to purchase and the deed.

Trusts

What are they?

Trusts are written agreements that provide for property management by someone with a special position of responsibility and duty to manage assets and act for the benefit of others. Property owners (known as the grantors or settlers) may transfer legal title to property to an individual, trust company or a bank, who will act as the "trustee." The trustee is given fiduciary powers to hold, manage and convey the property for the benefit of the original owners during their lifetime, and for other beneficiaries after the owners have passed away.

A revocable or living trust is an agreement that says how an owner or grantor wants property he or she puts into the trust to be managed and distributed. A revocable trust often allows the grantor to maintain control of the trust assets during his or her lifetime. A revocable trust also may be altered or terminated during the property owner's lifetime as long as the owner is mentally competent. The property is passed on to the beneficiaries only after the owner's death, at which time the revocable trust then becomes irrevocable. An irrevocable trust, on the other hand, cannot be changed once it is put in place.

Revocable or living trusts are often established as a way to allow asset management before death if the owner becomes incapacitated and to promptly pass assets upon death without probate. Many people find this desirable because the cost and formalities of probate are avoided and privacy is maintained because the property is not in the probate records, which are public records. However, the assets in the trust are still considered part of the taxable estate for tax purposes, so inheritance taxes may still be due.

The title to a residence and other real estate may be put into a revocable trust. A trust may be created by deed, will or other trust documents. A real estate transfer fee may be due depending upon whether a fee would be due if the grantor of the trust had conveyed property to the trust beneficiary.

In some localities, title to land is conveyed to a trustee to facilitate the development, financing and sale of a large tract. This is referred to as a "land trust." A land trust may also allow the trustee to transfer an unencumbered title to the purchaser and then to divide the proceeds among the various persons having a financial interest in the development (landowner, contractor, financier, and broker).

Who must sign the offer to purchase and the deed?

As far as a purchaser in a real estate transaction is concerned, the trustee is the "owner" and has power to sell property held by the trust unless the document creating the trust restricts his or her power. In some circumstances, he or she may have to get a court order authorizing the sale but this is rare. Most trust documents give the trustee the express authority and power to sell by private or public sale without court order. It may be wise to confirm the identity of the trustee and his or her authority.

Will the parties need an attorney?

The parties may need an attorney's assistance to confirm the identity and authority of the current trustee or trustees, particularly if there are multiple or successor trustees involved.

Legal Hotline Questions – Trusts

A broker is frequently encountering transactions where the property titles are held in trusts. When preparing an offer, the broker specifies that the property will be conveyed with a trustee's deed. However, buyers are questioning the difference between a trustee's deed and a warranty deed. The broker feels she has a responsibility to explain the difference between the two. The broker has been referring buyers to their attorneys, however attorneys sometimes request that the property be conveyed by warranty deed because a trustee's deed does not offer the same guarantees as a warranty deed. If the property is to be conveyed by trustee's deed because that is how title is held, what obligation, if any, does the broker have to explain the differences to a buyer? If an attorney insists on a warranty deed, can this request be accommodated?

Although the broker has the obligation to inform the parties of the type of deed offered by the seller, it is not the broker's responsibility to give the buyer legal advice about what type of deed is appropriate for the transaction. The buyer may discuss different types of deeds and negotiation strategies with his or her attorney. The buyer and seller will have to agree upon the type of deed to be used in the transaction and specify this in the offer to purchase.

For information about the different types of deeds, see *Legal Update* 03.09, "Warranties in the Offer to Purchase," online at www.wra.org/LU0309.

An agent recently listed a property owned by an elderly woman. Her daughter is her POA. After an offer was accepted with the daughter's signature, the agent ordered the title insurance and discovered that the property was owned by the seller's revocable trust. The seller (the mother) also is the trustee. What is the best way to get the correct signatures on the offer and counter-offer?

It may be prudent to seek guidance from the title company or an attorney to see what direction they may be able to offer. It would also be wise to obtain a copy of the trust document and confirm the identity and authority of the trustee. The offer then can be amended to add the trust as the seller and the signature of the trustee ratifying the contract and agreeing to be bound by its terms, obligations and conditions.

Life Estates

What are they?

A life estate is an interest that is limited in duration to the life of the person holding the life estate or to the life of some other designated person. The person holding the life estate is called the life tenant. A life tenant has essentially the same interests as a fee simple owner except that the interests of a life tenant do not last forever – they end upon the death of the designated person (generally the life tenant himself or herself). The life estate may be sold, leased or mortgaged. The life tenant, however, must keep the property in reasonably good condition, make all necessary repairs to preserve the property and avoid injuring the property (i.e., committing waste) for the benefit of those who will own the property once the life estate ends, that is, the remaindermen.

A remainderman of a life estate has a future interest in the property. Upon the death of the designated person, the remainderman automatically has a fee simple interest.

Who must sign the offer to purchase and the deed?

Both a life tenant and a remainderman may sell his or her respective interest in the property or dictate the disposition of that interest upon death. However, both the life tenant and all remaindermen must sign any offer or deed if the fee simple absolute to the property is being sold to a third-party buyer.

Will the parties need an attorney?

This area of the law can be very complicated. Accordingly, an attorney should prepare any deed creating or reserving a life estate. The sellers would be wise to confirm with an attorney that all necessary sellers have been identified whenever an interest in the property is sold.

Legal Hotline Questions – Life Estates

A broker is looking to put a house on the market that is held as a life estate. During this process, the father (who is the sole life tenant) had to be placed in a nursing home. The father has three children who disagree with one another. The house needs to have expensive work done to prepare for listing. Who is responsible for paying for the work – the father or the remaindermen children?

The broker may refer the father and the children to the attorney who drafted the estate plan and the life estate documents for legal advice on the rights and duties of each of the parties. The title company may also be of assistance. Unless the documents provide differently, the father may bear the responsibility for upkeep of the property in reasonably good condition.

The mother maintained a life estate and transferred a remainderman's interest to her daughter in December 2003. Today the life tenant/mother contacted a broker and said she wishes to sell her property. Shouldn't her daughter be the one listing the property?

Although either party to a life estate situation may list and sell their individual interest, to sell the property fee simple absolute, both parties must transfer their interests. The broker may refer the mother and the daughter to the life estate documents and tell them to speak with their attorney(s) if they need legal advice.

Real Estate Transfers at Death

Generally, an owner can dispose of his or her property at death by will, subject to certain statutory rights of a surviving spouse (Wis. Stat Ch. 861). Where a person dies without a valid will, he or she is said to die "intestate," and Wis. Stat. Ch. 852 specifies the person or persons who take the deceased's property. Any surviving spouse, children and other family members are provided for. Thus, real estate may be transferred based upon the wishes of the deceased expressed in his or her will, or based upon state law.

On the death of the owner, probate proceedings may be required, regardless of whether or not the deceased had a valid will. The probate process ensures that any taxes due and any creditor's claims are paid, if there are sufficient assets, and that the deceased's assets are transferred to

his or her legal heirs or beneficiaries (sometimes including trusts).

Property in Probate

What is it?

There are several different types of proceedings affecting probate property. The probate court judge supervises a formal probate administration, while the register in probate oversees an informal probate administration. In addition, a personal representative is appointed to handle the estate. For smaller estates, with assets valued at less than $50,000, a special administrator may be appointed to oversee summary settlement or summary assignment proceedings as described in Wis. Stat. Ch. 867.

Once a personal representative has been formally appointed by the court and has received his or her papers, called "domiciliary letters," the personal representative can enter into a listing contract and sell the estate's real estate by personal representative's deed.

Who must sign the offer to purchase and the deed?

The personal representative has the power to sell, mortgage or lease any property within the estate of a deceased individual without court order per Wis. Stat. § 860.01.

The personal representative is obligated to perform any offer to purchase or other contract for the sale or lease of real estate that the deceased entered into while he or she was still alive. However, if the deceased was the seller in a listing contract prior to death, a new listing contract with the personal representative typically will be required because the death of the seller automatically terminates the seller's listing contract.

Will the parties need an attorney?

Sometimes, a person will assure the broker that he or she is the sole heir entitled to certain property, and attempt to list it. If the new owner wishes to convey property prior to the assignment by the probate court, an attorney should be consulted concerning the proper steps to take to convey good title. Unless some type of legal proceedings have taken place to establish the title of this person, there is a defect or flaw in the title that will have to be addressed before a sale can be completed. The listing contract should, under such circumstances, contain a special clause providing that the sale will be contingent upon the seller taking the steps necessary to furnish good title.

Non-Probate Transfers

There are many different means by which assets may be transferred at death outside of probate court. These include revocable living trusts, transfer by affidavit for estates worth less than $50,000, joint tenancy and survivorship marital property.

With jointly owned and survivorship marital property, if one owner dies, the survivor can terminate the deceased's rights in real estate by completing and filing a Termination of Decedent's Property Interest form (HT-110) with the register of deeds office, as provided in Wis. Stat. Ch. 867. A certified copy of the death certificate, a copy of the deed establishing the survivor's rights, and a $25 fee will also be required. Some counties may also require a copy of the most recent tax bill. This form and instructions for its completion may be found on the Wisconsin Register of Deeds Association Web site at www.wrdaonline.org/Forms/index.htm.

A termination proceeding may be held to determine any inheritance taxes and establish the title of the survivor, if need be.

The Termination of Decedent's Property Interest form (HT-110) may also be used by a remainderman to transfer title to real estate when a life estate terminates, or by the survivor for a transfer upon death pursuant to a marital property agreement.

TODs

Wis. Stat. § 705.15 establishes a new mechanism for the non-probate transfer of real property upon the death of the property owner. Property that is solely owned, owned by spouses as survivorship marital property or owned by two or more persons as joint tenants may be transferred without probate upon the death of the sole owner or the last to die of the multiple owners.

A designated TOD beneficiary may be named on a deed. The name of the present owners would be followed by the words "transfer on death" or "pay on death," or the abbreviation "TOD" or "POD," and this would be followed by the name of the beneficiary. The deed must be recorded for the designation of the TOD beneficiary to be effective.

The designation of a TOD beneficiary on a deed does not affect ownership of the property until the owner's death. During the property owner's lifetime the TOD beneficiary has no current interest in the property; therefore, the owner may change the TOD beneficiary at any time and may sell, mortgage, lease or otherwise encumber or dispose of the property. The beneficiary designation may be canceled or changed at any time without the consent of the beneficiary, by executing and recording another deed that designates a different beneficiary or no beneficiary. The recording of a subsequent deed revokes any TOD designation made in a previously recorded deed.

On the death of the sole owner or the last to die of multiple owners, ownership of the interest in the real property passes, subject to any lien or other encumbrance, to the designated TOD beneficiary or beneficiaries. The transfer is completed when the TOD beneficiary files a Transfer at Death

form (TOD-110) with the register of deeds, along with a real estate transfer return, a certified copy of the death certificate, a copy of the deed establishing the TOD and a $25 fee. Some counties may also require a copy of the most recent tax bill. This form and instructions for its completion may be found on the Wisconsin Register of Deeds Association Web site at www.wrdaonline.org/Forms/index.htm.

Legal Hotline Questions – Transfers at Death

The accepted offer is supposed to close in two weeks. One seller has been in hospice and is only days from passing away. What are the options? The attorney for the sellers indicated that a quitclaim deed is not an option. The listing agent is talking about closing in escrow, but the lender does not want to do this. How to proceed?

The parties could consider a POA for the ill seller; however, if seller passes, the POA will become void.

If the sellers do own the property as joint tenants, a Termination of Joint Tenancy form (HT-10), a death certificate and a copy of the most recent tax bill will allow the surviving owner to terminate the joint tenancy. Then the surviving owner may immediately list and sell the property.

The listing contract had been signed by a man who had POA for a woman. The woman passed away. The POA expires at the time of her death, but is the listing contract that the man with the POA signed prior to her death still valid?

No. A POA is a written instrument in which a person appoints another as his or her agent and confers upon the agent the authority to perform certain specified acts. Upon the death of the principal, the authority of the agent to act for the deceased is terminated. Because a listing contract is a personal service contract, the death of one party will terminate the listing contract.

If there is an accepted offer and one of the sellers dies, does this void the contract?

Lines 272-274 of the WB-11 Residential Offer To Purchase provide that the contract binds the parties and heir successors in interest. In general terms, that means the person or persons who step into the shoes of the deceased. The offer does not become void because of the death of any of the parties. The remaining seller(s) should be referred to legal counsel to determine how ownership was held and how the decedent's interest passed after death. For example, the deceased's personal representative may become a seller.

The licensee took a listing about three weeks ago. The seller was in poor health at that time and has now passed away. There is a personal representative. Does the death of the seller void the listing contract? Does the licensee need to do a new listing contract with the personal representative?

The death of the seller terminates the listing. The licensee may contact the personal representative to negotiate a new listing contract.

A broker was working with someone who was the POA for the owner who was in a nursing home. During negotiations, the owner died. The person with the POA has now been appointed as the personal representative. The court has informed the personal representative that she could now sell the home on behalf of the estate. Must all the paperwork be redone, or can amendments be done?

The authority that the seller granted to the POA ends upon death, so the listing contract will need to be redone. The estate now is the seller. The offer and associated documents may be started over or amended to substitute the estate in place of the seller, as the successor in interest.

The parents own the listed property, but their daughter who has a POA for their affairs executed the listing contract. The father has since passed away. Is the broker's listing contract affected? If so, how to proceed?

The daughter's POA with respect to her father terminated when her father died. Thus, the listing contract is no longer valid with respect to the deceased father's interest in the property. If a personal representative or special administrator is appointed for the father's estate, that person may sign a listing contract with respect to the deceased father's interest.

If the property was held in joint tenancy or as survival marital property, the transfer to the surviving spouse may be handled with a summary administrative procedure under Wis. Stat. Ch. 867 (www.legis.state.wi.us/statutes/Stat0867.pdf). These procedures generally require the completion of a form by the surviving spouse and a copy of the death certificate at the Register of Deeds office. Once the spouse is officially established as the sole owner, then the listing contract will sufficiently reflect all persons with an ownership interest in the property. Until this process has been completed, the broker, in essence, has a listing contract signed by only one of the two owners.

The listing contract must be signed by someone agreeing to pay a commission. The law does not require that all the owners sign a listing contract in order for the listing contract to be enforceable against the owner who does sign. Therefore, technically a wife's signature on a listing via her attorney-in-fact can be liable for a commission to the broker if the broker successfully procures a buyer even if the husband is also on title. In the real world though, a listing contract without the signature of all owners (in this case the estate if the property was owned as tenants-in-common) is a

disaster waiting to happen. Until the interest of the deceased husband is terminated, any offers or deeds will require authorized signatures on behalf of each spouse.

Condominium Units

Condominium ownership can most easily be understood by thinking about having ownership of a unit in an apartment building. The owner has separate ownership of his or her particular "apartment," plus an undivided interest in the common areas (such as hallway, grounds and other amenities) available for use by all other owners in the development. Condominium ownership, however, is not limited to apartments and is found in residential real estate developments comprised of duplexes, separate residences, vacant lots, campsites, cabins, commercial buildings and units, and various combinations of units.

A condominium unit owner has separate ownership as to the unit with a tenancy-in-common with the other unit owners in the common elements. The unit owner's interest is a fee simple interest that may be sold or mortgaged, and passes to the owner's heirs at death. The owner can rent out or lease the unit for a limited period, subject to any restrictions in the condominium documents.

For more information about condominium ownership and the sale of condominium units, see the June 2004 *Legal Update*, "Condominium Law Revisions," online at www.wra.org/LU0406, and visit the Condominium Law REALTOR® Resource page at www.wra.org/Resources/resource_pages/condo_law.htm.

Cooperative Ownership

What is it?

A similar ownership structure also may be achieved with the use of a cooperative or co-op. In a cooperative, the association members are the shareholders of a corporation that owns the property and leases the individual units back to the members. In other words, owning a unit in a cooperative is like being a shareholder in a corporation which owns an apartment complex where each shareholder has exclusive rights to live in one of the apartments. Specifically, each shareholder is entitled to enter into an occupancy agreement for the use of one unit in the building.

Financing can be difficult because the elements of separate ownership are so minimal. A share in the cooperative is personal property. Cooperatives are regulated under Wis. Stat. ch. 185.

Can brokers list and sell it?

If the cooperative share offered for sale is personal property, the sale of the cooperative unit will not be a real estate transaction. Rather, it will be similar to a commercial transaction where corporate stock is sold instead of selling the actual real estate owned by the corporation. Wis. Stat. § 551.02(3)(f) permits a person licensed as a real estate broker, and whose transactions in securities are isolated transactions incidental to his or her real estate business, to engage in limited transactions that otherwise would require a securities broker-dealer license.

Will the parties need an attorney?

A real estate licensee should not handle the sale of a cooperative unit unless that licensee understands cooperative housing and the components involved in the sale. Wis. Admin. Code § RL 24.03(2)(a) requires that licensees act competently, and not provide services that the licensees are not competent to provide unless the licensees engage the assistance of someone who is experienced and competent.

What forms should be used for the sale of the cooperative?

If a broker is going to assist with the sale of a cooperative share, this will technically be outside of the realm of real estate practice. There are no approved forms for selling an interest in a cooperative, so the broker may contact the cooperative or the seller to get an idea of the appropriate documentation, including disclosure documents, which will be needed for the transaction.

Who must sign the offer to purchase and the deed?

The seller may work with the cooperative association, the seller's attorney, or the title company to arrange for the drafting of any purchase contract that may be needed, as well as the transfer of the cooperative share certificate and occupancy agreement representing the seller's interest in the cooperative. Real estate brokers generally cannot draft cooperative transaction documents, nor can they complete any documents provided by the cooperative – this would be the unlicensed practice of law.

Legal Hotline Questions – Cooperatives

A broker has listed a co-op member's share in a 100-acre farm. The seller is one member of a three-person co-op and he has exclusive rights to one home on this 100-acre farm. What form does the broker use to draft an offer? There is no deed that will be transferred. Will there be a transfer form involved?

Ownership of a unit in a cooperative community is personal property – not an interest in real estate – and may not be the appropriate subject for a real estate listing contract. A consumer who buys a cooperative unit actually purchases a share in the housing cooperative (typically a corporation), similar to a share of stock, and is entitled to enter into an occupancy agreement for the use of a unit in the cooperative buildings. The broker generally should draft cooperative transaction documents and may be wise to discuss this with the seller and with an attorney to assist with this matter.

Time Shares

Time shares can be thought of as a type of condominium used for vacation and recreational purposes. Instead of owning a condominium unit outright for residential purposes, time-share owners usually either own or simply have the right to use a time-share unit for one or more intervals or weeks each year. The Wisconsin Time-Share Ownership statutes are found in Wis. Stat. Ch. 707.

In a fixed-week arrangement, each owner generally owns one or more specified weeks of the time-share unit and receives a deed to that portion. The time-share common areas, such as the pool and grounds, are normally owned in common with all of the other owners. Benefits may include the tax advantages of ownership, plus a voice in the management of the property. Under this agreement, the owner usually may rent, sell, exchange or bequeath the vacation interval.

Other time shares have floating time. The time-share owners may, for example, have the right to select one week during each three-month calendar quarter, with the specific week reserved on a first-come, first-served basis. It is important to know what the reservation period is. Some time-share owners think they can reserve year-round, when in fact they are restricted to certain months. Holiday weeks are often excluded and sold separately. The purchaser may also receive a deed under a floating time arrangement.

A time-share owner may have deeded ownership or simply a right to use a time-share unit for a certain time period or number of weeks each year. A deeded ownership time share is called a time-share estate, which entitles the owners to occupy a unit during at least four separated periods over at least four years, together with a fee simple absolute interest or an interest for at least four years in a time-share property. Each type of time-share estate constitutes real property.

On the other hand, if the time-share owner simply has the right to use a time-share unit, the owner has a time-share easement under Wisconsin law. A time-share easement means an interest in property vesting in the purchaser and the purchaser's heirs, successors and assignees that gives a right to access and use a time-share unit (or any of several units) during at least four separated periods over at least four years.

Yearly maintenance fees are paid each year to the association for on-site management, unit upkeep and refurbishing, utilities and maintenance of the common areas and amenities such as pools, tennis courts and golf courses.

For further discussion of time shares and the forms used to sell them, see *Legal Update* 02.03, "Time-Share Transactions," online at www.wra.org/LU0203.

Stock and Other Entity Ownership Interests

Can brokers list and sell it?

While a real estate license is needed for transactions involving a direct transfer of business assets, a license to act as a real estate broker or salesperson does not necessarily entitle the licensee to negotiate the sale of an incorporated business where the transfer is to be made by transfer of the controlling stock. The sale of stock is normally a securities transaction and may require a securities broker-dealer's license. The Wisconsin Uniform Securities Law, in Wis. Stat. § 551.02(3)(f), provides an exemption from securities broker-dealer registration for real estate brokers whose securities transactions are isolated transactions incidental to their real estate business.

Will the parties need an attorney?

Licensees should be careful not to undertake a business sale or purchase unless they are competent to do so, or unless they secure the assistance of another broker, an attorney or other some professional who has the required expertise. Any person

engaged to provide such assistance must be identified along with his or her contribution per Wis. Adm. Code § RL 24.03. Because business transactions may be quite complicated, brokers should consult with their attorneys or with other brokers with business expertise when specialized competence is required.

Legal Hotline Questions – Entity Interests

Someone who claims to own a one-half interest in a 30-40-unit apartment complex wants to sell. He says this would be a residential real estate transaction, however, he actually is a member in the limited liability company (LLC) that owns the property. Can a broker sell this?

Wis. Stat. § 183.0703 provides that a LLC interest is personal property. § 183.0704(1)(a) indicates that this interest is assignable in whole or in part. § 183.0706(1) provides that unless otherwise provided in an operating agreement, an assignee of a LLC interest may become a member only if the other members unanimously consent. Accordingly, the transaction proposed relates to the sale of a one-half interest in an LLC, not real estate.

A license to act as a real estate broker does not entitle the licensee to negotiate the sale of a business where the sale will be made by the transfer of controlling stock or an LLC interest. Such transactions normally come within the scope of securities laws, and a securities dealer license may be necessary. However, Wis. Stat. § 551.02(3)(f) indicates that a real estate broker whose transactions in securities are isolated and incidental to his or her real estate business need not be licensed as a securities dealer.

A business broker has a client who is trying to sell his business by selling the stock in the company rather than the real estate itself. The seller has hired an attorney who has indicated that the broker will not be paid because it is a stock transfer. Under what provision of the exclusive listing contract for sale of business is the broker paid when someone (or the broker) sells the stock in the business?

In the WB-6 Business Listing Contract – Exclusive Right to Sell, lines 44-45 state that the seller shall pay the broker's commission when, "a transaction occurs which causes an effective change in ownership or control of all or any part of the Business or the included property from Seller to a third party other than in the ordinary course of business." A sale of the stock of the company that owns the business certainly represents a change in the ownership and control of the business and its assets.

An agent is working with both the buyer and the seller for the purchase of land for a subdivision. The parties want to include in the offer that the buyer is purchasing the LLC that owns the subdivision land from the seller. This is the only transaction the specified LLC has been involved in, and the land is the only asset of the LLC. Can the sale of the LLC be included in the real estate offer to purchase written by a licensee?

Because the transaction for the sale of the LLC is technically not one for real estate, but for the interest in the LLC which holds the real estate, the parties should work with legal counsel regarding the particulars of the transfer of interest in the LLC. The agent may assist the parties in the negotiation of the transfer, and may earn a commission under the terms and conditions of the listing contract if there is an effective change in ownership or control of the property by transfer of the ownership of the LLC.

Fractional Ownership

A tenancy-in-common (TIC) creates an undivided fractional interest in a property. This form of ownership has been used in new and different ways over the last decade or two, resulting in different considerations and cautions for REALTORS® working with a TIC. Some TICs are residential and may be sold by licensees, while other investment or commercial TICs are classified as securities, not real estate interests, and are regulated by the U.S. Securities and Exchange Commission (SEC).

Residential TICs

Residential TICs are a variation of both condominium and cooperative ownership, and have arisen, at least in part, in response to the need for affordable housing. TICs have primarily arisen in jurisdictions where condominiums, cooperatives and/or PUDs are difficult or very expensive to create.

Residential TICs may involve a small group of people joining together to buy a four-unit apartment building as tenants in common, They agree that each co-owner has the right to occupy a specific apartment exclusively. There is one mortgage on the property, and all tenants in common are legally responsible for the mortgage payments. Residential TICs require a carefully drawn agreement among the co-owners.

The downside to this arrangement is evidenced where the owners disagree or one or more tenants in common can't or won't pay their share of the mortgage and operating expenses. If one co-owner doesn't pay his or her share, the other co-owners must either make up the deficit or watch the mortgage go into foreclosure. Removing a non-paying tenant in common can be very difficult. Because of the many potential problems with residential TICs, they are not usually recommended unless there is no other joint ownership alternative available.

Legal Hotline Questions – Fractional Interests

A person owns a one-sixth share of a corporation that owns a property on a lake and would like to sell just his share.

The seller should review the terms and conditions of the corporation's governing documents. When it was created, the corporation may have anticipated that shareholders might want to sell their interest and there may be provision for buy/sell agreements. Technically the sale of stock is a securities transaction and not a real estate transaction. However, according to Wis. Stat. § 551.02(3)(f), a REALTOR® may broker the sale if the sale of stock is incidental to the real estate transaction. The seller's attorney may be asked to a review the governing documents and draft any transaction documents.

If a new condominium development in a tourist community has a rental pool arrangement for the units, can a real estate broker list and sell them with a real estate license, or does he or she need a securities license? The unit owners share in the revenues made in the rental pool.

If a unit is marketed and sold with an emphasis on the economic benefits to be derived from the managerial efforts of others – the rental pool – it may be a security. This is most likely where the unit owner does not occupy the unit full-time and someone other than the unit owner acts as the rental agent.

With resales, however, the transactions may become exempt from the securities laws because they are not sales by the issuer, that is, the declarant or developer. If certain exemptions are met, the sales would not be sales of securities and it may not be necessary to become licensed as a securities broker-dealer.

The broker may wish to check with his company attorney for a legal opinion establishing the broker's legal status when reselling these resort condominium units.

Investment/Commercial TICs

What are they?

Residential TICs should not be confused with investment or commercial TICs, which split the ownership of large, income-producing properties into undivided shares that give each investor a tenant-in-common interest in the entire property. This investment method allows investors to enjoy the risks and rewards of real estate ownership without participation in, or personal responsibility for, the ongoing management of a property. Commercial TIC investors are normally strangers and are unrelated – very different from the tenants in common who are siblings who inherit an undivided share in a cottage or hunting land from their father.

Investment TICs have become very popular with real estate investors ever since the Internal Revenue Service (IRS) approved them in Revenue Procedure 2002-22 for use in tax-deferred exchanges under Internal Revenue Code § 1031. This gives investors the opportunity to exchange an investment or business property (like an apartment building) for a management-free TIC share in an office building or shopping center, which is managed by the TIC development company.

Investment TIC interests consist of real estate interests, but depending on how the developer or sponsor organizes the transaction, they may also be securities. What classifies a commercial TIC as a security is the solicitation of investors who are unknown to one another into a common enterprise of real estate ownership with an expectation of limited management responsibilities. A real estate investment may become a security when a developer or sponsor looks for investors to buy into a common enterprise with an expectation of profit based on the efforts of others.

The 1946 U.S. Supreme Court case of ***Securities and Exchange Commission (SEC) vs. Howey*** established the criteria for investments that are categorized as securities subject to SEC and state securities commission regulation. A security is present when there is:

(1) An investment of money

(2) In a common enterprise

(3) With the expectation of profits

(4) Derived solely from the efforts of others.

The more investors rely on others to manage and operate the property, the more likely the investment will be considered a security. Commercial TIC investors typically depend on the labor of other, unrelated persons to generate income and secure profit from the investment.

Can brokers list and sell it?

TICs that are securities are subject to both federal and state securities laws and state real estate law. Accordingly, these investment TICs are sold by securities broker-dealers. Unfortunately, securities broker-dealers are prohibited, at least for the time being, from directly or indirectly compensating real estate licensees for providing real estate services in connection with the sale of investment TIC interests. In addition, the rules of the National Association of Securities Dealers explicitly state that the real estate licensee may not be compensated by the sponsor or a broker-dealer for participation in the marketing and sale of TICs, either by means of a fee or commission.

Penalties that may be imposed for securities law violations by real estate licensees include civil or criminal penalties and fines. The harshest civil penalty under the securities law is when sponsors and promoters are

required to pay back to the investor all the funds that the investor has put into the program. Securities litigation is complex and costly for all parties, and errors and omissions insurance generally will not cover real estate licensees in rescission actions related to securities matters.

The National REALTORS® Assocation (NAR) has been working with the SEC and others to change this payment prohibition and a recent NAR proposal reportedly looks hopeful. Under the NAR proposal, real estate brokers who want to advise clients on the real estate aspects of a TIC deal would enter into a modified buyer agency agreement that permits them to advise clients and earn an advisory fee from the TIC sponsor. Experience requirements and advertising prohibitions would also apply.

For additional information regarding TICs, visit www.realtor.org/NCommSrc.nsf/files/RCA%20Hot%20Topics%20Vol.%201%20-%20TICs.pdf/$FILE/RCA%20Hot%20Topics%20Vol.%201%20-%20TICs.pdf.