

TIC Memorandums: What They Are and How to Remove Them

By April Aldersio

In San Francisco, most attorneys that draft tenancy in common (“TIC”) agreements also draft a memorandum of agreement to be recorded. It is illegal to record the whole TIC agreement because it is not a legal subdivision; thus, a memorandum is instead used to give notice to future buyers and creditors. It is not illegal to record a memorandum, because it does not list the specific terms of the agreement, particularly which unit is assigned to which owner. Instead, a recorded memorandum, normally only a single page, gives people notice of the existence of a TIC agreement. For instance, the memorandum may state that there are restrictions on the rights of owners to transfer or encumber the property. Although it would not state what those restrictions were, it would put potential buyers and lenders on notice that the restrictions existed so that they could inquire and ensure that the borrower has the legal right to sell or give a security interest in the property.

Not having a memorandum recorded can significantly increase the risks of co-ownership. For example, one of the TIC owners could sell an interest in the property and the buyer would not be bound by the terms of the TIC agreement. While that would result in a good claim against the now-departed TIC owner, the new owner could take actions that are detrimental to the other owners.

If you have a TIC agreement and do not have a memorandum recorded, we recommend that you do so. Zacks Utrecht & Leadbetter will prepare and record a TIC memorandum for a low flat fee.

Because the memorandum is recorded it will stay on title until it is removed by a subsequent document. If the buyers are fortunate and have converted the building into condominiums, it is a good idea to remove the TIC memorandum. The TIC agreement will no longer govern after condominium conversion because the CC&Rs (short for covenants, conditions, and restrictions) replace the TIC agreement. Zacks Utrecht & Leadbetter is now offering a flat fee for removing the TIC memorandums when they are no longer required. Although there is no legal requirement to remove the memorandum from title, it is a good idea. Recorded documents that show up on title, especially those that are outdated, can in certain instances cause delays with obtaining title insurance and also needlessly confuse potential buyers. If your TIC agreement is no longer in effect and you have a memorandum recorded, we recommend that you have it removed.