

SIRKINLAW APC

One Sansome Street • Suite 3500 • San Francisco • California • 94104 •
415.839-6406 • rosemarie@andysirkin.com • www.andysirkin.com

YOUR NEW TIC – GETTING STARTED

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EXPLANATION OF TICS

TIC Formation: Why do people form TICs? The concept of TIC ownership with rights of exclusive occupancy to a unit arose as an alternative form of home ownership due to restrictive condominium conversion requirements. A series of court decisions have held that TICs are not subject to subdivision regulations. Each county differs with regard to subdivision requirements (condominium conversion). In San Francisco, many owners form a TIC in order to meet owner-occupancy requirements for conversion. However, many TIC owners choose not to convert, many TICs are ineligible for conversion, and many counties either don’t permit conversion or have restrictive requirements.

TIC v Condo: How is a TIC different from a condominium? No one owns a unit; each owner owns a percentage of the entire property. To own a unit, the property would have to be legally subdivided. The grant deed cannot identify a particular unit and must refer to an interest in the entire property. Similarly, the TIC Agreement (unlike CC&Rs) cannot be recorded as it would be construed as an illegal subdivision.

Financing: How does Fractional TIC financing work? Each loan is secured by the owner/borrower’s ownership/title percentage. Default by borrower triggers foreclosure on borrower’s TIC share (unit) only. The lender steps into the shoes of the defaulting borrower and is subject to the terms of the TIC agreement (with certain exceptions). An owner’s refinance or sale does not affect the other owners.

1. GRANT DEED

*Prepared by Title Company at Close of Escrow
Shows your "Percentage Interest" in the Property*

Purpose of Grant Deed: The Grant Deed is the document whereby a seller transfers (grants) a percentage interest in the property to a buyer. Percentage interest is also referred to as "ownership interest" and "title percentage". The Grant Deed is the official record of ownership and is recorded in the County Recorder's Office.

Contents of Grant Deed:

- Includes "granting" language from seller to buyer
- Includes legal description of the entire property
- Indicates the percentage interest being transferred
- Must refer to the entire property (i.e., entire address), and not just one unit

Signing/Recording the Grant Deed: The seller signs and notarizes the Grant Deed. The title company records the Grant Deed.

2. THE TIC AGREEMENT

The TIC Agreement is a private agreement between the owners. The term "private" means that it is not recorded and therefore is not a public document.

Without a TICA:

- There are no exclusive occupancy or usage rights, no rules
- One owner could move into another owner's unit
- One owner could force a sale of the entire property
- Expenses and income would be divided by title percentages, which may not be fair

Content of TICA:

- Identifies Units and Exclusive Use Common Areas. Must have a diagram of Units/Exclusive Use Common Areas
- Establishes management & decision-making process: Accounts Manager and Association Manager
- Describes mechanism for establishing budget, accounts and dividing assessments (for costs of maintenance, insurance, property tax, utilities)
- Describes maintenance obligations: Unit, Common Areas and Exclusive Use areas
- Describes what alterations can be done without approval, and establishes procedure for approving alterations that require approval
- Includes usage rules such as quiet hours, occupancy limits, pets, smoking, storage, outdoor areas
- Requires owners to investigate eviction history, e.g., Ellis Act evictions, and to comply with any rental restrictions
- Sets out procedure for renting
- Sets out alternative dispute resolution procedures.

- Sets out enforcement mechanism – forced sale

Signing the TICA:

- The TIC Agreement must be signed by the seller and the first buyers to close.
- Subsequent buyers sign an Assumption and Release of Obligations whereby the seller is released and the new buyer assumes the obligations of the TIC share he/she is purchasing.
- Each owner should keep a fully signed copy of TICA and all subsequent Assumption and Release of Obligations.

**3. THE DECLARATION OF PROPERTY TAX, MAINTENANCE COVENANTS AND
NON-PARTITION
(Three + Units)**

Purpose of Declaration:

- The Declaration is the document that puts the public on notice that the owners have an agreement that sets out their rights related to the property. The Declaration is recorded in the County Recorder's Office. Because it is recorded, it provides notice to the public that a TIC agreement exists. "Public" means not only the general public, but creditors, lenders, subsequent buyers
- Affords critical protection against another owner's bankruptcy/creditor claims
- Records owners' obligation to pay property taxes and maintenance costs
- Records owners' partition waiver, preventing them from forcing a sale of the entire property
- Records the enforcement procedure of creation of lien and power of sale when an owner is not paying his/her assessments.

Signing the Declaration:

- The Declaration is signed only by the seller and the first buyer(s) to close.
- The title company records the Declaration
- Because it is recorded, subsequent buyers are deemed to have notice of it and do not need to sign it. The Declaration itself states that it applies to all subsequent buyers
- Each owner should keep a copy of the recorded Declaration

NOTE: For two- unit properties, a **Memorandum of Agreement** is used in place of the Declaration.

**MEMORANDUM OF AGREEMENT
AND NON-PARTITION COVENANT
(Two Units)**

Purpose of Memorandum of Agreement

- The Memorandum of Agreement is the document that puts the public on notice that the owners have an agreement that sets out their rights related to the property. The Memorandum is recorded in the County Recorder's Office. Because it is recorded, it provides notice to the public that a TIC agreement exists. "Public" means not only the general public, but creditors, lenders, subsequent buyers.
- Affords critical protection against another owner's bankruptcy/creditor claims
- Records owners' partition waiver, preventing them from forcing a sale of the entire property

Signing the Memorandum

- The Memorandum of Agreement is signed only by the first owners to purchase a TIC interest
- The title company records the signed/notarized Memorandum with Exhibit A: legal description
- Because it is recorded, subsequent buyers are deemed to have notice of it. Therefore, subsequent buyers do not need to sign it. The Memorandum itself states that it applies to all subsequent buyers
- Each owner should keep a copy of the recorded Memorandum of Agreement

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NEW BUYER INTO FRACTIONAL TIC-Checklist for Reviewing the TICA

1. TIC Agreement Documentation

- A. **Two Units:** Is there a Memorandum of Agreement and Non-Partition Covenant recorded?
 - (1) The Memorandum will be recorded after the first sale.
 - (2) The Memorandum is critical to protect owners in bankruptcy
 - (3) The Memorandum runs with the land; does not need to be re-recorded with each sale
- B. **Three or More Units:** Do you have the Declaration of Property Tax, Maintenance Covenants and Non-Partition?
 - (1) The Declaration will be recorded after the first sale. Subsequent buyers do not need to sign
 - (2) Declaration critical to protect owners in bankruptcy
 - (3) Declaration runs with the land; does not need to be re-recorded with each sale.
- C. Do you have the TICA signed by the seller and first buyer to close?
- D. Do you have Assumption and Releases signed by each subsequent buyer? For each sale after the first sale, TICAs require an Assumption and Release of Obligations to be signed by buyer, seller and Accounts Manager

2. Occupancy/Possession

- A. Will the unit be delivered vacant? If not, are there grounds for eviction?
- B. Will Ellis Act history prevent buyer from renting?
- C. If buyer rents, will he/she or future buyer be able to regain possession?

3. Area Assignments-TIC Diagram

- A. All units and exclusive use common areas must be shown on a diagram attached as an Exhibit to TICA
- B. A TIC diagram is essential for showing parking, storage, and outdoor areas such as patios and decks
 - (1) For parking, ensure that drawing is sufficient to identify location and dimensions of parking space
 - (2) Are parking spaces accessible no matter where each person parks within his/her boundaries?
- C. All exclusive use areas must be identified by unit # and must include measurements
- D. Common patios, gardens, decks, courtyards, etc., must also be shown

4. Maintenance Obligations And Alteration Rights

- A. Is the TICA clear about individual owner vs HOA maintenance responsibilities? For example, what elements of exclusive use areas does an owner have to maintain?
- B. What rights does each owner have to alter his/her assigned unit and exclusive use areas?
- C. Does any owner have development/alteration rights that could impact buyer? Is buyer's planned renovation or alteration permitted?

5. Usage Restrictions

- A. Animals: What animals are permitted. Buyer's pet allowed?
- B. Parking: Parking size restricted or tandem?
- C. Rentals: What are rules around renting?
 - (1) HOA approval required?
 - (2) Minimum duration or prohibition on short-term/vacation rentals?
 - (3) Can parking space be rented?
- D. Nuisance: Noise transmission
 - (1) How much noise is transmitted from adjacent unit?

- (2) What rights will buyer have to insist on mitigation (floor covering, no shoes etc.)
- E. Smoking: Is smoking prohibited?
- F. Exclusive Use Areas: Is the use of specific exclusive use areas described?

6. Finances

- A. Review budget and account balances
 - (1) Who prepares the budget and who handles collection of assessments and payment of bills?
 - (2) Are maintenance/replacement reserves included in budget?
 - (3) How does the reserve account balance correspond with inspection reports?
 - (4) Is there a default fund account in addition to the maintenance reserves account?
- B. Are owners current in their dues? Consider reviewing several months' bank statements

7. MANAGEMENT

- A. How is the Property managed?
- B. Who are the managers and what are their roles?
- C. How are decisions made?
 - (1) What actions need to be voted on?
 - (2) For owner decisions, how many votes are required for various decisions?
 - (3) How often do the owners meet?

8. ENFORCEMENT.

- A. How is the TICA enforced?
- B. What is the enforcement procedure when an owner fails to pay assessments?
- C. What is the enforcement procedure when an owner is causing a nuisance/not following the rules of the TICA?

9. FRACTIONAL FINANCING

- A. Does TICA satisfy lender requirements?
- B. TICA written for individual loans
- C. Lender power to evict tenants under Ellis Act
- D. Lender approval of TICA amendments

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SETTING UP YOUR 2-4 UNIT TIC ASSOCIATION

These are general guidelines only. Refer to the applicable Section in the TIC Agreement. See also
www.andysirkin.com: Starting and Operating a TIC Homeowners Association

SET UP SHARED ON-LINE FILE FOR ALL OWNERS

TIC Document File: Include the TIC Agreement, signed by the first buyers, signed amendments, signed assumption and release of obligations (new owners), and a copy of the recorded Memorandum of Agreement (two units) or Declaration of Covenants (three and four units) F.

Budget File: Include current budget (Operating Expenses & Maintenance Reserves) and monthly assessment for each owner

Meeting File: Include Notices, Meeting Agendas, Minutes and assigned tasks. Include owner comments, emails, etc.

Maintenance File: Include bids, invoices, etc.

Accounts: Monthly Statements for Operating/Maintenance Reserves Account and Default Fund Account.

OWNER MEETINGS, VOTING & RECORD KEEPING– Article 8

FIRST OWNER MEETING	<ol style="list-style-type: none"> 1) Appoint Accounts Manager and Association/Building Manager. Review responsibilities of each Manager 2) Adopt Budget, establish each Owner’s Monthly Assessment. Include Operating Expenses and Maintenance Reserves. Establish method of paying assessments-recommend electronic payments. Share building inspection reports to help with Maintenance Reserves. 3) Discuss opening accounts if self-managed 4) Review maintenance responsibilities between the Association and individual owners. 5) Review permitted alterations and process for alteration approval 6) Review usage rules (quiet hours, animals, smoking, renting) 7) Insurance: Review Association insurance policies and requirements for individual coverage 8) Schedule next meeting 	
Regular Owner Meeting	Two Units: 2x year, last Saturday in Jan & July Three/Four Units: 3x year	At 7:00 pm, home of Accounts Manager. Can be Virtual
Special Owner Meeting	Any Owner can call a Special Meeting with 14 days’ Notice	
# votes per unit	<p>One vote per unit, regardless of percentage interest. (When one owner has two units = one vote) Most actions do not require a vote but are the obligations of the Association or an individual owner. For example, the Association has the obligation to prepare the budget and maintain the property.</p> <p>Actions to be voted on include those actions that require Association approval (e.g., certain alterations) and amendments to the TICA. For two units, if not a mandatory obligation, both owners have to approve-for certain actions, a reasonable standard is required for a disapproval. For 3-4 units, most actions requiring Association approval require majority owner approval. The TIC agreement includes list of actions that require unanimous approval.</p>	
Record-Keeping	The Accounts Manager keeps all signed TIC documents. Can be kept on-line	

2-4 Unit TIC Set Up Guidelines

BUDGET & ASSESSMENTS – Article 7			
Budget & Assessments			TICA §
Annual Budget	<p>Accounts Manager prepares the budget:</p> <p>(i) <u>Operating Expenses</u>: property tax, insurance, common utilities, monthly cleaning/garden.</p> <p>(ii) <u>Maintenance Reserves</u>: amounts based on estimate of replacement/repair cost of major components of property (roof, painting, etc.)</p>	<p>Adopt w/in ____ days.</p> <p>Review annually 45-60 days prior to year end</p>	
Regular Assessment	<p>The Accounts Manager establishes each Owner’s Regular Assessment (Determine if prop tax & insurance is impounded monthly by lender, then don’t need to pay to Association on monthly basis)</p>	<p>Each Owner deposits to Operating Account by ____ of month</p>	
Special Assessment	<p>Imposed by Association for unanticipated expenses</p>	<p>As needed</p>	
Reimbursement Assessment	<p>Imposed by Association on an Owner for example, damage caused by Owner or other expenses due from individual Owner</p>	<p>As needed</p>	

OPEN ACCOUNTS – Article 7			
<p>Operating Account</p> <p>Self-Managed: TIC group opens account Or Bookkeeper opens account</p>	<p>For Operating Expenses (Property Taxes, Association Insurance Costs, Association Utility Costs and an allowance for minor Association Repair Costs). Minimum \$1,000.</p> <p>and Maintenance Reserves (planned future maintenance expenses)</p> <p>May have same or separate accounts for Operating expenses and Maintenance Reserves</p>	<p>Monthly</p>	
Default Fund Account	<p>Two months of each Owner’s Regular Assessment (incl. prop tax, ins, reserves).</p> <p>If using a TIC bookkeeper, they may require two months property taxes to be paid upon purchase.</p>	<p>Fund w/in ____ days of purchase of Ownership Interest</p>	



2-4 Unit TIC Set Up Guidelines

NON-PAYMENT OF ASSESSMENTS & DISPUTE RESOLUTION PROCESS		
Non-payment of Assessments	<p>Two Units: Forced Sale through Internal Sale and Resale procedure Three-Four Units: Delinquent Assessments become a lien on defaulting Owner's interest. The Association can foreclose on the lien through a power of sale. Owner's TIC share (assigned unit) is sold, and proceeds (after payment allowable fees) paid to Owner</p>	
<p>ADR for violations other than non-payment of Assessments</p> <p>Mediation & Arbitration</p>	<p>Begin mediation as provided in the TIC Agreement. If mediation is not successful, or mediation bypassed, the next step is binding arbitration</p>	

SALES OF TIC SHARES – Article 12		
No Right of First Refusal	No right of first refusal, or right to review financial records of buyer.	
<p>Seller's responsibility to have Buyer sign Assumption & Release of Obligations.</p>	<p>Seller's responsibility to ensure that buyer signs an Assumption & Release of Obligations (A&R). The signed TICA and prior Amendments need to vw attached to the A&R.</p> <p>By signing an Assumption and Release, the Buyer assumes the obligations of the TICA, and Seller is released from all obligations. Note:</p> <p>Signed by all Owners by DocuSign. Notarization is not required</p>	

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Running a Successful 2-4 Unit TIC

Most buyers into a “TIC” (tenancy in common ownership with exclusive occupancy rights) are first time buyers. In addition to the responsibilities that entails, the co-owners now have to work together to manage the property and to protect and preserve their investment. It often happens that co-owners become friendly, and perhaps socialize in the common areas. However, the importance of adhering to a formal, structured system for operating the TIC and handling problems cannot be over-emphasized. This article sets out the key elements to running a successful TIC in a 2-4 unit building. It responds to the following questions:

Formation of the Association:	Is a TIC group a homeowner’s association?
First Meeting:	What should be done at the first owner meeting?
Manager Duties:	What are the duties of the Accounts Manager and the Association Manager?
Finances:	How are the finances managed? Who prepares the budget and owner assessments? What accounts are needed? What can you do when an owner pays late or doesn’t pay?
Maintenance:	Who is responsible for maintenance?
Meetings/Decision-Making:	How are meetings called and conducted? How many votes per unit? What actions require a vote? What happens if there is a tie?
Notices:	What notices can be communicated via email. What other communication via email is permitted?
Recordkeeping:	What records should the Association keep?
Disputes:	How are disputes handled?
Enforcement:	How does the Association and/or the owners enforce the TIC Agreement?

The TIC group as an Association.

Is a TIC group a homeowner’s association? Holding title to property as a TIC automatically creates an association because the TIC owners must associate to manage the property.

First Meeting

First Meeting: What needs to be done at the first owner meeting? The owners should have its first owner meeting as soon as possible after forming, and should discuss the following issues:

- 1. Plan Property Management: Elect Accounts Manager and Association Manager.** Every TIC, including one consisting of only two units, should have a plan under which a specific person is responsible for ensuring that the basic duties of the TIC group are fulfilled. These duties can be broken up and assigned to separate people. The responsible person for any particular task can be an owner or a paid manager. Owners rotate the manager duties on an annual basis. The key is that someone specific is responsible for each task, knows exactly what he/she is expected to do, and faces consequences if the job is not done. What does not work over the long term is “we’ll just all pitch

in” management. The initial Accounts Manager and the Association Manager should be elected at the first meeting. Their duties are listed below.

2. **Establish an Operating Budget, Maintenance Reserves and Assessments:** Even small TIC groups should have a budget that includes both “Operating Expenses,” [property taxes, insurance, shared utilities, management costs, janitorial/gardening, etc.], and “Maintenance Reserves” [funds collected in advance for eventual repair, refurbishment and replacement of the Common Areas]. The Accounts Manager is responsible for preparing the budget and calculating each owner’s monthly assessment. The Association Manager is responsible for preparing the Maintenance Reserve Plan (explained below), and providing that to the Accounts Manager to be included in the budget. The budget and owner assessments should be presented at the first meeting.
3. **Open Bank Accounts:** If the following accounts do not exist at the time of the first meeting, the Accounts Manager should be assigned the task of opening them:
 - Operating Account. The Association should have an operating account for Operating Expenses.
 - Maintenance Reserves Account: The Association should have a separate account for its Maintenance Reserves. The TIC agreement requires that Maintenance Reserve funds be kept in a separate account, and it is wise practice to do so.
 - The Default Account is a separate account into which each owner should deposit an amount equal to two months of his/her monthly assessment. This account is to be used only in the event an owner does not pay his/her assessments. The Association will proceed with its legal remedies, but in the meantime, it can draw upon the defaulting owner’s deposit in the Default Account to pay his/her assessments.
4. **Confirm TIC Insurance:** The Association should confirm the following aspects of the Association and individual insurance policies at the first meeting. The Association and every owner should provide a copy of the declarations page of the required policies. If any of these items cannot be verified at the meeting, an owner or Manager should be assigned the task of verifying them:
 - The expiration dates, to make sure they are in effect, and the names of the insured party or parties,
 - Casualty Policy: the items covered on the casualty policy, to make sure that all parts of the building are covered either under the TIC policy or under the individual policies carried by the owners; the Association should specifically confirm that its casualty policy covers all of the elements that it is responsible to maintain, repair and replace; and the limits of coverage, particularly those relating to replacement costs and building code upgrades.
 - Liability Policy: the limits of liability coverage to make sure they comply with TIC agreement

Duties of the Accounts Manager and Association Manager

What are the duties of the Accounts Manager? The Accounts Manager’s duties include the following. If the Association hires a book-keeper/Finance Manager, he/she typically performs the first three items on the list (marked with an asterisk). The Accounts Manager performs the other listed duties:

- Assessments Paid*: Confirm that each owner has deposited his/her assessments in the TIC account
- Bills Paid*: Make sure the bills are paid
- Budget*: Prepare the annual budget [Operating Expenses, Maintenance Reserves, and each owner’s Regular Assessment]
- Sign contracts and checks and otherwise act on behalf of the TIC.
- Record-keeping:
 - Keep minutes of all owner meeting.
 - Keep a current list of all owners, their phone numbers and email addresses.
 - Keep records of all TIC documents, which include a copy of the signed Agreement, signed Assumption and Release of Obligations, and signed amendments to the Agreement (if any).
- Provide a complete set of signed TIC documents to any owner who is selling. Sign (with notarized signature) an Assumption and Release of Obligations for each transfer of a TIC share.
- Complete the Annual Certificate of Validity and provide it to the other owners at the Annual Meeting.

What are the duties of the Association Manager? The Association Manager's duties include:

- **Maintenance:** Prepare the Maintenance Reserve Plan and provide to Accounts Manager. Coordinate common area repairs and obtain bids when required. Ensure the common areas are cleaned and maintained.
- **Meetings:** Send the Notice of the Annual Meeting to all owners and host Annual Meeting in his/her Unit. Accept written proxies. Prepare minutes of each Annual or Special Meeting.
- **Alteration Approval Requests:** Coordinate applications for alteration approval. Keep records related to alteration requests and approvals.

Building Finances

How should a TIC create its budget and collect assessments? A TIC operating budget consists of two components: the Operating Expenses and the Maintenance Reserves. Both budget components should be based on facts about the specific property for which the budget is prepared rather than on industry statistics or generalized averages or, worse, "educated guessing."

Keep in mind that a small TIC, (including a two-unit building) needs a properly prepared budget, including an accurate Maintenance Reserve calculation, even more than a large TIC, because a shortfall in TIC funds will have much more immediate and drastic effects when there are fewer owners to absorb it. It is risky to assume that either you or the other owner(s) will always have the funds available to make up a shortfall or respond to a funding emergency. Also remember that buyers and lenders will expect adequate reserves, and an owner who becomes accustomed to paying low dues will not be receptive to suddenly funding the missing reserves in order to help another owner sell or refinance.

The Accounts Manager is responsible for preparing the budget and calculating the owner assessments. (Note: Fractional lenders will generally impound property taxes and insurance with the owner's mortgage payment, and will submit those payments to the Association when the taxes/insurance are due. If impounded, the owner does not have to include his/her property tax/insurance payments as part of his/her monthly assessment.) The Association Manager is responsible for preparing the Maintenance Reserve and providing that to the Accounts Manager to be included in the budget. The Association should not tolerate any late payments, and should impose a late fee on any assessments paid more than 15 days late.

Building Maintenance

Who is responsible for ensuring that repairs are carried out? The Association Manager has the task of administering the maintenance of the Property, whether this involves ensuring the Common Areas are clean or hiring contractors. The Association Manager is authorized to proceed with hiring a contractor to perform necessary maintenance. Necessary maintenance does not require an owner vote. If the estimated cost is over \$1500, the Association Manager must obtain two (2) bids. As a practical matter in small Associations, unless the situation is an emergency, the Association Manager may advise the other owners of the required work and the estimated cost. A properly-prepared Maintenance Reserve Plan will mitigate the need for repairs and related additional costs, but not every problem can be anticipated and the need for unforeseen maintenance is to be expected. The Accounts Manager will impose a Special Assessment to cover the cost of unanticipated repairs.

Who prepares the Maintenance Reserve Plan? The Association Manager prepares the Maintenance Reserve Plan. The best practice for establishing the Maintenance Reserve Plan is:

- List all Common Area components for which refurbishment or replacement will be needed within 15 years; list the number of years until replacement and list the estimated cost
- Divide each cost by the number of years, which will tell you how much to collect for each year; and
- Divide the annual amount by 12, to determine the monthly reserve collection. Each Owner pays his/her allocated amount as part of his/her monthly assessment.

Meetings And Decision-Making

How does the Association or an owner call and conduct an owner meeting? The TIC agreement sets out the requirements for calling and conducting an Annual Meeting (Regular Owner Meeting) and a Special Meeting. A Special Meeting is a meeting called by an owner or the Association in addition to the Annual Meeting. In general, the meeting

requirements include: (i) How many days' notice must be given to each owner; (ii) Manner of notice; and (iii) That the notice include an agenda and that only the agenda items can be decided or discussed.

Owners can attend in person, via teleconference or can attend by appointing a proxy (someone to attend on his/her behalf). If an owner ignores meeting notices, he/she will be considered to have abstained, and his/her vote will not be required for action. For 3-4 unit buildings, a quorum of two attendees is typically required. A quorum of two allows the Association to proceed with making decisions even when one or more owners abstain. In other words, by ignoring notices for meetings, an owner cannot hold up the decision-making process.

With regard to voting, it must be kept in mind that the ordinary operations of the Association, e.g., budget, maintenance, enforcement of TIC agreement, do not require an owner vote. These and many functions of the Association and individual owners are obligations that are required to be carried out with consequences if not fulfilled. Owners vote on matters such as discretionary expenditures (non-essential work, such as an alteration) and amendments to the TIC Agreement. The TIC Agreement describes what actions require majority approval and what actions require unanimous approval.

NOTE: Ironically, small TIC groups generally have more difficulty than large ones with the meeting and decision-making process. One common source of difficulty is the failure to send each owner proper advance notice of each meeting with a full (and limited) agenda. Small homeowner's associations generally assume this formality is unnecessary, with the result that meetings become difficult to organize and/or are poorly attended. More importantly, the lack of proper notice and agenda generally makes the decisions non-binding, meaning that any owner who disagrees can ignore or challenge them.

Another common problem for TICs is the failure to create particular, concrete proposals on which a yes/no vote can be taken, and to clearly record the resolutions passed at the meeting in a way that can be verified. Each discussion should eventually lead to a motion. Before a vote is taken, the motion should be written down, and passed around or read aloud. These rules may seem ridiculously formal for a group of two or three owners, but in fact they are extremely effective at making owner meetings more productive and minimizing the likelihood of disputes about what was decided.

Notices and Communication

Are there rules about communication by email? The TIC Agreement provides that certain matters must be communicated by a "Notice." Examples include meeting notices, intent to rent, alteration requests and violation notices. For matters that require a Notice in the TIC Agreement, communication may be made by email. Besides matters that require a "Notice," an owner does not have to receive any communication via email. An owner can consent to communication via email, but if it relates to a matter that does not require a formal Notice, he/she does not have to. This is mentioned because it sometimes happens that one owner likes to email the other owners or one other owner all the time, and not in a positive way. The TIC Agreement describes how the TIC group is to operate and sending emails back and forth to complain or point out grievances is not an effective way to run the TIC and is not workable situation.

Record-Keeping

What records should a TIC group keep? The TIC agreement will describe the Association's record-keeping requirements. Record-keeping can be divided into two categories. The first category involves the TIC documentation. The Association should have a copy of the TIC agreement, signed by the first owners to close, and an Assumption and Release of Obligations signed by each subsequent buyer. It is essential that each owner has signed either the TIC Agreement (only the owners who closed at the first close), or an Assumption and Release of Obligations. Without having signed a TIC document agreeing to be bound by the TIC, an owner could claim that he/she is not bound by the TICA or does not agree to a particular provision. While at the end of the day, the owner will be considered to have purchased with notice of the TICA, but while this is being established, the owner can continue to argue that he/she is not bound.

The second category of record-keeping relate to the budget, meetings, insurance and owner information. Refer to "Duties of the Accounts Manager and Association Manager" for record-keeping responsibilities.

Disputes

Disputes among TIC groups are relative rare. The kinds of disputes and the incidence of disputes that arise in TIC situations are very similar to those that arise in a condominium building of a similar size. Disputes fall into two main categories, payment disputes and nuisance disputes. Nuisance disputes tend to occur more frequently than payment disputes. The TIC agreement describes the actions that an owner or the Association needs to take when another owner does not pay dues or assessments or otherwise violates the TIC Agreement.

(1) Monetary Violations of TIC Agreement:

Late Assessments: For late assessments (i.e., not paid within 15 days of the due date), the Association can and should consistently impose a late fee for each late assessment.

Non-Payment of Assessments/Forced Sale: When an owner simply does not pay his/her assessments, the remedy is a process under which the non-paying owner's TIC interest is sold on the open market through a private power of sale process as described in the Declaration and summarized below.

(2) Non-monetary violations of TIC Agreement (e.g., Nuisance):

ADR: Non-monetary disputes are typically resolved informally between the owners or between an owner and the Association via meetings, or through voluntary mediation or binding arbitration process (Alternative Dispute Resolution or ADR).

Fine Schedule: While most non-monetary disputes are addressed through ADR, in cases where mediation or arbitration are not workable, the Association can also consider adopting a fine or penalty schedule. Mediation and/or arbitration takes time, and while the process is under way the rule violations may be continuing. When recurring violations become a problem, a fine or penalty schedule may be appropriate and effective. Fines and penalties can deter violations by establishing immediate and clear-cut consequences. And then, the dispute becomes a dispute about money, rather than the conduct. For this approach to work, the Association must adopt a schedule in advance, and send a copy to each owner each time a fine or penalty is established or adjusted. In our experience, most small TIC groups do not have a fine penalty, and are able to resolve disputes through ADR.

What can TIC owners do to minimize disputes? The most important way that the TIC group can head off a dispute is to act promptly and consistently when a violation occurs. Because often owners in a small TIC develop personal relationships, it can be hard to enforce the rules. Excuses are given for the late payment, or the noise or other violation and the other owners let it slide until it becomes a bigger problem. However, tolerance or giving into excuses leads to uncertainty about the importance of the TICA, which can lead to more violations and makes the violation harder to enforce. Promptness and consistency are the key elements of a smoothly-run Association.

Regardless of personal relationships, your ownership is your investment, and the importance of keeping to a formal structure of meetings, budget preparation, assessment collection, and a prompt and consistent method of resolving disputes cannot be overstated.

Enforcement

Enforcement: What can an owner or the Association do when there is a violation? The TIC agreement describes the actions that an owner or the Association is permitted to take when another owner does not pay his/her assessments or otherwise violates the TIC agreement, (typically causes a nuisance). The most common remedy for non-payment is a private power of sale under which the non-paying owner's TIC interest is sold on the open market. The defaulting owner gets to keep any amount of the sale price left after paying costs of sale, mortgages, legal fees, and debts and penalties to the TIC group. This forced sale process must comply with the notice and timing requirements under California law. California law prohibits any remedy under which the non-paying owner automatically loses his/her ownership share and investment. Therefore, the sale process must be fair, provide adequate notice and be sold on the open market.

The private power of sale process is non-judicial, meaning that the TIC group does not need to go to court at any point during the sale process. However, it will be necessary to obtain an arbitrator's order regarding the amount of assessments due from defaulting owner. Note that a forced sale is only useful if the value of the defaulting owner's TIC interest is significantly greater than the amount he/she owes on a mortgage; otherwise, the proceeds from the forced sale, after payment of costs and mortgage, may not be sufficient to repay the owner's debt to the TIC group.

To get started with enforcing the TIC agreement, the first step is to gather evidence. For payment-related issues, documenting the violation means establishing when the payment was due and that the owner was given proper notice. For nuisance violations, an owner can gather photographs, recordings, witnesses or other evidence. The second step is to send a notice to the owner identifying the violation. The owner has a certain number of days to cure the violation or to initiate dispute resolution. Most disputes are resolved either informally between the owners or through mediation.