

NAR Exemption for 1031 Exchanges

The National Association of Realtors has proposed an exemption to the Securities and Exchange Commission for receipt of “referral fees” relating to TIC/1031 Exchange transactions processed as securities by FINRA members.

This request for exemption brings several issues that must be addressed:

1. What is a “reasonable” fee amount? How will it be determined? Who will pay it?
Will a standard amount be proposed or will Realtors be allowed to shop for the best compensation arrangement for themselves?
2. What professional designations will entitle Realtors to “share” commissions?
3. Who will oversee the activities of the Realtors as they relate to securities transactions?
4. What level of liability will the Realtors share in exchange for their fees? How will they insure against that liability? What proof will they have of insurance?
5. Who will the Realtor represent? The buyer or the seller?
6. How will adding a Realtor to the transaction improve the integrity of the market or protect the public?
7. Why would this be limited to TIC/1031 Exchange transactions only, when the same rationale for referral could be used for Limited Partnership transactions and REIT purchases?
8. Would this open the door to attorneys and CPA’s who might also bring referrals? Where would it end?

My recommendation is that Realtors that want to participate in “securities” transactions should get securities licensed. Then they would be regulated by FINRA and have to operate under the rules established for securities transactions. So long as the transaction passes the “Howie Test”, securities registration should be required for sales compensation. If a Realtor provides consulting services to an investor, those services could be negotiated and contracted between the investor and Realtor and kept outside of the securities transaction.

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