

Tenancy in Common Ownership

Title Percentages, Shared Expense Allocations, and Property Tax Allocations

INTRODUCTION

1. Ownership or Title Percentages

What are the “ownership” or “title” percentages?

What is the relevance of title/ownership percentages in the TIC exclusive occupancy context?

How are title percentages established?

What is the relationship between the title percentage and the percentage used to allocate shared expenses?

What title percentages are required for condominium conversion and OMI evictions?

How do the title percentages relate to other percentages in the TIC Agreement?

2. Percentage used for allocating shared expenses.

What percentage is used to allocate shared expenses of the property?

3. Property Tax Percentage

What is the property tax percentage and how is it calculated?

What happens when there is a sale?

Introduction

This article applies to tenancy in common agreements where the owners have exclusive rights to occupy certain units in a property. In addition to assigning exclusive occupancy rights, the TIC agreement will contain references to percentages or formulas which impact an owner's rights and financial obligations. Owners of a TIC property need to be able to distinguish between these different “percentages” that apply within their TIC group. It is important to understand what the percentages are, what they based on, and how they are applied.

The three main percentages that affect owners of a property held as a TIC are: (1) the title percentage, also known as the “ownership” percentage, (2) the percentage used to divide common area expenses, and (3) the percentage used to divide property taxes. Other percentages referenced in a TIC Agreement include each owner's debt percentage (amount of shared loan he/she has to repay, if the owners have a group loan), and a relative value percentage (current market value of each unit relative to value of entire building).

What are the “ownership” or “title” percentages?

The first percentage to greet TIC owners will be their title or ownership percentage. TIC owners should understand the following important facts about their title percentage:

Each owner in a TIC owns an undivided percentage interest in the entire property. This percentage interest is referred to as the owner's “ownership percentage” or “title percentage”. These terms are used interchangeably, and refer to the percentage interest purchased by the owner as shown in his/her purchase contract and on his/her Grant Deed. (The Grant Deed is

the document recorded with the County Recorder's office that is the owner's official record of ownership).

An owner's title percentage does not change throughout his/her ownership of the property. It is his/her title percentage that is transferred to his/her buyer. (Of course, an owner's title percentage will change if he/she sells a portion of his/her interest, or purchases another owner's interest or a portion of another owner's interest.)

If an owner has a fractional loan, his/her title percentage interest provides the collateral for the loan provided by the fractional lender.

What is the relevance of title/ownership percentages in the TIC exclusive occupancy context?

When owners hold title as tenants in common *without* an exclusive occupancy TIC agreement, typically, title percentages will be based on each owner's purchase price. Each owner's title percentage will dictate his/her financial obligations and rights upon the sale of the property. For example, if you purchased a property with two other people, each paying 1/3 of the purchase price, in most instances, the grant deed would show 1/3 ownership percentage each, and each would have 1/3 of all financial obligations and 1/3 of all income from the property. If a dispute arose resulting in court action, the property would be divided among the owners according to their title percentage, i.e., 1/3 each.

As a result, when TIC owners *do not have a TIC Agreement*, the fairest result is obtained by tying each owner's title percentage to the price they paid, because if they have to sell, they will regain their investment.

It works differently in a TIC group with exclusive occupancy rights. Because each owner has the right to sell his/her percentage interest in the property, which by virtue of the TIC agreement translates into exclusive occupancy rights to a "unit", the value of his/her share is based on the market value of his/her assigned unit (and not on the title percentage). So, for example, four owners who each have a 25% share in a 4-unit property with exclusive occupancy rights to one unit, and who sell ten years later, may have widely-different sales prices, based on the value of their assigned unit at that time. So, it doesn't matter what his/her title percentage is; what matters is the market value of his/her assigned unit.

As discussed above, the relevance of title percentages is clear when there is no TIC agreement. However, in the TIC exclusive occupancy context, where each owner individually reaps the reward of the appreciated value of his/her assigned unit, regardless of title percentage, title percentage has no ongoing significance with regard to the operation of the TIC group.

Note, however, as discussed below, a minimum title percentage is required with respect to qualification for condominium conversion and for certain evictions.

How are title percentages established?

By seller: Title percentages are typically established by the seller who initially creates the TIC. They can be based on square footage, listing price, a combination of the two, or simply based on the number of units.

By buyers: If a group of TIC buyers is purchasing the property before the title percentages are established, they will generally (a) use the market value of the different assigned units to establish title percentages, or (b) simply base title percentages on the number of units. Buyers may also consider other factors to establish the title percentages, such as eligibility for condominium conversion, (see below where 10% or 25% is required), or to establish the right to invoke an owner move-in eviction (25%).

What is the relationship between the title percentage and the percentage used to allocate shared expenses?

Most TIC agreements specifically state that the owners will divide expenses according to the TIC agreement, regardless of their title/ownership percentages. For example, let's say two owners purchased a two-unit property. Both units are identical in size. However one unit is completely remodeled and is worth more. Their title percentages are 45%/55%. How should they allocate common expenses?

This is a frequent question. As we have seen above, the title percentage typically relates to market value or purchase price, (or it can be based on the number of units). The next question is whether the title percentage should be used for allocating shared expenses. Would this lead to a fair allocation of expenses, say, for the roof or exterior painting? Often the answer is no. Some owners may want to consider square footage or other factors related to their particular building. Determining a fair allocation for shared expenses generally requires a discussion of the particular property and the units within that property.

In the example above, the owners determined that since their units were the same size, they should be equally responsible for common expenses, such as the roof, foundation and exterior painting. Sometimes, the title percentage and the expense allocations percentage are the same, but not always.

In sum, different criteria are used to determine the title percentages and the shared expense percentage. You may end up with the same result, (meaning the same percentage for both), but you will have gotten there having considered different factors.

What title percentages are required for condominium conversion and OMI evictions?

Minimum title percentages are required for condominium conversion and certain evictions as shown below:

Relevance of Ownership Percentage for Condominium Conversion/OMI Eviction:

Application of Ownership Percentage	Which owner	Required % for each owner
Two-unit Lottery Bypass Application	Two owners	25%
Expedited Conversion Program	One owner	10%

Three or Four unit conversion application		
Post-Expedited Conversion Program* Three-unit conversion application	Two owners	10%
Post-Expedited Conversion Program* Four-unit conversion application	Three owners	10%
Expedited Conversion Program: Five/six unit conversion application	Three owners	10%
Owner move-in eviction	One owner	25%

*When lottery resumes

How do the title percentages relate to other percentages in the TIC Agreement?

As mentioned above, the title percentage has no ongoing significance with regard to the operation of the TIC group. A TIC agreement that provides for exclusive usage rights will often specifically provide that the owners will share expenses according to the TIC Agreement *regardless of their title percentage*. However, some TIC agreements do provide that ownership percentages are to be used for common expenses. The TIC agreement will specifically state how expenses for maintenance of the common area, insurance, and other building expenses are to be divided among the owners. In some TIC agreements, these expenses are shared according to title percentage, but this is not always a fair allocation of such expenses.

2. Percentage used for allocating shared expenses

What percentage is used to allocate shared expenses of the property?

The TIC Agreement will describe each owner's financial obligations for shared expenses such as: property tax, insurance, common area maintenance, utilities and mortgage (if shared). Fractional mortgages, where each owner has a separate loan with a fractional lender on his/her ownership interest, are the responsibility of individual owners and are not considered shared expenses.

The TIC agreement will include specific percentages to be used for dividing shared expenses for common area repairs, utilities and insurance. In the case of a mortgage shared among the owners, the TIC Agreement will also specify what percentage of the shared mortgage each owner is responsible to repay. With respect to property tax, instead of a percentage, the agreement will include a formula for calculating what portion of the entire property tax obligation each owner is responsible to pay. A formula, rather than a fixed percentage, is generally used for property tax payments, because each owner's percentage of the total property tax for the property will change with each sale of a TIC interest.

The percentage specified in the TIC Agreement to allocate shared expenses stays the same

throughout an owner's ownership. Generally, there is a fixed percentage for all common area maintenance, however the TICA can provide that a different percentage applies to particular situations, e.g., a rear deck structure that is shared by only two owners.

3. Property Tax

What is the property tax percentage and how is it calculated?

Most TIC agreements do not include a specific percentage for the division of property taxes. This is because each sale of a TIC share will result in an increased assessment. The new owner is responsible for the increased assessment. It would not be fair to the existing owners to have to absorb continuing increases in property taxes as a result of another owner's sale. The TIC agreement will include a method or a formula for calculating property taxes. Such a method or formula is based on each owner's purchase price, as adjusted by annual increases and his/her individual improvements to the property, (if this results in an increased assessment). The intent is that each owner will pay property taxes just as though he/she purchased a single-family home. An owner's property tax will increase only as a result of annual assessments, and any improvements made to the assigned unit – just like an owner of a single-family home. The TIC group will calculate the percentage of property tax each owner is responsible for, and will recalculate the percentage after each sale or other event that triggers an increase.