SELLERS INFORMATION

PROPERTY EXCHANGE SERVICES, 1031 EXCHANGE

Qualified Intermediary and Qualified Escrow Services For Internal Revenue Code Section 1031 Exchanges

Why Do an IRC 1031 Exchange?

When an owner of investment real property ("Taxpayer") sells the property, the sale often creates an obligation for payment of capital gains taxes. Section 1031 of the Internal Revenue Code of 1986 allows a Taxpayer to sell investment real property ("Relinquished Property"), have the proceeds used to purchase new investment real property ("Replacement Property") and defer the taxes on the sale (the "Deferred Exchange").

A taxpayer may not simply sell Relinquished Property and use the money to purchase Replacement Property. The IRS and the Treasury Department have very strict requirements which must be satisfied in order for a Taxpayer to qualify for Deferred Exchange treatment (the "Regulations").

To qualify for a Deferred Exchange, the Taxpayer must enter into a valid exchange agreement (the "Exchange Agreement") with a third party (the "Qualified Intermediary"). The Qualified Intermediary must hold the funds from the sale of the Relinquished Property and the Taxpayer and the Qualified Intermediary must comply with the requirements of the Regulations.

The Regulations allow the Taxpayer and Qualified Intermediary to place the funds from the sale of the Relinquished Property into an escrow account (the "Qualified Escrow").

Why Use Investment Property Exchange Services as the Qualified Intermediary?

Financial Strength and Security

During the exchange, the funds from the sale of the Relinquished Property will be held and controlled by the Qualified Intermediary.

Many Taxpayers have had their exchange funds misused by unscrupulous intermediaries.

The Integrity of Your Exchange

The Qualified Intermediary will prepare most of the documentation that is required by the Regulations.

The Qualified Intermediary must conduct its business in compliance with the Regulations or your exchange could be jeopardized.

The Regulations on Deferred Exchanges are very complex. An unsophisticated intermediary could unwittingly act in a manner that could cause a Deferred Exchange to be disallowed under audit.

Frequently Asked Questions

How Does the Taxpayer set up an Exchange?

The exchange must be set up before the Taxpayer can close on the sale of the Relinquished Property.

The Qualified Intermediary prepares an Exchange Agreement and an assignment document to assign the Taxpayer's rights in the sale contract to the Qualified Intermediary.

The Taxpayer and the Qualified Intermediary sign the Exchange Agreement and the assignment document. The Buyer of the Relinquished Property also signs the assignment document. If a Qualified Escrow is being used the Qualified Escrow Agent also signs the Exchange Agreement.

The Qualified Intermediary or the Qualified Escrow Agent holds the executed Exchange Agreement. The executed assignment document is delivered to the escrow agent handling the sale of the Relinquished Property.

Once the sale escrow agent gets the assignment, and all other terms of the sale are satisfied, the sale escrow can be closed.

Upon close of the sale escrow the sale escrow agent transfers all of the Seller's net proceeds to the Qualified Intermediary or to the Qualified Escrow.

Can the Taxpayer deed the Relinquished Property directly to the Buyer?

Yes, the Regulations allow the Taxpayer to deed the Relinquished Property directly to the Buyer. This avoids extra fees.

Can the Taxpayer earn interest on the funds while they are held by the Qualified Intermediary? Or in the Qualified Escrow?

Yes, the Regulations allow the Taxpayer to earn interest on the funds; however, the interest may not be paid to the Taxpayer until the end of the exchange. The interest which is earned will be taxed as ordinary income.

How long does the Taxpayer have to identify Replacement Property and to complete the exchange?

Replacement Property must be identified on or before midnight of the 45th day following the day on which the sale of the Relinquished Property occurred (the "Identification Period").

Provided the identification requirements are satisfied, the exchange must be completed by midnight of the 180th day following the day of close of the Relinquished Property or the due date of the tax return for the year in which the transfer took place, including extensions (the "Exchange Period").

The Identification Period and Exchange Period must be counted very carefully. They are not extended for holidays or weekends.

How many Replacement Properties can the Taxpayer Identify?

The Taxpayer may identify a maximum of three (3) Replacement Properties, of any value (the "3 Property Rule"); OR

The Taxpayer may identify more than three (3) Replacement Properties BUT the aggregate value of all identified Replacement Properties cannot exceed 200% of the value of the Relinquished Property (the "200% Rule"); OR

If the Taxpayer identifies more than three (3) Replacement Properties with aggregate value in excess of 200% of the Relinquished Property, Taxpayer must actually acquire at least 95% of the value of the identified Replacement Properties.

Replacement Property which is actually acquired prior to the end of the Identification Period will qualify.

What form does the Taxpayer use to identify Replacement Property There is no special "form" however, the identification must be in writing, must be signed by the Taxpayer and must "unambiguously" describe the Replacement Property. A revocation of a previously identified Replacement Property has the same requirements.

How is the Replacement Property acquired?

The Taxpayer negotiates the purchase of Replacement Property in the normal manner with wording similar to the following inserted in the purchase contract:

Buyers Exchange Provision: It is the intent of Buyer to Acquire this property as Replacement Property in an Internal Revenue Code Section 1031 exchange. To affect such exchange, Buyer reserves the right to assign their position herein to a Qualified Intermediary. Seller agrees to cooperate in Buyers exchange, provided that Seller will be at no additional expense or liability for Buyers exchange and Buyers exchange shall not delay the closing of this escrow.

Before the Replacement Property can close, the Qualified Intermediary prepares an amendment to the Exchange Agreement and an assignment document in which the Taxpayer assigns his rights in the purchase contract to the Qualified Intermediary.

The Qualified Intermediary and the Taxpayer sign the amendment and the assignment. The seller of the Replacement Property also signs the assignment.

When all conditions of the Replacement Property are satisfied, the Qualified Intermediary transfers the required funds to the Replacement property escrow agent.

For further information or to open a deferred exchange, contact one of our preferred experts:

1031 Exchange at **(888) 771-1031**

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