



Real estate investors can sometimes purchase properties at steep discounts by utilizing techniques such as short sales, courthouse-step sales, and purchasing bank-owned properties (REO). While these approaches can often provide excellent buying opportunities, taxpayers who are engaged in 1031 exchanges must pay extra attention to the details of their particular acquisition. Each of the aforementioned approaches can present difficulties in completing a successful 1031 exchange.

The important point to realize is that each of these approaches has unique issues which must be understood and addressed early on. Some of the problems include:

1. Problems meeting the 180-day exchange period deadline due to the inability to control the closing of the purchase. This is a common problem, particularly with short sales. Prudent taxpayers will minimize this risk by taking full advantage of the 45-day identification rules. In short, you are on the seller's time schedule, not on yours.
2. These transactions often have rigid structures. As such, you may have difficulty complying with 1031-specific requirements, including contract assignability and deeding flexibility. Often, sellers in these situations are not willing to respect the need for slight modification to their "procedure" to effectuate a technically valid 1031 exchange.
3. In the case of courthouse-step purchases, advanced planning is necessary. Cashier's checks must accompany the winning bid at the time of the purchase. You will not know what the final winning bid figure will be; therefore, it is prudent to have multiple cashier's checks in appropriate increments ready. Of course, all cashier's checks must be immediately returned to the qualified intermediary if you are not the winning bidder.

Many of the aforementioned problems can be overcome with advanced planning and creative structuring. In many cases, the use of an Exchange Accommodation Titleholder (EAT) can allow for creative techniques such as using 1031 exchange proceeds for capital improvements after the replacement property has been acquired, and acquiring multiple properties before or after the relinquished property has closed.

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