

Simultaneous Exchanges

Using a QI is the Only Safe Harbor Provided by the Regulations

1031

Knowledge

The simultaneous exchange is the oldest method of performing a 1031 exchange. There are basically three ways to perform a simultaneous exchange:

1. SWAP OR TWO-PARTY TRADE: Two parties exchange (swap) deeds with each other.

Advantages: There is no need for a qualified intermediary (QI).

Disadvantages: It is very difficult to find another party who wants to swap for your property. The other party has to want what you have at exactly the same time you want to acquire their property. Also, the equity and debt must match on both properties to avoid one party recognizing some "boot."

2. THREE-PARTY EXCHANGE: An "accommodating party" is used to help facilitate the transaction for the taxpayer. In the Alderson format, title is passed through the buyer. In the Baird format, title is passed through the seller.

Advantages: No need for a QI.

Disadvantages: There are many disadvantages with this approach. Most legal and tax advisors strongly discourage their clients from utilizing this method. One of the main reasons this approach is discouraged is that the "accommodating party" actually takes title to a property that they know nothing about. Since this accommodating party is on the chain of title, they are exposed to any issues associated with that property, including the potential to be involved with environmental issues. In addition, there is very little documentation besides the recording of the deeds to support that an exchange really had been structured.

3. SIMULTANEOUS WITH A QI: A QI is used to structure the exchange.

Advantages: The 1991 Treasury Regulations state that the only "safe harbor" for a simultaneous exchange is using the services of a QI. The QI provides written instructions to the closing officers, prepares the exchange agreement and other necessary exchange documents which insulates the taxpayer from any "constructive receipt" issues. In addition, this format can be easily converted to a delayed exchange which eliminates the time pressure of trying to close the entire transaction simultaneously.

Disadvantages: There is a nominal cost for the QI services.

Even if the relinquished and replacement properties close on the same day, one of these three methods must be used to perform a valid simultaneous 1031 exchange. It is not sufficient to merely wire proceeds from the closing for the sale of the relinquished property to the closing for the purchase of the replacement property on the same day and obtain §1031 tax deferral. If the taxpayer has "constructive receipt" of the funds, even if only for a few minutes or hours, the transaction no longer qualifies for §1031 tax deferral.

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