The Real Estate Professional's Handbook

HOW TO BENEFIT FROM THE POWER OF EXCHANGE™

§1031 TAX DEFERRED EXCHANGE

THE POWER OF EXCHANGE™

ASSET PRESERVATION, INC.

ASSET PRESERVATION® INCORPORATED

a Stewart Title Company subsidiary

THE REAL ESTATE PROFESSIONAL'S HANDBOOK

HOW TO HARNESS THE POWER OF EXCHANGE™

NOTICES

This handbook is only intended to provide a broad overview regarding many aspects of IRC Section 1031 tax deferred exchanges. It is not designed to address all tax deferred exchange issues, nor the specific circumstances that may be faced by an individual investor. Asset Preservation, Inc. does not provide tax or legal advice. All investors are urged to seek independent legal/tax guidance on each transaction as circumstances often change and can affect the validity of an IRC §1031 exchange.

FOR MORE INFORMATION

Contact Asset Preservation's National Headquarters or Eastern Regional Office, or any local office for more information regarding:

- Investor Workshops
- Tax Deferred Exchange Training for Real Estate Professionals
- Approved continuing education (one, three or four hours) seminars for real estate agents and brokers, attorneys and accountants
- In-office seminars on advanced exchange topics (one, three or four hours)
- Customized marketing materials

ASSET PRESERVATION®
INCORPORATED

A National IRC §1031 "Qualified Intermediary"

www.apiexchange.com

NATIONAL HEADQUARTERS

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Member:
FEA

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INTRODUCTION

Purpose of this Handbook

The primary objective of this workbook is to equip real estate agents and brokers with a basic background regarding §1031 tax deferred exchanges and to provide a proven action plan for identifying, contacting and marketing your services as a real estate professional. The ultimate objective is for you to earn more commissions, better referrals and learn new ways to market your services to investors. As a result of your efforts, real estate investors should also be dramatically improving their position in the real estate market and obtaining a better return on their investments.

Background - IRC Section 1031 Tax Deferred Exchanges

Since 1921, savvy investors and real estate professionals have been taking advantage of a powerful tax strategy created by IRC Section 1031 – the tax deferred exchange. You and your clients can accumulate wealth and preserve real estate assets by learning how to defer capital gain taxes when disposing of virtually any property "held for investment." Thanks to IRC Section 1031, a properly structured exchange allows an investor to sell a property, reinvest the proceeds in a new property and defer all capital gain taxes. IRC Section 1031(a)(1) states:

> *"No gain or loss shall be recognized on the exchange of property held for productive use in a trade or business or for investment, if such property is exchanged solely for property of like-kind which is to be held for productive use in a trade or business or for investment."*

Background – Asset Preservation, Inc.

Asset Preservation, Inc. (API) was founded in 1990 with the unique focus of becoming an industry leader in the security of its clients' funds and property. In 1993, API was acquired by Stewart Title Company in Houston, Texas. Stewart Title's parent company, Stewart Information Services Corporation (SISCO), is listed on the New York Stock Exchange (NYSE: STC) and has roots in the title insurance industry that span over a century.

API is one of the most respected national "Qualified Intermediary" companies in the United States. At API, we are committed to providing investors and real estate professionals with the highest level of experience, expertise and security of funds in the industry – what we call *The API Advantage*™. *The API Advantage*™ gives investors secure access to the full power of exchanges, turning goals for financial growth and security into a very rewarding reality. API's team consists of highly specialized experts in the §1031 tax deferred exchange field. We have facilitated over 130,000 exchanges of all types and dollar amounts. Our documents and system have been analyzed by hundreds of attorneys and by the Internal Revenue Service. Our services are designed to provide the highest security for funds held and to maintain the integrity of every exchange.

API's role as a "Qualified Intermediary" is very specific. Our sole purpose is to guide an investor through a §1031 exchange. We inform an investor of the exchange requirements, produce the necessary exchange documents and manage their funds. In no way does API replace competent tax or legal advisors.

Mission: *To excel as the premier §1031 "Qualified Intermediary" company nationally by delivering superb service, the highest level of security for proceeds and value-added solutions from the industry's foremost experts.*

BENEFITS TO REAL ESTATE PROFESSIONALS

In addition to being a valuable tax deferral strategy for investment property owners, §1031 exchanges provide real estate professionals with numerous ways to quickly increase commission income. We have listed a number of these opportunities below:

1. The Potential for Two Fees from one Sale

Every tax deferred exchange involves one sale and one purchase, providing real estate professionals the opportunity to earn two commissions from one client!

2. Two or More Replacement Properties

Many investors leverage their investments and purchase several replacement properties, which equates to several commissions all from one client! Clients with a high equity position (or free and clear) will receive a better rate of return by purchasing several properties with some financing.

3. Seller of Clients' Replacement Property

The seller of the investor's replacement property often also holds their property for investment and may not be aware of the benefits of an exchange. If you can identify exchange opportunities, share with them the benefits and range of like-kind replacement properties available through an exchange, you may have the ability to generate additional business from their transaction as well.

4. Larger Properties = Larger Commissions

With the benefits of tax deferral, investors can purchase larger properties, which generate larger commissions from the same clients.

5. Become an "Exchange Agent"

By learning about tax deferred exchanges, real estate professionals can differentiate themselves from their competitors in a local market. Often real estate professionals who understand §1031 exchanges develop a base of repeat investors who only want to work with them. This can lead to an established clientele and less time working a "farm" area to produce business.

6. "Proactive" Tool to Find New Clients

The vast majority of real estate professionals focus most of their efforts on obtaining listings. As a result, most real estate professionals are competing against other real estate professionals in trying to convince a property owner to use their services for selling a property. An inherent disadvantage of this approach is that it depends upon having property owners who want to sell their property right now. In essence, you are competing for the small 5-10% of the market who is considering selling at any given time.

When you begin to focus your efforts on investors, you are now pursuing the 90% of the market with very little competition from other real estate professionals. Instead of waiting for owners who want to sell, you are taking control of your own success by approaching investors and showing them ways that no one else has to improve their position in the real estate market. The step-by-step guide supplied in this handbook, along with the informational marketing handouts provided by Asset Preservation, equip you with innovative ways to get in front of investors and earn more commissions.

BENEFITS TO REAL ESTATE INVESTORS

Section 1031 tax deferred exchanges continue to increase in popularity as more investors nationwide discover the wide range of investment objectives that can be easily met through exchanging.

The real power of a tax deferred exchange is not just the tax savings — it is the tremendous increase in purchasing power generated by this tax savings! With the advantages of leverage, every dollar saved in taxes allows a real estate investor to purchase two to three times more real estate. Many investors are surprised to discover that capital gain taxes are far higher than 15%. State taxes, which can be as high as 11% in some states, are added to the federal capital gain taxes owed. In addition, depreciation deducted over the ownership period is taxed at a rate of 25%. The net result is often a large percentage of an investor's profits going directly to pay taxes. The list on this page highlights some of the more common reasons for exchanging, while the next page cites some additional motivations.

1. Preservation of Equity

A properly structured exchange provides real estate investors with the opportunity to defer 100% of both Federal and State capital gain taxes. This essentially equals an interest-free, no-term loan on taxes due until the property is sold for cash! Most often, the capital gain taxes are deferred indefinitely because many investors continue to exchange from one property to the next, dramatically increasing the value of their real estate investments with each exchange.

2. Leverage

Many investors exchange from a property where they have a high equity position or one that is "free and clear" into a much more valuable property. A larger property produces more cash flow and provides greater depreciation benefits, which therefore increase an investor's return on their investment.

3. Diversification

Exchangers have a number of opportunities for diversification through exchanges. One option is to diversify into another geographic region such as exchanging one apartment building in Denver, Colorado for two additional apartments – one in Los Angeles, California and the other in Dallas, Texas. Another diversification alternative is acquiring a different property type, such as exchanging from several residential units to a small retail center.

4. Management Relief

Some investors accumulate several single family rentals over the years. The ongoing maintenance and management of what can be a far-reaching group of properties can be lessened by exchanging these properties for one property better suited to on-site maintenance and management. Exchanging into a single apartment complex with a resident manager is a good example of this strategy.

5. Estate Planning

Often a number of family members inherit one large property and disagree about what they want to do with it. Some want to continue holding the investment and some desire to sell it immediately for cash. By exchanging from one large property into several smaller properties, an investor can designate that, after their death, each heir will receive a different property that they can either hold or sell.

6. Non-Tax Motives for Exchanging

In addition to the deferral of capital gain taxes, there are many underlying reasons an investor would want to exchange one property for another. These are some of the typical non-tax motives for performing an exchange.

- Exchange from depreciated property to higher value property that can be depreciated.
- Exchange from property that cannot be refinanced, such as land, to improved property that will support a new loan thereby gaining the ability to obtain cash.
- Exchanging from non-income land to improved property to create cash flow.
- Exchange from already appreciated property, such as an apartment, to a high cash flow property, such as a retail center, to generate needed cash flow.
- Exchange from cash flow property to property with faster appreciation for clients who do not need cash but wish to build their estate.
- Exchange for a property or properties that may be easier to sell in the coming years.
- Exchange to meet the location requirements of a client who has moved across the country or one who simply wishes to invest in a different part of the city.
- Exchange to fit the lifestyle of a client, for example, a retiree may exchange for a property requiring reduced management in order to travel more.
- Exchange from several smaller properties into a larger one to consolidate the benefits of ownership, or exchange from a larger property to several smaller ones to divide an estate among children or for retirement reasons.
- Exchange to a property an investor can use in her own profession, for example, a doctor may exchange out of rental houses into a medical building she can use for her practice.
- Exchange out of a partial interest in one property to a full interest in another.
- Exchange into a singe family rental property that will initially be held for investment. At a later date the investor may decide to move into this property and convert it into their primary residence. Under current tax laws, after the investor has lived in the property as their primary residence for 2 out of 5 years, they are eligible for the tax exclusion benefits available under IRC Section 121.
- Exchange into a rental property at a resort location that is desirable and where property values typically appreciate well in good economic times.
- Exchange out of a management intensive ranch or farm operation for a lower management burden of an apartment complex with an on-site property manager.
- Exchange depreciated equipment or vehicles for similar new equipment or vehicles.

STEP-BY-STEP STRATEGY TO APPROACH INVESTORS

Over the years, through real estate upturns and downturns, high and low interest rates, real estate professionals that have consistently proven to be the most successful have several things in common:

- They seek an edge in knowledge, information, and experience that will set them apart from others in their field – and they put this knowledge to practical use.

- They seek to provide customers and potential customers with the best and most up-to-date service they can possibly deliver.

- They are adaptable - willing to learn new methods of doing things, learn new technologies and adapt to new strategies and markets.

Since tax deferred exchanges can be used for so many different types of investment objectives in numerous creative ways, they have quickly become a favorite of real estate agents and brokers, tax planners, financial planners and their clients. Thousands of real estate professionals have realized a real estate business with an emphasis on exchanges is more reliable and profitable because, no matter what the market conditions, there always seems to be the need or opportunity to sell or buy property and defer capital gain taxes.

It is not difficult to become an *Exchange Agent*. It does not involve the mastery of complicated tax law or investment formulas. There are no tests to pass. There are no special requirements other than a desire to understand the basics of exchanges, serve your clients and an effort to communicate that desire.

A successful exchange practice can be built with the following four steps:

1. Understand the reason why investors might benefit from an exchange.
2. Learn how to locate potential investor clients.
3. Provide effective communication regarding the possibility and benefits of an exchange.
4. Develop an effective exchange team to help you in these efforts.

1. Understand the Reasons Investors Benefit from an Exchange

Many of these reasons have been addressed earlier in the handbook. It's important to remember that §1031 exchanges allow investors to accomplish a wide range of investment objectives in addition to the immediate capital gain tax deferral benefits.

2. Locate Exchange Investors

Cultivate a reputation as an *Exchange Agent*. (Note: This does not mean you are a tax or legal expert. You are simply willing to work with investor clients in creative ways to achieve their real estate investment objectives.)

- Begin by networking within your own sphere of influence. Contact you own tax and legal advisors and ask for their referrals. Apartment Owner Associations and Property Manager Associations can be good sources of immediate referrals. Local investor groups are another excellent source of exchange clients. Contact FSBOs (For Sale By Owner) because often they have not sought out professional advice and may not be aware of the alternative to exchange.

LOCATE EXCHANGE INVESTORS:

- You will want to create a database of investors to whom you can begin mailing and regularly contact with information on exchanges and your specialized expertise in this area. There are a number of resources that can help you build an excellent database of investors in a given geographic region. One option is to contact a sales representative from your local Stewart Title office to see if they can provide a current list of investors. (Note: Due to a variety of factors, not all Stewart Title offices will have access to this information.) Another alternative is working through some of the national data companies who focus on collecting, updating and selling this data. Dataquick (www.dataquick.com) and Metroscan (www.metroscan.com) are a couple of well-known data companies. You may also want to contact a local mailing house that may cultivate mailing lists and arrange for special pricing if you choose to select both their data and mailing services for your marketing campaign to investors. You may want to begin your search by targeting investors who own two or more investment properties.

INVESTOR EDUCATION AND UPDATES:

- Mailing a cover letter and customized "Power of Exchange™" templates to your investor database is an efficient way for you to begin posturing yourself as an exchange agent knowledgeable of investment real estate.
- If you have the ability to assemble a database of local investor email addresses, you may be able to augment your mailing campaign by occasionally forwarding updates via email.
- Your website can feature a special section "For Real Estate Investors." In this area, you can summarize the opportunities available with tax deferred exchanges. (Note: Visit API's §1031Links section at www.apiexchange.com to have a complimentary link from API's site added directly to your website.)
- Schedule an "Investor Night" workshop to educate investors on local opportunities and market conditions. Often it is beneficial to coordinate the Investor Night with another professional who can address other real estate related topics or issues relevant to investors. For example, you may want to include a well-known local tax or estate planning attorney to discuss any recent estate planning changes that could affect investors. Alternatively, a local CPA can address any tax law changes or a mortgage broker can talk about the status of interest rates and offer predictions for the coming year.

3. Provide Effective Communication about Exchanges

Asset Preservation has made it easy to forward materials to investors about Section 1031 exchanges. In this handbook we have provided two sample introductory letters. In addition, the "Power of Exchange™" handouts are specifically designed as a marketing tool that you can forward to investors along with your cover letter. In fact, with over 90 topics already covered, and new handouts being prepared by API every month, you have enough handouts to cover a 5-year campaign of mailing to investors every month!

How to use the "Power of Exchange™" Marketing Handouts

A. Visit API's web site (www.apiexchange.com) and click on either the headings "Tools You Can Use" and "Handouts You can Customize for Clients", or "API's Exchange Solutions for Real Estate Agents/Brokers" and "Handouts You can Customize for Clients". From here you can open any of the handout topics as a pdf file (Note: You will need Adobe Acrobat Reader available with a free download from www.adobe.com to access these files.) Once the file is open, enter your name, company, address, telephone, etc. underneath "Compliments of" and print as many originals as needed.

Sales professionals know that communications with another real estate investor may bring unexpected and profitable results. Whether you are meeting a long-standing client, a potential new one, or a new acquaintance at an open house, you have the opportunity to explore their real estate investment needs and assess how an exchange may benefit them. Like all good communication, the key is good listening!

- Does the investor know of the possibility of a tax deferred exchange?
    - *Many do not!*
    - *Many do not even consider themselves to be "investors"*
    - *They may use different words: "swap", "trade", "§1031", "§1031 exchange"*
- Does the investor express reluctance to list and sell the property?
    - *"Why should I sell – Uncle Sam would get all the profit!"*
    - *"I'd sell, but I wouldn't have enough left after taxes to buy another property!"*
    - *"I want to get rid of this property, but the taxes would eat me alive!"*

- Do you see an opportunity to sell based on any of the investor motives (Benefits to Real Estate Investors) discussed earlier in this handbook? You owe it to yourself and your clients to become familiar with common reasons investors choose to exchange.
    - Once you learn about the investor's situation, you can work to fulfill their investment objectives.
    - Does the investor simply want to be rid of a management headache?
    - Does the investor want to acquire property in a newer and appreciating area?

- Understand the basics of real estate investment and opportunities for investors to improve their rate of return and accelerate their ability to achieve investment objectives.
    - Ask the investor, "*What would you like more of?*" (Every investor wants more of something – more cash flow, more depreciation benefits, more units, more real property, etc.) Find out what they want more of and then show them a way to move closer to this objective <u>today</u> by exchanging and using your services!
    - Ask, "*Is your current real estate investment giving you everything you want out of a real estate investment?*"
    - Understand that tax deferred exchanges offer many creative possibilities.
    - Brainstorm with the investor regarding different ways to meet their objectives.

4. Develop an Effective Exchange Team

Develop a team of knowledgeable professionals in your area that understand basic tax deferred exchange issues and that have a specialized expertise in areas related to investment property transactions. This would include:

A. Real estate or tax attorney
B. Accountant or CPA
C. Investment property lender
D. Title company and closing/escrow officers
E. Appraisal company
F. Qualified Intermediary (Asset Preservation, Inc.)

It's essential that you have an ongoing relationship with a knowledgeable Qualified Intermediary as a resource for dealing with the wide range of tax deferred exchange issues. Established in 1990, we have obtained virtually everything written on the subject of §1031 exchanges, including summaries of key court cases and private letter rulings. Call API toll-free (800-282-1031) for more information.

SAMPLE INTRODUCTION LETTER #1

<Date>

<Investor Name>
<Investor Address>

<Salutation>

Are you aware of one of the most powerful investment strategies that informed investors have been using since 1921 to build wealth in real estate?

Tax deferred exchanges, under Internal Revenue Code Section 1031, are one of the last significant tax advantages remaining for real estate investors!

Property owners nationwide are using this powerful tax deferral strategy to defer payment of capital gain taxes, thereby increasing their real estate portfolios and improving their rate of return much faster than those who sell and pay their taxes. *The tax deferred exchange gives investors the ability to dispose of a property without incurring a capital gain tax liability, which allows the earning power of the deferred taxes to work for the benefit of the investor instead of the government.* In essence, it can be considered an interest-free loan from the government.

In addition to being able to acquire more real estate faster, tax deferred exchanges provide investors with the opportunity to improve their investment position by acquiring different types of investment real estate. For example, investors can exchange from ranch land in Texas for an income producing apartment complex in Los Angeles. A single family rental house can be exchanged for an ownership interest in a small shopping center. The options to diversify, both geographically and by the type of investment property, are virtually unlimited!

I would like to schedule an appointment to meet with you and learn more about your specific investment objectives.

Sincerely,

<Name of real estate agent here>

SAMPLE INTRODUCTION LETTER #2

<Date>

<Investor Name>
<Investor Address>

<Salutation>

My name is ________________________ and I specialize in selling non-owner occupied properties.

Property values in your market have appreciated significantly. You can **maximize your investment return** by taking advantage of one of the last significant tax advantages remaining for real estate investors - *the Internal Revenue Code Section 1031 tax deferred exchange.*

The tax deferred exchange gives you the ability to dispose of a property without incurring a capital gain tax liability, thereby allowing the earning power of the deferred taxes to work for you, instead of the government. Tax deferred exchanges provide investors with the opportunity to improve their investment position by either acquiring larger properties to depreciate or acquiring different types of investment real estate. The options to diversify, both geographically and by the type of investment property, are virtually unlimited!

Please call me to:

- **Have a market profile on your property prepared -- at no cost or obligation.**
- **Schedule an appointment to learn more about your specific investment objectives.**

Sincerely,

<Name of real estate agent here>

THE API ADVANTAGE™

As a leading national qualified intermediary, Asset Preservation, Inc. (API) is committed to providing its exchange clients with unmatched customer service and the highest level of security available in the §1031 exchange industry. From the client's first contact with an API representative, API's professional exchange counselors, attorneys and accountants work together to meet the client's service needs in order to ensure a smooth transaction with no surprises. In the background, API management maintains tight financial controls and multi-layered security systems necessary to provide a level of comfort and the quality of performance relied on by sophisticated investors and Corporate America; we call it the "*The API Advantage*™."

Experience

- Established in 1990, API has successfully facilitated over 130,000 tax deferred exchanges.

Expertise

- API's Exchange Counselors, attorneys and accountants provide personal attention to each exchange.
- API's specialized Commercial Division staff handles complex exchange transactions where sophistication, speed and institutional flexibility are needed to get the job done.
- API is a member in good standing of the Federation of Exchange Accommodators, the tax deferred exchange industry's only national trade organization.
- API's staff is available for free consultation regarding all §1031 exchange matters.
- API's website includes the ability to initiate a tax deferred exchange 24/7 at www.apiexchange.com.

Security

- API maintains a fidelity bond with coverage in the aggregate amount of $25,000,000 and has Errors & Omissions coverage in the amount of $2,000,000. API has implemented other protections for its clients that go beyond the typical protections offered by other qualified intermediaries.
- API is a member of the Stewart Family of companies under the umbrella of Stewart Information Services, Inc. (Stewart), a NYSE publicly traded company. Stewart Title Company, Inc. (STC) issues a Letter of Assurance (LOA) to each of API's exchange clients upon request. Under the terms of this LOA, STC assures API's performance of its obligations under its Exchange Agreement. The coverage provided by the LOA is not limited to a specific dollar amount like a bond or Errors & Omissions coverage.
- As a member of the Stewart family of companies, API is audited twice each year, once by Stewart's internal audit group and a second time by Stewart's outside auditor, KPMG. The internal and external audits involve complete audits of the books and policies and procedures of API.
- A separate Exchange Account is established for each client. Exchange funds are not commingled with API's operating accounts. The client may require a notarized signature for the movements of funds–a security feature that assures exchange funds are moved only at the direction of the client.

INITIATING AN EXCHANGE WITH ASSET PRESERVATION, INC.

1. Always recommend that the investor discuss a §1031 tax deferred exchange with their tax or legal advisors.

2. Call API's National Headquarters toll-free, 800-282-1031, or the Eastern Regional Office toll-free, 866-394-1031, for a free consultation at any time and definitely before closing on the relinquished property. You can either open an exchange by A) calling API toll-free, B) order online at www.apiexchange.com, click on "Open New §1031 Exchange" or C) by completing a New Exchange Information Sheet – Sale (Phase I). The following information is needed to begin preparing the exchange documents:
   A) The name, address, email and telephone number of the exchanger;
   B) The closing officer's name, address, email, telephone and file number;
   C) The real estate agent's name, address, email, telephone and fax numbers.

3. Ensure that the Purchase and Sale Agreement is "assignable" and that all parties to the contract are made aware of such assignment in writing. It is common to show the seller as "John Doe and/or assignee."

4. Include §1031 exchange language establishing the intent to perform a §1031 tax deferred exchange in the Purchase and Sale Agreement. The §1031 exchange language should establish three things:
   A) Intent to perform a §1031 tax deferred exchange;
   B) Release the Buyer from any liabilities or costs resulting in the exchange;
   C) Notify the Buyer in writing of the assignment.

Sale of Relinquished Property (Phase I):

"Buyer is aware that Seller is to perform an IRC §1031 tax deferred exchange. Seller requests Buyer's cooperation in such an exchange, and agrees to hold Buyer harmless from any and all claims, liabilities, costs, or delays in time resulting from such an exchange. Buyer agrees to an assignment of this contract to Asset Preservation, Inc. by the Seller."

Purchase of Replacement Property (Phase II):

"Seller is aware that Buyer is to perform an IRC §1031 tax deferred exchange. Buyer requests Seller's cooperation in such an exchange, and agrees to hold Seller harmless from any and all claims, liabilities, costs, or delays in time resulting from such an exchange. Seller agrees to an assignment of this contract to Asset Preservation, Inc. by the Buyer."

5. The Qualified Intermediary's Exchange Agreement and other exchange documents must be executed prior to closing the sale.

NEW EXCHANGE INFORMATION SHEET – SALE (Phase 1)

Estimated Close Date ______

Seller / Exchanger Information

As they are shown on title ______

Mailing Address ______

City ______ State ______ Zip ______

Phone ______ Phone 2 / Other ______

Fax ______ Email ______

CLOSER / ESCROW OFFICER INFORMATION

Name ______ Company ______

Address ______

City ______ State ______ Zip ______

Phone ______ Fax ______

Email ______ File No. ______

PROPERTY INFORMATION

Address or Description: ______

City ______ State ______ Zip ______

County ______

Is the Property: ☐ Single/Multiple Family Residence ☐ Commercial ☐ Land ☐ Apt. Bldg. ☐ Other

REAL ESTATE AGENT / BROKER

Name ______ Company ______ Phone ______

BUYER(S)
As they will be shown on title ______

TRANSACTION DETAILS

Sale Price **$** ______ Estimated Mortgage Payoff **$** ______

Is there Seller financing? ☐ Yes ☐ No If yes, amount? **$** ______

Additional Information ______

Please send this form to Asset Preservation, Inc. by either:

Email

1) Go to FILE in the menu bar, select SEND MAIL
2) Address your email to: info@apiexchange.com
   Subject line: NEW ORDER. Please include your contact information

Fax

2) Complete and Print Form
2) Fax to API - Attn: NEW ORDER
   Please include your contact information

If you do not receive confirmation from us within 24 hours, please contact us immediately!

National Headquarters 800-282-1031 • 916-791-5991 • Fax: 916-749-1270
Eastern Regional Office 866-394-1031 • 631-369-3617 • Fax: 631-614-7954

NEW EXCHANGE INFORMATION SHEET – PURCHASE (Phase 2)

Buyer / Exchanger Information

Estimated Close Date ______

As they will be shown on title ______

Mailing Address ______

City ______ State ______ Zip ______

Phone ______ Phone 2 / Other ______

Fax ______ Email ______

CLOSER / ESCROW OFFICER INFORMATION

Name ______ Company ______

Address ______

City ______ State ______ Zip ______

Phone ______ Fax ______

Email ______ File No. ______

PROPERTY INFORMATION

Address or Description: ______

City ______ State ______ Zip ______

County ______

Is the Property: ☐ Single/Multiple Family Residence ☐ Commercial ☐ Land ☐ Apt. Bldg. ☐ Other

REAL ESTATE AGENT /BROKER

Name ______ Company ______ Phone ______

SELLER(S)
As they are shown on title ______

TRANSACTION DETAILS

Purchase Price **$** ______

Is a Deposit Needed? ☐ Yes ☐ No If yes, amount? **$** ______

Additional Information ______

Please send this form to Asset Preservation, Inc. by either:

Email

1) Go to FILE in the menu bar, select SEND MAIL
2) Address your email to: info@apiexchange.com
   Subject line: NEW ORDER. Please include your contact information

Fax

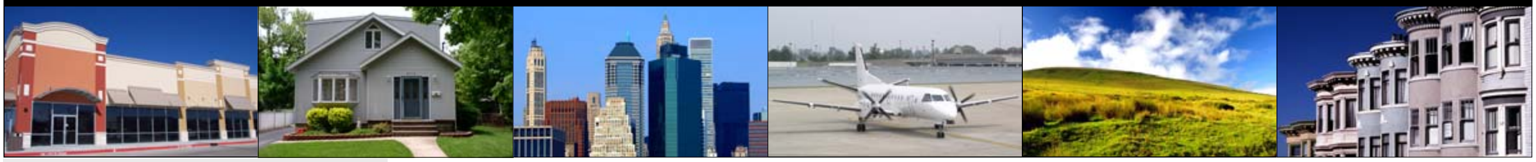
1) Complete and Print Form
2) Fax to API - Attn: NEW ORDER
   Please include your contact information

If you do not receive confirmation from us within 24 hours, please contact us immediately!

National Headquarters 800-282-1031 • 916-791-5991 • Fax: 916-749-1270
Eastern Regional Office 866-394-1031 • 631-369-3617 • Fax: 631-614-7954

A SALE VS. AN EXCHANGE

"ANALYZE THE BENEFITS BEFORE SELLING"



The benefits of IRC Section 1031 exchanges can be tremendous! Investors are often able to defer thousands of dollars in capital gain taxes, both at federal and state levels. If the requirements of a valid §1031 exchange are met, capital gain recognition will be deferred until the taxpayer chooses to recognize it. This essentially results in a long-term, interest-free loan from the IRS.

AN EXAMPLE

An investment property owner sells a rental property for $400,000. The owner originally purchased the property for $200,000. There is $200,000 of debt and the property has been fully depreciated. The capital gain is approximately $350,000 (assuming 75% of the property is depreciable). If the investor does not do an exchange, federal capital gain taxes would be:

$150,000 (depreciation recapture) x 25% =	$37,500
$200,000 (capital gain balance) x 15% =	$30,000
$350,000 Capital Gain Taxes Owed	$67,500

The state taxes owed (where applicable) would need to be added to the federal taxes due. Assuming the property owner sold in California, the following additional taxes would need to be paid:

State level (CA) 9.3%, $350,000 x 9.3% =	$32,550
Total Capital Gain Taxes (Fed. & State)	$100,050

The next comparison analyzes the value of the new property that could be acquired in a sale versus an exchange. The comparison assumes an investor makes a 25% down payment and finances 75% of the property (75% loan-to-value ratio).

SALE VS. AN EXCHANGE

	SALE	EXCHANGE
Equity	$200, 000	$200, 000
Capital Gain Tax	$99, 050	$0
Cash to Reinvest	$100, 950	$200, 000
ASSUMING A 75% LOAN-TO-VALUE		
New Property	$403, 800	$800, 000

This example illustrates that the real power of a tax deferred exchange is not just the tax savings – it is the increase in purchasing power generated by this tax savings!

ADVANTAGES OF AN EXCHANGE

1. Preservation of equity

2. Maximize return on investment

3. Increased cash flow from larger properties

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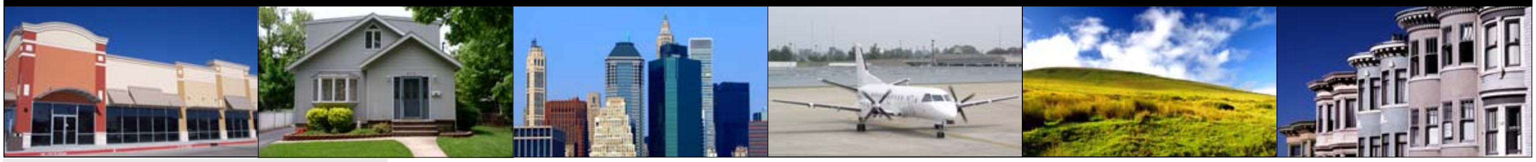
Template # 1

1031 TAX DEFERRED EXCHANGES

"AN OVERVIEW OF SEVERAL REQUIREMENTS FOR TAX DEFERRAL"



WHAT IS IRC SECTION 1031?

Section 1031 of the Internal Revenue Code allows an owner of investment property to exchange property and defer paying federal and state capital gain taxes (up to 15% Federal, 25% depreciation recapture and applicable state taxes) if they purchase a "like-kind" property following the rules and regulations of the Internal Revenue Code. This allows investors to use all of the sale proceeds to leverage into more valuable real estate, increase cash flow, diversify into other properties, reduce management or consolidate holdings.

WHAT IS "LIKE-KIND" PROPERTY?

There is some confusion regarding what type of property qualifies for a §1031 tax deferred exchange. The Internal Revenue Code Section 1031 states that "no gain or loss shall be recognized on the exchange of property held for productive use in a trade or business or for investment if such property is exchanged solely for property of like kind which is to be held either for productive use in a trade or business or for investment." "Like-kind" property can include, but is not limited to, any of the following, provided it is held for investment:

- Single Family Rental
- Duplex
- Apartment
- Commercial Property
- Raw Land

For example, raw land can be exchanged for a single family rental, or apartments or a commercial building. Properties can be exchanged anywhere within the United States.

DOES AN EXCHANGE NEED TO BE SIMULTANEOUS?

No, contrary to what some property owners envision, a §1031 tax deferred exchange is rarely a two-party swap. Most exchanges are delayed exchanges, whereby the Exchanger has 180 days between the sale of the relinquished property and the closing of the replacement property. They must identify the potential replacement property (or properties) within 45 calendar days from closing on the relinquished property.

WHEN IS A §1031 EXCHANGE APPLICABLE?

It is applicable whenever a property owner intends to SELL any property that is not their primary residence (and falls under the definition of "like-kind") and plans to BUY another "like-kind" property within 180 calendar days following the closing of the relinquished property.

Paramount to any exchange is a competent and experienced Qualified Intermediary. Asset Preservation is the entity which structures, guides and documents the exchange transaction from beginning to end.

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Template # 2

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FIVE REASONS TO EXCHANGE

"INVESTORS CAN MEET MANY OBJECTIVES UNDER IRC §1031"






Section 1031 tax deferred exchanges continue to increase in popularity as more investors nationwide discover the wide range of investment objectives that can be easily met through exchanging.

I. PRESERVATION OF EQUITY

A properly structured exchange provides real estate investors with the opportunity to defer 100% of both Federal and State capital gain taxes. This essentially equals an interest-free, no-term loan on taxes due until the property is sold for cash! Often the capital gain taxes are deferred indefinitely because many investors continue to exchange from one property to the next, dramatically increasing the value of their real estate investments with each exchange!

II. LEVERAGE

Many investors exchange from a property where they have a high equity position, or one that is "free and clear", into a much more valuable property. A larger property produces more cash flow and provides greater depreciation benefits, which therefore increase the investors' return on their investment.

III. DIVERSIFICATION

Exchangers have a number of opportunities for diversification through exchanges. One option is to diversify into another geographic region, such as exchanging out of one apartment building in Denver, Colorado, for two additional apartments – one in Los Angeles, California, and the other in Dallas, Texas. Another diversification alternative is acquiring a different property type, such as exchanging from several residential units to a small retail strip center.

IV. MANAGEMENT RELIEF

Some investors accumulate several single family rentals over the years. The ongoing maintenance and management of what can be a far-reaching group of properties can be lessened by exchanging these properties for one property better suited to on-site maintenance and management. Exchanging into a single apartment complex with a resident manager is a good example of this strategy.

V. ESTATE PLANNING

Sometimes a number of family members inherit one large property and disagree about what they want to do with it. Some want to continue holding the investment and some desire to sell it immediately for cash. By exchanging from one large property into several smaller properties, an investor can designate that, after their death, each heir will receive a different property, which they can either hold or sell.

Call the knowledgeable exchange professionals at **Asset Preservation** for a complimentary consultation regarding your specific investment objectives.

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Template # 3

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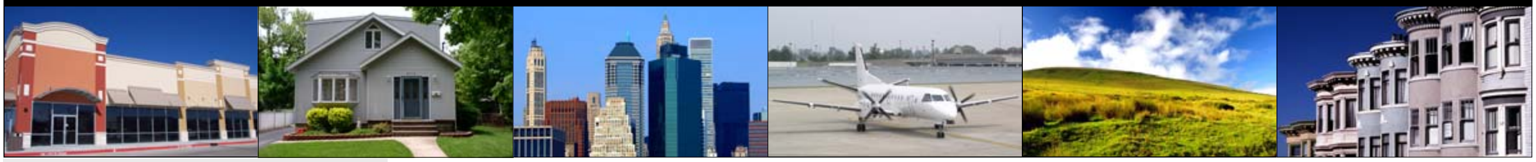
CALCULATING YOUR CAPITAL GAIN

"ANALYZE THE BENEFITS OF AN EXCHANGE BEFORE YOU SELL"



Compare the tax savings and additional purchasing power of an exchange vs. a taxable sale:

1. Calculate Net Adjusted Basis
Original Purchase Price ____________________
+ Improvements ____________________
- Depreciation ____________________
= NET ADJUSTED BASIS ____________________

2. Calculate Capital Gain
Sales Price ____________________
- Net Adjusted Basis ____________________
- Cost of Sale ____________________
= CAPITAL GAIN ____________________

3. Calculate Capital Gain Tax DUE
Recaptured Depreciation (25%) ____________________
+ Federal Capital Gain (15%) ____________________
+ State Tax (when applicable) ____________________
= TOTAL TAX DUE ____________________

4. Analyze Purchase without an Exchange
Sales Price ____________________
- Cost of Sale ____________________
- Loan Balances ____________________
= GROSS EQUITY ____________________
Capital Gain Taxes Due ____________________
= NET EQUITY ____________________
Net Equity X 4 = ____________________

5. Analyze Purchase with an Exchange
Capital Gain Taxes Due ____________________
Gross Equity = Net Equity ____________________
Gross Equity x 4 = ____________________

The real power of a tax deferred exchange is not just the tax savings — it is the tremendous increase in purchasing power generated by this tax savings! With the advantages of leverage, every dollar saved in taxes allows a real estate investor to purchase two to three times more real estate.

Many investors are surprised to discover that capital gain taxes are far higher than 15%. State taxes, which can be as high as 11% in some states, are added to the federal capital gain taxes owed. In addition, depreciation deducted over the ownership period is taxed at a rate of 25%. The net result is often a large percentage of your profits going directly to pay taxes. Under the 4th calculation, the net equity times four (assuming a 25% down payment) is the value of property you could purchase after paying all capital gain taxes.

Under the 5th calculation, involving an exchange, no taxes are paid, leaving the full purchasing power of the entire gross equity to acquire considerably more real estate! In just one transaction, the Exchanger acquires far more investment property than a seller!

Note: Asset Preservation, Inc. cannot give tax and or legal advice. Every taxpayer should review their specific transaction and potential tax consequences with their own tax and/or legal advisors.

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Template # 4

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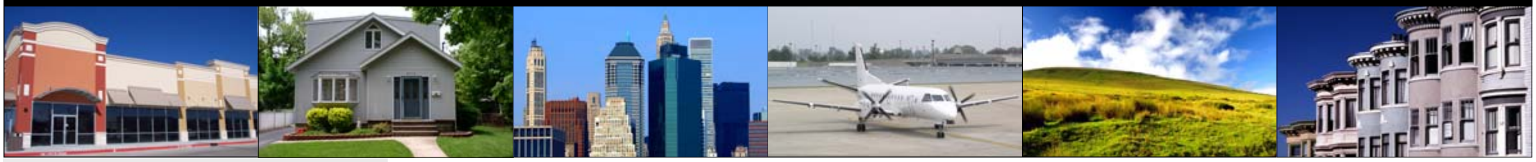
An Introduction to the Benefits of §1031 Tax Deferred Exchanges



EXCHANGES ARE A POWERFUL TAX STRATEGY

Tax deferred exchanges have been a part of the tax code since 1921 and are one of the last significant tax advantages remaining for real estate investors. One of the key advantages of a §1031 exchange is the ability to dispose of a property without incurring a capital gain tax liability, thereby allowing the earning power of the deferred taxes to work for the benefit of the investor (called an "Exchanger") instead of the government. In essence, it can be considered an interest-free loan from the IRS.

BASIC TAX EXCHANGE REQUIREMENTS

The IRS allows up to a maximum of 180 calendar days between the sale of the relinquished property and the purchase of the replacement property. Within the 180 day "exchange period," the investor must also properly identify suitable replacement properties within 45 calendar days of closing on the sale of the relinquished property. There are a number of requirements which need to be met to qualify for tax deferral under the tax code:

Requirement #1: Both the "relinquished" and "replacement" properties must be held for investment or used in a business. The IRS uses the term "like-kind" to describe the type of properties that qualify. Any property held for investment can be exchanged for any other "like-kind" property held for investment. This definition covers a vast variety of developed and undeveloped real estate. Properties which are clearly not like-kind are an investor's primary residence or property "held for sale."

The relinquished and replacement properties need not have identical functions (i.e. both be residential rentals or commercial strip centers). The key issue is that the Exchanger can substantiate that both properties were "held for investment."

Requirement #2: The IRS requires an investor to identify the replacement property(s) within 45 days from closing on the sale of a relinquished property. The 45 day Identification Period begins on the closing date, and the replacement property(s) must be properly identified in a letter signed by the Exchanger. Exchangers have a number of ways to properly identify properties. They may identify up to three replacement properties without regard to their total fair market value (Three Property Rule). Alternatively, they can identify an unlimited number of replacement properties, if the total fair market value of all properties is not more than twice the value of the property sold (200% Rule). An Exchanger can not meet either of these rules if they acquire 95%of the aggregate fair market value of all identified replacement properties.

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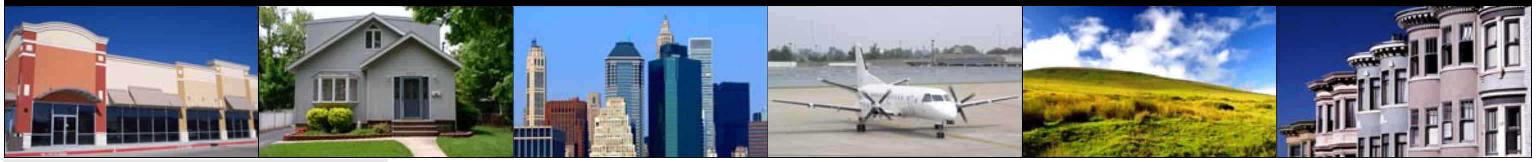
Template # 5

An Introduction to the Benefits of §1031 Tax Deferred Exchanges



Requirement #3: Close on the replacement property by the earliest of either: 180 calendar days after closing on the sale of the relinquished property or the due date for filing the tax return for the year in which the relinquished property was sold (unless an automatic filing-extension has been obtained). Example: If an Exchanger closes on the relinquished property on December 27, the exchange period will end on April 15 (assuming this is the due date for their tax return). In this case, they would have to close on the replacement property (or file the appropriate extension) by April 15. Exchangers may choose to close both transactions within a shorter period of time, thereby avoiding the potential hardship of the 45/180 day time limits.

Requirement #4: The most common exchange format, the delayed exchange, requires investors to work with an IRS-approved middleman called a "Qualified Intermediary." The Qualified Intermediary documents the exchange by preparing the necessary paperwork (Exchange Agreement and other documents), holding proceeds on behalf of the Exchanger, and structuring the sale of the relinquished property and purchase of the replacement property.

Note: To defer all capital gain taxes, an Exchanger must buy a property or properties of equal or greater value (net of closing costs), reinvesting all net proceeds from the sale of the relinquished property. Any funds not reinvested, or any reduction in debt liabilities not made up for with additional cash from the Exchanger, is considered "boot" and is taxable. Example: Stewart sells his duplex, which he held for investment, for $160,000. A hundred calendar days later he closes on a different duplex, which he will hold for investment, for $110,000. Stewart receives the $50,000 in excess funds for his child's education. Stewart must pay capital gain taxes on $50,000. (In this example, Stewart chose to take some money out of his exchange and pay the capital gain taxes.)

WHEN ARE CAPITAL GAIN TAXES PAID?

Maybe never. Many investors mistakenly believe they will "have to pay the taxes sometime" so they might as well just sell. Quite often, this is a bad investment decision. The tax on an exchange is deferred into the future and is only recognized when an investor actually sells the property for cash instead of performing an exchange. Investors can continue to exchange properties as often and for as long as they wish, thus moving up to better investments and putting off the taxes for many years.

To learn more:

1) Call Asset Preservation toll-free at 800-282-1031
2) Visit API's website at www.apiexchange.com.

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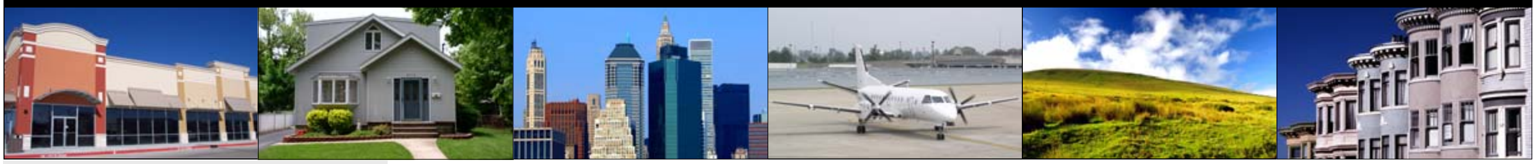
Template # 6

What Language Should be Added to the Contract in an Exchange?



Although many Exchangers include language in their Purchase and Sale Agreement establishing their intent to perform an exchange, it is not required by the Internal Revenue Code.

CONTRACTS MUST BE ASSIGNABLE

It is important, however, that the Purchase and Sale Agreements for both properties are assignable. In order to structure a typical exchange transaction, Asset Preservation, Inc. (API) must be assigned in as the Seller of the relinquished property and also as the Buyer of the replacement property. An Exchanger should review the contract to confirm they are not prohibited from assigning their position as either a "Seller" or "Buyer" to a Qualified Intermediary. When a typical exchange is initiated by Asset Preservation, API is shown as the Seller on the Settlement Statement instead of the Exchanger being reflected as the Seller.

"LAST MINUTE" EXCHANGES ARE POSSIBLE

At Asset Preservation, many real estate investors contact our office *just minutes before closing on their transaction* and successfully convert a sale into an exchange. In most situations, a successful exchange can be accomplished as long as Asset Preservation is contacted prior to closing.

Many Exchangers and real estate agents add exchange language to the contract for a couple of reasons:

1. It establishes their intent to perform a §1031 tax deferred exchange;
2. To notify the other party in advance of the need to assign the contract to an Intermediary.

The language below is satisfactory to establish the Exchanger's intent to perform a tax deferred exchange and releases the other parties from costs or liabilities as a result of the exchange:

SALE OF RELINQUISHED PROPERTY

"Buyer is aware that Seller intends to perform an IRC Section 1031 tax deferred exchange. Seller requests Buyer's cooperation in such an exchange and agrees to hold buyer harmless from any and all claims, costs, liabilities, or delays in time resulting from such an exchange. Buyer agrees to an assignment of this contract by the Seller."

PURCHASE OF REPLACEMENT PROPERTY

"Seller is aware that Buyer intends to perform an IRC Section 1031 tax deferred exchange. Buyer requests Seller's cooperation in such an exchange and agrees to hold seller harmless from any and all claims, costs, liabilities, or delays in time resulting from such an exchange. Seller agrees to an assignment of this contract by the Buyer."

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Template # 7

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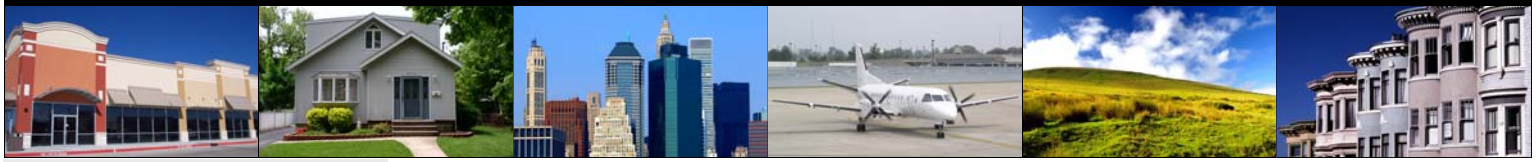
1031 Tax Deferred Exchanges

"Understanding Common Exchange Terminology"



To many real estate investors, the "buzz words" often used to describe different aspects of a tax deferred exchange can be confusing. For example, doesn't something with two 'downlegs' and three 'uplegs' sound a lot more like a lopsided creature than an exchange transaction? Reflected below are brief descriptions of commonly used exchange terminology:

ACTUAL RECEIPT: Physical possession of proceeds.

BOOT: "Non like-kind" property received; "Boot" is taxable to the extent there is a capital gain.

CASH BOOT: Any proceeds actually or constructively received by the Exchanger.

CONSTRUCTIVE RECEIPT: Although an investor does not have actual possession of the proceeds, they are legally entitled to the proceeds in some manner such as having the money held by an entity considered as their agent or by someone having a fiduciary relationship with them. This can create a taxable event.

DIRECT DEEDING: Transfer of title directly from the Exchanger to Buyer and from the Seller to Exchanger after all necessary exchange documents have been executed.

EXCHANGER: Entity or taxpayer performing an exchange.

EXCHANGE AGREEMENT: The written agreement defining the transfer of the relinquished property, the subsequent receipt of the replacement property, and the restrictions on the exchange proceeds during the exchange period.

EXCHANGE PERIOD: The period of time in which replacement property must be received by the Exchanger; Ends on the earlier of 180 calendar days after the relinquished property closing or the due date for the Exchanger's tax return (If the 180th day falls after the due date of the Exchanger's tax return, an extension may be filed to be entitled to the full 180 day exchange period).

IDENTIFICATION PERIOD: A maximum of 45 calendar days from the relinquished property closing to properly identify potential replacement property or properties.

LIKE-KIND PROPERTY: Any property used for productive use in trade or business or held for investment; both the relinquished and replacement properties must be considered "like-kind" to qualify for tax deferral.

MORTGAGE BOOT: This occurs when the Exchanger does not acquire debt that is equal to or greater than the debt that was paid off on the relinquished property sale; Referred to as "debt relief". This can create a taxable event.

QUALIFIED INTERMEDIARY: The entity who facilitates the exchange; Defined as follows: (1) Not a related party (i.e. agent, attorney, broker, etc.) (2) Receives a fee (3) Receives the relinquished property from the Exchanger and sells to the buyer (4) Purchases the replacement property from the seller and transfers it to the Exchanger; Asset Preservation, Inc. (API) is a "Qualified Intermediary."

RELINQUISHED PROPERTY: Property given up by the Exchanger; Referred to as the sale, 'downleg' or 'Phase I'.

REPLACEMENT PROPERTY: Property received by the Exchanger: Referred to as the purchase, 'upleg' or 'Phase II'.

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Template # 8

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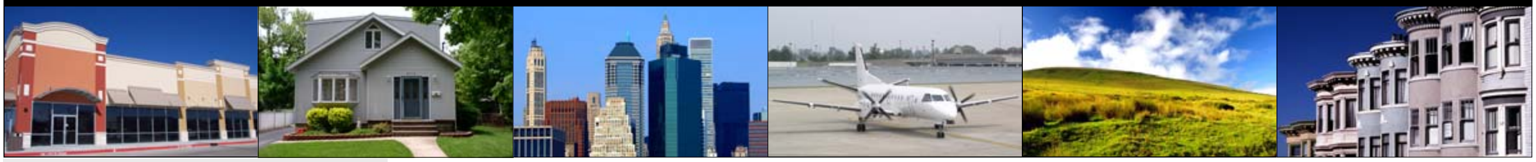
WHAT IS A QUALIFIED INTERMEDIARY

"UNDERSTANDING THE ROLE OF A Q.I."



WHAT IS A QUALIFIED INTERMEDIARY?

In most circumstances, the use of a "Qualified Intermediary" is required to successfully complete an IRC Section 1031 tax deferred exchange. Treasury Regulation §1031.1031 (k)-1(g)(4)(iii) refers to the entity that facilitates an exchange as a "Qualified Intermediary" (sometimes referred to as an accommodator or facilitator), which it defines as follows:

1) *A Qualified Intermediary ("QI") is a person who:*

2) *Is not the taxpayer or a disqualified person;*

Enters into a written agreement with the taxpayer (the "Exchange Agreement") under which the QI:

- *Acquires the relinquished property from the taxpayer;*
- *Transfers the relinquished property;*
- *Acquires the replacement property;*
- *Transfers the replacement property to the taxpayer.*

3) *The Exchange Agreement must expressly limit the taxpayer's rights to receive, pledge, borrow, or otherwise obtain benefits of money or other property held by the QI. (See Treasury Regulations §1031.1031(k)-1(g)(4)(i).)*

The use of an experienced QI can significantly reduce the complexity of an exchange by assuring the proper execution of required documentation. The QI industry is not regulated nationally. Consequently, the careful selection of the QI is essential to ensure the highest levels of expertise and security of funds.

Asset Preservation, Inc. (API) provides Qualified Intermediary services in conformity with the Internal Revenue Code and Treasury Regulations. API:

- Coordinates with each taxpayer's attorney and/or tax advisor, forwards exchange transaction documentation as needed so that the IRC §1031 rules and regulations are thoroughly understood;
- Prepares the necessary exchange documentation - Exchange Agreement, Assignment Agreement (s), Notice of Assignment (s), Qualified Exchange Account Form, Security of Funds Instrument and instructions to each Closing Officer and oversees each closing to assist in proper §1031 procedures;
- Facilitates the sale of the relinquished property and the purchase of the replacement property;
- Holds and protects exchange proceeds on behalf of the Exchanger until funds are needed to purchase the replacement property;
- Provides guidance, information and critical timelines throughout the entire exchange.

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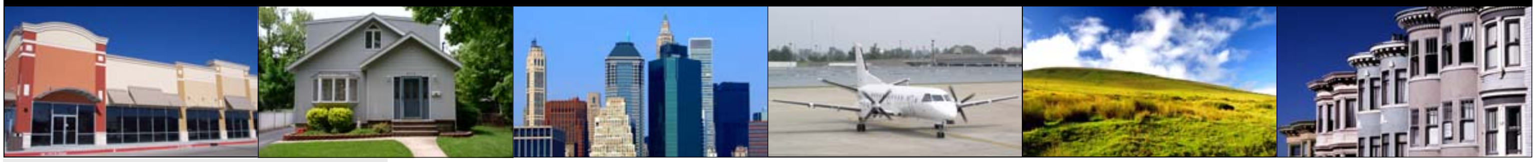
WHAT DOES NOT QUALIFY?
"PROPERTY EXCLUDED FROM §1031 TREATMENT"



Taxpayers nationwide are able to acquire better performing properties or meet other investment objectives by understanding the great variety of properties that can be exchanged under Internal Revenue Code Section 1031. There are, however, some types of assets that do not qualify for non-recognition treatment, such as:

1) Stock in trade or other property held primarily for sale: The exclusion encompasses two aspects - A) "Stock in trade," which is property held for sale to customers in the ordinary course of the taxpayers' trade or business resulting in gain taxed as ordinary income and; B) "Property held primarily for sale," which is a much more expansive category of excluded property. The word primarily is viewed as being held "principally" or "of first importance." [*Malat v. Riddell, 383 US 569, 5 L. Ed. 2d 154, 86 S. Ct. 244 (1966)*]. Generally the IRS considers property held primarily for any disposition as falling into the category of property held primarily for sale. [*Rev Rul 75-292, 1975-2 CB 333; Wagnesen v. Comm., 74 TC 653 (1980)*]. See Asset Preservation's flyer titled "Property Held for Sale" for a more exhaustive list of factors the IRS reviews to determine if a taxpayer is holding a property primarily for sale.

2) Stocks, bonds or notes: Although stocks can be exchanged in a corporate reorganization under IRC §1036(a) and certain United States bonds under IRC §1037, none of these types of transactions qualify for tax deferral under IRC §1031.

3) Other securities of evidences of indebtedness or interest: The scope of this category is not clear because most of the court cases addressing this category are obsolete after the 1984 amendment excluding partnerships interests from §1031 deferral. Check with your tax and/or legal advisor.

4) Interests in a partnership: In 1984, the exclusion of an interest in a partnership was added to the Internal Revenue Code. [*Tax Reform Act of 1984, Pub. L. No.98-369, 98 Stat.494: IRC §1031(a)(2)(D)*]. Although a partnership or limited liability company (LLC) can perform an exchange at the entity level, the individual partnership interest or LLC member interest is excluded. However, an interest in a partnership that has made a valid election under IRC §761(a), to be excluded from the application of subchapter K, is treated as an interest in each of the assets of the partnership and not as an interest in a partnership. A thorough discussion is beyond the scope of this article and taxpayers should get guidance from their tax and/or legal advisors regarding timing and other issues involving exchanges where property has been held in a partnership or LLC.

5) Certificates of trust or beneficial interests: These represent a right to an interest in the stock or a corporation and are not considered real property.

6) Choses in action: A chose in action is a right to recover or receive money or other consideration or property, but a chose in action is not considered property in itself. Courts typically look to state law for the definition of a chose in action. [*See Miller v. United States, 63-2 USTC & 9606, SD Ind 1963*]. The chose in action exclusion is vague due to the difficulty in defining the term itself and it has rarely been used to disallow non-recognition treatment in an exchange. Some major league player contracts have been considered a chose in action and denied exchange treatment. [*Ltr Rul 8453034; Heltzer v. Comm., TC Memo 1991-404, 62 TCM 518, 537]*.

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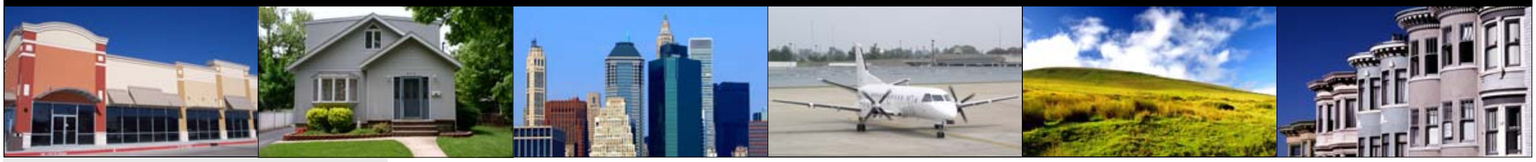
Template # 102

WHAT ARE THE REQUIREMENTS FOR FULL TAX DEFERRAL IN A §1031 EXCHANGE?



TAX DEFERRAL AND CAPITAL GAIN CALCULATIONS ARE DIFFERENT

Some real estate investors confuse what is required for full tax deferral in an exchange with calculations involved in determining their accumulated capital gain. The requirements for full tax deferral are different than the capital gain tax and/or basis computations. The formulas for calculating a capital gain tax liability can be found in Asset Preservation's handout entitled "*Calculating Your Capital Gain*."

WHAT ARE THE REQUIREMENTS FOR FULL TAX DEFERRAL IN AN EXCHANGE?

If an Exchanger intends to perform an exchange that is fully tax deferred, they must meet two simple requirements:

1. **Reinvest the entire net equity (net proceeds) in one or more replacement properties.**

AND

2. **Acquire one or more replacement properties with the same or a greater amount of debt.**

An alternative approach for complete tax deferral is *acquiring property of equal or greater value and spending the entire net equity in the acquisition.* One exception to the second requirement is that an Exchanger can offset a reduction in debt by adding cash to the replacement property closing.

WHAT IS "BOOT?"

The term "boot" refers to any property received in an exchange that is not considered "like-kind." Cash boot refers to the receipt of cash. Mortgage boot (also called "debt relief") is a term describing an Exchanger's reduction in mortgage liabilities on a replacement property. Any personal property received is also considered boot in a real property exchange transaction.

If the Exchanger receives cash or other property in addition to like-kind property, this may result in a taxable event. To determine the taxes that may be due, several steps are required. First, the Exchanger's tax advisor must calculate the realized capital gain. Second, the amount of "boot", money or other property received, along with any depreciation recapture, must be determined. Finally, a tax advisor should always review the Exchanger's specific situation to see if there are additional tax issues that may offset any current capital gain tax liabilities.

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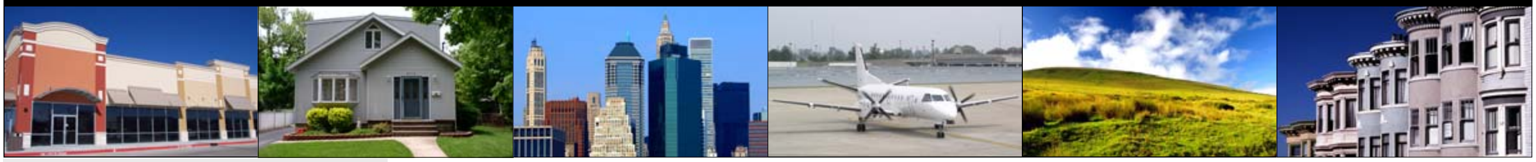
Template # 9

THE EXCHANGE EQUATION

"BALANCING THE EXCHANGE"



REALIZED GAIN VS. RECOGNIZED GAIN

Whenever property is sold, it is important to make the distinction between realized gain and recognized gain. Realized gain is defined as the net sale price minus the adjusted tax basis. Recognized gain is the taxable portion of the realized gain. The common objective in a tax deferred exchange is disposing of a property containing significant realized gain and acquiring a "like-kind" replacement property so there is no recognized gain. In order to defer all capital gain taxes, an Exchanger must "balance the exchange" by acquiring replacement property that is the same or greater value as the relinquished property, reinvest all net equity and replace any debt on the relinquished property with debt on the replacement property (although a reduction in debt can be offset with additional cash.)

THE EXCHANGE EQUATION

The Exchanger can quickly calculate whether there will be recognized gain based on the following principals: Taxable "boot" is defined as non like-kind property the Exchanger may receive as part of an exchange. "Cash boot" is the receipt of cash and "mortgage boot" (also referred to as debt relief) is a reduction in the Exchanger's mortgage liabilities on a replacement property. Generally, capital gain is recognized (and therefore taxable) to the extent there is boot.

For a fully deferred exchange, an Exchanger must reinvest all net equity and acquire property with the same or greater debt. Compare the relinquished property with the replacement property in terms of:

1. Value
2. Net Equity (after deducting costs of sale)
3. Debt

EXAMPLE 1	Relinquished Property	Replacement Property
VALUE	$450, 000	$600, 000
NET EQUITY	$200, 000	$200, 000
DEBT	$250, 000	$400, 000

The Exchanger is acquiring property of greater value, reinvesting the entire net equity and increasing the mortgage on the replacement property. Analysis: There is no boot and no recognized gain.

EXAMPLE 2	Relinquished Property	Replacement Property
VALUE	$450, 000	$600, 000
NET EQUITY	$200, 000	$150, 000
DEBT	$250, 000	$450, 000

The Exchanger keeps $50,000 of the exchange proceeds, reinvesting only $150,000 as a down payment on the replacement property. Analysis: There is $50,000 of "cash boot" which results in recognized (taxable) gain.

EXAMPLE 3	Relinquished Property	Replacement Property
VALUE	$450, 000	$350, 000
NET EQUITY	$200, 000	$200, 000
DEBT	$250, 000	$150, 000

The Exchanger acquires property of a lower value and, while reinvesting all equity in the replacement property, acquires less debt in the process. Analysis: The Exchanger has reduced the debt by $100,000 ("mortgage boot") which results in a recognized (taxable) gain of $100,000.

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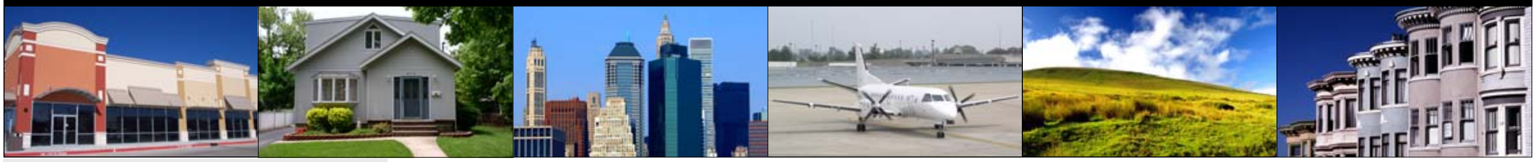
Template # 10

PARTIAL TAX DEFERRAL

"DEFER SOME CAPITAL GAIN TAXES AND OBTAIN CASH NOW"



Although a §1031 tax deferred exchange allows an investor to defer 100% of their capital gain tax liability, some choose to only perform a partially deferred exchange.

WHAT IS A PARTIAL EXCHANGE?

In a partial exchange, the investor decides to defer some capital gain taxes and also recognize as gain by either 1) cash proceeds received or 2) a reduction on their replacement property debt — both of these events result in the receipt of "boot" which refers to any property received in an exchange that is not considered "like-kind." [Cash boot refers to the receipt of cash. Mortgage boot is a term describing an Exchanger's reduction in mortgage liabilities on a replacement property. Any personal property received is also considered boot in a real property exchange transaction.]

WHEN CAN CASH PROCEEDS BE RECEIVED?

Cash proceeds can be received as follows:

1) When the Exchanger instructs the closing officer to disburse a fixed dollar amount of proceeds to them directly from the relinquished property closing;

- OR -

2) After all identified property has been purchased or after the end of the exchange period, if there are properties which have been identified but not purchased.

WHAT ARE THE REQUIREMENTS FOR FULL TAX DEFERRAL IN AN EXCHANGE?

If an Exchanger intends to perform an exchange that is fully tax deferred instead of partially deferred, they must meet two specific requirements:

1) Reinvest the entire net equity (net proceeds) in one or more replacement properties;

- AND -

2) Acquire one or more replacement properties with the same or a greater amount of debt. [One exception to the second requirement is that an Exchanger can offset a reduction in debt by adding cash to the replacement property closing].

WHEN NOT TO DO AN EXCHANGE

If the boot is greater than the amount of the capital gain, then it's not recommended to do an exchange.

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Template # 11

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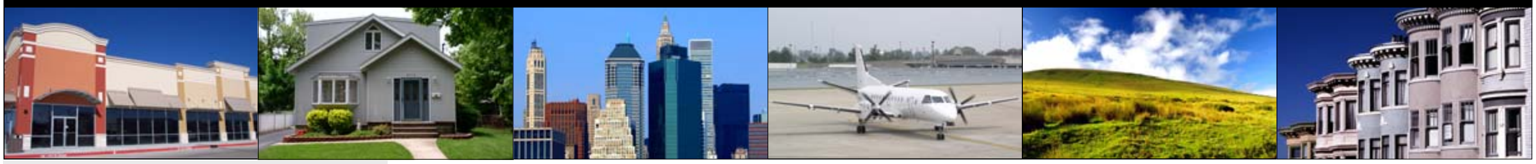
SIMULTANEOUS EXCHANGES

"USING A QI IS THE ONLY SAFE HARBOR PROVIDED BY THE REGULATIONS"



The simultaneous exchange is the oldest method of performing an IRC §1031 tax deferred 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:** No need for a Qualified Intermediary.
- **Disadvantages:** 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. 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 Exchanger. 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 Qualified Intermediary.
- **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 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 had been structured.

3) **SIMULTANEOUS WITH A QI:** A Qualified Intermediary 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 Qualified Intermediary ("QI.") The QI provides written instructions to the closing officers, prepares the exchange agreement and other exchange documents and insulates the Exchanger from any "constructive receipt" issues. In addition, this format can be easily converted to a delayed exchange and eliminate the time pressure of trying to close the entire transaction simultaneously.
- **Disadvantages:** Nominal cost for the QI services. Even if properties close on the same day, one of these three methods must be used to perform a valid transaction. It is not sufficient to merely wire proceeds from the sale closing to the purchase closing on the same day and obtain tax deferral. If the Exchanger has "constructive receipt" of the funds, even if only for a few minutes or hours, the transaction no longer qualifies for tax deferral.

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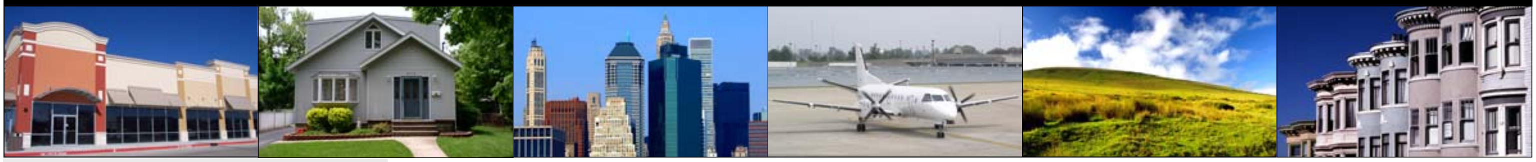
Template # 12

SIMULTANEOUS EXCHANGES

"CONSTRUCTIVE RECEIPT - EXAMPLES OF WHAT NOT TO DO"



As suggested by the name, a basic requirement for a valid IRC Section 1031 tax deferred exchange is an exchange of one investment property for another investment property. To qualify for tax deferral, an Exchanger must never acquire *actual* or *constructive* receipt of the proceeds resulting from the sale of the property given up in the exchange. (See e.g., Fredericks, Fred - 1994). Unless an Exchanger is merely swapping one property for another in a cashless two-party or three-party exchange (a "simultaneous exchange"), a Qualified Intermediary (QI) must be used as a conduit for the sale proceeds to avoid being deemed to have actual or constructive receipt of the exchange funds. Even if an exchange transaction is structured as a swap from the perspective of the Exchanger, however, engaging in an exchange without a Qualified Intermediary can be dangerous.

Allen, Joyce, (1982) TC Memo

In this case, the Tax Court held that a multi-party exchange using two escrows was a sale, followed by a purchase because neither of the escrows was made subject to the successful completion of the transaction in the other escrow.

Klein, Keith, (1993) TC Memo

Here, the Tax Court held that a multi-party transaction involving an escrow account was a sale followed by a reinvestment of sale proceeds, rather than a tax deferred exchange because the Exchanger had unrestricted control over the funds in the escrow account. Although the escrow agreement assigned some of the escrowed funds (from the sale of the Exchanger's relinquished property) to a third party (the person from whom the Exchanger was acquiring the replacement property), those instructions were made at the Exchanger's "own behest." The deal between the Exchanger and the purchaser of his property involved no restrictions on the Exchanger's control of the sale proceeds that were to be deposited into the escrow account. Thus, at the time that the purchaser deposited the funds in escrow, the Exchanger had constructive receipt of the proceeds.

Florida Industries Investment Corp. (1999) TC Memo

A corporation intending to perform an exchange failed to prove that it, acting through its president, did not have control over the escrowed sale proceeds, thus the exchange did not qualify as a tax deferred exchange. Although the sales agreement imposed restrictions on the corporation's access to the escrowed sale proceeds until the expiration of the 180-day period, the escrow agent (also, the corporation's lawyer) violated the terms of the agreement and permitted the president to control the disbursement of the funds for purposes other than the acquisition of replacement property. Also, on several occasions, the agent signed checks to pay off balances due with respect to the acquisition of replacement properties, and amounts in excess of those balances due were not re-deposited in the escrow account.

Maxwell, Mark v. U.S. (1988)

A district court held that a multi-party exchange using an escrow was a sale and not a tax deferred exchange where the Exchanger had the discretion to terminate the escrow before using the exchange proceeds for purchasing the replacement property that was to be transferred back to the Exchanger.

These examples illustrate an Exchanger may have constructive receipt of the sale proceeds even though they never actually receive cash from the sale of the investment property.

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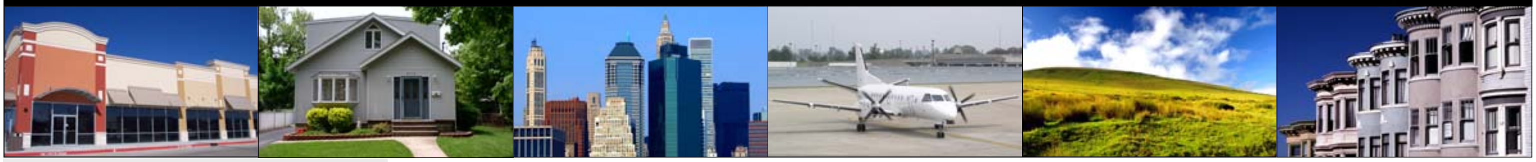
Template # 13

STAGES OF A 1031 TAX DEFERRED EXCHANGE

"FOLLOW THESE SIMPLE STEPS FOR A SUCCESSFUL TRANSACTION"



STEP #1 - SALE OF THE RELINQUISHED PROPERTY

(a) Phone consultation with Asset Preservation, Inc. (API)
(b) Exchange opened with API.
(c) Pursuant to the Exchange Agreement, an Assignment is executed prior to closing and API assumes the Exchanger's Purchase and Sale Contract.
(d) API instructs the closing officer to directly deed the property from the Exchanger to the buyer.
(e) Proceeds are transferred directly to API via wire transfer. API sets up a separate "Qualified Exchange Account" for each Exchanger.

STEP #2 - IDENTIFICATION OF REPLACEMENT PROPERTY

(a) API provides Exchanger confirmation of exchange proceeds received; the 45-Day Identification Period and 180-Day Exchange Period; the specific identification requirements; summary of the Identification Rules.
(b) Exchanger properly identifies potential replacement properties under either the Three Property Rule, 200% Rule or the 95% Rule.

STEP #3 - PURCHASE OF REPLACEMENT PROPERTY

(a) Exchanger has a total of 180 calendar days from the relinquished property closing date, or their tax filing date, whichever is earlier, to acquire "like-kind" replacement properties.
(b) Prior to closing on the replacement property, Exchanger assigns the Purchase & Sale Contract to API.
(c) After the Assignment is executed, the exchange is complete when API purchases the replacement property with the exchange proceeds and transfers it to the Exchanger by a direct deed from the seller.

1) Initial Phone Consultation with the Exchanger

2) Exchange opened with Asset Preservation, Inc. (API)

3) API provides exchange documents for sale to closing officer

4) Sale property deeded to buyer; Sale closed; Funds wired to API

5) API provides identification information and summary of rules

6) Exchanger identifies property within 45 calendar days

7) API forwards exchange documents for purchase to closing officer

8) Funds wired to closing officer; Direct deed and close of purchase

9) Exchange completed in 180 days; copies of documents to Exchanger

0 — **45 days** — **180 days**

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Template # 14

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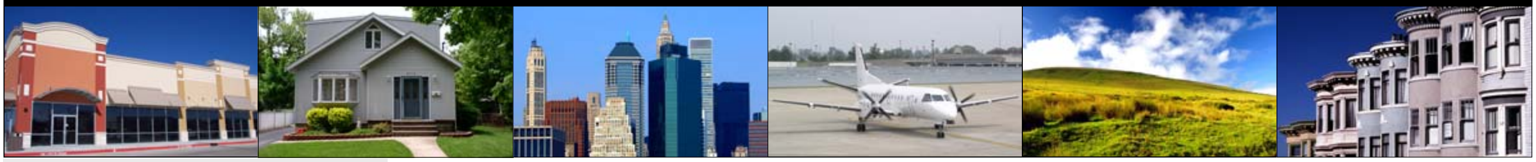
IDENTIFICATION RULES

"IT'S ESSENTIAL TO ADHERE TO THESE REQUIREMENTS"



IDENTIFICATION RULES

The identification period in a delayed exchange begins on the date the Exchanger transfers the relinquished property and ends at midnight on the 45th calendar day thereafter. To qualify for a §1031 tax deferred exchange, the tax code requires identifying replacement property:

- **In a written document signed by the Exchanger;**
- **Hand delivered, mailed, telecopied, or otherwise sent;**
- **Before the end of the identification period to;**
- **Either the person obligated to transfer the replacement property to the Exchanger (generally the "Qualified Intermediary") or any other person involved in the exchange other than the taxpayer or a disqualified person.**

An identification notice must contain:

- An unambiguous description of the replacement property (i.e. legal description, street or distinguishable name)
- Exchangers should note the address of the relinquished property
- The type of property should be described in a personal property exchange

ADDITIONAL ISSUES

Exchangers acquiring a property which is being constructed must identify this property and the improvements in as much detail as is practical at the time the identification is made. Exchangers who intend to acquire less than a 100% ownership interest in the replacement property should specify the specific percentage interest. Exchangers should always consult with their tax and/or legal advisors about the specific identification rules and restrictions.

Any properties acquired within the 45-day identification period are considered properly identified. An investor has the ability to substitute new replacement properties by revoking a previous identification and correctly identifying new replacement properties as long as this is done in writing within the 45-day identification period.

Although Exchangers can identify more than one replacement property, the maximum number of properties that can be identified is limited to:

A) Three properties without regard to their fair market value ("3 Property Rule");

B) Any number of properties so long as their aggregate fair market value does not exceed 200% of the aggregate fair market value of all relinquished properties ("200% Rule");

C) Any number of properties without regard to the combined fair market value, as long the properties acquired amount to at least ninety five percent (95%) of the fair market value of all identified properties ("95% Rule").

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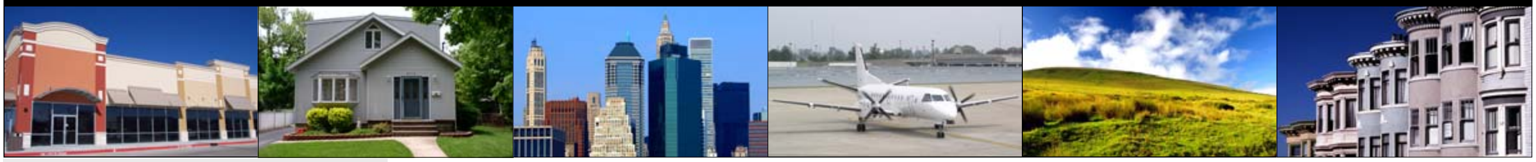
Template # 15

Restrictions on Exchange Proceeds

"Why Exchangers Can't Have Access to Exchange Funds"



A "Qualified Intermediary" must limit the Exchanger's ability to access funds held in the exchange account in order to meet the safe harbor requirements specified in the U.S. Treasury Regulations. Although the deferred exchange rules provide an Exchanger with the flexibility to take up to 45 days to identify and a maximum of 180 days to purchase a replacement property, there are specific restrictions placed on the Exchanger's ability to access exchange proceeds in the possession of the Qualified Intermediary during the exchange period.

SECTION 1.1031(k)-1(g)(6)

In a deferred exchange, U.S. Treasury Regulations, Section 1.1031 (k)-1(g)(6), require stipulations in the exchange agreement which limit the Exchanger's ability *"to receive, pledge, borrow or otherwise obtain the benefits of money or other property before the end of the exchange period. The Exchanger may have rights to receive, pledge, borrow, or otherwise obtain the benefits of money or other property upon or after:*

a) The receipt by the Taxpayer of all replacement property to which the taxpayer is entitled under the exchange agreement

b) The occurrence after the end of the identification period of a material and substantial contingency that —

1. Relates to the deferred exchange,

2. Is provided for in writing, and

3. Is beyond the control of the Taxpayer and of any disqualified person (as defined in paragraph (K) of this Section), other than the person obligated to transfer the replacement property to the taxpayer."

WHAT IS THE IMPACT OF THESE RESTRICTIONS?

Although a thorough discussion is beyond the scope of this flyer, the following are two examples:

Scenario #1: The Exchanger identifies multiple replacement properties within the 45-day Identification Period, acquires one of these properties <u>within the Identification Period</u>, and they would like to receive the remaining proceeds (referred to as "cash boot") in the exchange account.

A Solution: Revoke the Identification of all other replacement properties, so the remaining proceeds can be released on day 46 by the Qualified Intermediary.

Scenario #2: The Exchanger identifies multiple replacement properties and acquires at least one, but not all of these properties. However, <u>they are past the 45-day Identification Period,</u> and they would like to receive the remaining proceeds.

A Solution: The remaining exchange proceeds must be held by the Qualified Intermediary until either the end of the exchange period (day 181) or one of the occurrences specifically cited in the Section 1.1031 (k)-1(g)(6) restrictions.

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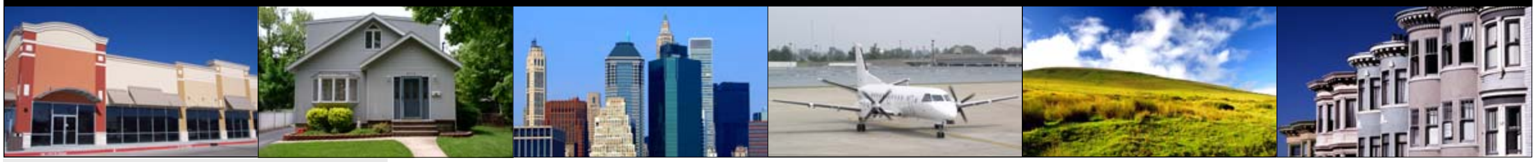
Template # 17

WHAT NOT TO DO IN A DEFERRED EXCHANGE

"LESSONS TO BE LEARNED FROM THESE FAILED EXCHANGES"



Delayed exchanges, under IRC Section 1031, are the most common exchange format nationwide. The IRS has structured exchanges with strict guidelines for full tax deferral. In a delayed exchange, a property owner must meet a number of key time deadlines after closing on the sale of a relinquished (also referred to as the sale or Phase I) property:

1. Acquire the replacement property (s) within 180 calendar days, or the day the Exchanger's tax return is due, whichever is earlier (the "Exchange Period")

- AND -

2. Either acquire all replacement properties or properly identify all potential replacement properties within 45 calendar days (the "Identification Period").

Listed below are three recent examples of what not to do in a deferred exchange:

<u>CHRISTENSEN VS. COMM. (April 10, 1998)</u>

What Happened: The Christensen's filed their tax return on April 15 and acquired replacement property within 180 days, but this purchase closed after they had already filed their tax return. The Tax Court cited failure to comply with the deadlines, specifically the requirement to complete the exchange within 180 days OR the tax filing date, <u>whichever is earlier,</u> as the reason tax deferral was not allowed.

What Should Have Happened: They should have filed an extension prior to their closing to obtain benefit of the entire 180 day exchange period.

<u>KNIGHT VS. COMM. (March 16,1998)</u>

What Happened: On day 179, the Knight's purchase of their replacement property fell apart. The Knight's acquired another property after the 180th day and argued they made a "good faith" attempt to meet the time requirements. The Tax Court denied the exchange because the tax code clearly <u>allows only a maximum of 180 days to complete the exchange.</u>

What Should Have Happened: The Knights should not have postponed their acquisition to last moment, if at all possible. Had more time been available, they may have been able to acquire another properly identified property before their 180th day.

<u>DOBRICH VS. COMM. (October 20, 1997)</u>

What Happened: The Dobrich's intentionally "back-dated" an Identification Notice. This was discovered by the IRS and they were *liable for $2.2 Million in capital gain taxes PLUS a $1.6 Million fraud penalty!*

What Should Have Happened: The Dobrich's should have acquired only property identified within the 45 day Identification Period. Under no circumstances should investors ever backdate Identification Notices!

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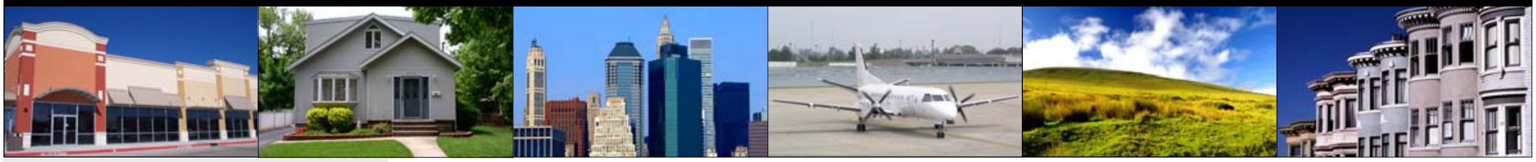
Template # 18

EXCHANGING MULTIPLE PROPERTIES

"UNDERSTANDING THE REQUIREMENTS IS CRITICAL"



Real estate investors may take advantage of the tax code to exchange several properties into one replacement property. However, two basic rules can make planning for such an exchange challenging:

The 45-day identification and 180-day exchange completion periods start when the first of several sales in the same exchange close.

If several sales are grouped in the same exchange, the identification rules permit listing only 3 properties of unlimited value - or - more than 3 properties whose combined values do not exceed 200% of the value of properties being sold.

If the goal is to exchange several properties into one or more replacement properties, the Exchanger must consider the prospect of completing all of the sales and then the purchase within a 180-day window. The first question is to decide whether there is an advantage to having only one exchange or is it better to attempt to break the sales and purchases into different exchanges. Two or more separate exchanges will provide more flexibility than one exchange in terms of identification lists and exchange periods. However, there may be practical limitations in purchasing a single replacement property in separate purchases.

Care must also be taken to establish two or more exchange transactions. The separate exchanges must clearly be reflected in the property sale agreements, separate exchange agreements and closing arrangements. If one replacement property is selected for two exchanges, the separate identification notices of both exchanges should specify only the fractional interest of the replacement property that will be purchased for the respective exchange.

Successful Exchangers have sold multiple properties in the same exchange using a variety of strategies:

- Delay closing on the first few properties to sell until the remainder of sales can be agreed to and closed within a short period. Leases to eventual purchasers can be structured.
- Tie up the desired replacement property with an option to purchase (with or without a lease) until sales of the relinquished properties can be negotiated and closed at roughly the same time.
- If all else fails, a reverse exchange can be structured so that the replacement property can be purchased by the Intermediary for the Exchanger prior to selling any of the relinquished properties. However, financing and other considerations often make a reverse exchange a more costly choice.
- A well-planned exchange of several properties into one replacement property can achieve a variety of investment objectives. A thorough understanding of the §1031 rules is critical to a successful exchange.

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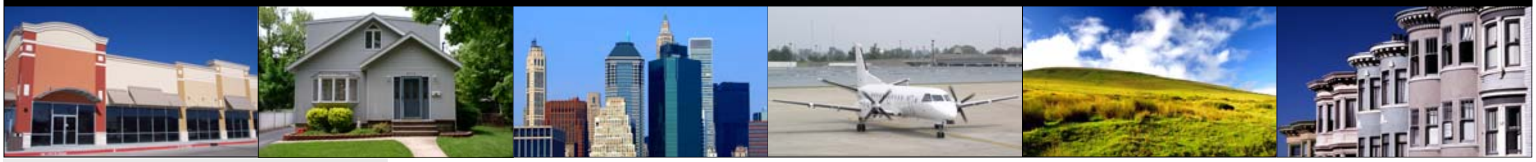
Template # 19

Reverse Exchanges

"You Can Purchase The Replacement Property First"



REVERSE EXCHANGE BENEFITS

Revenue Procedure 2000-37 ("Rev. Proc. 2000-37"), provides guidelines for the taxpayer to acquire the replacement property before the sale of the relinquished property is completed. The reverse exchange can be the ideal solution if the taxpayer cannot delay the closing of the replacement property. The reverse exchange helps investors meet a number of objectives:

Seize the Moment: Don't miss out on the buy of a lifetime! Immediately acquire a desirable replacement property prior to selling the relinquished property.

Protect Your Exchange: Eliminate the pressure-filled problems presented by the 45-day identification period.

Improve the Replacement Property: Use the parking arrangement to increase the value of the replacement property by making capital improvements.

Investors can take advantage of the current real estate market and still defer their capital gain by following Rev. Proc. 2000-37 safe harbor guidelines for a reverse exchange.

REVERSE EXCHANGE STRUCTURES

Rev. Proc. 2000-37 makes it clear that the Exchanger cannot own both properties at the same time. It describes the ownership process as a "parking arrangement" because either ownership of the relinquished property or the replacement property is "parked" with an Exchange Accommodation Titleholder ("EAT"). To "park" the ownership actually means that a deed is recorded to transfer the ownership to the EAT so that the Exchanger owns one property and the EAT owns the other property.

ADDITIONAL ISSUES

<u>Parking the Replacement Property</u>: The EAT acquires title to the replacement property with funds the Exchanger causes to be loaned to the EAT. Within 180 days, the Exchanger sells the relinquished property through the "delayed exchange" format and the EAT transfers the replacement property to the Exchanger.

<u>Parking the Relinquished Property</u>: The Exchanger conveys the relinquished property to the EAT and then the Exchanger acquires the replacement property under a "simultaneous exchange" format. During the 180 days, the EAT remains on title to the relinquished property until it is sold to a purchaser.

<u>Reverse/Improvement Exchange</u>: The EAT acquires the replacement property and makes improvements to this property. The improved property is later exchanged for the relinquished property within 180 days to complete the exchange.

All investors should thoroughly review any contemplated reverse exchange transactions with their legal and/or tax advisors.

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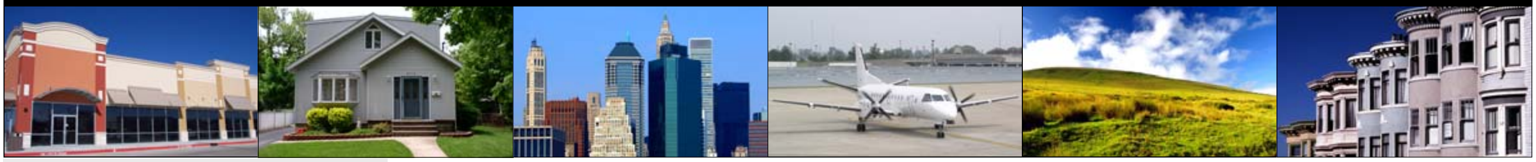
Template # 20

REVERSE EXCHANGE VARIATIONS

"COMPARISON OF THE TWO DIFFERENT PARKING ARRANGEMENT FORMATS"



BENEFITS OF A REVERSE EXCHANGE

The need for a §1031 reverse exchange arises when circumstances require that the replacement property be acquired before closing on the relinquished property. Often Exchangers may need to perform a reverse exchange in a "sellers market" where recently listed properties are quickly under contract with a buyer. Revenue Procedure 2000-37 provides guidelines for the Exchanger to perform a "parking arrangement" exchange within 180 calendar days from the Exchange Accommodation Titleholder's (EAT) purchase of the replacement property.

REPLACEMENT PROPERTY PARKED

The EAT acquires title to the replacement property with funds the Exchanger causes to be loaned to the EAT. Within 180 days, the Exchanger sells the relinquished property through the "delayed exchange" format and the EAT transfers the replacement property to the Exchanger.

Positives of the "Replacement Property Parked"

- Full exchange equity need not be present.
- A deferred exchange may follow this format.
- Allows for multiple relinquished properties.

Negatives of the "Replacement Property Parked"

- Lender may have issues lending to the EAT.
- High costs - potential double transfer taxes and title insurance fees.

RELINQUISHED PROPERTY PARKED

The Exchanger conveys the relinquished property to the EAT and then the Exchanger acquires the replacement property under a "simultaneous exchange" format. During the 180 days, the EAT remains on title to the relinquished property until it is sold to a purchaser.

Positives of the "Relinquished Property Parked"

- Loan and purchase of replacement property easier since the loan is directly to the Exchanger.
- Possibly less expensive on transfer tax for relinquished property.

Negatives of the "Relinquished Property Parked"

- Equity and debt should match to avoid "boot."
- Transfer to EAT may increase county property tax basis.
- Lender issues on relinquished property (due on sale clause and prepayment penalties).

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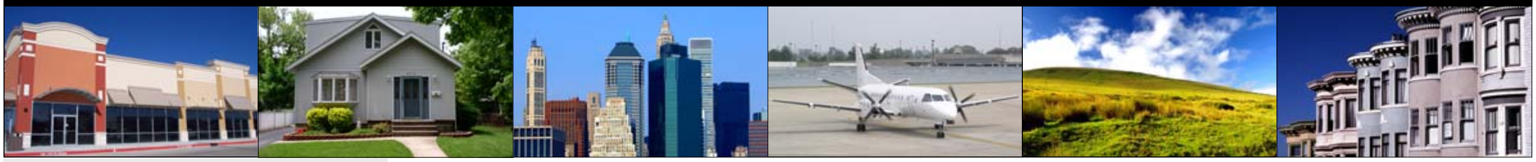
Template # 21

IMPROVEMENT EXCHANGES

"BUILD NEW OR IMPROVE AN EXISTING PROPERTY"



LET'S EXPLORE

The improvement exchange allows an investor, through the use of a Qualified Intermediary, to make improvements on a replacement property using exchange equity. In other words, an investor can *maximize investment opportunities* using tax-deferred dollars while building or improving new investment property. This type of exchange is also referred to as a "construction" or "build-to-suit" exchange.

BENEFITS OF THE IMPROVEMENT EXCHANGE

Improvement exchanges offer an Exchanger a wide array of benefits which often result in a better investment than properties readily available on the open market. The ability to refurbish, add capital improvements, or build from the ground up, while using tax deferred dollars, can *create tremendous investment opportunities.* Due to the additional options provided by this variation and because the 1991 Treasury Regulations and Rev. Proc. 2000-37 established parameters for improvements to be produced, improvement exchanges continue to become more common.

Another benefit is that the new replacement property does not necessarily have to be fully completed within the 180 day exchange period. A certificate of occupancy is not required.

REQUIREMENTS OF AN IMPROVEMENT EXCHANGE

An Exchanger must meet three basic requirements in order to defer all of their gain in the improvement exchange format. The Exchanger must; 1) spend the entire exchange equity on completed improvements or down payment by the 180th day, 2) receive substantially the same property they identified by the 45th day and 3) the replacement property must be of equal or greater value when deeded back to the Exchanger. The final value of the replacement property is the combination of the original purchase price *plus* the capital improvements made to the property. [Note: The improvements need to be in place prior to the Exchanger taking title to the replacement property.]

WHEN CAN THE IMPROVEMENT EXCHANGE BE USED?

The improvement exchange is commonly utilized to the benefit of §1031 Exchangers in the following situations:

- The property to be acquired in the exchange is not of equal or greater value to property being sold. In this case, the improvement exchange can eliminate a taxable situation by *adding capital improvements to an existing property*.
- *To build a new investment from ground-up*. This example maximizes the investment opportunity in a given area by enabling an Exchanger to build their own property. You don't have to be subject to property on the market and the seller's terms. Build a new one!
- The new investment *is* of equal or greater value but it needs refurbishments. Utilize the improvement exchange to *refurbish the new property* while again using tax-deferred dollars.

POTENTIAL OBSTACLES

The main obstacle in this type of §1031 exchange occurs when there is a lender involved. This is true because throughout the improvement process, the Intermediary is holding title to the property. This can be overcome in most cases and a successful exchange can be completed!

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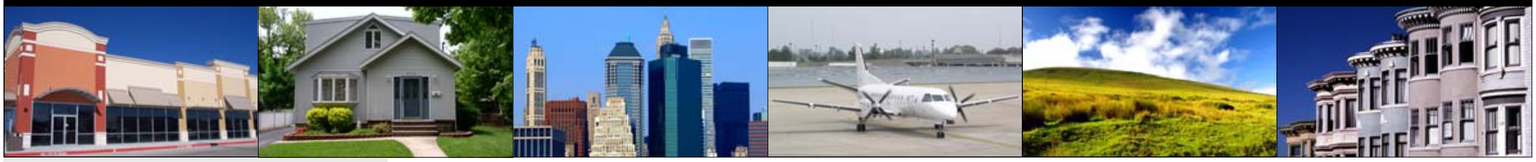
Template # 22

IMPROVEMENT EXCHANGES

"IT IS IMPORTANT TO UNDERSTAND THESE ADDITIONAL REQUIREMENTS"



The improvement exchange is a powerful strategy that enables an investor to improve a replacement property. Although this provides tremendous flexibility and opens up a vast array of potential replacement property options, a couple of additional requirements must be followed to obtain full tax deferral.

IDENTIFICATION OF PROPERTY TO BE PRODUCED

The Regulations state the following regarding identifying a replacement property: "...a legal description is provided for the underlying land and as much detail is provided regarding construction of the improvements as is practicable at the time identification is made." This means the Exchanger should identify not only the property being improved but also specify the exact improvements to be made to this property. Often this is accomplished by identifying the parcel of land and providing a copy of the blueprints or construction drawings. The IRS does allow for running construction changes, such as relocating an interior wall by a couple of feet. Nevertheless, it is critical the property received by the Exchanger is substantially the same as the property identified.

RECEIPT OF PROPERTY TO BE PRODUCED

To qualify for a "safe harbor" improvement exchange (within the 180 day maximum exchange period) the Exchanger must actually receive like-kind real property, not services to be produced. Exchange proceeds that are not reflected in actual improvements to real property within the 180 day exchange period are considered boot since production services to be built in the future are not like-kind real property.

REPAIR VS. IMPROVEMENT

Some Exchangers want to know what fix up cost are considered a "repair" versus an "improvement" because a repair is deductible in the current tax year, whereas an improvement is amortized and depreciated over the life of the property.

The Department of the Treasury distinguishes between repairs and improvements in Reg. 1.162-4: "...cost of incidental repairs which neither materially add to the value of the property nor appreciably prolong its life, but keep it in ordinarily efficient operating condition, may be deducted as an expense...repairs in the nature of the replacements, to the extent that they arrest deterioration and appreciably prolong the life of the property, shall be capitalized and depreciated."

REPAIR: A repair keeps the property in good operating condition. It does not materially add to the value of the property or substantially prolong its life.

IMPROVEMENT: An improvement adds to the value of property, prolongs its useful life, or adapts to new uses.

The two key issues to examine are whether the property's useful life is appreciably prolonged or whether the value of the property has materially increased as a result of the expenditure. If neither of these conditions are present, and if the expenditure only restores the property or keeps it in an efficient operating condition, it is generally considered maintenance or a repair expense and should be deductible. The Tax Court has ruled that the proper test is to compare the value after the repair has been completed with the value prior to the existence of the condition necessitating the repairs, and not with the value immediately prior to making of the repair. See Plainfield Union Water Co. v. Commissioner, 39 TC 333 (1962).

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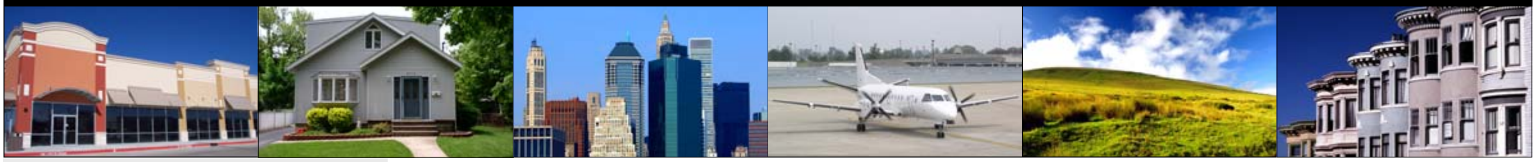
Template # 23

STRUCTURING REVERSE AND IMPROVEMENT EXCHANGES
"WHAT DIFFERENTIATES ASSET PRESERVATION'S FORMAT"



STRUCTURING COMPLEX EXCHANGES

A number of "Qualified Intermediary" companies offer improvement and reverse exchanges, but the structure varies from company to company. What differentiates Asset Preservation, Inc. from others?

Quite simply, Asset Preservation offers the *best exchange structure* and *most qualified professionals* to facilitate these very unique and complex exchange transactions. *Asset Preservation's improvement and reverse exchange services are very different — and substantially better* — than those offered by most other companies.

WHAT ARE THE DIFFERENCES?

Our structure offers one of the most sophisticated and secures ways of facilitating exchanges when the Intermediary must hold title to real estate. Asset Preservation sets up a new and separate LLC (Limited Liability Company) to hold real or personal property for the benefit of an individual Exchanger who has selected our professional Intermediary services.

Many exchange companies have a separate exchange holding company in which they hold many properties for many different Exchangers. What is a problem with this approach? A chief disadvantage is that each individual Exchanger's transaction can be jeopardized by an issue or lien attached to the corporation, which is a result of a problem with another Exchanger's property. Yes, this format is much easier for the Intermediary, but unfortunately, it leaves each Exchanger in a much more precarious and risky position during their entire exchange period.

QUESTIONS TO ASK AN INTERMEDIARY

1) Do you create a separate LLC for every Exchanger who wants to perform an improvement or reverse exchange? (If not, are you aware that a lien or problem with another Exchanger's transaction can affect my property as well?)

2) How do you handle the management of the property during the exchange period? (What is the best method of delineating the responsibilities of the respective parties?)

3) What type of assurance or guarantee will you provide me in writing regarding the security of my proceeds or property while they are in the possession of the Intermediary during the exchange period? (Is this assurance backed by an established and nationally recognized parent company?)

4) Do you have a specialized staff, including an in-house attorney, specifically dedicated to handling these complicated exchanges? (If yes, how many successful "parking arrangement" exchanges have they handled?)

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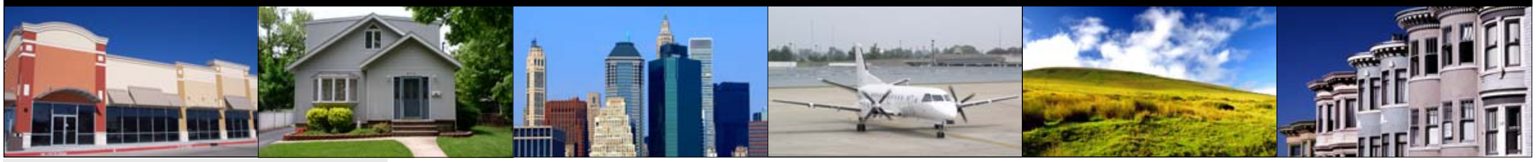
Template # 25

Asset Preservation, Inc. does not give tax or legal advice. The information contained herein should not be relied upon as a substitute for tax or legal advice obtained from a competent tax and/or legal advisor.

1031 Tax Deferred Exchanges

"What is Considered "Like Kind" Property?"



IRC Section 1031 does not limit "like-kind" property to certain types of real estate. The term refers to the nature or character of the property, rather than its grade or quality. Real property must be exchanged for like-kind real property. Real property is not considered like-kind to personal property.

WHAT IS EXCLUDED?

An Exchanger's primary residence and property held "primarily for resale" (dealer property) are excluded from tax deferral under IRC Section 1031. [Note: Primary residences qualify for tax exclusion, with certain restrictions, under IRC Section 121.]

QUALIFYING REAL PROPERTY

<u>The types of real estate which can be exchanged are extremely broad</u>. Any real estate *held for productive use in a trade or business or for investment* – whether improved or unimproved – is considered "like-kind." Improvements to real estate refer to the grade or quality, not the nature or character of the real property. Like-kind examples:

- Unimproved for improved property
- Fee for leasehold with 30+ years to run
- Commercial building for vacant land
- Duplex for commercial property
- Single family rental for an apartment
- Industrial property for rental resort property

QUALIFYING PERSONAL PROPERTY

Personal property that qualifies for a §1031 exchange must be "held for productive use in a trade or business or for investment." In general, qualifying properties must both be in the same General Asset Class or within the same Product Class. The Standard Industrial Classification Manual provides categories for General Asset Classes of depreciable tangible personal property. It is critical to review any personal property transactions with tax advisors because the rules are more restrictive than for real property. Examples of qualifying personal property exchanges include:

- Mexican gold coins for Austrian gold coins
- Aircraft for aircraft
- Restaurant equipment for restaurant equipment
- Computers for computers

Call the professionals toll-free at **Asset Preservation** for more detailed information on "like-kind" issues.

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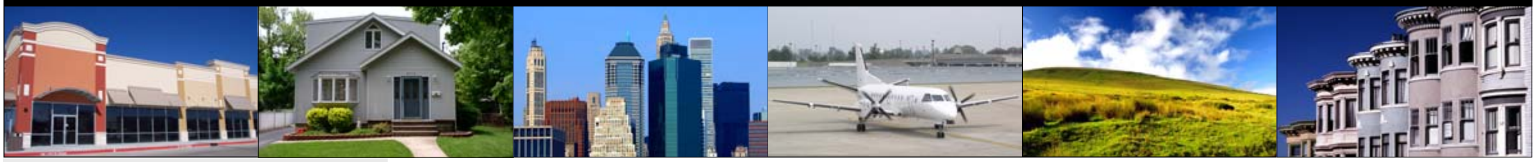
Template # 26

How Long Must an Investment Property be Held for the IRS to Consider it a "Like-Kind" Property?



IRC §1031 states that property "held for productive use in a trade or business or for investment" must be exchanged for like-kind property. There is much confusion and misinformation among real estate agents and investors on the issue of what is viewed as "held for investment." Most of this confusion stems from the fact that neither the IRS nor the Regulations provide a comprehensive definition of the phrase "held for investment." (The regulations do state, however, that unproductive real estate held by a non-dealer for future use or future appreciation, is held for investment.)

A MORE COMPLETE PERSPECTIVE

There is no safe holding period for property to automatically qualify as being "held for investment."

To qualify for a 1031 exchange, a taxpayer must be able to support that their "intent" at the time of the purchase was to hold the property for investment.

Time is only <u>one factor</u> at which the IRS looks in determining the Exchanger's intent for both the relinquished and replacement properties. The IRS may look at all the facts and circumstances of an investor's situation to determine the Exchanger's true intent for acquiring, holding, and selling properties involved in an exchange. Ideally, an investor would have a variety of ways to support that their intent was to hold for investment purposes.

If the investor has the intent to resell the property for a profit within a short amount of time, and not to hold for long-term investment, then the exchange will probably not qualify for deferral. Please see Asset Preservation article entitled "Property Held for Sale" Issues (31) to review more of the factors the IRS talks out to determine whether property is being held primarily for investment vs. for sale.

TWO ADDITIONAL PERSPECTIVES

In one private letter ruling (PLR 8429039), the IRS stated that a minimum holding period of two years would be sufficient. Although a private letter ruling does not establish legal precedent for all investors, there are many advisors who believe two years is a conservative holding period, provided no other significant factors contradict the investment intent.

Other advisors recommend that Exchangers hold property for a minimum of at least twelve months. The reason for this is twofold: (1) A holding period of 12 or more months means the investor will usually reflect it as an investment property in two tax filing years. (2) In 1989, Congress had proposed a one year holding period. Although this proposal was never incorporated into the tax code, some believe it represents a reasonable minimum guideline.

The investor's "intent" in holding both the relinquished and replacement properties is the central issue. Each Exchanger and their advisors should be able to substantiate properties relinquished and acquired in a tax deferred exchange were "held for investment."

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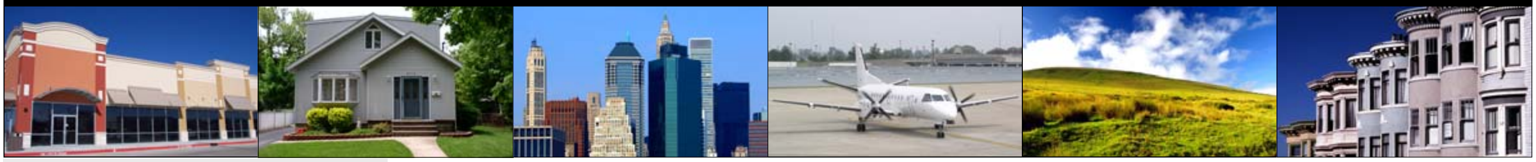
Template # 27

ANSWERS TO FAQ'S ABOUT THE 1997 PRIMARY RESIDENCE TAX LAWS (§121)



PRIMARY RESIDENCE RULES SUMMARY

Most real estate agents and brokers are familiar with the changes created by the 1997 Taxpayer Relief Act. This Act repealed the old §1034 rollover provision and one-time exclusion of $125,000 at age 55. Although the revisions to §121 are a tremendous benefit to property owners, some frequently asked questions still need to be addressed. Let's review key elements of the new primary residence rules:

Couples filing a joint tax return can exclude up to $500,000 of the capital gain on the sale of their primary residence, and single filers can exclude up to $250,000.

The home must have been the primary residence of both spouses two of the last five years.

The exclusion is available once every two years.

Capital gains in excess of $250,000/$500,000 are taxed at the applicable tax rates (5% or 15% federal, plus state tax).

FREQUENTLY ASKED QUESTIONS (FAQ's)

Q. Do the two years have to be consecutive?

A. No, you can live in the property for one year and rent for one, then live there one year, etc.

Q. What if I convert my primary residence to a rental for more than three years, can I take advantage of the tax exclusions under §121?

A. Unfortunately not. The residence is no longer deemed a principal residence. You would be required to occupy it again for two years.

Q. Can the home be depreciated during the rental period and still qualify for the §121 exclusion?

A. Yes, however, depreciation taken after May 6, 1997 must be recognized in the year of the sale.

Q. If I convert my primary residence to a rental, how long does it have to be rented to qualify for a §1031 tax deferred exchange?

A. There is no definitive answer in the tax code that directly addresses this question. Under §1031, you may defer capital gain taxes when like-kind properties, which are "held for investment," are exchanged. Many tax and legal advisors believe that at least one (1) year of ownership is a reasonable minimum time frame. The owner must be able to support the fact that the home was legitimately converted to a rental that was "held for investment."

WHAT DOES THIS ALL MEAN? OPPORTUNITY!

Home owners ("empty nesters") can downsize without a huge tax penalty.

The potential exists for tax-free dollars to be used for the purchase of investment property.

Convert a vacation home into a primary residence and after living in it for at least two years and holding it for at least 5 years, you can take advantage of the tax exclusion.

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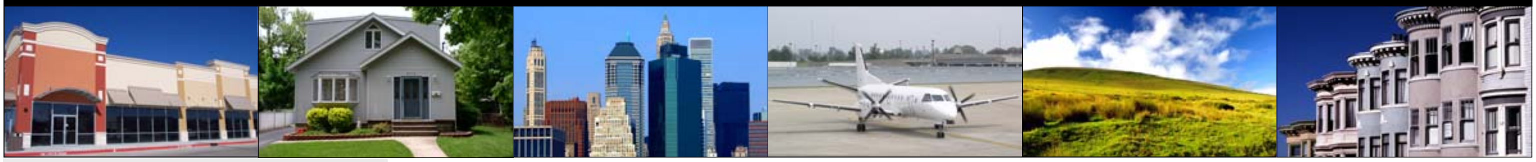
Template # 28

Converting a Rental to a Residence

"Many Taxpayers can Take Advantage of Two Tax Code Sections"



Some taxpayers take advantage of exchanges and the tax deferral available under IRC §1031 and later convert their former rental house to a principal residence to qualify for the tax exclusion available under IRC §121.

HOW LONG TO RENT THE §1031 PROPERTY?

Section 1031 of the tax code does not provide a defined "holding period" for investment properties. The time period the property is held is only one factor the IRS may look at to determine the taxpayer's intent to hold for investment. The IRS can examine all the other facts and circumstances that may or may not support the intent to hold for investment.

Some legal and tax advisors recommend that a taxpayer hold a §1031 exchange property for a minimum of at least twelve months. The reason for this is that a holding period of 12 or more months results in the taxpayer reflecting the property as an investment property in two tax filing years. Another perspective is holding the §1031 exchange property for at least two years. In one Private Letter Ruling (PLR 8429039), the IRS stated that a minimum holding period of two years was sufficient. Many legal and tax advisors who believe two years is a conservative holding period, provided no other significant factors to contradict the investment intent.

IRC §121 - PRINCIPAL RESIDENCE EXCLUSION

Exclusion of up to $250,000 of the capital gain on a principal residence for a single taxpayer and $500,000 for a married couple filing jointly.

The taxpayer must own and use the home as a principal residence 2 of the 5 years prior to the sale.

§1031 AND §121: 5 YEAR HOLDING PERIOD

All principal residence sales occurring after October 22, 2004 are subject to a five year holding period if the principal residence was originally acquired through a tax deferred exchange. Investors who previously acquired their current residence through a §1031 exchange within the past three years will have to wait at least two more years before selling their residence to exclude the gain.

Under this provision, an Exchanger who performs an IRC §1031 tax deferred exchange into a rental house as replacement property and later converts the rental house into the Exchanger's principal residence, is not allowed to exclude gain under the principal residence exclusion rules of IRC §121 unless the sale occurs at least five years after the closing date of the replacement property acquisition.

COST RECOVERY/DEPRECIATION

Capital gain taxes must be paid on the cost recovery ("depreciation") taken after May 6, 1997 (at 25%), but may exclude additional gain on the principal residence, up to the maximum amounts allowed by §121.

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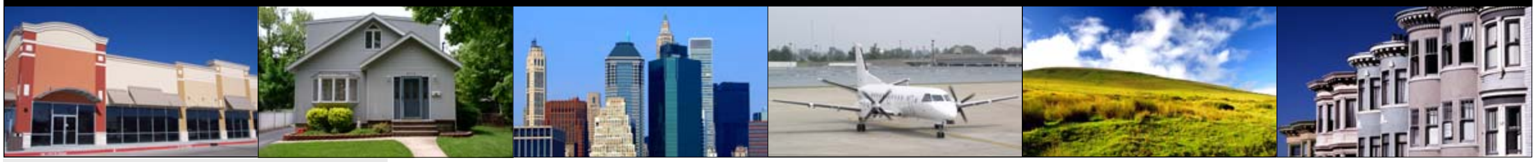
Template # 29

SPLIT TREATMENT EXCHANGES

"USE TWO TAX CODE SECTIONS TO YOUR ADVANTAGE"



ONE SALE – TWO TAX BREAKS!

A property owner selling a duplex, triplex or four-plex, where the owner lives in one unit and rents out the remaining units, can use two tax code sections and receive excellent tax advantages!

The unit where the owner lives is considered their primary residence and can qualify for exclusion of capital gain taxes as described below under "IRC Section 121 - Benefits of Selling a Residence." The capital gain taxes associated with the remainder of the multi-family property can qualify for tax deferral by performing a §1031 tax deferred exchange on the rental units. All this is possible even though there is one buyer for the entire complex.

§121– BENEFITS OF SELLING A RESIDENCE

Tremendous tax benefits are available on the portion of the property considered the primary residence by the owners. The 1997 Taxpayer Relief Act provided homeowners significant tax advantages on what is considered their primary residence. Section 121 of the tax code allows a homeowner to exclude capital gain taxes if they meet the following requirements:

- Couples filing a joint tax return can exclude up to $500,000 of the capital gain on the sale of their primary residence, and single filers can exclude up to $250,000.
- The home must have been the primary residence of both spouses for twenty four (24) of the last sixty (60) months.
- This exclusion is available every two years.

§1031–BENEFITS OF EXCHANGING

Section 1031 allows an owner of property "held for productive use in a trade or business or for investment" to exchange for another "like-kind" property and defer paying capital gain taxes. The units that have been rented may qualify for these tax benefits.

ALLOCATION ISSUES

An accountant is generally needed to determine the value allocated to the residence portion and to the remaining units held for investment. A tax professional may use factors such as the square footage or the quality and value of improvements to each unit in determining what percentage is considered the primary residence and what percentage is allocated to the exchange portion. *[Note: Proper closing techniques must be used. Please consult with API for guidelines.]*

EXCELLENT INVESTMENT OPPORTUNITIES

Purchasing a duplex or triplex can be an ideal first investment because the owner can live in one unit and have tenants in the other units making payments, thus helping the owner qualify for the mortgage.

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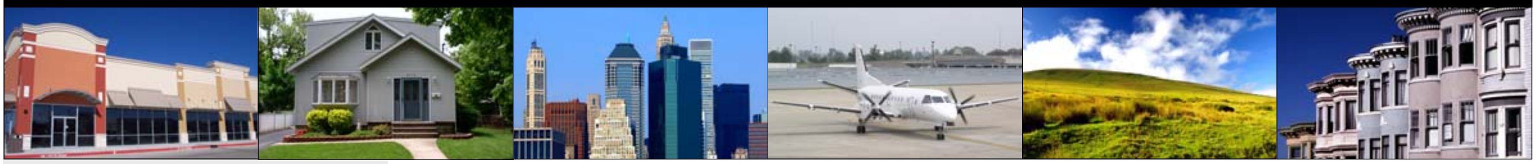
Template # 30

PROPERTY HELD FOR SALE

"FACTORS THE IRS MAY EXAMINE"



Real estate held as *"stock in trade or other property primarily for sale"* is excluded from the tax deferral benefits of IRC Section 1031. Stock in trade describes property which is included in the inventory of a dealer and is held for sale to customers in the ordinary course of business. The gain on the sale of this property is taxed as ordinary income.

SUBSTANTIATING THE INVESTMENT INTENT

To qualify for a §1031 exchange, a taxpayer must be able to support that their "intent" at the time of the purchase was to hold the property for investment. Listed below are some factors the IRS may review to determine whether or not the intent was to hold the property for investment. The burden of substantiating the investment intent is the responsibility of the taxpayer and the items below are not an exhaustive list but provide useful indicators in determining the taxpayer's intent.

- The purpose for which the property was initially acquired.
- The purpose for which the property was subsequently held.
- The purpose for which the property was being held at the time of sale.
- The extent of advertising, promotion of other active efforts used in soliciting buyers for the sale of the property.
- The listing of property with brokers.
- The extent to which improvements, if any, were made to the property.
- The frequency, number and continuity of sales.
- The extent and nature of the transaction.
- The ordinary course of business of the taxpayer.

CAN A "DEALER" PERFORM AN EXCHANGE?

The fact that a taxpayer is considered a dealer does not automatically disqualify them from performing an exchange. A dealer may segregate assets that they intend "to hold for productive use in a trade or business or for investment" from their dealer property. Some dealers have been advised by their attorneys to form a separate entity, such as an LLC, specifically to hold title to property that may be able to qualify for an exchange sometime in the future.

REVIEW WITH LEGAL AND/OR TAX ADVISORS

It is important that all taxpayers, and particularly dealers, review their transaction with an attorney or accountant before proceeding with an exchange. There are many issues not covered in this short discussion which may affect the ability of a taxpayer to successfully defend an exchange transaction.

In addition to consulting with legal and/or tax advisors, please call Asset Preservation to obtain more information and summaries of key court cases related to dealer property issues.

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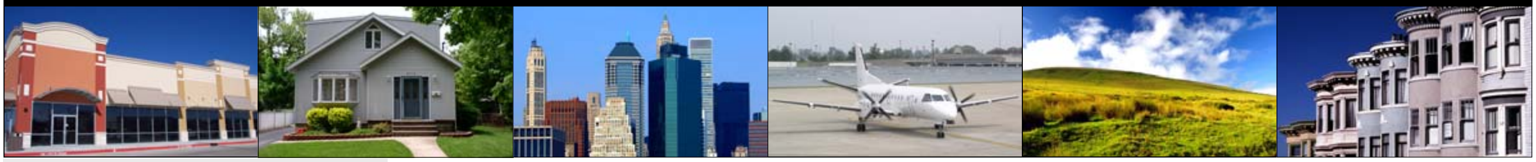
Template # 31

VACATION HOME EXCHANGES

"BARRY E. MOORE V. COMM., T.C. MEMO. 2007-134"



Many sellers who own vacation homes want to explore the potential of performing an Internal Revenue Code (IRC) Section 1031 tax deferred exchange. See Asset Preservation's handout entitled, "Vacation Home Exchanges - Basics", for an introduction to issues involved in these types of exchanges. A recent Tax Court decision, Barry E. Moore v. Commissioner, T.C. Memo. 2007-134, provides a significant case concerning whether a vacation home would be considered "held for investment." The court's analysis also indicates certain tax planning strategies that investors may wish to utilize when considering exchanging a vacation home.

LAKEFRONT PROPERTY EXCHANGED FOR LAKEFRONT PROPERTY

In Moore v. Comm., the taxpayers exchanged a lakefront vacation property with a mobile home in Lincoln County, Georgia (the Clark Hill property) for a lakefront property with a larger five bedroom and 4.5 bath house on 1.2 acres in Forsyth County, Georgia (the Lake Lanier property). The taxpayers in this case argued that both of these properties were held for investment, specifically for long-term appreciation purposes, and thus qualified for tax deferral under IRC §1031. However, based upon the taxpayer's significant personal use of the property, the court concluded that both the relinquished Clark Hill property and the replacement Lake Lanier property should be viewed as held primarily for the taxpayer's personal use and enjoyment. In reaching this conclusion, the court considered the following: (i) the taxpayers never rented or attempted to rent the property to others; (ii) the taxpayers deducted mortgage interest as a "home mortgage interest" expense rather than investment interest expense; (iii) the taxpayers did not take (and probably did not qualify for) depreciation or other tax benefits associated with an investment property under the Internal Revenue Code, including deductions for maintenance expenses.

The court accepted the taxpayer's argument that both the relinquished and replacement properties were held for appreciation but concluded that *"...the mere hope or expectation that the property may be sold at a gain cannot establish investment intent if the taxpayer uses the property as a residence. The proposition that holding a primary or secondary (e.g. vacation) residence motivated in part by an expectation that the property will appreciate in value is insufficient to justify the classification of that property as property 'held for investment' under Section 212(2) and, by analogy, Section 1031. There is no convincing evidence that the properties were held for the production of income, and there is convincing evidence that petitioners and their families used the properties as vacation retreats. The evidence overwhelmingly demonstrates that petitioners' primary purpose in acquiring both the Clark Hill and Lake Lanier properties was to enjoy the use of those properties as vacation homes, i.e. as secondary personal residences."*

PLANNING STRATEGIES FOR A POSSIBLE VACATION HOME EXCHANGE

A taxpayer and their advisor should be able to substantiate the primary intent was holding the vacation home for investment purposes and not personal use. The reporting of rental income, attempts to rent the property or the outright conversion of the property from a vacation property to a rental property before a sale of such property, would be helpful in establishing investment intent. A taxpayer would probably have a stronger argument if the property has been treated as an investment property on the tax return. Obviously, there are tradeoffs in taking this position in that eligibility for depreciation and other tax benefits associated with investment property may restrict the amount of personal use of this property. Most importantly, taxpayers should consult with their tax and/or legal advisors regarding any vacation home exchange.

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Template # 109

TENANT-IN-COMMON BASICS

"EXPLORE TENANT-IN-COMMON OWNERSHIP PROGRAMS"






THE CHALLENGE

Some investors hesitate to perform a §1031 exchange because the requirement to identify all replacement properties by the 45th day can be challenging to fulfill. In addition, it can be difficult to locate a second replacement property of exactly the right equity/value needed for a fully deferred exchange.

A SOLUTION - TIC PROPERTY

A potential solution is to acquire a fractional ownership interest in a Tenant-in-Common (TIC) property ownership interest in a large commercial property with multiple owners. A TIC interest represents co-ownership between two or more investors. In essence, rather than owning 100% of a smaller property, the investor receives a separate deed to an undivided interest, thus owning a fractional interest in a much larger property. A properly structured TIC is not a joint venture or a partnership. Instead, each co-owner has the same rights as would a single owner. Generally, a "management agreement" or "operating agreement" links the co-owners together. Most TIC properties provide creditworthy tenants and steady monthly income. In 2002, the IRS issued Revenue Procedure 2002-22 that provides specific guidelines for requesting advanced rulings relating to specific TIC arrangements.

Some investors have chosen TIC property ownership because they can enjoy the benefits of appreciation, cash flow, annual depreciation and flexibility without management problems. In many cases, a TIC program provides the flexibility for an Exchanger to specify the exact amount of property that must be purchased to meet their specific exchange requirements. Below are some advantages available to the average investor which in the past was previously reserved for large institutional investors.

BENEFITS OF TIC OWNERSHIP

- Geographic Diversification
- Economic Diversification
- Excellent Value
- Existing Financing
- Financial Diversification
- Flexibility
- Liquidity
- Low Minimum Investment
- Professional Management
- Predictable Performance

EVALUATE POTENTIAL TIC ARRANGEMENTS

Great care should be taken so that the TIC arrangement is not considered a joint venture or partnership. A partnership interest is specifically excluded from tax deferral treatment under Section 1031. An investor considering any TIC program should have their tax/legal advisors thoroughly review the proposed ownership arrangement to assess whether or not the structure will likely meet the requirements of IRC Section 1031. In addition, the investment itself and property management should be evaluated.

Please call Asset Preservation for more information on TIC program arrangements.

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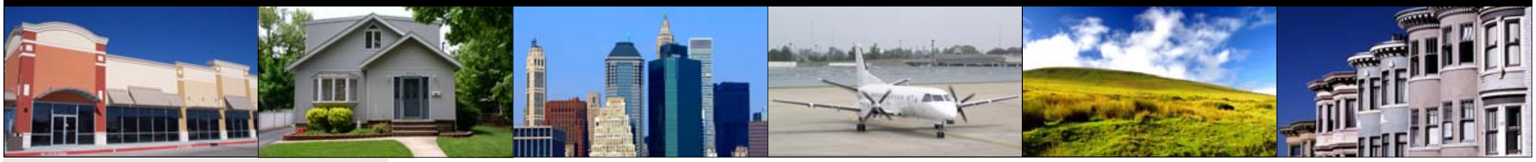
Template # 34

Asset Preservation, Inc. does not give tax or legal advice. The information contained herein should not be relied upon as a substitute for tax or legal advice obtained from a competent tax and/or legal advisor.

NET LEASEHOLD INTERESTS

"EXCELLENT §1031 REPLACEMENT PROPERTY OPPORTUNITIES"



A LEASEHOLD INTEREST CAN BE CONSIDERED "LIKE-KIND" PROPERTY

Leasehold interests may be either relinquished property or replacement property in an exchange. [Reg. §1.1031 (a)-1 (c) (2)] A leasehold interest with a remaining term of 30 years or more is considered "like-kind" property to a fee interest in any other real estate held for productive use in a trade or business or for investment. If a leasehold has an unexpired term of less than 30 years, it is not treated as a qualifying §1031 property. However, if the lease provides for optional renewal periods, these periods can be included in determining whether the leasehold has 30 years or more remaining. In one case, a lease with an initial term of 5 years and ten optional renewal periods of 5 years each was held to be "like-kind" property since the taxpayer had the right to use the property for up to 55 years. [R & J Furniture Co. v. Comm., 20 T.C. 857 (1953)]

Note: A property owner granting a lease of 30 years or more is not considered exchangeable property.

GROSS VS. NET LEASEHOLD INTERESTS

A gross lease often obligates the lessor only to pay a portion of expenses of the leased property. A net lease (often referred to as a net, net, net or NNN lease) requires the tenant to pay, in addition to the fixed rent, expenses of the property such as taxes, insurance, utilities, maintenance, etc. The obvious advantage of a NNN lease to property owners is that many of the routine management burdens of ownership are the responsibility of the tenant.

WHY EXCHANGE INTO LONG-TERM LEASES AS §1031 REPLACEMENT PROPERTIES?

Many real estate investors have accumulated substantial real estate portfolios over a period of many years. In many instances, these investors have performed a §1031 tax deferred exchange into replacement properties. The exchange transaction has allowed them to eliminate the payment of capital gain taxes and rollover equities into larger and better performing properties. Now that they have met many of their long-term investment objectives, they desire to increase their monthly cash flow and simultaneously reduce the management problems typically associated with most real estate investments. An ideal solution is to exchange into a net leasehold interest, providing excellent cash flow with very few responsibilities associated with the ongoing management of the property.

ADVANTAGES OF NET LEASES

1. Predictable cash flow, typically with standard cost-of-living adjustments already built into the lease.
2. Tenant typically is a well-recognized national company, often with audited financial statements which can be thoroughly reviewed by the lessee.
3. Very few management headaches. Lessor is responsible for taxes, utilities, maintenance and insurance.
4. Allows a real estate investor to take advantage of an income stream without triggering the recognition of capital gain taxes.

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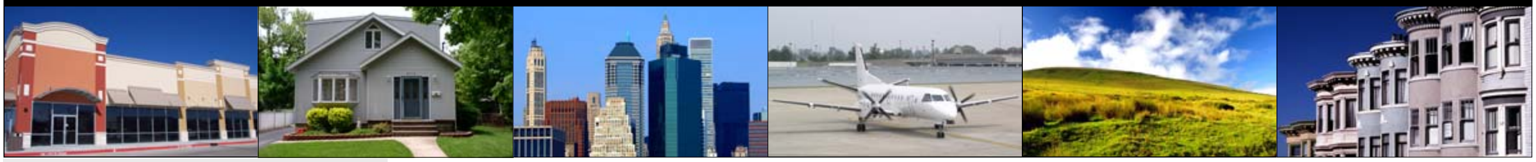
Template # 33

REVENUE PROCEDURE 2002-22

"PROCEDURE DEALS WITH UNDIVIDED FRACTIONAL INTERESTS"



More real estate investors have been exploring the benefits of tenant-in-common ("TIC") programs that offer an undivided fractional interest in a large property with multiple owners. Investors have been interested in TIC programs because of the advantages of having partial ownership in a larger property which could offer appreciation, cash flow, annual depreciation benefits without many of the management problems typically associated with rental property.

BACKGROUND - REVENUE PROCEDURE 2000-46

In 2000, the government released Revenue Procedure 2000-46 which stated that the IRS would not issue any advance rulings or determination letters on whether or not a particular TIC program represented an undivided fractional interest in real property that would qualify for an IRC Section 1031 tax deferred exchange.

REVENUE PROCEDURE 2002-22

Revenue Procedure 2002-22 supersedes Revenue Procedure 2000-46 referenced above. Revenue Procedure 2002-22 addresses a couple of issues:

1. Guidelines for requesting advance rulings to assist taxpayers in preparing a ruling request on a specific structure and proposed transaction.
2. Conditions present in the proposed TIC structure under which the IRS normally will consider a request for a ruling.

These guidelines and conditions constitute requirements for advance rulings and are the clearest set of principles the IRS has set out as to its thinking on TIC programs.

REQUIRED GENERAL INFORMATION

The following information and copies of documents must be submitted with the ruling request:

- Name, taxpayer ID number, and percentage fractional interest;
- Name, taxpayer ID number, ownership of all persons involved in the acquisition, sale, lease (including the sponsor, lessee, manager and lender);
- Full description of the property;
- Representation that each co-owner holds title to the property as a tenant-in-common under local law;
- All promotional documents relating to the sale;
- All lending agreements;
- All agreements among the co-owners;
- Any lease agreements;
- Any purchase and sale agreements;
- Any property management or brokerage agreement;
- Any other agreement relating to the property including debt agreements and any call and put options relating to the property.

Call Asset Preservation toll-free (800-282-1031) to receive the full text of Revenue Procedure 2002-22 and to discuss your specific situation in greater detail.

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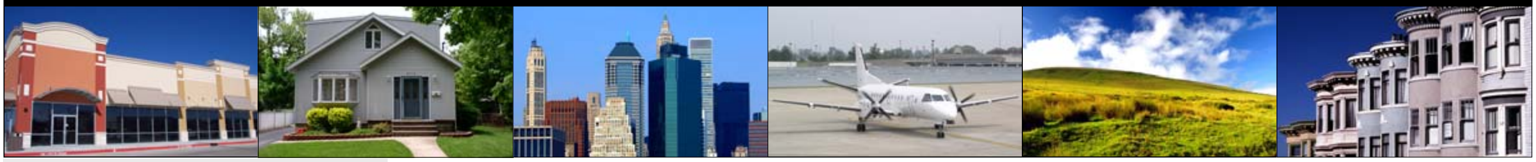
Template # 35

1031 TAX DEFERRED EXCHANGES

"CAN EASEMENTS BE EXCHANGED FOR REAL PROPERTY?"



IRC Section 1031 does not limit "like-kind" property to certain types of real estate. The types of real estate which can be exchanged are extremely broad. The term refers to the nature or character of the property, rather than its grade or quality. In many cases, an easement can be exchanged for a fee interest.

QUALIFYING REAL PROPERTY

Real property must be exchanged for "like-kind" real property. Any real estate *held for productive use in a trade or business or for investment* – whether improved or unimproved – is considered "like-kind." Like-kind examples:

Unimproved ⇨ Improved Property

Fee ⇨ Leasehold with 30+ years to run

Vacant land ⇨ Small retail center

Duplex ⇨ Commercial property

Single family rental ⇨ An apartment

Industrial Property ⇨ Rental resort property

WHAT ABOUT EASEMENTS?

Although it is important to look to the treatment of easements under the applicable state laws, in many cases an easement is considered "like-kind" to any other "like-kind" real property held for productive use in a trade or business or for investment.

QUALIFYING EXCHANGES OF EASEMENTS

An agricultural conservation easement in perpetuity in a farm found to be real property, for a fee simple interest in real property.

- *IRS Letter Ruling 9232030*

An exchange of agricultural easements over two farms for fee-simple title in a different farm.

- *IRS Letter Ruling 9851039*

A perpetual conservation easement encumbering real property for the fee simple interest in either farm land, ranch land, or commercial real property.

- IRS Letter Ruling 9601046

A scenic conservation easement, found to be real property under state law, for a fee simple interest in timber, farm land, or ranch land.

- IRS Letter Ruling 9621012

Call the professionals toll-free at Asset Preservation for more detailed information on "like-kind" issues.

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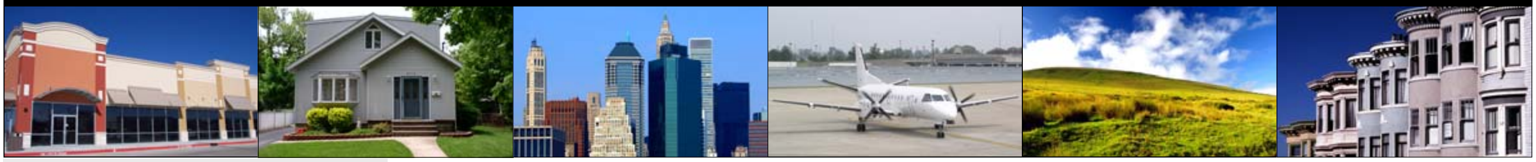
Template # 36

PERSONAL PROPERTY EXCHANGES

"PLANES, TRAINS AND AUTOMOBILES"



PERSONAL PROPERTY EXCHANGES

Internal Revenue Code Section 1031 allows investors to exchange either "like-kind" real or personal property for other "like-kind" real or personal property. Although the rules for "like-kind" real estate are fairly broad, the rules to exchange personal property for "like-kind" or "like-class" specify that an Exchanger can only receive tax deferral if the sale of personal property is exchanged for the purchase of personal property that falls within the same Product Class or General Asset Class. Product and General Asset Classes, as described in the North American Industry Classification System (NAICS), were developed for use in the classification of establishments and products by the type of activity for which they are engaged. Depreciable tangible personal property is exchanged for property of "like-kind" if it is exchanged for property of "like-class".

GENERAL ASSET CLASSES

- Office furniture, fixtures, and equipment;
- Information systems (computers);
- Data handling equipment, except computers;
- Airplanes and helicopters;
- Automobiles and taxis;
- Buses;
- Light general-purpose trucks;
- Heavy general-purpose trucks;
- Railroad cars and locomotives;
- Tractor units for use over-the-road;
- Trailers and trailer-mounted containers;
- Vessels, barges, tugs, and similar water transportation equipment; Industrial steam and electric generation and distribution systems.

UNEXCHANGEABLE ITEMS

Another aspect of personal property exchanges that differs from real property exchanges is that certain items of the sale transaction, such as "goodwill" "covenants not to compete" and "inventory" does not qualify for tax deferral under IRC Section 1031. Thus, these items may not be attributed to the value of the sale for the exchange and the capital gain or loss must be recognized by the Exchanger.

MIXED EXCHANGES

There are also many transactions that involve the sale of both real property and personal property, such as the sale of hotels, restaurants, and gas stations, wherein the Exchanger owns both the land and the personal property. In this case, the Exchanger can allocate the proceeds specifically for real property and personal property and purchase "like-kind" property with the respective funds. In a complex combined real and personal property exchange, it is important to maximize potential tax deferral benefits in advance. Asset Preservation, Inc. encourages Exchangers to always work closely with an accountant or attorney to ensure that the transaction is structured properly.

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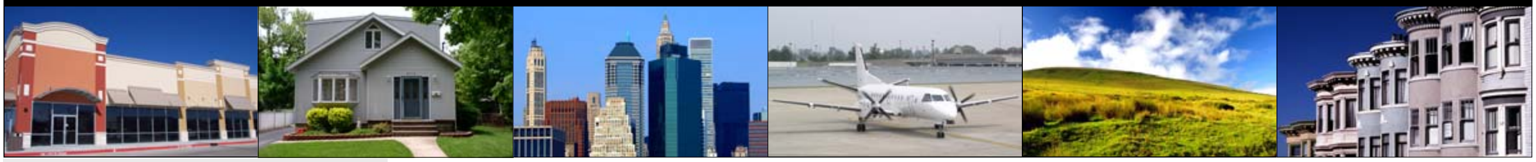
Template # 37

OIL, GAS AND MINERAL RIGHTS

"CONSULTING WITH EXPERTS IS IMPORTANT IN THESE TRANSACTIONS"



Investors who desire tax deferral on the sale or exchange of oil and gas interests may have the opportunity to reap the advantages of an exchange. As in any exchange, it is important to consult with tax and legal advisors regarding applicable state laws and the specifics of each transaction whenever oil, gas or mineral interests are involved.

Investors will want to analyze exactly the nature of the oil or gas interest to evaluate whether or not it might qualify for tax deferred treatment under IRC §1031. A production payment is usually considered personal property because it is treated as an assignment of income and, therefore, is not like-kind to a real property interest. [Comm. V. P.G. Lake, Inc. (1958)] However, a royalty is generally considered "like-kind" real property and can be exchanged for any other real property. [Anderson V. Helvering, (1940); Rev. Rul. 72-117 (1972)]

DURATION IS IMPORTANT

The primary distinction between these two types of interests is the duration of the respective interest. An overriding royalty interest continues until the oil or gas deposit is exhausted. On the other hand, a production payment usually terminates when a specified quantity of oil or gas has been produced or a stated amount of proceeds have been received.

MINERAL RIGHT ISSUES

Minerals transferred with a fee interest can also be considered part of the real estate and not a separate asset or inventory to the property owner. [Butler Consol. Coal Co. v. Comm. (1946)]. Generally a working interest or royalty interest can be exchanged for another working or royalty interest or other real property. However, the IRS may disallow an exchange if the investor sells a working interest and retains royalty interests or surface rights.

The following exchanges did qualify for tax deferral:

- Overriding royalty interest in oil, gas and mineral rights for an undivided one-half of the fee in a parcel of improved real property. [Crichton, Kate (1940)]
- An interest in a producing oil lease extending until the exhaustion of the deposit for a fee interest in an improved ranch. [Rev. Rul. 68-331 (1968)]
- Perpetual water rights for a fee interest in land, when local law treats water rights as real property rights and the water right is in perpetuity as compared to a specific amount of water. [Rev. Rul. 55-749 (1955)]

The following did not qualify for tax deferral:

- Limited oil payment right for an overriding oil and gas royalty where the oil payment was a limited interest and the overriding royalty was to continue as long as gas or oil might be produced. [Midfield Oil. Co. (1939)]
- Leasehold measured in terms of a fixed percentage of all oil that might be produced from leasehold measured in terms of a fixed number of barrels of oil. [Bandini Petroleum Co. (1951)]
- Carved out oil payment rights for a fee interest in a ranch, even though local law treated them all as interests in real property. [Fleming, William (1955)].

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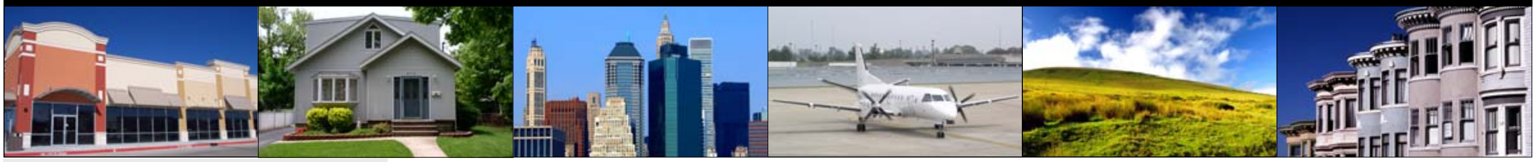
Template # 38

EXCHANGES OF WATER RIGHTS

"CERTAIN WATER RIGHTS MAY QUALIFY FOR TAX DEFERRAL"



The types of real property which can be exchanged under IRC Section 1031 as qualifying "like-kind" property are extremely broad. Any real property held for productive use in a trade or business or for investment – whether improved or unimproved – can be considered "like-kind."

WHAT ABOUT WATER RIGHTS?

It is important to look to the treatment of water rights under the applicable state laws. Often, water rights are treated as real property and may qualify for an exchange of other "like-kind" (including non-water rights) real property for IRC Section 1031 purposes.

TYPES OF WATER RIGHTS

Riparian Right: A) Cannot be lost by non-use; B) Rights in water arise from, and only from, ownership of land which adjoins or underlies a stream; C) Can only be used on the riparian tract.

Prior Appropriation: A) Follow the mining laws concept; B) The first to use the water is protected against later water takers; C) Allows maximum use of water resources; D) Provides more flexible water usage.

Under the "Prior Appropriation" system, a water right gives an individual the right to use a maximum quantity of water from a specific resource, at a specified point of diversion or withdrawal, for a specified use, and a specified time. The right has a particular "priority" in relation to other water rights from the same source and the priority is the order of ranking in which the owner of the right may take their entitlement. The first in time is the first in right. A senior water right has priority over a junior water right.

LEGAL GUIDANCE ON WATER RIGHTS

In Weichens v. United States, 228 F. Supp. 1080 (Arizona - 2002) a water right constituted real property under state law, but the court held that the rights were so limited in priority, quantity, and duration as to not be like-kind to a fee simple interest in real property. On the other hand, in Revenue Rulings 68-331 and 55-749, the IRS found that perpetual easements in the form of water rights and an interest in a producing oil lease extending to the exhaustion of the deposit were like-kind to a fee interest in real property. In PLR 200404044, the IRS concluded that a perpetual water right was like-kind despite several actual and potential limitations on the use of the water.

Exchangers should thoroughly review all aspects of a potential exchange of water rights with legal and/or tax advisors familiar with these issues and state laws.

Every Exchanger should consult with their legal and/or tax advisors to review whether the water right in question qualifies for 1031 treatment. A PLR applies to the facts and circumstances of a taxpayer's specific situation. Most Private Letter Rulings have language as follows: "This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be cited as precedent." Contact Asset Preservation toll-free to discuss your particular exchange situation in greater detail.

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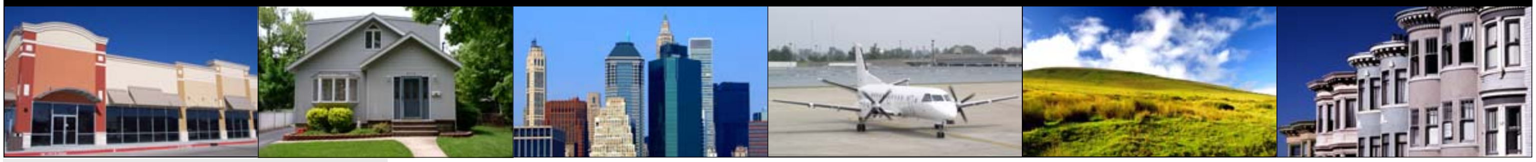
Template # 39

FARM AND RANCH EXCHANGES

"USE TWO TAX CODE SECTIONS TO YOUR ADVANTAGE"



ONE SALE – TWICE THE TAX BREAKS!

Sellers of farms and ranches are able to take advantage of two different tax code sections to minimize capital gain tax liabilities. By utilizing all the opportunities available in the tax code, many ranch and farm owners can meet their investment objectives and defer capital gain taxes! Often some of the property can qualify for *tax exclusion* under IRC §121 and the remainder can qualify for *tax deferral* under IRC §1031.

BENEFITS OF IRC SECTION 121

The 1997 Taxpayer Relief Act provided property owners significant tax advantages on the sale of a principal residence. IRC §121 allows a homeowner to exclude capital gain taxes if they meet the following requirements:

- Couples filing a joint tax return can exclude up to $500,000 of the capital gain on the sale of their principal residence, and single filers can exclude up to $250,000.
- The home must have been the primary residence of both spouses two of the last five years.
- The exclusion is available once every two years.

In addition, a property owner can obtain tax exclusion on the sale of vacant land, under T.D. 9030, if:

- The vacant land is adjacent to the land containing the taxpayer's principal residence;
- The property owner owned and used the vacant land as part of their principal residence;
- The property owner sells or exchanges the principal residence that meets the requirements of §121 within 2 years before or 2 years after the date of the sale or exchange of the vacant land;
- The requirements of §121 have otherwise been met.

WHAT IS AN IRC SECTION 1031 EXCHANGE?

Section 1031 of the Internal Revenue Code allows an owner of property "held for productive use in a trade or business" or "held for investment" to exchange for another "like-kind" property and defer paying capital gain taxes. Although there are some misconceptions, this does not require exchanging a ranch for another ranch since the definition of "like-kind" property is very broad. For example, a property owner can exchange out of a farm or ranch and acquire:

- Single family rental, duplex or triplex
- Apartment or commercial property
- Another farm or ranch property
- Vacation home primarily "held for investment"

WHAT IS NEEDED TO ACCOMPLISH THIS?

A good accountant or real estate attorney is often needed to determine the value of the residence portion of the transaction and the land used in the farm or ranch operation. An experienced "Qualified Intermediary" is essential to a successful exchange. Call the 1031 exchange experts at **Asset Preservation** to learn more!

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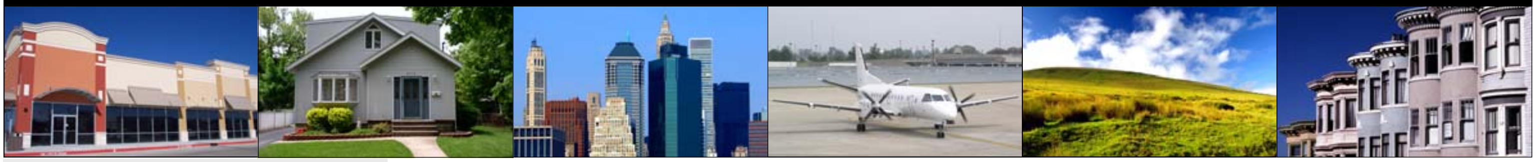
Template # 40

§1031 Tax Deferred Exchanges

"Does a Timeshare or a Share in a REIT Qualify for Tax Deferral"



A vast array of real property can be exchanged under Internal Revenue Code §1031 as qualifying "like-kind" property. Any real property held for productive use in a trade or business or for investment can be considered "like-kind" property.

WHAT ABOUT A TIMESHARE?

There are generally two types of timeshares that can be purchased by a taxpayer:

1. The first variation was widely promoted in the 1970's and 1980's and generally consists of a right to use a type of unit at a particular location for a specified period of time. These are generally considered personal property and are not eligible for §1031 tax deferral.
2. The other variation has become more popular in the past 10-15 years and generally consists of a taxpayer purchasing legal title, not merely rights to use a property, to a specific unit for a specified period of time. This second variation is generally considered real property and may qualify for §1031 tax deferral.

Even if the timeshare owner has title to a real property interest, they should be able to support that the primary intent for holding the timeshare is for investment purposes. In Dewey vs. Commissioner, the IRS did not allow §1031 tax deferral because they determined the taxpayer's primary purpose for a two-week timeshare purchase was personal enjoyment and not for investment purposes. As with any §1031 exchange, the taxpayer should be able to substantiate that the primary intent for holding the property was either for investment or business purposes.

WHAT ABOUT A REIT?

A real estate investment trust, commonly referred to by the acronym "REIT", is a entity where many taxpayers pool their resources by purchasing shares in a REIT that will own commercial property. The REIT acquires, owns and manages the commercial property for the benefit of the REIT shareholders. The individual shares owned by the investors in the REIT are considered personal property, not real property, and generally will not qualify for tax deferral under IRC §1031. The reason is that for a property to be considered "like-kind," real property held for investment or business purposes must be exchanged for other real property held for investment or business purposes.

However, the REIT entity who actually holds title to the real property may be able to exchange the entire property in a valid §1031 exchange. Asset Preservation has facilitated exchanges for a number of larger REIT entities nationally.

Taxpayers and their legal or tax advisors are encouraged to contact our National Headquarters to discuss specific timeshare or REIT issues in more detail.

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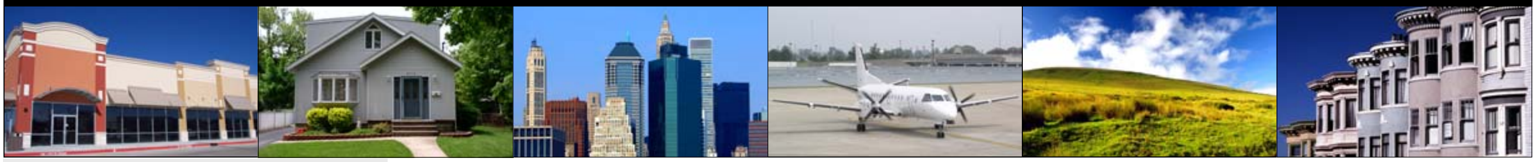
Template # 41

1031 "LIKE KIND" PROPERTY

"WHERE DOES PROPERTY HAVE TO BE LOCATED TO QUALIFY FOR DEFERRAL?"



The term "like-kind" property isn't specifically defined in the tax code. Any real property held for productive use in a trade or business or for investment can be considered "like-kind" property. Properties are of "like-kind" if they are of the same nature or character, even if they differ in grade or quality. Real property is generally considered to be of "like-kind" regardless of whether the properties are improved or unimproved.

U.S. PROPERTY = U.S. PROPERTY

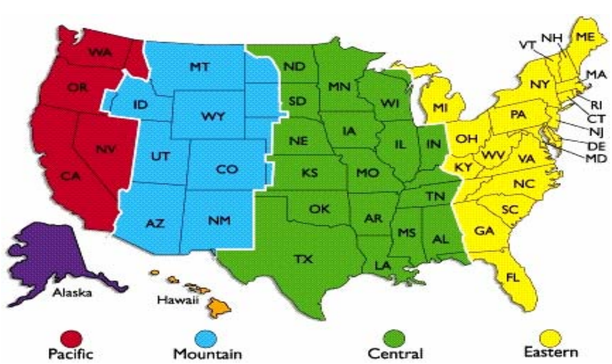
U.S. PROPERTY ≠ FOREIGN PROPERTY

Real property held for investment in the United States must be exchanged for other real property held for investment in the United States. Exchangers cannot exchange United States property for foreign property or visa versa. However, in one Private Letter Ruling (PLR 9038030), an investor was allowed to exchange into the U.S. Virgin Islands as part of a qualifying §1031 exchange. However, as with any PLR, it is very important to analyze the unique facts and circumstances of the taxpayer's situation. PLR 9038030 allowed an exchange into the U.S. Virgin Islands because it cited Section 932 of the Code, specifically that the taxpayer intended to have income derived from sources within the Virgin Islands and, based upon this Code Section, the term "United States" was enlarged to include the U.S. Virgin Islands.

BACKGROUND ON FOREIGN PROPERTY

Prior to 1989, Exchangers could exchange U.S. property for property outside of the U.S. However, for all exchanges occurring after July 10, 1989, only U.S. property can considered "like-kind" for purposes of IRC Section 1031.

UNITED STATES PROPERTY



AN EXAMPLE

An investor can exchange out of a 100 acre parcel of unimproved land in Oregon worth $1.2M and acquire the following properties that will be held for investment:

1. 40 acres of unimproved land in Kansas for $300,000;
2. A rental home near the Florida coast for $350,000;
3. A rental ski condo in Colorado for $550,000

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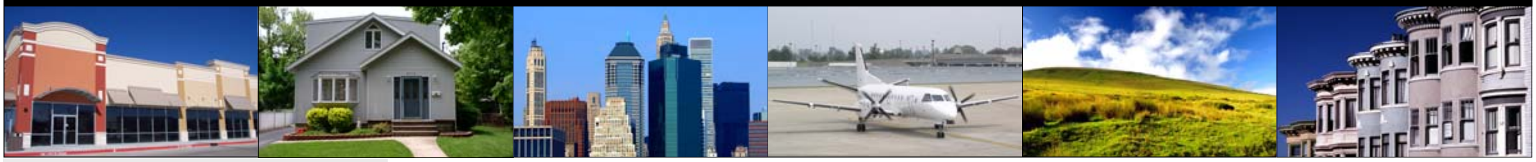
Template # 71

HOTEL OWNERS

"USE §1031 EXCHANGE TO INCREASE INVESTMENT RETURNS"



WHAT IS A 1031 EXCHANGE?

Section 1031 of the Internal Revenue Code (IRC) allows an owner of any business or investment property to defer paying federal and state capital gain taxes and depreciation recapture if they purchase a "like-kind" property following the rules and regulations of the tax code. The real power of a tax deferred exchange is not just this tax savings — it is the tremendous increase in purchasing power generated by this tax savings! An exchange allows hotel investors to use all of their sale proceeds to leverage into more valuable real estate, diversify into other properties, increase cash flow and investment returns or consolidate into a larger property.

IRC SECTION 1031

IRC Section 1031 states that *"no gain or loss shall be recognized on the exchange of property held for productive use in a trade or business or for investment if such property is exchanged solely for property of like kind which is to be held either for productive use in a trade or business or for investment."*

NUMEROUS EXCHANGE STRATEGIES

Hotel investors have a number of options available:

- Delayed Exchange: Provides up to 180 days to acquire another replacement property.
- Reverse Exchange: Gives investors the option to purchase a desirable replacement property before selling the hotel they currently own.
- Improvement Exchange: Either construct a new hotel or rehabilitate an existing one -- all with tax deferred dollars!

HOTEL EXCHANGE CONSIDERATIONS

When exchanging a hotel, the owner must be sure they are exchanging "like-kind" real property for other "like-kind" real property. "Like-kind" or "like-class" personal property must also be exchanged for equivalent personal property.

- The requirements for exchanges of personal property are far more restrictive than for real property. These rules establish 13 different asset classes. For example, dryers and washing machines can be exchanged for other dryers or washing machines at a new property but not for personal property in another asset class.
- Another factor in hotel transactions is that the allocation in the contract attributed to "goodwill" does not qualify for tax deferral.

Investors performing a hotel exchange should always work closely with an attorney or CPA to ensure the transaction is structured properly. Call Asset Preservation toll-free to discuss the additional complexities involved in the exchange of hotel properties.

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Template # 42

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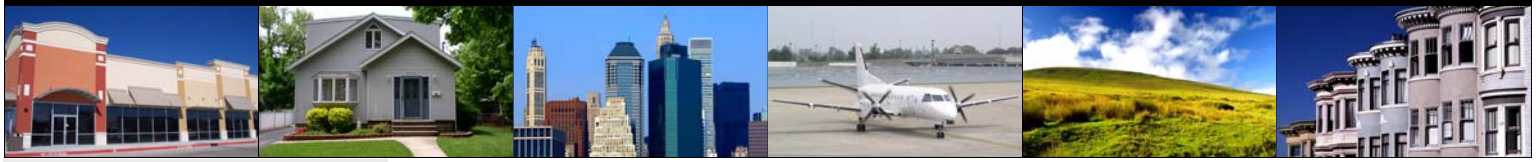
OIL AND GAS ENERGY PROGRAMS

"USE WITHIN AN EXCHANGE OR FOR A FAILED EXCHANGE"



Real estate investors engaging in a 1031 tax deferred exchange transaction may want to consider acquiring oil and gas related properties in the energy sector rather than the more typical real estate investment property. As explained below certain rights in oil, gas and mineral interests are "like kind" to a fee interest in investment real estate. For example, a "royalty" interest in an oil and gas lease represents an interest in the underlying land that would be considered like kind to a fee interest in real estate. A working interest or operating interest in oil and gas rights may qualify as like-kind to a fee interest in real property for purposes of Section 1031. The specific terms of a leasehold interest and whether the lease qualifies for an exchange should be reviewed by a tax or legal advisor. A royalty is part of the mineral title to a defined parcel of land and represents ownership of a percentage of the gross revenue from the production of oil and gas on that property. Unlike a working interest, which bears the expense of drilling wells and the liabilities associated with operating those wells, a royalty interest does not involve the expense or risk associated with production, but shares in the mineral reserves.

Exchanging into oil and gas royalties can present investors with an opportunity to diversify their portfolio by adding properties whose performance does not necessarily correlate with the performance of traditional real estate. Ownership of royalties can produce attractive cash flow and provide diversification. As with any new investment, investors should consult with knowledgeable tax and/or legal advisors to determine the suitability of this type of investment. To learn more about these types of energy royalty programs and tenant-in-common ownership programs, visit www.nobleroyalties.com or the Tenant-in-Common Association at www.ticassoc.org.

OPPORTUNITIES FOR TAX ADVANTAGES IF THE EXCHANGE CANNOT BE COMPLETED

In the event someone defined as an "accredited investor" cannot complete an exchange and they receive the exchange proceeds from the Qualified Intermediary, they may be interested in exploring other tax-advantaged programs within the energy sector. Many of these programs allow investors to write off all or most of their investment against ordinary income in the current tax year plus they experience continued cash flow and tax benefits during the life of the program.

Section 263(c) of the tax code allows an investor the option to deduct, as expenses, intangible drilling and development costs (IDC) involved with oil and gas wells. IDCs are costs that cannot be recovered from the operation. An investor with a failed exchange can use IDCs to eliminate taxes that would otherwise be a consequence of a failed exchange. These investments are typically structured as limited partnerships, where most investors typically participate as a general partner during the drilling phase of the program. After that phase, the investors interest is converted to limited partner status with the driller/operator remaining as the general partner in the program. In addition to the IDC benefits, investors may be able to obtain additional tax advantages. Similar to the depreciation of real estate, under Section 613 of the tax code, the IRS allows for a standard 15% depletion allowance for all income earned from the program. As a result, investors can deduct 15% against the income earned from the program for any given year. For more information on these types of investments, visit capguardmanagementco.com, www.ridgewoodenergy.com and www.atlasamerica.com.

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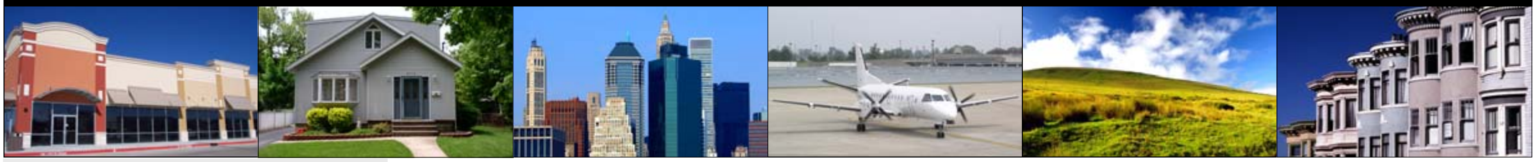
Template # 93

New Tax Bill Affects Exchanges

"Changes are Effective for Sales Closing after October 22, 2004"



FIVE YEAR COMBINED HOLD PERIOD REQUIRED TO EXCLUDE GAIN UNDER IRC §121

On October 22, 2004, President Bush signed into law corporate and foreign tax legislation that also contained a provision affecting IRC §1031. Under this provision, an Exchanger who performs an IRC §1031 tax deferred exchange into a rental house as replacement property and later the rental house is converted into the Exchanger's principal residence, is not allowed to exclude gain under the principal residence exclusion rules of IRC §121 unless the sale occurs at least five years after the closing date of the replacement property purchase. The Conference Agreement on H.R. 4520 includes the following provision to amend §121 (d):

Sec. 840. Recognition of gain from the sale of a principal residence acquired in a like-kind exchange within 5 years of sale. (10) PROPERTY ACQUIRED IN LIKE-KIND EXCHANGE -- If a taxpayer acquired property in an exchange to which section 1031 applied, subsection (a) shall not apply to the sale or exchange of such property if it occurs during the 5-year period beginning with the date of the acquisition of such property.

The change to IRC §121 is effective for principal residence sales occurring on or after October 22, 2004 and all investors who previously acquired their current residence through a §1031 exchange within the past three years will now have to wait at least two more years before selling their residence to exclude the gain. This assumes they meet the two out of five year principal residence test.

The result of this additional requirement to IRC §121 is that an investor exchanging into a rental house, which is later converted to a principal residence, will have to wait a minimum of five years to exclude capital gain under IRC §121 (subject to the maximum exclusion restrictions of $500,000, married filed jointly; $250,000 filing as a single). Also note that the Exchanger must acquire the replacement property with the intent to hold it for investment. There is no defined "holding period" as to how long a property must be held to be considered held for investment.

AN EXAMPLE

An Exchanger completes an exchange for a rental home that is held for investment and rents the property out for two years. The exchanger decides to move into their former rental house and live in it as their principal residence. Under the new law, the Exchanger will have to wait for at least three more years before selling the principal residence and excluding gain under IRC §121.

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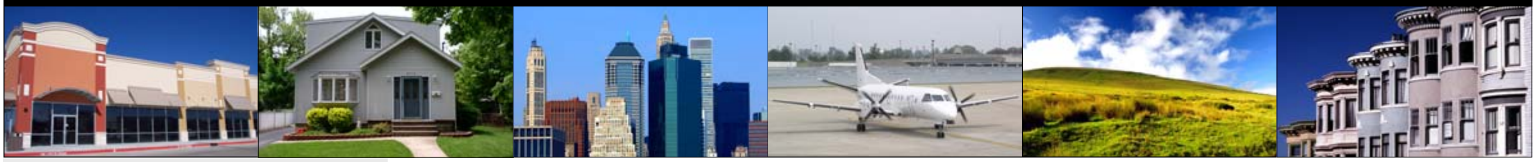
Template # 79

California Withholding Law

"New 3 1/3 withholding becomes law"



Dispositions of California real estate interests that occur on or after January 1, 2003 will be subject to withholding. As part of the budget solutions proposed by members of the California Legislature, Assembly Bill 2065 (for the complete bill text, see the link at the bottom of this bulletin), requires all real estate transferees (buyers) to withhold 3 1/3% of the sales price of specified California real property. The amount withheld shall be held in trust for the State of California according to the law. The sales price is defined to mean the cash paid, plus the fair market value of property transferred plus any liability assumed. It does not subtract any expenses of the sale.

The law sets forth a notice to be supplied by the escrow agent to the transferee with the escrow agent handling various certifications and, if necessary, the withholding and transmittal of funds to the Franchise Tax Board in the form and manner and at the time specified by the Franchise Tax Board.

The provisions in AB 2065 are patterned after Cal-FIRPTA (Foreign Investment in Real Property Tax Act) which became effective in 1988, which was in turn patterned after the federal law first adopted in 1980. Cal-FIRPTA currently relates only to withholding of real estate proceeds of foreign, non-resident aliens. The law amends CAL-FIRPTA to set up withholding requirements relating to three classes of transferors:

a) Individuals;
b) Persons (but not certain partnerships, or an individual or a corporation) where the funds are to be distributed to a transferor outside the state or to the financial intermediary of the transferor;
c) The seller is a corporation with no permanent place of business in California immediately after the sale.

Under the new law, 3 1/3 of the sales price is required to be withheld unless:

1. The property sales price is less than $100,000; or
2. The property is the principal residence of an individual transferor based on a written certification signed under penalty of perjury; or
3. The property is transferred to a corporate beneficiary by a foreclosure or a deed in lieu; or
4. The property transferred by an individual and will be replaced in a **like-kind exchange**, based on a written certification by the transferor or signed under penalty of perjury; or
5. The property is transferred by an individual as an involuntary conversion and the transferor certifies an intent to acquire replacement property eligible for deferral under Section 1033 of the Internal Revenue Code.
6. The transferor is an individual who certifies under penalty of perjury that the transaction will result in a loss for CA income tax purposes.
7. The transferor is a corporation unless immediately after the transfer, the corporation has no permanent place of business in California.

An escrow agent would:

a) Provide written notification of the withholding requirements to the parties;
b) Provide certification forms for the exemptions contained in the bill;
c) Provide instructions to be signed by the parties authorizing the withholding and remitting of the amount to the Franchise Tax Board along with any charge imposed for withholding and remitting, not to exceed $45.

There are additional provisions to be aware of covered on the CLTA web site: www.clta.org.

Source: CLTA News Express, Bulletin 2002/03-24

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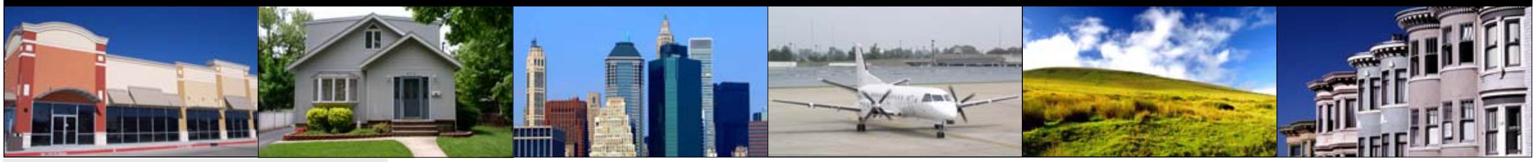
Template # 46

Principal Residence Rule Update

"Treasury Decision 9030 Clarifies Section 121 Exclusions"



IRC SECTION 121/TREASURY DECISION 9030

Section 121 of the Internal Revenue Code allows exclusion up to $250,000 of the capital gain on a principal residence for single taxpayers and $500,000 for a married couple filing jointly. To qualify, the taxpayer must own and use the home as a principal residence for 2 of the 5 years prior to the sale. The ownership and use periods do not need to be concurrent. The two years may consist of 24 full months or 730 days. Treasury Decision 9030 clarifies a number of issues including exceptions to the two-year rules for use, ownership and claimed exclusion "safe harbors" when the primary reason for the sale is health, change in place of employment, or "unforeseen circumstances."

Employment: Exception permitted if the new job site is at least 50 miles farther from the old home than the old workplace was from that home.

Health: Exception permitted if the primary reason is related to a disease, illness or injury or if a physician recommends a change in residence for health reasons. In addition, a qualified person for health reasons includes close relatives, so that sales related to caring for sick family members will qualify.

Unforeseen Circumstances:

- Death
- Divorce or legal separation
- Becoming eligible for unemployment compensation
- Change in employment that leaves the taxpayer unable to pay the mortgage or reasonable basic living expenses
- Multiple births resulting from the same pregnancy
- Damage to the residence resulting from a natural or man-made disaster, or an act of war or terrorism
- Condemnation, seizure or other involuntary conversion.

Any of the first five situations listed above must involve the taxpayer, spouse, co-owner, or a member of the taxpayer's household to qualify. The Regulations also give the IRS Commissioner the discretion to determine other circumstances as "unforeseen."

MULTIPLE HOMES

The Regulations list several factors relevant in determining which home is the "principal residence" of taxpayers who own more than one home:

- Place of employment
- Amount of time used
- Where other family members live
- Address used for tax returns
- Driver's license
- Car and voter registration
- Bills and correspondence
- Location of the taxpayer's bank, clubs and religious entities

DEPRECIATION

Taxpayers do not need to allocate the gain between the business and residential use if the business use occurred within the same dwelling unit as the residential use. Capital gain taxes must be paid on the total depreciation taken after May 6, 1997, but may exclude additional gain on the residence, up to the maximum amount.

The principal residence exclusion may include capital gain from the sale of vacant land that has been used as part of the residence, if the land sale occurs within two years before or after the sale of the residence.

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Template # 45

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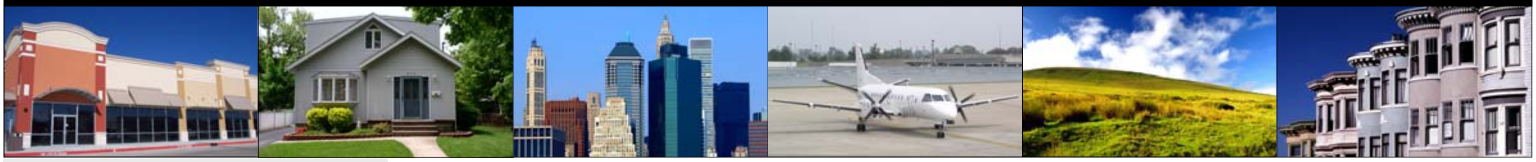
SUMMER 2007 TAX UPDATE

"NEW PLRS AND IRS DISASTER RELIEF EXTENSIONS"



For more information on these PLRs and disaster relief below, visit apiexchange.com, go to "Links" in the blue menu bar and then select "Tax Code and Legal References."

PLR 200728008 - RELATED PARTY EXCHANGES

This ruling addresses the sale of a relinquished property to a related party through a qualified intermediary where the related party sells within two (2) years. The ruling holds that a subsequent sale by the related party, within two (2) years, will not trigger recognition of gain under IRC Section 1031(f).

PLR 200725018 - PRORATED EXCLUSION FOR SALE OF RESIDENCE WITHIN 2 YEARS

The IRS determined that a taxpayer's second marriage and resulting new family were unforeseen circumstances under the homesale exclusion rules. As a result, the taxpayer qualified for a prorated maximum exclusion for gain recognized on the sale of the principal residence.

PLR 200728037 - RECENT REIT RULING

The IRS ruled that a §1031 exchange by a Real Estate Investment Trust (REIT) operating partnership in which no gain was recognized would not be treated as a sale of property nor will the relinquished property be treated as property sold for purposes of Section 857(b)(6)(D)(iv). This ruling is very similar to PLR 200701008 issued earlier in 2007.

45/180 DAY EXTENSIONS FOR STORMS

The IRS has revised several earlier extension notices to add counties and/or extend deadlines. As of June 14, the IRS website lists the following counties as receiving disaster relief beginning in April 2007:

- **April 14-18 Northeast Storms** – for deadlines on/before June 25th: Bergen, Burlington, Camden, Essex, Gloucester, Hudson, Mercer, Middlesex, Morris, Passaic, Somerset and Union in New Jersey. Albany, Dutchess, Orange, Richmond, Rockland, Ulster and Westchester in New York. Belknap, Grafton, Hillsborough, Merrimack, Rockingham and Strafford in New Hampshire. Cumberland, Knox, Lincoln, Oxford, Sagadahoc and York in Maine.
- **April 21-24 Texas Storms** – for deadlines falling on/before July 2nd: Atascosa, Denton, Maverick, Moore and Swisher.
- **May 4 Kansas Storms** – for deadlines falling on/before July 5th (October 15th for Kiowa County):Comanche, Edwards, Kiowa, Osborne, Ottawa, Phillips, Pratt, Riley and Stafford.
- **May 4 South Dakota Storms** – for deadlines falling on/before July 23rd: Beadle, Brown, Clark, Davison, Hanson, Hutchinson, Marshall, Miner, Sanborn, Spink and Yankton.

To qualify for disaster relief:

1) The taxpayer must be located in one of the specified counties, regardless of where the relinquished property or replacement property is located, or the taxpayer otherwise has difficulty meeting the exchange deadlines under the conditions in Revenue Procedure 2005-27, section 17; and **2)** The relinquished property was transferred (or the parked property was acquired by the EAT in a reverse exchange under Revenue Procedure 2000-37) on or before the first date of the disaster period listed above; and **3)** The 45 and 180 day deadline falls between the first day of the disaster period and the extension date listed above.

The actual extension is for the longer of 120 days from the last day of the 45 or 180 day deadline, or until the extension date specified above, 120 days will be longer in most cases.

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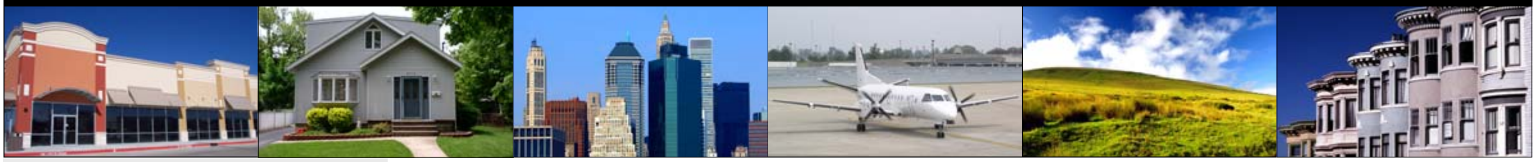
Template # 110

SELLER FINANCING

"NUMEROUS OPTIONS ARE AVAILABLE IN §1031 EXCHANGES"



When an Exchanger elects to carry back a Note on the relinquished property (the sale or Phase I Property), there are basically two options for treatment of the Note:

(1) DO NOT include the Note in the exchange and pay any taxes that may be due. The Exchanger would receive the Note as the Beneficiary at the closing and pay taxes on this portion of the capital gain under the Installment method (as specified in IRC §453).

(2) Include the Note in the exchange by initially showing the "Qualified Intermediary" as the Beneficiary and possibly defer the capital gain taxes.

In option number #1, the Exchanger is electing to take the Installment method per IRC Section 453. The Note is made payable to the Exchanger and is received by the Exchanger at the closing of the relinquished property. The drawback to this method is the capital gain taxes could become due in one lump sum if the Note allows for prepayments or if a balloon payment is required. In option number #2, the Exchanger has four different alternatives for attempting to use the Note as part of the tax deferred exchange. In order to avoid "constructive or actual receipt" by the Exchanger, the Intermediary is named as the Beneficiary on the Note.

(A) Use the Note towards the Down Payment on the Replacement Property Purchase

The Seller of the replacement property accepts the Note as partial payment towards the purchase price. In this scenario, the Note is assigned to the Seller by the Intermediary and delivered to the Seller at closing.

(B) Exchanger Purchases Note from Asset Preservation, Inc.

Essentially, the Exchanger purchases the note from the Intermediary. The purchase may include discounting the note to represent its fair market value at the time of purchase. The sale of the note to the Exchanger takes place during the exchange period, thus allowing the Intermediary to use the note proceeds towards the replacement property purchase.

(C) The Payer on the Note Pays Off the Note Prior to Closing on the Replacement Property

The Note is actually paid off during the exchange. This works only on short-term Notes due within the 180 day exchange period. The Payer pays off the Note directly to the Intermediary, the holder of the Note. The Intermediary adds the payoff proceeds to the existing proceeds in the Qualified Exchange Account. When the replacement property is ready to close, all proceeds are delivered to the closing officer.

(D) Selling the Note on the Secondary Market

The Exchanger finds an investor willing to purchase the Note, thereby replacing the Note with cash. The cash proceeds are added to the existing cash in the Qualified Exchange Account for purchasing the replacement property. Typically the Note will need to be sold at a discount, often anywhere from 15% – 30%. If the Note is discounted, the discounted amount may be considered a selling expense.

If the Exchanger chooses option #2 and then is unsuccessful with any of the four alternatives shown above, the Intermediary will assign the Note back to the Exchanger. The Exchanger has all the tax benefits of the installment method in Code §453 as shown under option #1 available. Many Exchangers choose option #2 because it allows for several alternatives of tax deferral, without penalizing the Exchanger.

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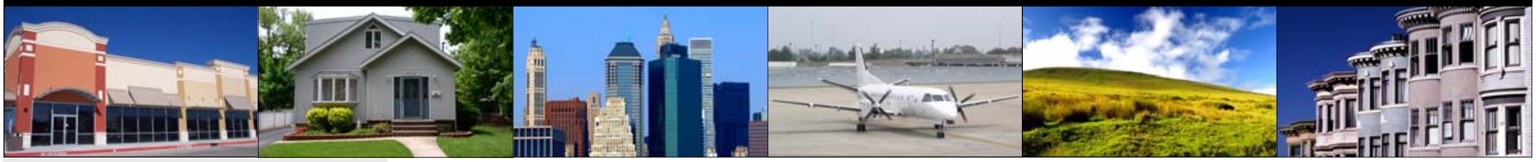
Template # 48

PARTNERSHIPS AND 1031 EXCHANGES

"WHAT HAPPENS WHEN ONLY ONE PARTNER WANTS TO EXCHANGE?"



A partnership may exchange property for other property of "like-kind." However, IRC Section 1031(a)(2)(D) specifically prohibits exchanges of partnership interests. This means that an Exchanger cannot buy into or sell interests in a partnership and qualify for a §1031 exchange. The rationale is that a partnership interest [along with a real estate investment trust (REIT) share] itself is personal property and thus is not "like-kind" with real property. Given these facts, what alternatives are available to Exchangers?

IS IT A 'TRUE' PARTNERSHIP?

First, investors owning a property together must determine if they really own the property in a true "partnership." Often, investors who own property with others may consider the other individuals their "partners" even though they hold title as an undivided interest and don't file a partnership tax return, thus they are merely "co-owners." The test is generally, "do the owners hold title as "tenants-in-common?"

POTENTIAL ALTERNATIVES

One option is that the entire partnership stays intact and exchanges the relinquished property for a replacement property. After the partnership closes on the replacement property, the property can be refinanced and the proceeds are distributed to the partner who wants to cash out.

Another alternative is that the partnership has a valid election out of subchapter K under IRC §761. The partner seeking to cash out sells their undivided interest and the other partner exchanges their tenancy-in-common interest for a replacement property. (Note: There are risks associated with partnership issues that must be discussed with a legal and/or tax advisor.)

ADDITIONAL CONSIDERATIONS

- Advance planning is important, as the greater the period of time between the election out of the partnership and the exchange, the better. The election out of the partnership to the individuals as an undivided interest shortly before closing on the relinquished property leaves open the possibility that the exchange would be invalidated because the property was not held as an undivided interest long enough to be considered "held for investment." [Note: In several instances, however, the Tax Court has extended §1031 tax deferral to former partners who changed their ownership structure prior to closing on a relinquished property.]
- If the entire partnership will be exchanging, it is preferable that the Partnership Agreement mention that they are holding the property "for investment or use in a trade or business."
- Every Exchanger should always consult with their legal and/or tax advisors to review the many issues and risks involved with partnership situations. Contact Asset Preservation toll-free to discuss partnership issues in greater detail.

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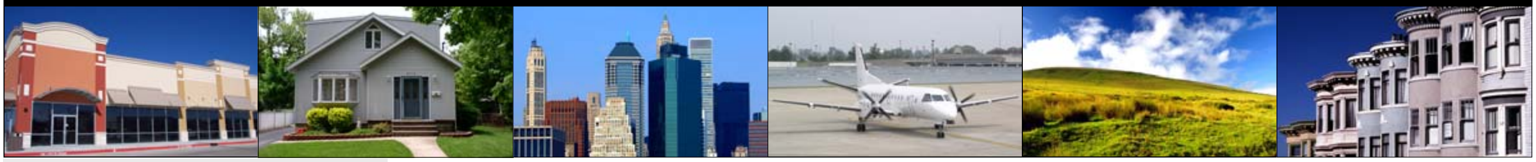
Template # 49

Closing Costs

"What Costs can be Considered Acceptable Exchange Expenses?"



WHAT COSTS CAN BE DEDUCTED?

A frequently asked question is "What expenses can be deducted from the exchange proceeds without resulting in a tax consequence?" Although the IRS has not published a complete list of qualifying expenses, there are some rulings that provide general parameters. Brokerage commissions can be deducted from the exchange proceeds (Revenue Ruling 72-456). Other transactional costs may also be able to be deducted if they are paid in connection with the exchange. (Letter Ruling 8328011).

WHAT ARE "EXCHANGE EXPENSES?"

Transactional costs that are referred to as "exchange expenses" on Form 8824 are not specifically listed but should generally include costs that are:

A. A direct cost of selling real property, which typically include:

- Real estate commissions
- Title insurance premiums
- Closing or escrow fees
- Legal fees
- Transfer taxes
- Notary fees
- Recording fees

OR -

B. Costs specifically related to the fact the transaction is an exchange such as the Qualified Intermediary fees.

ITEMS THAT ARE NOT "EXCHANGE EXPENSES"

Although not a complete list, the costs related to obtaining the loan should not be deducted from the proceeds.

THESE "NON-EXCHANGE EXPENSES" INCLUDE:

- Mortgage points and assumption fees
- Credit reports
- Lender's title insurance
- Prorated mortgage insurance
- Loan fees and loan application fees

OTHER "NON-EXCHANGE EXPENSES" CAN INCLUDE:

- Property taxes
- Utility charges
- Association fees
- Hazard insurance
- Credits for lease deposits
- Prepaid rents and security deposits

These rough guidelines do not address every potential cost. Exchangers should review their specific transaction and closing costs with their tax and/or legal advisors.

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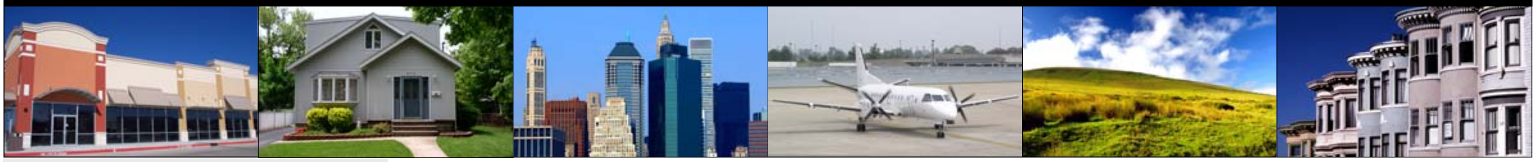
Template # 50

1031 EXCHANGES AND REFINANCING

"WITH PROPER TIMING, USE YOUR EQUITY FOR WHATEVER YOU WANT"



AN EXCELLENT OPPORTUNITY

Many real estate investors never consider an exchange because they mistakenly believe their equity must always remain tied up in real estate. Believe it or not, an investor can exchange into a more desirable property, thus preserving all their equity — and then refinance the replacement property to obtain cash. The cash received from the refinance of the replacement property can then be used for whatever the investor chooses.

THE TIMING IS IMPORTANT

A real estate investor should not refinance the relinquished property and shortly thereafter perform a tax deferred exchange, unless it can be established that the debt incurred prior to the exchange had "independent economic substance."

If the Exchanger cannot support they had a valid business reason incurring addition debt prior to the sale, the IRS could easily characterize this as a "step transaction" (where they determine the steps leading up to the exchange show the investor's original intent was merely to obtain the cash in an attempt to avoid the reinvestment rules of IRC § 1031.) For example, in Private Letter Ruling 8434015, the IRS ruled that cash proceeds refinanced immediately prior to closing an exchange constituted taxable boot.

CONSULT WITH ADVISORS

It is important to consult with your personal tax/legal advisors and an experienced IRC §1031 "Qualified Intermediary" on the timing of proposed refinancing.

POST EXCHANGE REFINANCING

In most circumstances, an attorney or CPA will recommend refinancing the replacement property after completing the exchange transaction. Any refinancing should be done later and off the replacement property closing statement.

USE REFINANCED PROCEEDS TO PAY BILLS OR INVEST IN STOCKS

- Refinanced proceeds can be used for anything the investor chooses and these funds do not have to be invested back into real estate. The money can go towards paying bills or meeting immediate cash flow requirements.
- Through a refinance of the replacement property, an investor can diversify their investments and/or take advantage of excellent returns currently available in many stocks, thus providing the Exchanger the ability to meet two important objectives:
- Preserve equity through full tax deferral;
- After refinancing the replacement property, diversifying investments into the stock market or other attractive investment opportunities.

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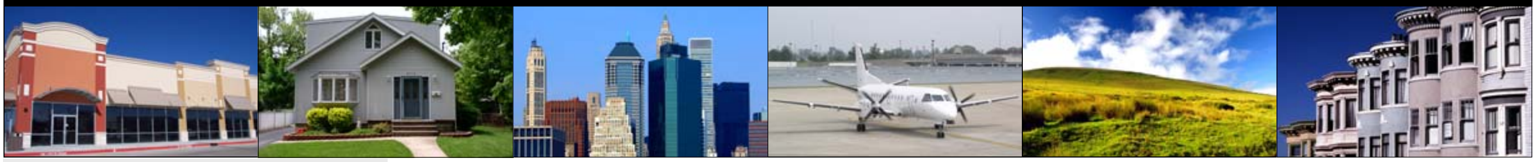
Template # 51

HOLDING TITLE TO REAL PROPERTY

"A COMPARISON OF THREE DIFFERENT METHODS"



	COMMUNITY PROPERTY	JOINT TENANCY	TENANCY IN COMMON
PARTIES	Only husband and wife	Any number of persons (Can be husband and wife)	Any number of persons (Can be husband and wife)
CONVEYANCE	Both co-owners must join in conveyance of real property. Separate interests cannot be conveyed.	Conveyance by one co-owner without the others breaks the joint tenancy.	Each co-owner's interest may be exchanged or sold separately by each owner.
CREDITOR'S RIGHTS	Co-owner's interest cannot be seized and sold separately. The whole property may be sold to satisfy debts of either husband or wife, depending on the debt.	Co-owner's interest may be sold on execution sale to satisfy creditor. Joint tenancy is broken, creditor becomes tenant in common.	Co-owner's interest may be sold on execution sale to satisfy the creditor. Creditor becomes tenant in common.
DEATH	On co-owner's death, 1/2 goes to survivor in severalty. Up to 1/2 goes by will or succession to others.	On co-owner's death, the interest ends and cannot be willed. Survivor(s) own(s) the property by survivorship.	On co-owner's death, the interest passes by will to the devisee or heirs. No survivorship rights.
DIVISION	Ownership interests are equal.	Ownership interests cannot be divided without breaking the joint tenancy.	Ownership can be divided into any number of interests, equal or unequal.
TITLE	Title is in the "community" (Similar to title being in a partnership.)	There is only one title to the whole property.	Each co-owner has a separate legal title to their undivided interest which can be exchanged or sold.

In any transaction, whether it's a sale or a §1031 tax deferred exchange, it is important to understand the differences among the various ways of holding title to real estate. The above chart provides a quick overview of some common ways of holding title. Not all of these methods are available in every state and there are other methods which may be available. It is important to consult with your legal and/or tax advisors to discuss the advantages and disadvantages of these methods in respect to your specific real estate transaction.

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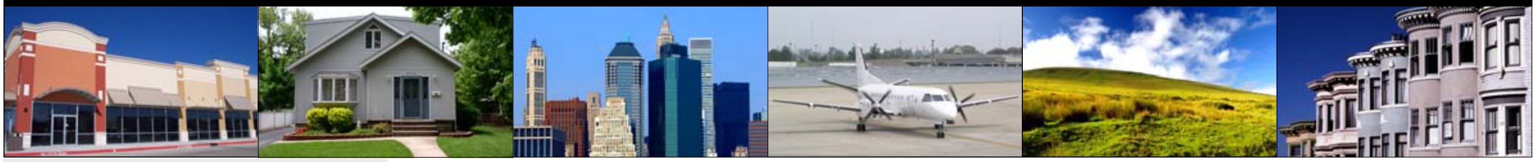
Template # 54

EXCHANGE ENTITIES

"CONSIDER THESE VESTING ISSUES PRIOR TO A §1031 EXCHANGE"



Generally in a §1031 tax deferred exchange, an Exchanger should take title to the replacement property in the same manner they held title on the relinquished property. In most cases, the entity initiating the exchange must be the same entity concluding the exchange. Some examples are reflected below:

- If a wife relinquishes, then the wife acquires;
- Smith LLC relinquishes, Smith LLC acquires;
- Gemco Corp. relinquishes, Gemco Corp. acquires;
- Durst Partnership relinquishes, Durst Partnership acquires.

SOME EXCEPTIONS TO THE GENERAL RULE

Partnerships and Limited Liability Companies (LLC's): An Exchanger who elects taxation as a sole proprietorship can hold the relinquished property as an individual but acquire the replacement property as a single-member, single-asset LLC. This provides the benefit of liability protection and also can help satisfy the 'single asset entity' requirements that many lenders impose on replacement property purchases. The IRS has also ruled that a limited liability company with two members will be considered a single member limited liability company if the sole role of one of the members is to prevent the other member from placing the LLC into bankruptcy and that the limited role member had no interest in LLC profits or losses nor any management rights other than the limited right regarding bankruptcy.

Grantor Trusts: An Exchanger can acquire a replacement property in a revocable living trust or "grantor" trust for estate planning purposes.

Death of an Exchanger: If the Exchanger dies during the exchange, the deceased Exchanger's estate may complete the exchange.

BUSINESS CONSIDERATION/LENDER REQUIREMENTS

Sometimes a business consideration, lender requirement or the Exchanger's liability issues can make it difficult to keep the vesting entity the same throughout the exchange. For this reason, it is important that Exchangers review the entire exchange transaction with their legal and/or tax advisors before closing on the sale of the relinquished property. Some problem areas:

If a wife, as the only Exchanger, is relying on the husband's income to qualify for replacement property financing, the lender may require that the husband appear on the deed. This could have an impact on the wife's exchange.

Most lenders are wary about lending to trustees. An Exchanger who relinquishes property in a trust but needs to obtain conventional financing for the purchase may have difficulty obtaining a loan because lenders prefer loaning to an individual.

Sometimes an Exchanger may relinquish a property in one entity such as multi-member LLC, corporation or partnership but want to acquire a replacement property in a different entity. This would disqualify the exchange.

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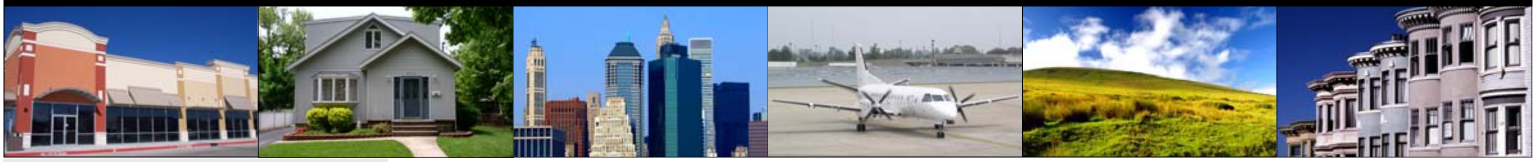
Template # 53

CLOSING TAX DEFERRED EXCHANGES

"IT'S PAINLESS WITH ASSET PRESERVATION, INC."



Handling the closing of a §1031 tax deferred exchange is almost as easy as closing a typical sale transaction! The main difference, though, is the documentation provided by Asset Preservation, Inc. (API). These documents are paramount to a successful §1031 exchange and must be executed prior to the relinquished property closing.

QUALIFIED INTERMEDIARY DOCUMENTS

Once you call API with the information needed to prepare the exchange documents, we immediately forward the following for the Exchanger's signature:

1. Exchange Agreement
2. Assignment Agreement
3. Notice of Assignment (also signed by the Buyer)
4. Qualified Exchange Account Agreement

CLOSING DOCUMENTS/STATEMENTS

To properly reflect a §1031 tax deferred exchange some minor revisions to your standard documents are required:

A. API should be shown as the Seller on the Seller's Settlement Statement. For example, show the Seller as "Asset Preservation, Inc., as Qualified Intermediary for (name of Exchanger inserted here)." All other documents which are common to the area (such as Escrow Instructions in some states) should also show Asset Preservation, Inc. as the Seller.

Note: Settlement statements that show the Exchanger as the Seller, instead of Asset Preservation, Inc. as the Seller, could be considered a potential "red flag" to the IRS.

B. Have the Exchanger "READ AND APPROVE" all documents and statements prior to having API sign as the Seller.

C. Prepare the 1099S Form in the name of the Exchanger. Check Box #4 on the form which indicates that other property will be received as part of the consideration.

PREPARING THE DEEDS

Prepare the deed directly from the Exchanger to the Buyer. A benefit of API's exchange program is that you will only prepare one deed for each phase of the exchange, unless API is facilitating a reverse or improvement exchange.

API IS ALWAYS HERE TO HELP!

API's exchange counselors have extensive experience in both exchange transactions and closing issues. We are always here to answer any questions about your exchange and to assist with the preparation of your closing documents.
Call us toll-free to receive tax deferred exchange brochures and information packages for your clients.

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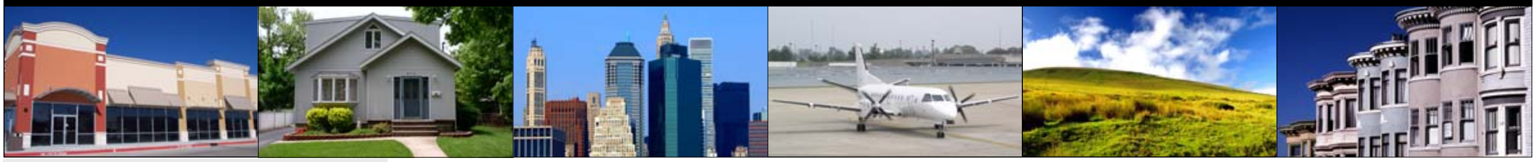
§1031 Tax Deferred Exchanges

"What Residential Real Estate Agents Need to Know"



1031 tax deferred exchanges provide real estate agents a tremendous opportunity to increase commissions! Conversely, by not understanding a few key exchange concepts, real estate agents often can unknowingly incur increased liability. We have provided answers below to questions frequently asked by residential real estate agents.

Q: When should the Intermediary is contacted?

A: As soon as the contract is signed. Asset Preservation, a leading national "Qualified Intermediary," does not charge a cancellation fee if the transaction does not close.

Q: What language should be added to the Purchase and Sale Agreement?

A: The verbiage below is satisfactory in establishing the Exchanger's intent to perform a tax deferred exchange and releases the other parties from costs or liabilities as a result the exchange:

"Buyer is aware that Seller intends to perform an IRC Section 1031 tax deferred exchange. Seller requests Buyer's cooperation in such an exchange and agrees to hold Buyer harmless from any and all claims, costs, liabilities, or delays in time resulting from such an exchange. Buyer agrees to an assignment of this contract to Asset Preservation, Inc. by the Seller."

Q: Who should I contact to set up an exchange?

A: You can call Asset Preservation's National Headquarters toll-free 800-282-1031.

Q: What should be done so I do not incur a potential additional liability?

A: Every time you list any property that may have been "held for investment" (i.e. rental house, second or vacation home, duplex, land, etc.), recommend that your client talk to their legal and/or tax advisors about the benefits of a 1031 exchange. You can also suggest that your client call an experienced Qualified Intermediary. Exchanges have been a part of the tax code since 1921. As a licensed professional, a real estate agent can't afford to say "I don't know about exchanges because I specialize in residential."

Q: Can exchanges be set up at the last minute?

A: Yes, as long as the transaction has not closed. Asset Preservation can successfully convert a sale into an exchange. Documents can be prepared and faxed to the title company within an hour.

Q: If my clients have more questions, where can they go for more information?

A: Call Asset Preservation's toll-free number or visit our Internet site: www.apiexchange.com.

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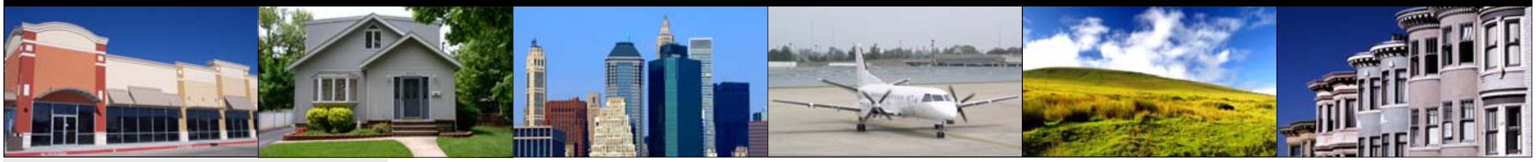
RELATED PARTY EXCHANGES

"CAUTION NEEDED IN THESE TRANSACTIONS"



INTENT OF THE RELATED PARTY RULES

The related party rules were enacted to prevent related parties from "cashing out" of an investment and avoiding tax if either party's property is disposed of within two years of the exchange. In addition, Section 1031(f) states that the Internal Revenue Service reserves the right to invalidate any exchange in which the taxpayer can't prove that the "exchange" did not have a principal purpose of avoiding taxes that would otherwise be due or avoiding the purposes of the related party rules.

WHO IS A RELATED PARTY?

A related party is any person or entity bearing a relationship with the taxpayer. Although not an exhaustive definition, this includes:

- Family members such as brothers, sisters, spouses, ancestors and lineal descendents. (Stepparents, uncles, in-laws, cousins, nephews and ex-spouses are not considered related.)
- A corporation or partnership in which more than 50% of the stock or more than 50% of the capital interest is owned by the taxpayer.

LET'S LOOK AT SEVERAL SCENARIOS

Although it is important to consult with tax or legal advisors before attempting any exchange with a related party, some guidelines exist which are useful in analyzing related party exchanges.

Simultaneous Exchange

When related parties directly swap with each other, both parties must hold the property acquired for two years following the exchange. If either party disposes of their property within the two year holding period, then the capital gain tax will need to be recognized.

Delayed – Selling to a Related Party

A taxpayer can sell to a related party, but the related party must hold the property for a minimum of two years or the exchange will be invalidated.

Delayed – Purchasing from a Related Party

In Technical Advice Memorandum 9748006, the IRS disallowed tax deferral to an Exchanger who purchased his mother's property. Revenue Ruling 2002-83 also denied tax deferred treatment to an Exchanger using a Qualified Intermediary to ultimately purchase a replacement property from a related party. A conservative guideline to observe is: *"If the buyer and seller are related, and one of the parties ends up with the property and the other ends up with the cash, the exchange will probably be disallowed."*

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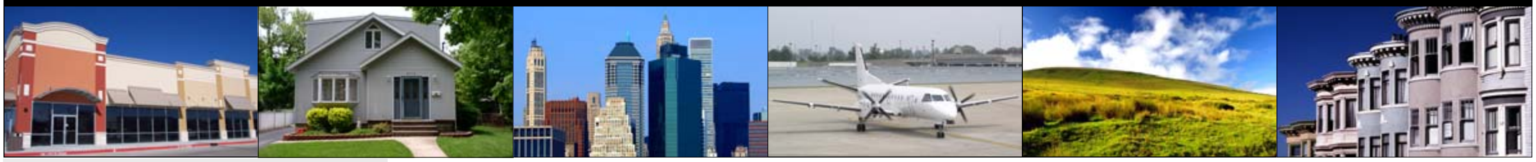
REVENUE RULING 2002-83

"CLARIFICATION OF THE RULES WHEN PURCHASING FROM A RELATED PARTY"



SECTION 1031(f)

Section 1031(f)(4) of the Code adds special rules for transactions between related persons. For purposes of Section 1031(f), the term "related person" means any person bearing a relationship to the Exchanger described in Section 267(b) or 707(b)(1).

Essentially, Section 1031(f) denies tax deferral when related parties perform an exchange of low basis property for high basis property in anticipation of the sale of the high basis property. The rationale for Section 1031(f) is that if a related party exchange is followed shortly thereafter by a disposition of the property, the related parties have essentially "cashed out" of the investment and the original exchange should not receive tax deferred. The IRS tends to look at the related parties as a single economic unit and tax deferred exchange treatment will be disallowed if it is a part of a transaction or series of transactions structured to avoid the purposes of the related party provisions.

REVIEW OF LEGAL DEVELOPMENTS

TAM 102519-97: IRS ruled that an individual is not entitled to tax deferred treatment when purchasing a replacement property owned by a related party, even though a Qualified Intermediary (QI) purchased the replacement property.

TAM 200126007: IRS denies tax deferred treatment when Exchanger wanted to sell residential property with a low basis and exchange for replacement property owned by a party related to the Exchanger. The IRS felt this transaction involved "basis shifting" and a cashing out of the investment by an exchange between related parties.

FSA 199931002: Exchanger should not exchange into a property owned by a related party when transferring the relinquished property to an unrelated party.

FSA 2001137003: Exchanger <u>can</u> acquire a replacement property from a related party if the Exchanger and the related party are involved in a 'swap' and each hold their property for at least two years.

REVENUE RULING 2002-83

Revenue Ruling 2002-83 addresses the situation where an Exchanger transfers a relinquished property to a QI in exchange for a replacement property owned by a related party. The Revenue Ruling specifies that an Exchanger, under the facts shown below, is <u>not</u> entitled to non-recognition treatment under Section 1031(a) if, as part of the transaction, the related party received cash or other non-like-kind property for the replacement property.

Facts:

- Exchanger A wants tax deferral under IRC Section 1031;
- B is an entity related to Exchanger A;
- C wants to buy A's property.

The Issue:

- Exchanger transfers low basis relinquished property to QI;
- QI sells relinquished property to C for cash;
- QI acquires high-basis replacement property from B, transfer this property to A and pays B the cash received from C.

Result: Tax Deferred Treatment Denied

In essence, the Exchanger A, enters into a like-kind exchange with QI, an unrelated third-party. The problem is that the end result is the same as if Exchanger A had exchanged property with B followed by a sale from B to C.

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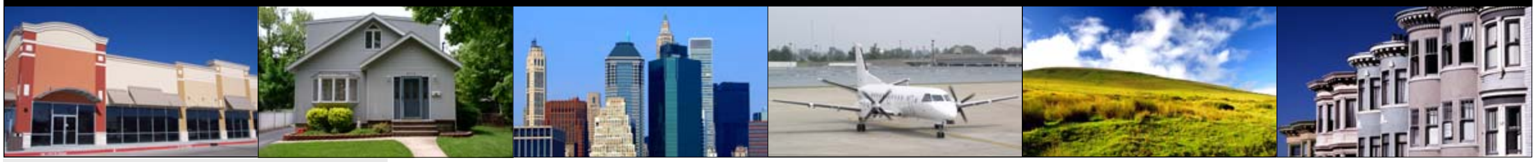
RELATED PARTY EXCHANGES

"TERUYA BROTHERS V. COMM. AND PLR 2004-40002"



TERUYA BROTHERS V. COMM. (2005)

The U.S. Tax Court held that a company could not defer gain under §1031 on its exchange of properties through a Qualified Intermediary that sold them and then later bought replacement properties from a party related to the exchanger because the company could not demonstrate that tax avoidance was not a principal purpose of the transaction.

The Section §1031 rules say that if someone exchanges with a related party, and the related party sells the property within two years, the transaction is disqualified from the tax deferral benefits of Section §1031.

WHERE TERUYA BROTHERS STUMBLED

When Teruya Brothers sold the Royal Towers Apartments and the Ocean Vista Condominiums in 1996, they did so through a §1031 exchange with a Qualified Intermediary. The Intermediary acquired the replacement property from Times Super Market, a Hawaii grocery chain, and then the Intermediary transferred the replacement property to Teruya Brothers, all in compliance with the 45-day and 180-day limits.

However, there was a problem: Teruya Brothers owned 62.5% of Times Super Market. Unfortunately for Teruya Brothers, the IRS has taken the position that this fact pattern is taxed as: 1) exchange of relinquished and replacement properties between the Teruya Brothers and Times Super Market, followed by 2) a sale to the third party by Times Super Market.

The court indicated that an exchange involving a Qualified Intermediary and a related party that did not involve tax avoidance might be valid in certain cases. In this case, the court found that tax avoidance was a principal purpose and disallowed the exchange.

PLR 2004-40002

This private letter ruling is important in that it validated a situation where related parties exchanged with each other where both performed a §1031 exchange and never cashed out of their investment.

Partnership A owned Building 1 and Partnership B owned Building 2. Partnership A and Partnership B are considered related persons under IRC Section §1031(f)(3). Partnership A had entered into a purchase and sale agreement to sell Building 1 to an unrelated third party and then purchase Building 2 from Partnership B in a §1031 exchange. Partnership B is also interested in doing a §1031 exchange on the sale of Building B as its relinquished property. Partnership B's replacement property is owned by a completely unrelated seller. Partnership A and Partnership B hire the same Qualified Intermediary to prepare all needed exchange documents. Partnerships A and B both represent they will not sell Building 2 or Partnership B's replacement property within 2 years from their acquisition in a §1031 exchange.

The IRS ruled that neither IRC §1031(f)(1) nor §1031(f)(4), with the tax avoidance structuring exception, apply since neither of the related persons are cashing out their investment and both partnerships are seeking to acquire like-kind replacement properties under IRC §1031.

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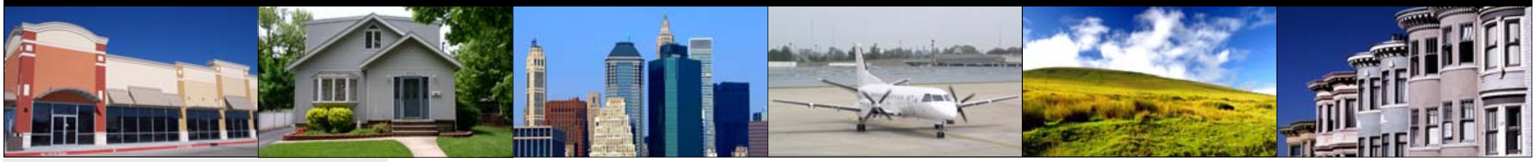
PRECONSTRUCTION SALES



WHAT IS A PRECONSTRUCTION SALE?

Preconstruction sales are real estate purchase transactions which commence prior to construction of the new project's (typically condominiums) completion. Preconstruction prices are usually lower than those of existing or "already built" properties. (Recently, a Florida beachfront condominium unit was offered for $190,000 during the Reservation Agreement Phase and was worth $270,000 when the unit was completed.) Developers discount the prices of these units to create incentive for purchasers to buy a property "they can't see, feel or touch". Developers sell preconstruction properties in order to secure their construction loans on the project. Lenders may require that 50% to 80% of a project be pre-sold in order to approve the construction loan and subsequently the beginning of the construction process.

THE PROCESS

1. Reservation Agreement – The developer organizes site plans, floor-plans, prices and amenities of the Condominium project which, initially, are subject to change. Units are reserved by purchasers with a minimum "intent to buy" deposit which is usually 5% or less of the purchase price. The deposit is placed in an interest-bearing trust account and is refundable to the purchaser at any time during this stage.
2. Right of Rescission Period – The condominium documents, which have been approved by the State, are delivered to the Purchaser for examination. These documents contain the exact details of the project, including the final site plan, floor-plans, amenities, by-laws, etc. A potential purchaser then has fifteen days to approve the documents and decide whether they will complete the purchase of the property specified.
3. Contract for Sale – The Buyers deliver the balance of the required earnest money deposit, which is usually 20% of the contract purchase price. At this point, the contract becomes binding to both parties.
4. Closing of the Sale – The Certificate of Occupancy is issued upon completion of the condominium unit.

The purchasers perform a walk-through inspection of the property and attend the closing where funds are disbursed and settlement is completed.

PURCHASING A PRECONSTRUCTION PROPERTY IN A §1031 TAX DEFERRED EXCHANGE

Be sure to inform the seller (developer) of the intent to perform an exchange and that the contract will need to be assignable to a "Qualified Intermediary." Although closing dates for preconstruction properties typically are not specified in advance, it is critical that an investor desiring to perform an exchange meet the following time requirements: (A) After the sale of the relinquished (sale) property, the Exchanger must identify the replacement (purchase) property(ies) within 45 days of this closing. (B) The purchase of the replacement property must be completed within 180 calendar days from closing on the relinquished property. Clearly indicate in the preconstruction purchase contract the purchaser's intent to perform a tax deferred exchange. One suggestion to help alleviate time pressures for closing on the replacement (preconstruction) property is extending the closing date on the relinquished property once it is under contract.. The 45/180 time requirements begins after closing on the relinquished property, so postponing this closing gives an investor a higher probability that the replacement property will be completed within the exchange period.

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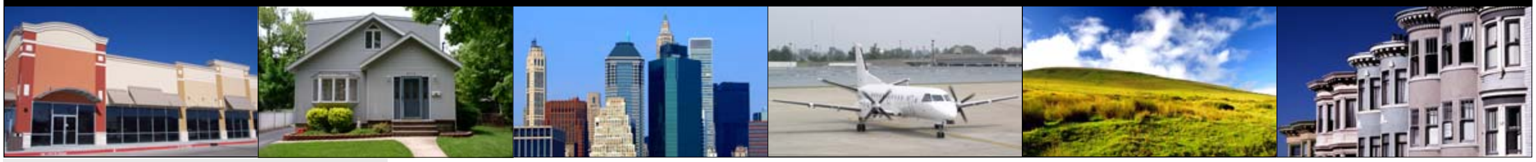
SOARING AIRCRAFT MARKET MEANS HIGHER CAPITAL GAIN TAXES FOR AIRCRAFT OWNERS



TAX CONSEQUENCES OF SELLING AIRCRAFT

What does a growing economy and delayed delivery times for new aircraft mean to aircraft owners? An increase in the value of your present aircraft! As anyone who is involved in the aviation industry can tell you, aircraft of all types and ages have seen dramatic increases in value in recent years. This translates into increased opportunity for those individuals or corporations wishing to upgrade their current aircraft.

While appreciation of your aircraft is generally a positive thing, there is also a downside. Specifically, any appreciation in value of your aircraft will result in capital gain taxes at the time the aircraft is sold. On the other hand, depreciation taken on the aircraft will be subject to depreciation recapture at the time of a sale. Aircraft owners looking to upgrade their current aircraft may be in for disappointment. Once tax advisors calculate the amount of value remaining to reinvest in a new aircraft, it may not seem to be a smart move to sell after all.

PERFORM AN EXCHANGE, RATHER THAN SELLING

The answer to this dilemma lies in exchanging your aircraft, instead of selling. Many aircraft owners are unaware that a method exists for deferring the significant capital gain taxes and depreciation recapture due on the sale of their aircraft. An exchange is nearly as simple as a typical aircraft sale. Once you have located a purchaser for your aircraft, you or your broker contacts a Qualified Intermediary who will structure your exchange within the IRS requirements. It is not necessary to purchase your replacement aircraft from the same party you are selling to, nor is it necessary to close your sale and your purchase at the same time. The IRS has built in timeframes to allow you flexibility in your exchange.

ASSET PRESERVATION PROVIDES A TAX SOLUTION

Sellers of business use aircraft turn to Asset Preservation Inc. (API) for answers to their capital gain tax dilemmas. Aircraft owners have learned that API has helped structure hundreds of aircraft sales as §1031 exchanges, thereby deferring capital gain taxes due! As a Qualified Intermediary, Asset Preservation, Inc. has designed a system for facilitating aircraft exchanges which allows owners to sell aircraft, search for replacement aircraft, and complete tax deferred exchanges within the time limits specified by the IRS. API's sole purpose is to guide aircraft owners through their exchange transactions with minimal interruption to their everyday business activities.

API professionals monitor each exchange carefully through communication with sellers and brokers to address issues as they arise. Our experienced staff and aircraft specialists allow us to accommodate all types of exchange transactions. Give API a call to learn how we can help you keep your sale proceeds available for reinvestment in a new or upgraded aircraft. Our exchange counselors are always available to answer questions and provide guidance in determining if a §1031 tax deferred exchange might be an excellent alternative for you.

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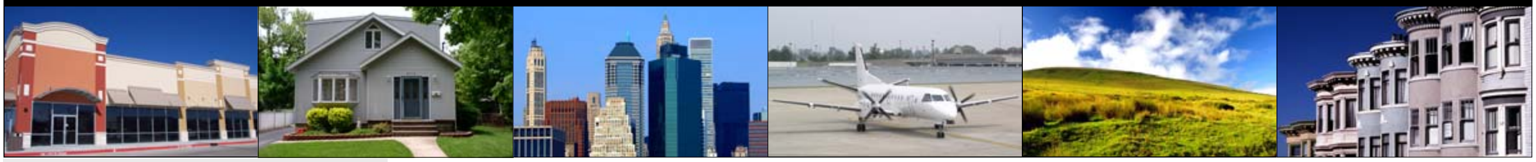
REAL ESTATE VS. MUTUAL FUNDS

"OVER THE PAST 10 YEARS, REAL ESTATE BEAT THE STOCK MARKET"



WHY INVESTMENT REAL ESTATE?

Why invest in real estate? The first reason is fairly obvious. Most financial planners recommend that investors accumulate a diversified investment portfolio that consists of some stocks, bonds, and assets such as real estate. Another reason for holding real property for investment is that sometimes real estate can outperform the stock market.

A TEN-YEAR COMPARISON

According to the National Association of Realtors, the median home resale price in 1991 was $97,100. With a 20% down payment of $19,420 and a $77,680 mortgage, an investor could have purchased the median resale home for $97,100.

At the end of 2001, that median price of that home was $147,500. Through only price appreciation, an investor would have gained $69,820. [Note: This increase in equity does not include the equity growth through the pay-down of the mortgage over the same period. Assuming a 30-year loan at 8%, if this was included, they would have an additional $8,917 in equity growth.]

Assume an investor put $19,420 into the Vanguard 500 Index fund over the same time period. Over the same ten-year time period, it would have grown to $60,593, after paying taxes on the capital gains and dividends.

Since the Vanguard 500 Index Fund generally did better than most other managed mutual funds over the past ten years, it's fair to assume that property owners holding real estate for investment outperformed investors holding stocks and bonds in the same time period.

REAL ESTATE VS. A MUTUAL FUND

	Real Estate	Index Fund
1991 Equity	$19, 420	$19, 420
2001 Equity	$69, 820	$60, 593
10 Year Annual Return	13.7%	12.1%
5 Year Annual Return	18.8%	10.1%
3 Year Annual Return	20.5%	(1.5%)

THE POWER OF TAX DEFERRAL

The comparison above only looks at the *appreciation* of real estate held for ten years compared to an Index Mutual Fund held for the same time. The benefits of owning investment real estate become even more dramatic after calculating the costs of sale. If the index fund is sold, the investor must recognize capital gain taxes; however, the investor who exchanges their investment property will have all their equity available for purchasing more real estate. This increase in purchasing power is another tremendous advantage in owning real estate held for investment as an important asset in a diversified investment portfolio.

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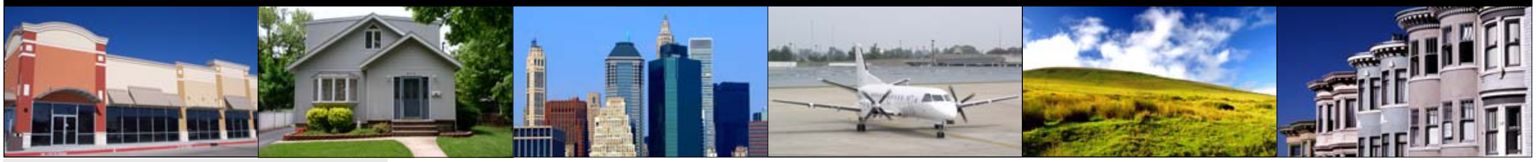
Template # 61

ARE YOUR STOCKS SINKING?

"IT MAY BE A GOOD TIME TO DIVERSIFY INTO REAL ESTATE"



For many investors, the declines in the stock market resulted in substantially lower returns and, in most cases, a significant drop in overall portfolio values. In fact, if an investor had purchased a portfolio of stocks listed on the NASDAQ at the peak around March, 2000, they could have seen a decline of over 60% in their portfolio value a couple years later. Even though many financial analysts offer advice to keep a long-term perspective and remain fully invested in the stock market, is there some merit to exploring other investment alternatives?

DIVERSIFYING INTO INVESTMENT REAL ESTATE

This may be an excellent time to investigate diversifying out of an investment portfolio that is heavily weighted in stocks and shift some assets into investment real estate. In most areas throughout the country, real estate has appreciated well over the past few years. In addition, there are several fundamental advantages to owning real estate.

SOLID RETURN ON INVESTMENT:

Many investment real estate alternatives, such an income property, produce a steady cash flow in the form of rents. Even if appreciation is not dramatic, the return on investment (ROI) can be attractive compared to conservative alternatives such as a bond fund or money market account. Many real estate investors routinely achieve returns in the 8-15% range. Furthermore, historically much of the time when the stock market is down, real estate has been up and vice versa.

BENEFIT OF LOWER BORROWING COSTS:

As the Federal Reserve has lowered the federal funds rate, generally the interest rates available for investment properties have also become more attractive. If a property generates an attractive return at the time of purchase, lower rates at a later date provide an excellent way for property owners to refinance. Replacing an old loan on an investment property with a new loan at a better interest rate creates more cash flow immediately, a better overall ROI, and this benefit will remain in place throughout the duration of the loan!

FULL CAPITAL GAIN TAX DEFERRAL:

The tax code gives an investor the option of performing a §1031 tax deferred exchange to acquire additional properties. The ability to postpone, potentially indefinitely, the payment of capital gain taxes provides an opportunity for the creation of wealth that is not available to investors in the stock market. An exchange provides investors with an interest-free, no-term loan from the government.

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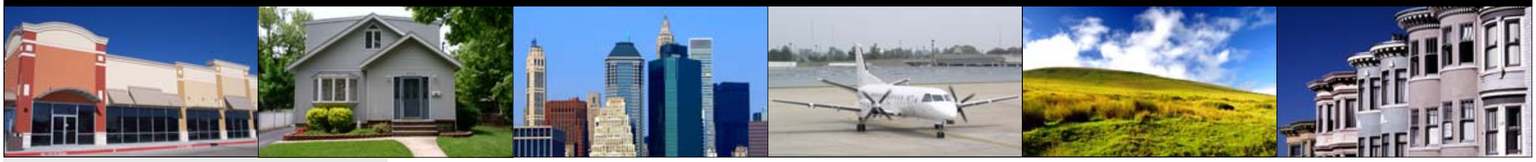
Template # 62

How Secure Are The Exchange Funds?

"It's the Most Important Question to Ask an Intermediary"



BEWARE

Security of the exchange funds is paramount to all other aspects of an exchange. Many property owners are not aware that, with the exception of minimal regulations in the state of Nevada, "Qualified Intermediary" companies are not overseen by the federal government or any national regulatory entities! The bottom line is that you have to determine whether the company selected can provide sufficient protection and financial security, in writing, before proceeding with any 1031 exchange.

INVESTIGATE THE SECURITY PROVIDED

It is critical to examine the differences between "Qualified Intermediary" companies. Most investors are not aware that exchange companies can often hold millions, and sometimes hundreds of millions of dollars, at any point in time. It is important to compare the true security that can be provided *in writing* when comparing many "independent" companies versus a subsidiary of a large parent company. Does a bond, even one for $10 million or more, really provide a great degree of additional security? The answer is "no." Any loss above the bond amount is not covered by the bond and can leave investors unprotected.

BETTER THAN BONDED!

Asset Preservation, Inc. is proud to offer all four of the "safe harbors" provided in the Treasury Regulations. Our many levels of security, backed by a written "Letter of Assurance" from Stewart Title Company, provide Exchangers with the highest degree of exchange proceed security.

QUESTIONS TO ASK AN INTERMEDIARY

1. **Where will the exchange funds be held?** *(If held in a bank, are you aware that FDIC coverage is only for $100,000 per account?)*

2. **In what type of account are the funds invested?**

3. **Are separate accounts set up for each client?**

4. **What are the requirements for the withdrawal of any exchange proceeds?** *(Is the Intermediary authorized to move funds without the Exchanger's written approval?)*

5. **Is the notarized signature of the Exchanger required for moving funds at all times?** *(What written documents specify this requirement?)*

6. **Can a written "3rd Party Guaranty" be provided to all Exchangers?** *(Is this backed by a recognizable entity with an established track record and sufficient assets to cover a potential loss of exchange proceeds?)*

Call the professionals at Asset Preservation. We are confident you will find our security to be unparalleled!

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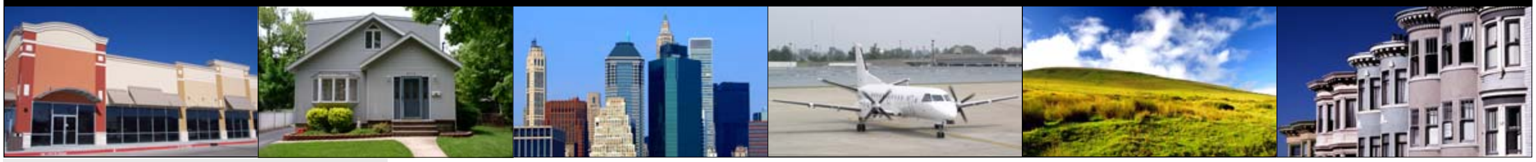
Template # 63

1031 TAX FILING REQUIREMENTS

"BEWARE IF YOU ARE CLOSING AFTER OCTOBER 17"



FORM 8824 - REPORTING THE EXCHANGE

Form #8824, Like-Kind Exchanges, is filed to reflect the exchange on the Exchanger's tax return in the year the transaction began (i.e. the year the relinquished property was sold to a buyer.) Form #8824 requires the Exchanger to provide the following information:

Part I - Information on the Like-Kind Exchange

1) Description of like-kind property given up;
2) Description of like-kind property received;
3) Date like-kind property given up was acquired;
4) Date property was transferred to other party;
5) Date like-kind property was identified;
6) Date like-kind replacement property was received.

Part II-Related Party Exchange Information

Part III-Realized Gain or (Loss), Recognized Gain, Basis

Part IV - Deferral of Gain from Section 1043 Sales

FORM 4797/SCHEDULE D - REPORTING THE GAIN

Form #4797 or Schedule D is filed to report the taxable gain. The gain must be allocated between capital gain, ordinary income depreciation recapture, Section 1231 gain and unrecaptured Section 1250 gain.

FORM 6252 - REPORTING AN INSTALLMENT SALE

Form #6252, Installment Sale Income, must be filed if the Exchanger carries back a note to a buyer on the sale of the relinquished and is able to report the taxable gain under the installment sale rules.

CONSULT WITH YOUR TAX ADVISOR

This is a brief summary. Every Exchanger should consult with a tax advisor to review their specific situation and tax filing requirements.

DUE DATE OF THE TAX RETURN

An Exchanger has to complete their exchange within 180 calendar days, or the date their tax return is due - whichever is earlier.

If an Exchanger closes an exchange:

1) Between October 17 and December 31;
2) Files their tax return on April 15;
3) Desires the ability to have up to 180 calendar days to complete their exchange by purchasing one or more replacement properties;

<u>then the Exchanger must:</u>

File an extension by April 15, using Form #4868, which would extend the date the Exchanger's tax return is due until August 15 of that year.

If the tax extension is not filed by their tax filing date, the Exchanger's "exchange period" is shortened to the actual date their tax return is due and filed.

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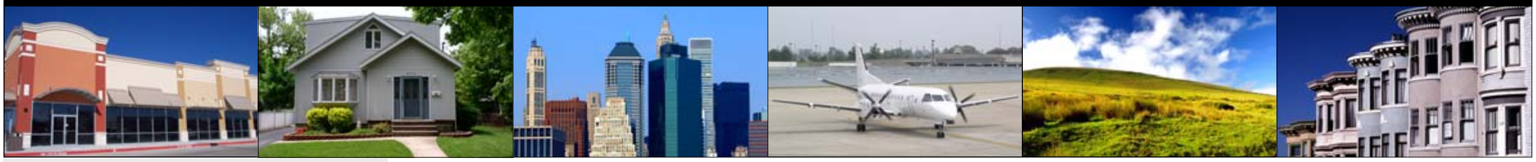
Template # 64

TAXING THOUGHTS

"CONSIDER THESE TAX FACTS AS APRIL 15 APPROACHES"



LOTS OF WORDS

- The Gettysburg address is 269 words.
- The Declaration of Independence is 1,337 words.
- The Holy Bible is 773,000 words.

However, the tax code has grown from 11,400 words in 1913, to more than 7 million words today.

TAX FORMS

There are over 480 different tax forms, each with many pages of instructions. Even the easiest form, the 1040E, has thirty three pages of instructions.

SAVE A TREE?

The IRS sends out 8 billion pages of forms and instructions each year. Laid end to end, these forms and instructions would stretch 28 times around the earth. Nearly 300,000 trees are cut down yearly to produce the paper for all the IRS forms and instructions.

LOST PRODUCTIVITY

American taxpayers spend $200 billion and 5.4 billion hours working to comply with federal taxes each year, more than it takes to produce every car, truck, and van in the United States.

TAX FREEDOM DAY

America will celebrate Tax Freedom Day on April 27, 2003. This is the day the average American will work to pay taxes for the year.

COST OF COMPLIANCE

The IRS employs 114,000 people; that's twice as many as the CIA and five times more than the FBI. Sixty percent of the taxpayers must hire a professional to prepare their own tax return.

PERCENTAGE OF INCOME

Taxes consume 38% of the average American family's income. The percentage attributed to taxes is more than for food, clothing and shelter combined.

ASSET PRESERVATION'S SOLUTION

Perform an IRC §1031 tax deferred exchange and don't give the government a penny more than you have to. The tax code rewards real estate investors for reinvesting their equity into more real estate. Since 1921, the tax code has given investors the ability to defer federal and state taxes through an exchange for "like-kind" real estate within the 45-day identification and 180-day exchange periods.

Call the professionals at Asset Preservation, Inc. to learn about the *"Power of Exchange™"* today!

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Template # 65

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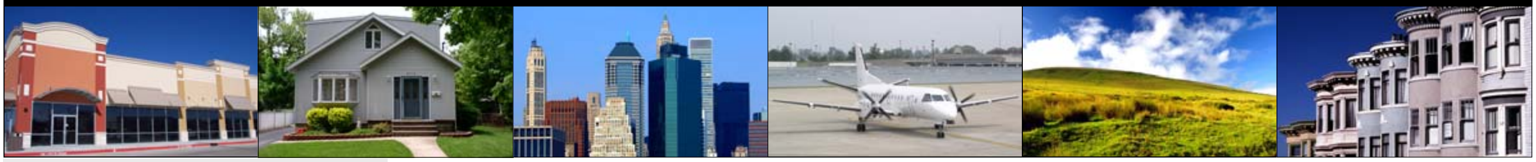
REPLACEMENT PROPERTY CALCULATION

"OLD TAX BASIS IS CARRIED OVER IN A §1031 EXCHANGE"



TAX BASIS - PURCHASE ACQUISITION

In a standard purchase transaction, the taxpayer's original tax basis in the purchase property is the actual purchase price. The taxpayer allocates a portion of this purchase to land value and the remaining amount to real and/or personal property that is eligible for annual cost recovery (depreciation) deductions.

TAX BASIS - EXCHANGE ACQUISITION

In an IRC §1031 tax deferred exchange, the tax basis in the replacement property is reduced using a formula that takes into account the adjusted basis of the relinquished property sold in the exchange. Treas. Reg. §1.1031(d)-1(e) says that the basis of the replacement property acquired must be increased (or decreased) by the amount of the gain (or loss) recognized on the transfer of the relinquished property. Although most taxpayers will rely upon the calculations provided by their tax and/or legal advisors, the formula for determining the tax basis in the replacement property is reflected in this handout.

REPLACEMENT PROPERTY BASIS FORMULA

1.	Relinquished Property Adjusted Basis	________
2.	*Plus*: Any Other Property Transferred	+ ________
3.	*Plus*: Liabilities Assumed by Taxpayer	+ ________
4.	*Plus*: Amount of Cash Paid by Taxpayer	+ ________
5.	*Plus*: Gain Recognized on Other Property	+ ________
6.	*Less*: Money or Property Received	- ________
7.	*Less*: Liabilities Assumed by Other Party	- ________
8.	*Less*: Loss Recognized on Other Property	- ________
9.	*Equals*: **Basis in Replacement Property**	= ________

AN EXAMPLE

Taxpayer exchanges a relinquished property with a value of $1,000,000, mortgage of $500,000 and a basis of $500,000 for a replacement property with a value of $1,500,000, mortgage of $900,000 and the taxpayer adds $100,000 cash. Basis is computed as follows:

Basis of Relinquished Property	$500, 000
Plus: Liabilities Assumed by Taxpayer	+ $900, 000
Plus: Amount of Cash Paid	+ $100, 000
Less: Liabilities Assumed by Buyer	- $500, 000
Equals: **Basis of Replacement Property**	= $1, 000, 000

A SIMPLE RULE

An easy rule to remember is that the taxpayer's basis in the replacement property is the value of the replacement property less the amount of gain deferred in the exchange (or plus the amount of unrecognized loss).

Asset Preservation, Inc. expressly disclaims any responsibility for any tax calculations and urges all investors to seek the advice of tax professionals regarding their specific gain and/or tax calculations

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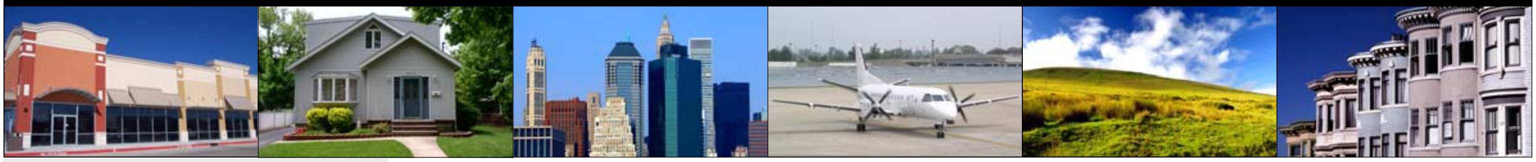
Template # 66

THE POWER OF INVESTMENT ANALYSIS

"USING REAL ESTATE INVESTMENT SOFTWARE TO INCREASE RETURNS"



One key to successful investing is a balanced portfolio. Most financial advisors recommend that investors have some liquid savings, some fixed-return instruments and investments with equity growth potential. Real estate, as one element of an investment portfolio, offers the potential for equity growth as well as monthly cash flow. Reflected below is a comparison of the before-tax equity accumulation potential of three investments:

Savings: Investing $40,000 in a CD at 5%, compounded daily, grows to $84,675 in 15 years.

Mutual Fund: Investing $40,000 in a mutual fund appreciating at 10% grows to $176,090 in 15 years.

Real Estate: Investing $40,000 (20% down) in a $200,000 rental property, appreciating at 5% annually, and assuming a 15-year fully amortized loan used to purchase the property, net proceeds in 15 years would be $386,680.

ANALYZING REAL ESTATE INVESTMENTS

Once the decision has been made to invest in real estate, it is important to analyze the return you expect to receive. Some common methods for comparing value are shown below:

Cash-on-Cash: Measures the investor's initial investment to the potential before-tax cash flow a property produces.

"Cap" Rate Method: This is expressed as a percentage and represents the Net Operating Income as compared to the purchase price.

Gross Rent Multiplier Method: A calculation representing the Gross Scheduled Income divided by the Sales Price.

INVESTMENT ANALYSIS SOFTWARE

Until recently, more investors had to learn complicated formulas, purchase sophisticated financial calculators or hire the services of a professional advisor to evaluate their investments. Now there are many investment analysis software programs available that analyze data and provide many useful statistics and graphs to determine actual returns. In addition, many software programs provide the ability to analyze "what if" scenarios by giving the user the ability to change the mortgage payments, operating expenses, rent increases, cash flow, etc. and study either projected returns and even arrive at an ideal point for selling, or better, exchanging the property.

STAR INVESTMENT ANALYZER

Asset Preservation has provided investors the ability to purchase a user-friendly and relatively low cost investment analysis program, STAR INVESTMENT ANALYZER. Visit our web site (www.apiexchange.com) and click on the "Investment Analysis Software" button below the picture on the home page to learn more about the advantages of this program or to download a free trial version.

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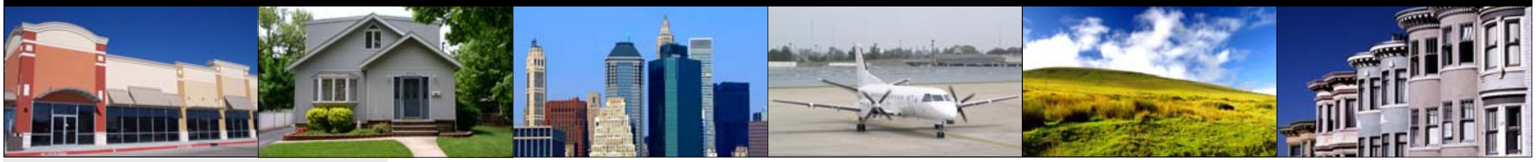
Template # 67

NEVADA QUALIFIED INTERMEDIARY RULES

"SUBSIDIARIES OF TITLE INSURANCE COMPANIES ARE EXEMPT"



NRS 645.605, within the Nevada Revised Statutes and Nevada Administrative Codes, requires that an entity who acts as a qualified intermediary in Nevada must register with the Real Estate Division. However, these rules provide an exception as reflected below:

> *"If you are a bank or other depository institution, an escrow company, a title insurer, an agent licensed pursuant to change 92A or NRS or a subsidiary or employee of such an organization, you need not register."*

Since Asset Preservation, Inc. (API) is a subsidiary of Stewart Title Company and a part of Stewart Information Services Corp. *(NYSE: STC)* family of companies, we are exempt from registering with the Real Estate Division.

SECURITY OF PROCEEDS IS OUR FOREMOST CONCERN

At API, security of the exchange funds is paramount to all other aspects of an exchange. An investor selecting a qualified intermediary in an IRC §1031 tax deferred exchange should thoroughly explore all the security mechanisms provided by the qualified intermediary.

BETTER THAN BONDED

Asset Preservation, Inc. is proud to offer all four of the "safe harbors" provided in the Treasury Regulations. Our many levels of security, backed by a written "Letter of Assurance" from Stewart Title Company, provide Exchangers with the highest degree of security for exchange proceeds

QUESTIONS TO ASK AN INTERMEDIARY

1) Where will the exchange funds be held? (If held in a bank, are you aware that FDIC coverage is only for $100,000 per account?)
2) In what type of account are the funds invested?
3) Are separate accounts set up for each client?
4) What are the requirements for the withdrawal of any exchange proceeds? (Is the Intermediary authorized to move funds without the Exchanger's written approval?)
5) Can the Exchanger elect to require their notarized signature for the movement of funds at all times? (What written documents specify this requirement?)
6) Can a written "3rd Party Guaranty" be provided to all Exchangers? (Is this backed by a well known entity with an established track record and sufficient assets to cover a potential loss of exchange proceeds?)

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Template # 68

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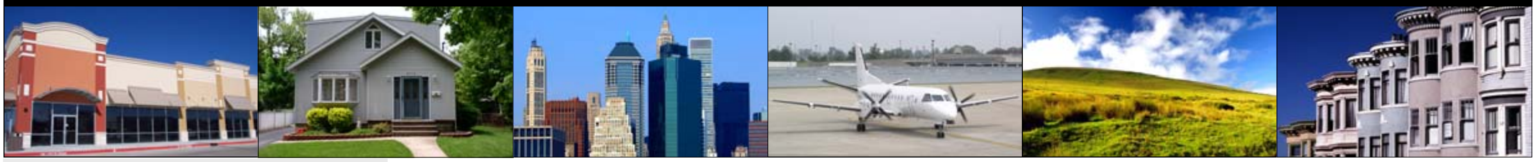
FIRPTA WITHOLDING RULES

"CHANGES ON NOVEMBER 3, 2003 IMPACT IRC §1031 EXCHANGES"



A foreign person is subject to US tax on the disposition of real property located in the US. For these purposes, a foreign person includes a nonresident alien or foreign partnership, trust, estate or corporation that has not elected to be treated as a domestic corporation under IRC §897(i). Such dispositions are subject to certain withholding rules under the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA). Under FIRPTA, the transferee (or purchaser) is required to withhold and remit to the IRS, 10% of the sales price in order to ensure that any taxable gain realized by such foreign person is actually recognized and paid. The purchaser must file IRS Forms 8288 and 8288-A to report and pay the amount withheld to the IRS by the 20th day after the date of a transfer.

There are certain exceptions to the withholding requirements. In the case of a 1031 tax deferred exchange, the transferee is not required to withhold if the "[t]he transferor gives . . . written notice that no recognition of any gain or loss on the transfer is required because of a non-recognition provision in the Internal Revenue Code or a provision in a U.S. tax treaty." Such a notice is called a "Declaration and Notice to Complete an Exchange" ("1031 Declaration and Notice"). Under prior law, a buyer could generally rely on a 1031 Declaration and Notice executed by a foreign person and was relieved of any withholding obligation. Under rules effective as of November 3, 2003, however, a transferee can rely on a 1031 Declaration and Notice only if: (1) the foreign person completes a simultaneous exchange (i.e., the same day), and (2) the foreign person receives no cash or mortgage boot. Finally, the amount that must be withheld by a buyer can be reduced or eliminated pursuant to a withholding certificate issued by the IRS ("Withholding Certificate"). The transferee, the transferee's agent or the transferor may request a Withholding Certificate. The IRS will generally grant or deny an application for a Withholding Certificate within 90 days after its receipt of a completed Form 8288-B application.

IMPACT ON SIMULTANEOUS EXCHANGES

Under these rules, a buyer of US property from a foreign person can rely on a 1031 Declaration and Notice only if the foreign person exchanges US property for other US property in a swap in which the foreign person receives no cash or mortgage boot. Since many exchanges can involve payment of some cash or debt reduction, the utility of a 1031 Withholding Certificate has been substantially reduced.

IMPACT ON DELAYED EXCHANGES

To the extent that the 1031 exchange is not simultaneous, or if any cash or mortgage boot will be received by the foreign person with respect to the disposition of US property, the buyer can only rely on a Withholding Certificate issued by the IRS to the foreign person. As a result, foreign persons desiring to engage in a delayed 1031 exchange should consult a tax adviser and apply for a 1031 Withholding Certificate well in advance of the anticipated disposition of US property holdings.

For more information, visit: www.irs.gov and download Publication 515: Withholding of Tax on Nonresident Aliens and Foreign Entities.

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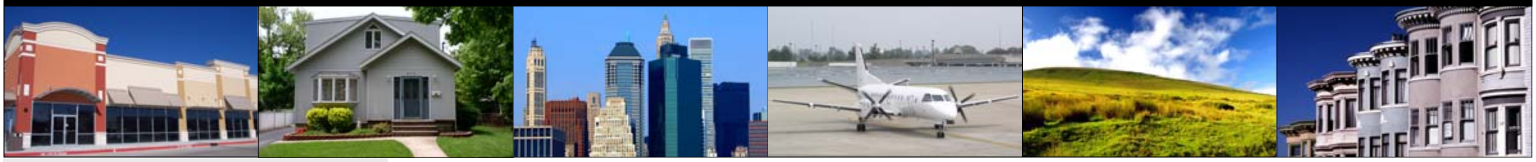
Template # 70

Six Strategies for Real Estate Agents to Generate Additional Commissions



In addition to being a powerful tax deferral strategy for investment property owners, §1031 exchanges provide real estate agents with numerous ways to quickly increase commission income. Here are a few of the opportunities:

I. TWO TRANSACTIONS

- Every tax deferred exchange involves one sale and one purchase, providing real estate agents the opportunity to earn two commissions!

II. TWO OR MORE REPLACEMENT PROPERTIES

- Many Exchangers leverage their investments and purchase several replacement properties, which equates to several commissions all from one client!
- Clients with a high equity position (or free & clear) will receive a better rate of return by purchasing several properties with some financing.

III. SELLER OF CLIENTS' REPLACEMENT PROPERTY

- The seller of the Exchanger's replacement property often also holds their property for investment and may not be aware of the benefits of an exchange.
- If you can identify exchange opportunities, share with them the benefits and range of "like-kind" replacement properties available through an exchange.

IV. LARGER PROPERTIES = LARGER COMMISSIONS

- With the benefits of tax deferral, Exchangers can purchase larger properties, which generate larger commissions from the same clients.

V. BECOME AN "EXCHANGE AGENT"

- By learning about tax deferred exchanges, real estate agents can differentiate themselves from other competitors in their local market.
- Often agents who understand §1031 exchanges develop a base of repeat investors who only want to work with them. This can lead to an established clientele and less time working a "farm" area to produce business.

VI. "PROACTIVE" TOOL TO FIND NEW CLIENTS

- Agents can approach any owner of a non-owner occupied property to get an appointment to meet with them. Often, Stewart Title may be able to assist with obtaining a list of these owners in your area.
- At the first appointment, listen to their investment objectives. Remember, every investor wants one thing – MORE of something (more equity, more cash flow, more real estate, more tax advantages, etc.)
- At the first meeting, find out what your prospects would like more of. Do not try to list their property at this time. The objective is to discover their specific long-range investment goals and what type of investment property they need to own next to meet these goals.
- Find several properties that meet their criteria.
- In your second meeting with the property owners, show them several properties that meet their objectives or investment criteria. Show them how they can do an exchange, preserve their equity and move one step closer to meeting their financial goals. Then, ask for the listing.

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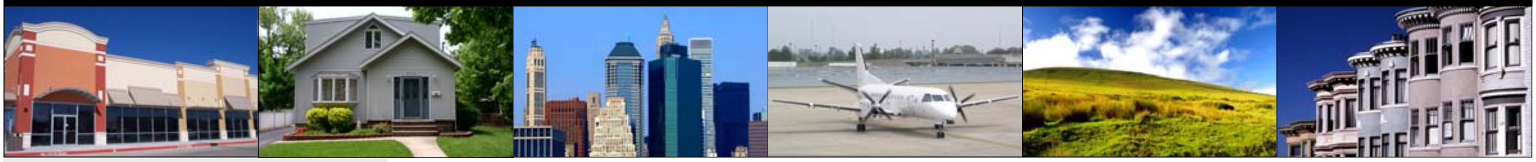
Template # 73

NEW YORK COOPERATIVES

"DO THEY QUALIFY FOR §1031 TAX DEFERRED EXCHANGES?"



WHAT IS A NEW YORK CO-OP?

The New York cooperative or "co-op" was originally conceived in the late 1800s to entice home owners to live on top of each other instead of side by side. The co-op is founded upon the idea of a private social club. Co-op owners, through a board of directors, are entitled to choose their own neighbors, provided that federal and state discrimination statutes are not violated. When buying into a co-op, the taxpayer is buying a long-term lease and the right to exclusive possession of an apartment for an indefinite period. The co-op board acts very much like a landlord and the taxpayer is entitled to demand from the board the same services and attention they expect in a rental building. The co-op board bills the taxpayer every month for a pro-rated share of the total cost of running the building, which usually including the monthly costs of a mortgage on the entire building. The taxpayer pays this monthly bill, called maintenance, in addition to any bank loan they may have obtained to purchase the apartment.

IS A CO-OP CONSIDERED REAL PROPERTY?

In support of the premise that an interest in a co-op apartment may be considered real property in New York are the following statutes and a case cite:

- CPLR §5206: Provides a homestead exemption from creditors.
- §2402(5): Provides that a "mortgage" includes a loan by a bank to purchase stock in a co-op corporation.
- §254-b: Limits late charges on loan secured by co-ops.
- §279(5): Allows the issuance of mortgage loans for financing the co-op ownership of real estate.
- In the Shor ruling (Shor, 43 N.Y. 2d. At 158), the Court of Appeals, for most purposes, treated an interest in a co-op as an interest in real property.

The IRS also allows taxpayers who own co-ops to take a tax deduction for their proportionate share of the real estate taxes allowed as a deduction to the corporation. In summary, there are many tax and legal advisors who believe there is strong legal authority to support that a co-op contains sufficient real property identity to be considered real property for §1031 exchange purposes.

In Letter Ruling 200137032, the IRS ruled that the conversion of ownership in a co-op for a condominium in the same building qualified for a §1031 exchange. The IRS viewed the interest in the co-op as a tenant with a lease of more than 30 years and the condominium as both real property interests.

For more information, please contact Asset Preservation, inc. at 800-282-1031 or 866-394-1031.

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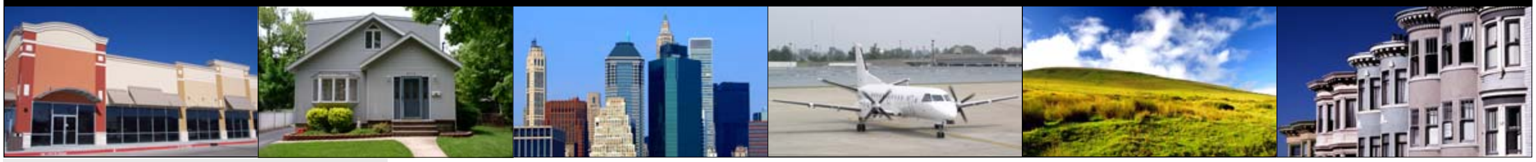
Template # 75

IDENTIFYING IN A TIMELY MANNER

"YES, THE 45-DAY IDENTIFICATION PERIOD IS SET IN STONE"



SECTION 1.1031(k)-1

Section 1.1031(k)-1: Treatment of Deferred Exchanges states that *"the identification period begins on the date the taxpayer transfers relinquished property and ends at midnight on the 45th day thereafter."* Later in this subsection, the manner of identifying replacement property is specifically stated as: *"Replacement property is identified only if it is designated as replacement property in a written document signed by the taxpayer and hand delivered, telecopied, or otherwise sent before the end of the identification period to either - (i) The person obligated to transfer the replacement property to the taxpayer (regardless of whether that person is a disqualified person as defined in paragraph (k) of this section); or (ii) Any other person involved in the exchange other than the taxpayer or a disqualified person (as defined in paragraph (k) of this section). Examples of persons involved in the exchange include any of the parties to the exchange, an intermediary, an escrow agent, and a title company."*

FORM 8824 - LIKE-KIND EXCHANGES

On Form 8824, Part I, Item #5, the IRS asks for the following information: *"Date like-kind property you received was identified by written notice to another party (see instructions for 45-day written notice requirement) (month, day, and year)."* As both the code and Form 8824 indicate, there is no leeway whatsoever in properly identifying replacement property in an exchange. Identification must be made in writing and within 45 calendar days from the relinquished property closing. Any attempt to try to circumvent these rules is considered tax fraud and could result in significant negative consequences.

WHAT WERE THEY THINKING?

In the Tax Court case, Dobrich vs. Commissioner (October 20, 1997), the taxpayers committed tax fraud by falsifying the date property was identified. The taxpayers misrepresented to the IRS that they had properly identified replacement property by back-dating documents in an attempt to reflect that an "oral identification" had been made. They tried to fabricate their identification and created false documents to attempt to substantiate their claim. The Court found evidence of the Dobrich's intent to defraud and ruled that they were liable for a Section 6663 fraud penalty. In addition, the taxpayer plead guilty to a criminal charge of causing the delivery of false documents to the IRS.

Ultimately, the taxpayers were liable for the $2.2 million in capital gain taxes they were attempting to defer….plus an additional 75% fraud penalty of an additional $1.6 million!

The bottom line: Every taxpayer should make sure that they properly identify replacement property within the 45 calendar day identification timeline - period.

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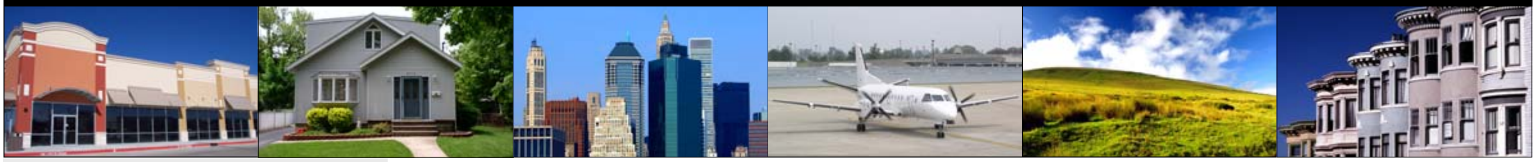
Template # 74

STATE TAX WITHHOLDING

"SUMMARY OF THE EXEMPTIONS AND RULES"



Some states impose a withholding requirement on the sale of property by people who are not residents of their state. Often, an exemption is available for §1031 exchanges.

CALIFORNIA

- **Requirement:** 3.33% of the sales price withheld.
- **Exemption:** Submitting Form 593-C ("Real Estate Withholding Exemption Certificate for Individual Sellers") by certifying they are selling the property as part of a §1031 exchange. Non-resident sellers seeking an exemption must submit Form 593-W ("Withholding Exemption Certificate and Waiver Request for Non-Individual Sellers") to the California Franchise Tax board.
- **Information:** www.ftb.ca.gov or 800-998-3676.

COLORADO

- **Requirement:** 2% of the sales price on property over $100,000.
- **Exemption:** If the seller is performing a §1031 exchange, the non-Colorado resident may sign an "Affirmation of No Reasonably Estimated Tax to be Due" on the Colorado Department of Revenue Form 1083.
- **Information:** C.R.C. 39-22-604.5.

HAWAII

- **Requirement:** 5% of the amount realized.
- **Exemption:** Completion of Form N-289 where the seller states they are not required to recognize any gain on the transfer because of Section 1031 exchange.
- **Information:** H.R.S. §235-68.

MAINE

- **Requirement:** 2.5% of the consideration.
- **Exemption**: Submitting Form REW 5 ("Request for Exemption or Reduction in Withholding or Maine Income Tax on the Disposition of Maine Real Property").
- **Information**: 207-626-8473 M.R.S. Title 36 §5250-A.

MISSISSIPPI

- **Requirement**: 5% of the amount realized if proceeds exceed $100,000 and the sale is not considered an exchange.
- **Information**: M.R.S. Section 27-7-308.

NEW YORK

- **Requirement**: 7.7% of the capital gain.
- **Exemption**: Filing Form IT-2663 before closing with the New York State Department of Taxation and Revenue.
- **Information**: N.Y.R.S. Tax Law Article 22, Section 663

OREGON

- **Requirement:** Exchangers sells an Oregon property and buys outside Oregon, they can defer the Oregon capital gain taxes (9%) until a taxable sale happens
- **Information:** O.R.S. Chapter 316 and Chapter 317.

PENNSYLVANIA

- **Requirement:** The deferral of capital gain taxes is not available and the gain is subject to a 2.8% gross receipts tax.

RHODE ISLAND

- **Requirement:** 6% of the total payment to the seller.
- **Exemption:** Completion of Forms 71.3, Nonresident Election of Gain and Certificate of Withholding Due.
- **Information:** http://www.tax.ri.gov.

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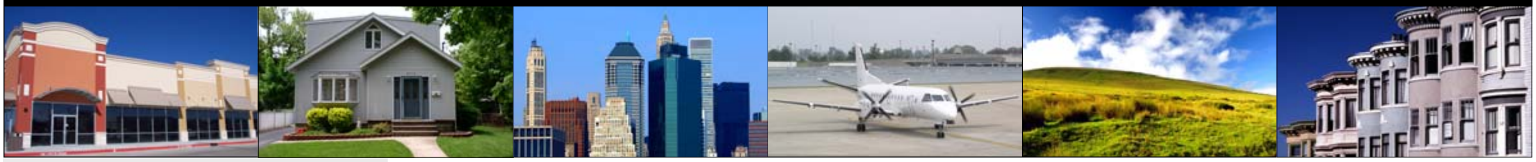
Template # 76

INDIVIDUAL RETIREMENT ACCOUNTS

"HOW REAL ESTATE CAN BE PURCHASED WITHIN AN IRA"



RETIREMENT ACCOUNTS

There are a number of retirement plans such as 401(k), 403(b), SEP and other plans where people can accumulate assets for retirement in a tax advantaged way. One of these is an individual retirement account which is more commonly referred to as an IRA. Depending on the type of IRA, the income and capital gain taxes can be deferred or tax-free. It is possible to use an IRA to invest in real estate, and potentially, in the case of a Roth IRA, the capital gains are also tax-free.

TRADITIONAL IRA vs. ROTH IRA

What is the difference between a traditional IRA and a Roth IRA? With a traditional IRA, subject to certain income and contribution restrictions which are beyond the scope of this article, an investor can make contributions to a tax deferred account with pre-tax funds (i.e. the investor's income for income tax purposes is reduced by the amount of the contribution). With a Roth IRA, which is also subject to certain income and contribution restrictions, the contribution is made with after-tax dollars. However, the advantage of a Roth IRA is that it allows for the tax-free growth of the investment account and tax-free distributions during retirement.

The first step in using an IRA for real estate investing is to create or rollover the IRA to a company that provides the option for a self-directed account and where there is an option to invest in real estate. Generally, the investor will want to make sure the self-directed IRA is set up where the company holding the funds functions more as an administrator (as opposed to a custodian) and where they have the accounting systems set up to handle real estate investments.

FINANCING ISSUES AND "UBI"

IRS Publication 598 states the income from debt financed property within an IRA is considered unrelated business income ("UBI"). UBI is defined as *"the income from a trade or business that is regularly carried on by an exempt organization and that is not substantially related to the performance by the organization of its exempt purpose or function, except that the organization used the profits derived from this activity."*

If the IRA receives more than $1,000 of UBI during a tax year, it is subject to taxation and an additional tax form must be filed (If there is less than $1,000 of UBI, no filing is required). **Tax Planning Tip:** Some advisors recommend using the excess UBI to make principal reductions on the mortgage each year since once the debt is paid off, the income is no longer considered UBI.

One way to locate a company that specializes in real estate purchases within a self-directed IRA is to perform an internet search looking for "self-directed IRA". Companies offering this service can also be found at: lincolntrust.com; pensco.com; entrustadmin.com. Always consult with your tax and legal advisors.

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Template # 77

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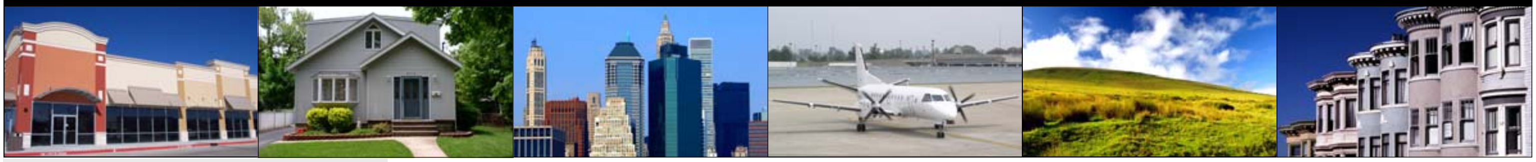
REVENUE PROCEDURE 2004-51

"PROVIDES CLARIFICATIONS IN PARKING ARRANGEMENT EXCHANGES"



Key Portions of Rev. Proc. 2004-51 are Reflected Below

Section 4.01 of Rev. Proc. 2000-37 provides that the Internal Revenue Service will not challenge the qualification of property held in a QEAA "as either 'replacement property' or 'relinquished property' (as defined in § 1.1031(k)-1(a)) for purposes of § 1031 and the regulations there under, or the treatment of the exchange accommodation titleholder as the beneficial owner of such property...." Thus, taxpayers are not required to establish that the exchange accommodation titleholder bears the economic benefits and burdens of ownership and is the "owner" of the property. The Service and Treasury Department are aware that some taxpayers have interpreted this language to permit a taxpayer to treat as a like-kind exchange a transaction in which the taxpayer transfers property to an exchange accommodation titleholder and receives that same property as replacement property in a purported exchange for other property of the taxpayer.

An exchange of real estate owned by a taxpayer for improvements on land owned by the same taxpayer does not meet the requirements of § 1031. *See DeCleene v. Commissioner*, 115 T.C. 457 (2000); *Bloomington Coca-Cola Bottling Co. v. Commissioner, 189 F.2d 14 (7th Cir. 1951). Rev. Rul. 67-255, 1967-2 C.B. 270, holds that a building constructed on land owned by a taxpayer is not of a like kind to involuntarily converted land of the same taxpayer. Rev. Proc. 2000-37 does not abrogate the statutory requirement of § 1031 that the transaction be an exchange of like-kind properties.*

The Service and Treasury Department are continuing to study parking transactions, including transactions in which a person related to the taxpayer transfers leasehold in land to an accommodation party and the accommodation party makes improvements to the land and transfers the leasehold with the improvements to the taxpayer in exchange for other real estate. This revenue procedure applies to taxpayers applying the safe harbor rules set forth in Rev. Proc. 2000-37 in structuring like-kind exchanges.

Section 1 of Rev. Proc. 2000-37 is modified to read:

This revenue procedure provides a safe harbor under which the Internal Revenue Service will treat an exchange accommodation titleholder as the beneficial owner of property for federal income tax purposes if the property is held in a "qualified exchange accommodation arrangement" (QEAA), as defined in section 4.02 of this revenue procedure.

Section 4.01 of Rev. Proc. 2000-37 is modified to read:

The Service will treat an exchange accommodation titleholder as the beneficial owner of property for federal income tax purposes if the property is held in a QEAA. Property held in a QEAA may, therefore, qualify as either "replacement property" or "relinquished property" (as defined in § 1.1031(k)-1(a)) in a tax deferred like-kind exchange if the exchange otherwise meets the requirements for deferral of gain or loss under § 1031 and the regulations there under.

Section 4.05 is added to Rev. Proc. 2000-37 to read:

This revenue procedure does not apply to replacement property held in a QEAA if the property is owned by the taxpayer within the 180-day period ending on the date of transfer of qualified indicia of ownership of the property to an exchange accommodation titleholder.

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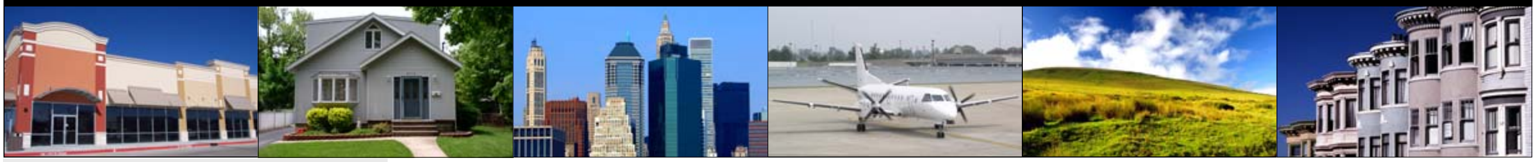
Template # 78

Disregarded Entity Issues

"Important to Review these Issues with a Tax Advisor"



This flyer summarizes rules relating to entities that may be "disregarded" for purposes of IRC Section 1031 and is designed to assist in cases where the Exchanger desires to title the replacement property in a manner that is different from title to the relinquished property. In all cases, an Exchanger should consult with their tax or legal advisor to ensure that the desired structure is acceptable for IRC Section 1031 purposes.

GENERAL RULES

1. Virtually any natural or legal person (individual, corporation, partnership, LLC, trust, etc.) may do an IRC Section 1031 exchange.
2. The seller of the relinquished property (generally as determined by the status of legal title) must also be the buyer of the replacement property, e.g., if John Q. Public is on title to the relinquished property, then John Q. Public must acquire title to the replacement property.

EXCEPTION TO RULE 2

If the transferor of the relinquished property or the transferee of the replacement property is a "disregarded entity" (See Treas. Reg. § 301.7701) or the "owner" of a disregarded entity, then the entity is treated as if it does not exist and the owner and the entity are, in effect, interchangeable as the Exchanger, i.e., the entity may sell and the owner may buy and vice versa. For example, if A owns 100% of the interests in an entity that is a "disregarded entity" then A may sell the relinquished property and the entity may take title to the replacement property and vice versa.

WHAT ENTITIES ARE NOT DISREGARDED?

- C ("regular") Corporations:Not disregarded
- S Corporations: Not disregarded
- General Partnerships: Not disregarded
- Limited Partnerships: Not disregarded

The IRS has ruled that where an otherwise non-disregarded entity has two members under local law, but one of the members is a disregarded entity that is owned by the other member, the eligible entity is treated as having only one member. Thus, the entity cannot be a partnership for tax purposes; it must be classified either as a disregarded entity or as an association taxable as a corporation. [Rev. Rul. 2004-77, 2004-31 I.R.B. 119]

LIMITED LIABILITY COMPANIES (LLCs)

LLCs are not disregarded except in the following cases where the LLC has **not** made an election to be treated for tax purposes as a corporation:

- 100% of the interests are owned by a single legal or natural person. [PLRs 9751012; 9807013; 19911033]
- 100% of the interests are owned by husband and wife as community property in a community property state. [Rev. Proc. 2002-69, 2002-2 CB831]

The IRS has ruled that a two-member LLC formed under Delaware law was disregarded for §1031 exchange purposes where all economic interests were held by one member and the function of the second member was solely to prevent a bankruptcy filing or other violation of the LLC's covenants with lenders [PLR 199911033]. The IRS has ruled that the acquisition of all the ownership interests held by 2 different owners by a single buyer in a single transaction constituted an acquisition of the underlying assets owned by the LLC. [Rev. Rul. 99-6, 1991-1 C.B 432].

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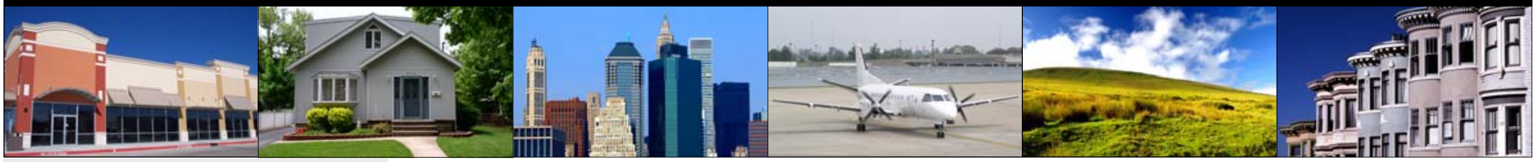
Template # 81

CONVERTING A RESIDENCE TO A RENTAL

"REVENUE PROCEDURE 2005-14: APPLYING §1031 AND §121 TO A SALE"



REVENUE PROCEDURE 2005-14

The IRS recently gave guidance on Revenue Procedure 2005-14 on how to report exchanges of property used as a principal residence and for business/investment use in the last five years. A property owner can convert a principal residence to a rental property and later sell it and benefit from both IRC §121 (principal residence tax exclusion rules) and IRC §1031 (investment property tax deferred exchange rules). Property owners must comply with all the rules in both sections to qualify.

APPLICATION OF §121 AND §1031

If a property owner has owned and lived in a principal residence for at least 2 out of the last 5 years preceding the sale of the principal residence, $250,000 if filing as a single ($500,000 on a joint return) of the gain from the sale, except for any depreciation taken on the property since May 6, 1997, can be excluded. IRC §121 does not require the owner to live in the property at the time of the closing to qualify for the gain exclusion. A principal residence does not qualify if it was purchased in a §1031 exchange within the previous five years.

In essence, the Treasury has declared that if an owner lives in the residence long enough to meet the principal residence requirements, they may then convert the house into a property "held for investment" which can qualify for a §1031 exchange. (Note: Although there is no defined "holding period" to be considered "held for investment," many tax/legal advisors believe 1-2 years is sufficient barring any factors which contradict an investment intent.) The property owner can perform an IRC §1031 exchange and still be eligible for gain exclusion under IRC §121, even if it is presently being used as a rental.

When the owner sells the home as an investment property, they must still meet all the necessary requirements for a §1031 exchange. This includes hiring a Qualified Intermediary prior to closing on the relinquished property and adhering to all the time requirements of an exchange, such as identifying the replacement property within 45 calendar days from the sale date and purchasing all replacement properties within 180 days, or the owner's tax filing date, whichever is earlier.

DEPRECIATION

The property owner can exclude gain up to $250,000 (filing as a single) or $500,000 (filing jointly) under IRC §121 except for any depreciation taken on the property after May 6, 1997. Realized gain is first excluded under IRC §121 and then is eligible for deferral under IRC §1031.

The revenue procedure provides six examples that include illustrations of the treatment of depreciation and boot in which both the benefit of §121 exclusion and §1031 deferral could be used. Please visit the "Tax Code/Legal References" section at apiexchange.com to read the full text of Revenue Procedure 2005-14.

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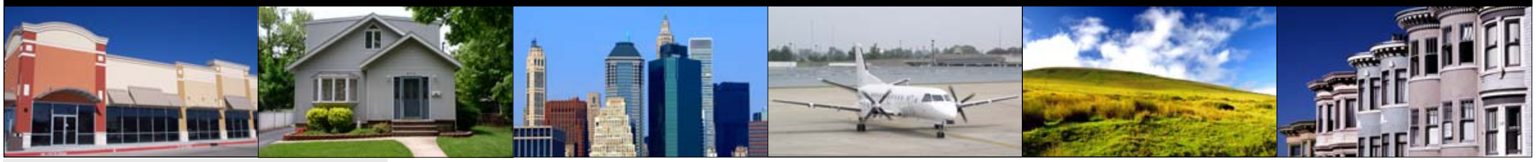
Template # 84

REAL ESTATE AUCTIONS

"AN EFFICIENT METHOD TO BUY AND SELL PROPERTY"



WHAT IS A REAL ESTATE AUCTION?

A real estate auction is an increasingly popular way to buy or sell real estate. A real estate auction is one of the most efficient ways to sell real estate at market value and within a few weeks. The auction allows a seller to have complete control of the transaction, from setting the showing of the property to identifying motivated, pre-qualified bidders, a certain date of sale and closing without any surprises.

A real estate auction is beneficial for all parties. Auctions provide a more concentrated advertising method giving the seller maximum exposure for their property. The seller disposes of properties quickly and efficiently, thus saving long-term carrying costs such as interest, real estate taxes and maintenance. For the buyer, this could mean an excellent investment, since properties are usually purchased at fair market value through competitive bidding. Auctions are conducted in an open forum, providing both motivated buyers and sellers the assurance of watching the property's true market value emerge as the bidding process progresses.

Most properties can be sold at an auction. This includes residential property, town homes, cooperative apartments and single family homes, commercial property, industrial property and vacant land.

ELEMENTS OF A SUCCESSFUL AUCTION

A successful auction is one in which bidders compete vigorously for the privilege of buying a property. It depends on the execution of three tasks:

1. Expose the property
2. Educate the buyers
3. Close the transaction

REAL ESTATE AUCTION TERMINOLOGY

Offering Strategies:

- *With Reserve:* A low "suggested opening bid" is published, but no definite price at which the seller guarantees a sale.
- *Without Reserve/Absolute:* There is no minimum bid reserve; the highest bid is accepted regardless of price.
- *Without Reserve/Subject to Minimum Bid:* There is a sale only if the bid is at or above the stated minimum.

Formats:

- *Single Seller/Single Stand-Alone:* Ideal for a specialized market or a high profile property.
- *Single Seller/Multiple Property Auction:* A single seller offering multiple properties.
- *Multiple Seller/Multiple Property Auction:* Multiple sellers pool their properties to create a larger auction event.

Types of Formats:

- *Open-Outcry:* Bids are shouted out in person or by phone.
- *Sealed Bid Offering:* Bidders submit bids on pre-approved contract forms and the seller can accept or reject the offer.
- *Convertible:* Converting a Sealed Bid to an Open-Outcry.

To learn more, contact the National Auctioneers Association at 913-541-8084 (www.auctioneers.org) or contact one of the oldest auction companies in the United States, J.P. King at 800-662-5464 (www.jpking.com).

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Template # 88

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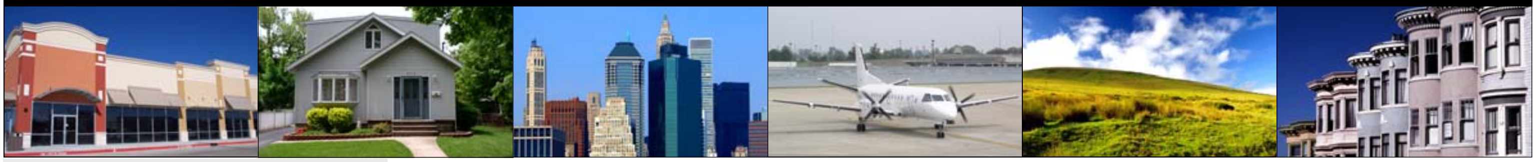
Maximum Profits While Navigating Economic Change
"The Real Estate Cycle and its Impact on Wealth"



Are You Limiting Your Investment Growth Potential?

Real estate investors who build wealth using the traditional long term "buy and hold approach" often overlook one of the most profitable and passive strategies of real estate – timing. Strategically building a real estate portfolio based on timing focuses investment buying decisions in parts of the country with economic strengths that support rising real estate values, regardless of the investor's hometown. The real estate market cycle is based on the fundamental economics of supply and demand. As economic conditions in one city cause real estate values to rise, values in another city remain flat as vacancies climb. A few years later, economic conditions change in both markets, the cities swap place in the cycle and the opposite city now has skyrocketing real estate values. It is useful to seek out experts who track this cycle and monitor the economics of thousands of real estate markets weekly.

What is a Portfolio Compression?

Building a real estate portfolio by timing investment property purchases in cities where economic conditions lead to rising real estate values could substantially increase an investors net worth. Strategically timing the purchase and the sale of real estate investments is called *Portfolio Compression* and results in exceeding the growth of the traditional 15 year buy and hold approach. *Portfolio Compression* captures real estate growth in shorter segments of between 1 and 3 years resulting in increased diversification and a more linear equity growth curve. This allows investors to target a wealth building plan through the growth phases of 5 to 6 market cycles rather than limiting growth to any single economic location.

Portfolio Compression incorporates a multi-market investment approach focused on:

- Buying investment property in cities where economic conditions support rising real estate values;
- Selling investment property as economic conditions change and a city moves into the plateau aspect of the cycle;
- Incorporating the use of strategic releveraging plans, combined with a §1031 tax deferred exchange;
- Identifying next market growth phase opportunities for replacement investments.

Supply and demand imbalances create a trendable, trackable and predictable cycle. By monitoring economic fundamentals, it is possible for investors to fully implement Portfolio Compression and time predictable cycles. For more information on incorporating the 4-Phases of *Portfolio Compression*, timing the real estate cycle, and knowing the economic conditions of over 12,000 cities nationwide, visit Signil Wealth Consulting Group at www.signil.com and click on the API logo.

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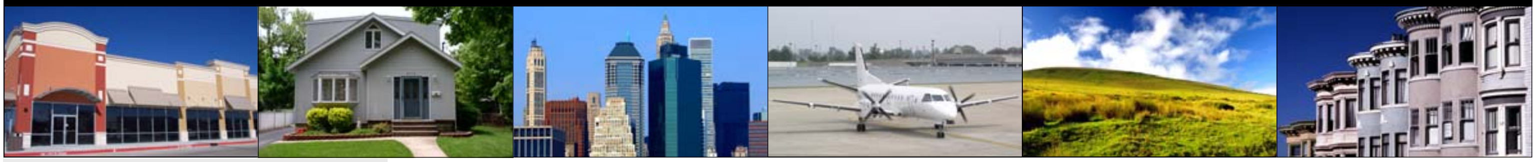
Template # 98

INVOLUNTARY CONVERSIONS

"HANDLING INSURANCE PAYOUTS"



WHAT IS AN INVOLUNTARY CONVERSION?

Certain involuntary dispositions of appreciated property are eligible for income tax deferral under Internal Revenue Code §1033. Events that result in an involuntary conversion include theft, damage resulting from an "act of God" (such as a casualty), or the government's taking of a taxpayer's property for public use. The essential elements of an involuntary conversion are a property loss caused by destruction (either complete or partial), theft, seizure or condemnation.

If the taxpayer replaces the involuntarily converted property with property that is of equal or greater value and is similar or related in use within a specified time, the taxpayer can defer recognition of the gain (and the tax on it). To qualify for deferral, the replacement property must be purchased within two years of the close of the tax year in which the gain was realized. A larger three year replacement period applies for condemned property. Taxpayers can apply to the IRS for extensions of these replacement periods.

The gain that would result on the receipt of insurance proceeds or compensation paid by the government on a taking for public use, is automatically deferred if the property is replaced with other property which is similar or related in use.

The foregoing rules apply to property used in a taxpayer's trade or business or held for investment purposes and personal use property. The deferral rules do not apply to losses. In most cases, however, losses are deductible as casualty losses.

<u>An Example</u>: Jennifer had a basis of $150,000 in a vacation home she owned in Breckenridge, Colorado which appreciated in value since she purchased it. The vacation home was completely destroyed by fire and she subsequently received an insurance payment of $300,000. She purchased a new vacation home for $290,000 in Sarasota, Florida, within two years of the end of the year in which she received the insurance payment.

Jennifer's realized gain on the involuntary conversion is $150,000 ($300,000 insurance payment minus the $150,000 basis). If Jennifer elects gain deferral, she will only recognize $10,000 of gain. Because she received an insurance payment of $300,000, but only spent $290,000 on the replacement property (vacation home she purchased in Florida), the $10,000 is the excess of the amount she received from the insurance payment. Her basis on the new property will be $150,000. This is the cost of the replacement property in Florida ($290,000) minus the deferred gain ($140,000). If Jennifer purchased a replacement property for $300,000 or more, she would not have to report any gain.

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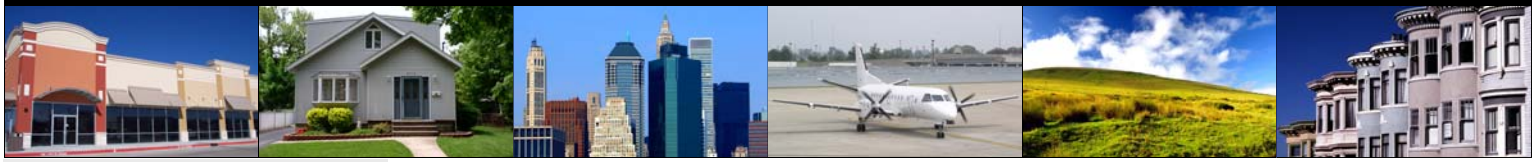
Template # 97

DISASTER AREA TAX RELIEF

"REQUIREMENTS FOR POSTPONEMENT"



REQUIREMENTS FOR POSTPONEMENT OF §1031 TIME PERIODS

A taxpayer may qualify for postponement if the relinquished property was transferred on or before the Presidentially declared disaster or the taxpayer is an "affected taxpayer" or has difficulty meeting the 45-day identification period or 180-day exchange deadline. For these purposes, "difficulty" generally includes, but is not limited to, the following:

a) The relinquished property or replacement property is located in a disaster area;

b) The principal place of business of any party to the transaction is located in the covered disaster area (i.e. qualified intermediary, exchange accommodation titleholder, transferee, settlement attorney, lender, financial institution or a title insurance company);

c) Any party to the transaction, or an employee of such party involved in the transaction is killed, injured or missing in the declared disaster;

d) A document prepared in connection with the exchange or a relevant land record is destroyed, damaged or lost;

e) A lender refuses or decides not to fund a loan due to the declared disaster;

f) A title insurance company is not able to provide the required title insurance policy necessary to settle or close a real estate transaction due to the declared disaster.

AFFECTED TAXPAYERS

"Disaster Area" tax relief includes individuals and businesses located in the "Disaster Area", those whose tax records are situated in the "Disaster Area" and relief workers. Relief workers are generally granted extensions regardless of their state of residence or location of their tax records. Any areas added to the "Disaster Area" may also receive the same relief.

Every taxpayer should consult with their tax advisor to determine whether they are eligible for the relief and to obtain additional information with respect to their particular circumstances.

A few select tropical storms and hurricanes identified by the government have resulted in disaster areas typically having a different set of extensions and requirements from the IRS. As examples, Tropical Storm Bonnie and Hurricane Charlie disaster area taxpayers were allowed extensions through October 15, 2004.

The IRS presented different extension rules with Hurricanes Katrina and Rita. Extensions would be "*postponed by 120 days or the last day of the general disaster extension period authorized by an IRS News Release or other guidance announcing tax relief for victims of the specific Presidentially declared disaster, whichever is later…*"

These extensions can change a number of times in the early days of the disaster. Specific and current information regarding disaster areas can be accessed from the IRS website at www.irs.gov, or by calling 866-562-5227.

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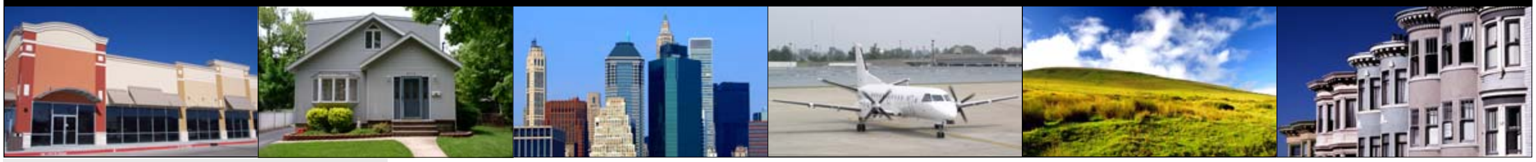
Template # 96

DEPOSITS IN AN EXCHANGE

“HANDLING EARNEST MONEY DEPOSITS IN AN EXCHANGE”



Most offers to purchase real estate are accompanied by the Buyer’s delivery of a check to the Seller generally referred to as an “Earnest Money Deposit”. Depending on the terms of the purchase agreement, the earnest money deposit may be refundable or non-refundable. In most cases, the delivery of the earnest money deposit is refundable and merely serves as evidence of the Buyer’s intent to purchase a property.

In a tax deferred exchange under Internal Revenue Code Section 1031, however, the Seller (Exchanger) is generally prohibited from receiving the proceeds from the sale of the relinquished property. An Exchanger receives sale proceeds if “. . . *the taxpayer actually receives the money or property or receives the economic benefit of the money or property. The taxpayer is in constructive receipt of money or property at the time the money or property is credited to the taxpayer's account, set apart for the taxpayer, or otherwise made available so that the taxpayer may draw upon it at any time or so that the taxpayer can draw upon it if notice of intention to draw is given.*”

As a result of the foregoing rules, Exchangers are rightfully concerned about the tax consequences resulting from their receipt of an earnest money deposit or the payment of an earnest money deposit to a Seller in connection with the acquisition of replacement property. Some of the typical questions that Asset Preservation receives are discussed below:

If a Seller of an investment property is planning to engage in a §1031 tax deferred exchange, can the Seller accept an earnest money deposit and still obtain full tax deferral? The answer is usually, yes. First, the question of whether the Exchanger is in receipt of the sale proceeds is determined at the time ownership is transferred from the seller to the buyer (usually referred to as the “closing”). Thus, if the Exchanger enters into a qualified exchange agreement before the closing as required when engaging in a tax deferred exchange, and thereafter deposits the earnest money funds with the Qualified Intermediary or the Closing Agent *before the closing occurs,* the receipt of the earnest money deposit should not be treated as the receipt of the sale proceeds. On the other hand, if the Exchanger keeps the earnest money deposit through the closing, he or she would be in receipt of proceeds from the sale. In this case, the deposit would constitute boot in the exchange, thus would be taxable to the extent there is a capital gain.

Can an Exchanger pay an earnest money deposit to a Seller of replacement property? Yes. There are two ways to accomplish this within a tax deferred exchange. If the Qualified Intermediary is holding exchange funds from the sale of the Exchanger’s relinquished property, the deposit can be wire transferred directly to the Closing Agent or Seller for the Exchanger after the replacement property exchange agreement has been fully executed by the Exchanger. Alternatively, the Exchanger can pay the earnest money directly to the Closing Agent or Seller from their own funds and get reimbursed their deposit at the closing without creating a taxable event. The Exchanger may enter into contract on the replacement property before entering into contract on their relinquished property, but it is important to close on the relinquished property prior to purchasing the replacement property in order to avoid a "Reverse Exchange" situation.

Can an Exchanger get reimbursed for their earnest money deposit paid for the replacement property? Yes. Assuming that the Exchanger has paid the earnest money deposit from their own funds, the Qualified Intermediary may direct the closing agent to include an item on the closing statement evidencing the return of earnest money funds to the buyer such as “Refund of Earnest Money to Buyer”. The Qualified Intermediary would then transfer funds to the closing agent in an amount sufficient to reimburse the Exchanger.

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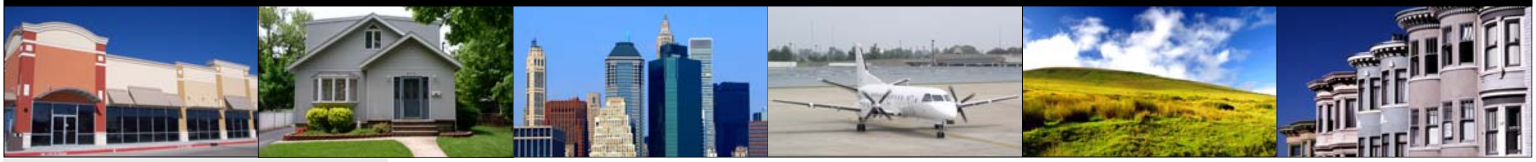
COST SEGREGATION STUDIES

"ACCELERATED DEPRECIATION = IMPROVED CASH FLOW"



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IMPROVING CASH FLOW WITH COST SEGREGATION

Commercial property owners may realize significant tax savings through an IRS approved procedure known as a cost segregation study (CSS). In most cases, all depreciable costs are lumped together and depreciated using the straight line method with recovery periods of 39 years for commercial real property and 27.5 years for residential real property. A CSS will properly identify assets (e.g. special-use electrical and mechanical) as well as land improvements that can be depreciated more rapidly under the taxpayer's method of accounting. Certain assets identified in a CSS may be eligible for accelerated depreciation with recovery periods of 15, 7 or 5 years. Thus, the CSS can increase after tax cash flow by reducing taxable income in the early years of ownership.

The primary benefit of cost segregation is based on the time value of money. A cost segregation study will provide access to deductions sooner, allowing an owner to defer substantial tax payments into future years, thereby creating a significant net present value benefit. Deferring tax payments increases current cash flow and allows owners to utilize their funds for other means. Further, investors who do not depreciate assets over the shortest allowable recovery periods may be losing money. For all intents and purposes they are providing the IRS with an interest-free loan.

COMMONLY OVERLOOKED APPLICATIONS OF COST SEGREGATION

While many owners and their advisors know that cost segregation studies can be used on newly constructed or acquired properties, most are still unaware of the benefits of using cost segregation for properties already placed in service. Look-back studies allow investors to modify their existing depreciation schedules and reclassify costs that were listed as 39 or 27.5-year property, but could have been allocated to 5, 7 or 15-year recovery periods. These studies correct previous deductions resulting in significant "catch up" depreciation. The "catch up" adjustment can now be taken in a single year per *Revenue Procedure 2002-19* by completing IRS Form 3115 which notifies the IRS of an automatic change in accounting method – all without the need to amend prior tax returns. Bonus depreciation, which was originally introduced as part of the *Job Creation and Workers Assistance Act of 2002* ended on December 31, 2004. Many property owners and advisors are not aware that this significant tax benefit may still be available via a look-back study. Owners with properties that would have qualified for bonus depreciation but missed this opportunity still have a chance to qualify if they did not specifically elect out when they filed their tax return. Bonus depreciation provides significant additional first year benefits for qualifying assets. Depending on the bonus level, either 30% or 50% of the qualifying costs can be taken as a deduction in the year placed in service.

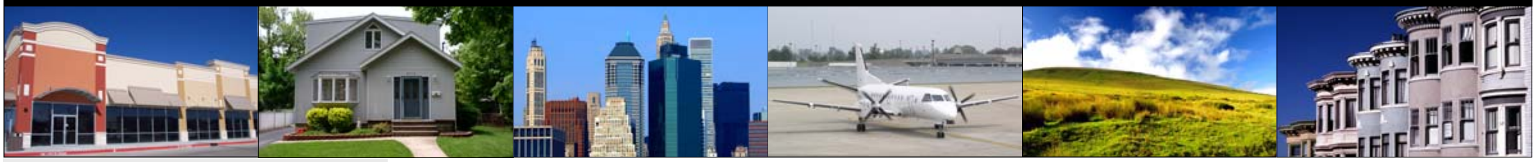
Investors who recently made improvements to existing properties are allowed to classify the majority, in some cases all, of their costs into a 15-year recovery period instead of the usual 39-year category. A CSS will properly identify all assets eligible for this special treatment as well as the 5 or 7-year property. This benefit is available for Qualified Leasehold / Restaurant Improvements completed between October 22, 2004 and December 31, 2005 and applies to buildings that are 3 years old or older.

1031 EXCHANGES AND COST SEGREGATION

In regards to 1031 exchanges, it is important that the investor consult with their tax advisors to make sure they have acquired enough real property to fully meet the 1031 exchange requirements, especially if they perform a CSS on a newly acquired replacement property. For more information, visit www.bedfordcap.com, www.auroragroupinc.com or www.ccrtaxaudit.com. The above information was provided by Bedford Capital Consulting.

PURCHASE CONTRACTS

"CAN THESE BE EXCHANGED UNDER SECTION 1031?"



In certain markets across the country, the demand for new construction has been very strong. In those markets, an investor who has executed a purchase agreement for new construction may be able to sell a contract to purchase new construction before taking title to the newly constructed property. A sale of the purchase agreement at a significant tax gain raises the question . . .

CAN A PURCHASE CONTRACT BE EXCHANGED FOR INVESTMENT PROPERTY UNDER SECTION 1031?

Unfortunately, there is not clear guidance on this subject. Certain tax and legal advisors have argued that there is authority for the proposition that a contract right to purchase investment property is "like-kind" to a fee interest in investment property, and that an investor *should* be able to exchange a contract for real property. Those advisors point to the well known *Starker* case [Starker v. U.S. 602 F2d 1342 (9th Cir 1979)] in which the court reasoned that ownership of real property represents a "bundle of rights" including the right to use the property, to exclude others, to sell the property, to collects rent and to utilize the mineral rights and natural resources located on the property. That court concluded that a contract to acquire property (which itself is a bundle of rights) should be treated as equivalent to the rights associated with ownership of real property. Other courts have followed this reasoning. See e.g., *Biggs v. Comm.*, 632 F2d 1171, 5th Cir 1980; *Brauer v. Comm.*, 74 TC 1134, 1980. Query which of the bundle of rights represented by a purchase contract (the right to acquire property) are included in the rights associated with ownership of property mentioned by the Starker court.

While there is language in the foregoing cases that could be used to support the argument that a contract right to acquire property is the same as ownership of real property in certain situations, none of them could be relied upon alone to support the exchange of a purchase contract for real property in a particular Section 1031 exchange. Moreover, the IRS has not given specific advice on the topic or otherwise attempted to resolve the issue of when a contract right is equivalent to a fee interest in real property. Accordingly, an investor is cautioned to discuss such an exchange with their tax and/or legal advisor before engaging in such a transaction.

A related question is whether a purchase contract could be exchanged for another purchase contract. In general, state law characterizes a contract right as intangible personal property. Under Section 1031, personal property held for investment may be exchanged for like-kind investment property, however, the scope of like-kind is much narrower in the case of a personal property exchange. Again, there is limited direct authority for the proposition that one contract would be viewed by the IRS as like-kind to another such contract, but such an exchange would seem to involve rights that are similar in character. Whether the purchase contract was held for investment or not would be another matter that the investor would need to substantiate in the event of an audit. While an investor might want to argue that the contract was acquired with a view to sell before the property was required to be purchased, Section 1031(a) provides that property held primarily for sale is not eligible for an exchange. Again, an investor is cautioned to discuss the exchange of a contract for another contract with a tax and/or legal advisor before committing to such a transaction.

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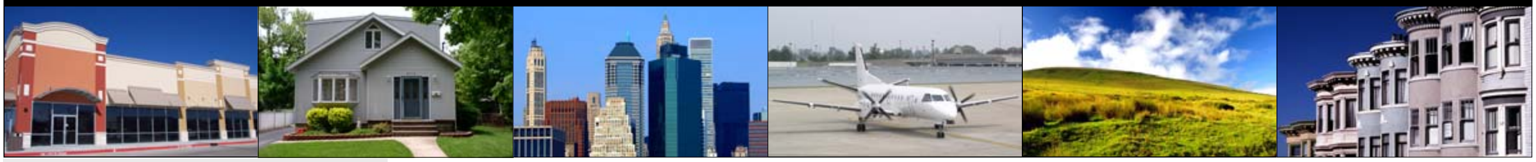
§1031 AND COST SEGREGATION STUDY

"COMBINE BOTH TO MAXIMIZE CASH FLOW"



Cost segregation and tax deferred exchanges under IRC §1031 are two of the most valuable tax planning strategies available to commercial real estate owners today. §1031 permits an investor or business owner to defer tax that would be generated on a sale of qualified property, and, as explained below, cost segregation studies can generate accelerated depreciation that will increase after tax cash flow. With proper tax planning, both tax deferral techniques can be used on the same property in order to obtain the maximum tax benefits available.

THE BENEFITS OF COST SEGREGATION

Commercial real estate owners can utilize a cost segregation study to increase current depreciation deductions on newly acquired improved real property and property that may already have been placed in service. In the absence of cost segregation, certain equipment associated with the property is lumped together with fixtures and classified as "improvements". Improvements to real property are generally depreciated using the straight line depreciation method over periods as long as 39 years. By engaging a cost segregation expert, certain equipment associated with improvements are carved out and more accurately classified as property eligible for accelerated depreciation. Using cost segregation, recovery periods for certain items associated with the property can be reduced to a period as short as 5 years. Moreover, by reclassifying such property, the owner may be able to use an accelerated depreciation method available under current tax law. In general, a shorter depreciation recovery period will generate larger depreciation deductions in the early years of ownership. Increased deductions reduce taxable income and can generate tremendous cash flow benefits. Investors may also be surprised to find that their CPA can help them claim unused depreciation deductions for assets that have been depreciated under the straight line method for many years, without the headache of amending prior-year returns.

THE BENEFITS OF §1031 EXCHANGES

A §1031 exchange allows a business owner or investment real property owner to avoid tax on the gain from the sale of a property, if the owner acquires like-kind replacement property. Any business or investment real property is generally considered like-kind to any other type of business or investment real property.

RELATIONSHIP BETWEEN COST SEGREGATION AND §1031 EXCHANGES

- Both strategies can be used on the same property
- Both techniques are used to defer taxes and therefore improve cash flow
- Both can be performed on every type of commercial property
- Both encompass complex areas of tax law and necessitate the use of specialists

TAX PLANNING AND CONSIDERATIONS

A cost segregation proposal will help the building owner and advisor determine if a study will be beneficial for the replacement property in a §1031 exchange, given the carryover tax basis. In general, cost segregation studies are most advantageous when the building has a basis greater than $1M, the owner is exchanging up in value or exchanging from land to a building. Building owners should also plan for the possibility of future depreciation recapture which may generate some tax in a later sale or §1031 exchange. With proper planning, a recapture tax can be deferred by acquiring replacement property with sufficient amounts of property that would be eligible for a shorter recovery period. Also, the two methods can be integrated effectively and may provide an opportunity for taxpayers to defer income taxes indefinitely while maximizing current after tax cash flow.

The above information was provided by Scott Zarret, CPA at 303-221-4100.

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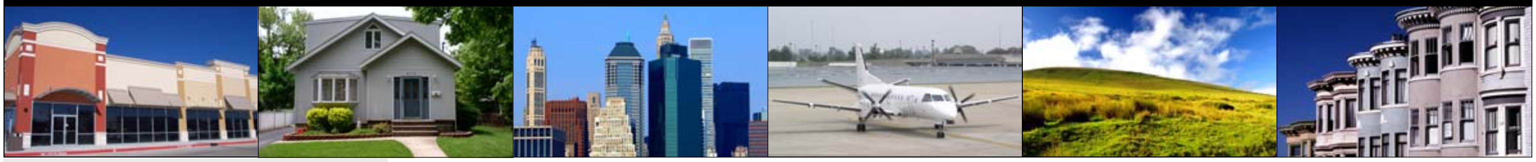
WHAT IS AN IRC SECTION 721 UPREIT?

"AN EXCHANGE ALTERNATIVE FOR COMMERCIAL INVESTORS"



A Real Estate Investment Trust (REIT) is similar to a mutual fund for real estate investors and offers the benefits of a diversified portfolio that is professionally managed along with distributing almost all of the net income to investors. Although a REIT can do an exchange at the entity level, individual REIT shares are considered personal property and do not qualify for an IRC Section 1031 exchange. For tax deferral under §1031, an investor must exchange real property for other "like-kind" real property. There are many resources available on the internet to learn more about REITs, including the REIT industry trade organization, the National Association of Real Estate Investment Trusts at www.nareit.com.

WHAT IS AN UPREIT?

An Umbrella Partnership REIT (UPREIT), under IRC §721, provides tax deferral benefits to commercial property owners who contribute their property into a new tiered ownership structure that includes an operating partnership (OP) and the REIT who is a partner in the OP. In exchange for the commercial property contributed to the UPREIT, the investor receives units in the operating partnership (OP Units). The capital gain taxes remain deferred as long as the UPREIT holds the property and the investor holds the OP Units. The advantage is this structure provides a viable exit strategy to commercial property owners who otherwise might have significant capital gain tax liabilities on the sale of appreciated property. In addition, the investor benefits from additional diversification because they have an interest in a portfolio of commercial properties instead of just one property. This structure is not appropriate for every investor as they must have property that the REIT wants to add to their portfolio and typically this will be a larger commercial property.

A hybrid of the above scenario has been developed for investors who perform a §1031 exchange into a tenant-in-common (TIC) ownership property that a REIT may acquire later. The TIC property can later be contributed into an UPREIT structure, allowing the §1031 investor to ultimately acquire OP Units that are essentially the equivalent to an interest in the REIT itself.

HOW ARE OP UNITS VALUED?

OP Units are generally convertible into REIT common stock. The Board of Directors typically establishes the price of the common stock in a private REIT while the market value prices the OP Units with the stock of a public REIT. OP Units in a public REIT are more liquid than those issued by a private REIT. An UPREIT's Preferred OP Units are generally redeemable at par. The terms and redemption options are negotiated on a case-by-case basis. The Common OP Units in an UPREIT can often be sold the following ways:

- Free Convertibility: Common OP Units can usually be converted into shares of common stock at the investor's option.
- Annual Repurchase Option: Some REITs provide a repurchase option for investors up to a fixed percentage of the investor's initial common OP Unit holdings.
- 100% Repurchase Option on Death: Upon an investor's death, an UPEIT can, at the election of the estate, repurchase Common OP Units at fair market value.

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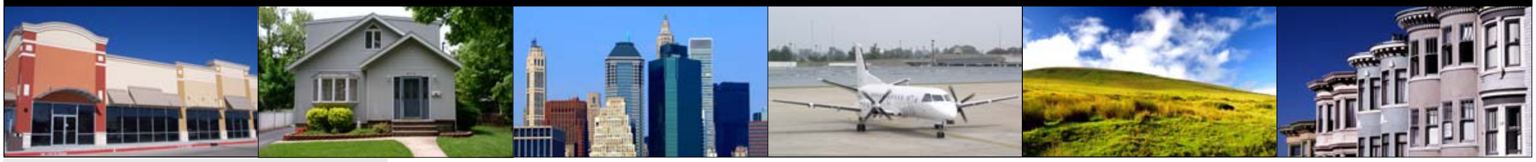
§1031 Tax Deferred Exchanges

"Overview of the Benefits for Financial Advisors"



WHY SHOULD FINANCIAL ADVISORS TAKE ADVANTAGE OF §1031?

Many financial advisors have clients with significant assets invested in real estate. A tax deferred exchange is a powerful tax strategy financial advisors can share with clients to help them build wealth through tax deferral and accumulate a diversified portfolio. Section 1031 of the Internal Revenue Code allows a client to exchange any property held for investment purposes and defer paying federal and state capital gain taxes (up to 15% Federal, 25% depreciation recapture and applicable state taxes) if they purchase a like-kind property following the rules and regulations of the Code. This allows a client to use all of the sale proceeds to leverage into more valuable real estate, move to another property type to increase cash flow, diversify geographically into other properties, reduce management or consolidate real estate asset holdings.

DIVERSIFY CLIENT PORTFOLIOS WITH REAL ESTATE ASSETS

There is a wide range of property that qualifies for a §1031 tax deferred exchange. The Internal Revenue Code Section 1031 states that "*no gain or loss shall be recognized on the exchange of property held for productive use in a trade or business or for investment if such property is exchanged solely for property of like-kind which is to be held either for productive use in a trade or business or for investment.*" For example, raw land can be exchanged for a single family rental, apartments for a commercial building, an office for industrial property or even a vacation home held for investment purposes. Like-kind property can include, but is not limited to, any of the following, provided it is held for investment: single family rental, duplex, apartment, office complex, commercial property, warehouse or industrial property.

A NEW OPPORTUNITY - FRACTIONAL (TIC) OWNERSHIP

Another type of property that qualifies as like-kind is to acquire a fractional ownership interest as a tenant-in-common (TIC) in a large commercial property with multiple owners. A TIC interest represents co-ownership between two or more investors. In essence, rather than owning 100% of a smaller property, your client receives a separate deed to an undivided interest, thus owning a fractional interest in a much larger property. A properly structured TIC is not a joint venture or a partnership. Instead, each co-owner has the same rights as would a single owner. Generally, a tenancy-in-common agreement links the co-owners together. Many TIC properties have institutional grade tenants that provide consistent monthly income. Some investors have chosen TIC property ownership because they can enjoy the benefits of appreciation, cash flow, annual depreciation and flexibility without management problems. In many cases, a TIC program enables the client to specify the exact amount of property that will meet their specific equity/debt requirements in an exchange.

WHAT IS THE NEXT STEP FOR FINANCIAL ADVISORS?

If you have a client with business or investment property listed for sale or that will be listed for sale, contact Asset Preservation, Inc. to arrange a complimentary consultation.

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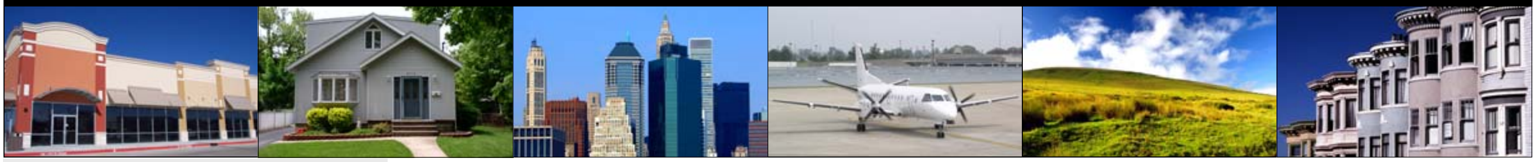
Template # 103

SELLING APPRECIATED PROPERTY

"A SUMMARY OF TAX ADVANTAGED STRATEGIES"



The Federal Tax Code provides ways a property owner can dispose of, exchange or sell an appreciated property and receive tax benefits. Some alternatives are described below.

IRC Section 121 enables a homeowner to exclude capital gain taxes (up to $250,000 if filing as a single, and $500,000 if married and filing jointly) if living in the house as a primary residence for two of the last five years. Partial exemption is also available in certain unforeseen circumstances such as a move of more than 50 miles in employment, health or medical reasons, divorce or death. Revenue Procedure 2005-14 also allows a property owner to convert a primary residence to a rental property, and later take advantage of both capital gain tax exclusion under §121 and tax deferral under §1031 by exchanging into a replacement property held for investment or for use in trade or business.

IRC Section 453 (Installment Sale) allows a property owner who sells a property on an installment basis to defer paying capital gain taxes to future tax years when installment payments are actually received. Essentially, the property owner provides "seller carryback financing" for the buyer and only pays capital gain taxes as the payments are received over time. A variation on this strategy is sometimes called the ***structured sale***. In a structured sale, the seller carryback note that is held by the seller is assigned over to a high quality alternate obligor (often a financial services company or life insurance company with high insurance ratings) who then makes payments to the seller over time under the terms of the note.

IRC Section 721 provides tax deferral to investors who contribute their property into a partnership entity to the extent that the contributor receives an interest in the partnership. Certain investment strategies are designed to take advantage of §721 including an operating partnership (OP) created by a Real Estate Investment Trust (REIT) sometimes referred to as an "Umbrella Partnership" or UPREIT. In exchange for the property contributed to the UPREIT under §721, the investor receives units in the operating partnership (OP Units). The capital gain taxes remain deferred as long as the UPREIT holds the property and the investor holds the OP Units.

IRC Section 1031 allows a property owner to defer capital gain taxes on the sale of any property held for investment or use in a trade or business when exchanged for like-kind property to be held for investment or use in a trade or business.

IRC Section 1033 provides tax deferral on the conversion of property destroyed in a casualty event or taken by a governmental entity through condemnation. To the extent that the property owner reinvests the compensatory proceeds for the loss in property that is similar or related in purpose or use, §1033 permits the property owner to defer recognition of gain.

A Charitable Remainder Trust permits a property owner to contribute appreciated property to a Charitable Remainder Trust (CRT) for the benefit of a designated charity. The contributor (called a donor) receives a charitable tax deduction on the transfer of the property to the CRT. Having acquired the donated property, the trustee of the CRT can sell the property (at no gain to the trust) and reinvests the proceeds in income producing investments. A CRT is usually designed to pay an annuity to the donor over the donor's life or over the joint life of the donor and the donor's spouse. Any value remaining in the CRT at the donor's death passes to the charitable remainder beneficiary. There are many types of CRTS, a few of which include; A) ***charitable remainder annuity trust (CRAT)*** which pays a fixed dollar amount annually; B) ***charitable remainder unitrust*** which pays a fixed percentage of the trust's assets annually; C) ***charitable pooled income fund*** which is set up by the charity allowing many donors to contribute. Consult with your tax and/or legal advisor for more information on CRTs or any tax strategy.

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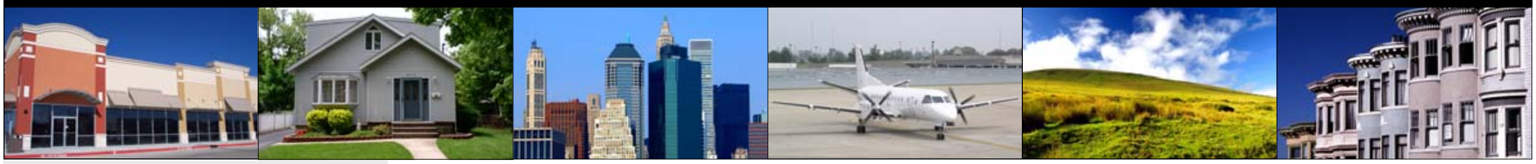
Template # 104

DETERMINING THE VALUE OF A PROPERTY

"CAP RATE, GRM AND CASH-ON-CASH DEMYSTIFIED"



Investors nationwide use commonly accepted formulas to analyze new purchases and arrive at appropriate prices for the sale and purchase of investment properties. A few commonly used methods to determine the value of an investment property are the Income Capitalization Rate (Cap Rate), the Gross Rent Multiplier (GRM) approach and the cash-on-cash rate of return.

CAPITALIZATION RATE (CAP RATE): The cap rate is the ratio between the first year Net Operating Income (NOI) and the purchase price of the property. The cap rate formula below can be used to arrive at the value of an investment property, when the cap rate and the net operating income are known. Another variation of the cap rate formula is to determine the cap rate of an investment property when the NOI is known and the price is fixed.

$$\frac{\text{NOI}}{\text{Cap Rate}} = \text{Investment Value} \qquad \frac{\text{NOI}}{\text{Purchase Price}} = \text{Cap Rate}$$

Once the NOI for an investment property has been determined, the following assumptions can be made: the lower the cap rate, the higher the sales price; the higher the cap rate, the lower the sales price; sellers want buyers to accept the lowest possible cap rate; from the buyer's point of view, the higher the cap rate, the more advantageous the purchase. ***Pros:*** The main advantage of using a cap rate is its simplicity. It also accounts for vacancy and operating expenses. ***Cons:*** The reliability of using a cap rate is limited because it only looks at a one year forecast and does not take into consideration any financing or tax implications.

GROSS RENT MULTIPLIER (GRM): The value of an investment property is calculated using the Gross Scheduled Income (GSI = the maximum amount of annual rent received if the property was 100% occupied) for year one, multiplied by the GRM.

$$\text{First Year GSI} \times \text{GRM} = \text{Investment Value}$$

If an investor wants to calculate the GRM for a potential investment, divide the asking price by the first year GSI. The higher the asking price, the higher the GRM. Sellers generally try to sell their properties at the highest possible GRM. Buyers typically try to purchase investment properties at the lowest possible GRM. The lower the GRM, the more attractive the investment becomes to the buyer. ***Pros***: The GRM is a convenient tool because of its simplicity. ***Cons***: The usefulness of the GRM is limited by the fact that it does not take into account vacancy and uncollected rent, operating expenses, debt service, tax impact or income past the first year.

CASH-ON-CASH: Another measurement of investment performance is called the cash-on-cash rate of return. This involves comparing an investor's initial investment to the potential before-tax cash flow that the investment property is likely to produce.

$$\frac{\text{Before-Tax Cash Flow}}{\text{Initial Investment}} = \%\ \text{Return}$$

Pros: Cash-on-cash takes into consideration vacancy and uncollected rent, operating expenses, and debt service. ***Cons***: Cash-on-cash does not take into consideration anything past a first year forecast and does not take into account tax considerations.

MARKET RESEARCH CAN BE TIME CONSUMING - HERE IS A SOLUTION

As important as it is to determine the value of real estate, many investors want to know where to buy for immediate appreciation. One market research website is designed to help investors choose the right locations and help real estate professionals grow their business. The Signil.com site is updated with weekly information including comprehensive city ranking systems, zip code level mapping, comprehensive market summaries and much more covering the country. You can set up a free Member account and get two months FREE by visiting www.signil.com/api.

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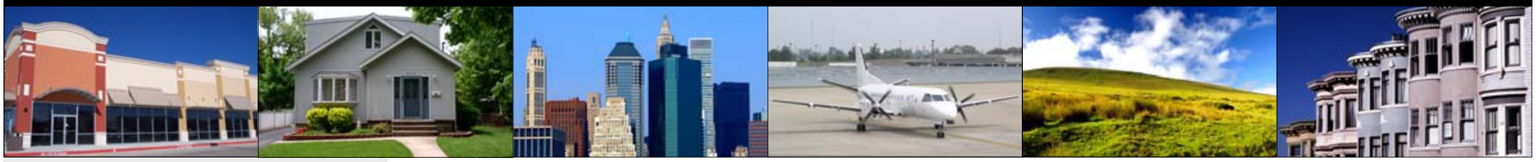
Template # 105

Return on Equity

"How Hard is Your Investment Working?"



The question as to when to sell an investment property depends on many factors, including: the likelihood of future appreciation, the cash flow it produces, the ease or difficulty of managing the property, and the property's fit in an investor's overall investment portfolio.

A real estate investor should not overlook a simple measure to determine how hard their invested dollars are working: the property's "Return on Equity." By analyzing return on equity, a real estate investor can compare a particular property with other potential investments in an effort to maximize the return on their investment equity.

Example: A small fourplex was purchased several years ago on very favorable terms. It produces a nice cash flow that resulted in an extraordinary 20% return the first year. Even with the following assumptions, which would produce a high return on equity, the return falls to less than 5% after 7 years.

- 10% down payment
- 90% Loan-to-Value (LTV), 7% fixed mortgage over 30 years
- Appreciation at an average of 4% per year
- Annual net income increasing by 2% per year

Year	Value	Debt (7%)	Equity	Equity as % of Value	Annual Net Income	Return on Equity
1	$300,000	$270,000	$30,000	10.0%	$6,000	20.0%
2	312,000	267,020	44,980	14.4%	6,120	13.6%
3	324,480	264,062	60,418	18.6%	6,242	10.3%
4	337,459	260,890	76,569	22.6%	6,367	8.3%
5	350,957	257,489	93,468	26.6%	6,494	6.9%
6	364,995	253,842	111,153	30.4%	6,624	5.9%
7	379,595	249,931	129,664	34.1%	6,756	5.2%
8	394,779	245,737	149,042	37.7%	6,891	4.6%
9	410,570	241,241	169,329	41.2%	7,028	4.1%
10	426,993	236,419	190,574	44.6%	7,168	3.7%
11	444,073	231,249	212,824	47.9%	7,311	3.4%
12	461,836	225,705	236,131	51.1%	7,457	3.1%
13	480,309	219,760	260,549	54.2%	7,606	2.9%
14	499,522	213,385	286,137	57.2%	7,758	2.7%
15	519,502	206,550	312,952	60.2%	7,913	2.5%
16	540,282	192,220	348,062	64.4%	8,071	2.3%
17	561,894	191,361	370,533	65.9%	8,232	2.2%
18	584,370	182,934	401,436	68.6%	8,396	2.0%
19	607,744	173,897	433,847	71.3%	8,563	1.9%
20	632,054	164,207	467,847	74.0%	8,734	1.8%

As evidenced in the chart above, the investor in this example has a return on equity that starts diminishing significantly after about 7 years of ownership. In order to continue obtaining a much better return on invested equity, an investor should consider exchanging this one investment property after 5-7 years and acquiring multiple replacement investment properties. Later on, the investor will benefit again by exchanging these investment properties and exchanging into more (or larger) properties with leverage that will continue to produce a higher return on their equity.

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