HIGHLIGHTS OF A 1031 TAX DEFERRED EXCHANGE

IPX1031®

IRC §1031 allows you to defer capital gain tax when you sell real property used for business or investment purposes, and purchase like-kind property. A 1031 Exchange will also defer depreciation recapture provided the replacement property is also improved real property.

KEY STEPS

The §1031 regulations require you to use a Qualified Intermediary ("QI"), also known as accommodator or facilitator, in 1031 Exchanges. The QI must be assigned into the contract on the property you are selling before escrow closes. Once escrow closes, the QI will hold the proceeds from the sale of the property. These proceeds are restricted for certain periods. You may withdraw proceeds before funds are sent to the QI, but withdrawals will be taxable boot.

From the date escrow closes, there are two statutory timelines. You have 45 calendar days to identify property you are going to purchase and 180 calendar days to close on your replacement property. There are no extensions for weekends or holidays. If the 45th or 180th day falls on a Sunday, that is your deadline. When identifying property, you can use either the 3 Property Rule (identify up to 3 properties regardless of their value) or the 200% Rule (identify as many properties as you want up to an aggregate fair market value of 2 times what you sold).

REPLACEMENT PROPERTY

Under §1031 all real estate is considered to be like-kind with all other real estate, as long as both the properties sold and purchased are used for investment or business purposes. So, a primary residence or second home cannot be used in a 1031 Exchange. Property purchased for resale, such as "flipped" homes, also don't normally qualify for 1031 Exchange. Single-family rental homes, condos, commercial property, farm land, bare land and any other interest in real estate that is held for business or investment, and is located in the United States, is like-kind and can be exchanged. You can also buy and sell multiple properties within one exchange.

INVESTMENT

In order to defer all capital gain, your net purchase price must be greater than your net sales price. As an example, a property sold for $800,000 may have a net sales price of $750,000 after commissions and other qualified closing costs. A purchase of at least $750,000 is required to defer all capital gain tax. If you buy a property of lower value than you sold, you will be liable for taxes on the difference (this is known as "boot"). In addition, all the equity (proceeds) must be used towards the Replacement Property(ies). Any proceeds left over after the exchange is completed are also boot.

HOLDING MONEY & QUESTIONS FOR QIs

You need to be sure that your money is secure since all Qualified Intermediaries are not created equal. Here are some important questions to ask any QI before you hand them your money:

- How long have they been in business?
- Are they bonded, and what is the size of the bond?
- Do they have errors and omissions insurance coverage?
- Do they have a written guarantee your money will be there when you need it to purchase replacement property?

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