

## SECTION 1031 TAX DEFERRED EXCHANGE GLOSSARY

The following are some of the commonly used exchange terms and phrases.

- ❖ **1031 Exchange** – also known as the Tax Deferred Exchange allows investors to defer the tax liability on the sale of investment property, or property used in a trade or business, where the *Exchangor* reinvests the proceeds of the sale into another like-kind investment or business property.
- ❖ **Boot** – Anything the *Exchangor* receives other than the *like-kind* replacement property in a 1031 exchange. Cash proceeds are the most common form of boot.
- ❖ **Constructive Receipt** – *Exchangor* deemed to have possession or control of the exchange proceeds even though funds may not be directly in their possession. 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. In summary, if the *Exchangor* has control over the funds, that is considered "constructive receipt" and the exchange is voided. Possession or control by the agent of the *Exchangor* is generally deemed possession or control by the *Exchangor*. Use of any of the four safe harbors will result in the determination that the *Exchangor* is not in actual or constructive receipt.
- ❖ **Delayed Exchange** – An exchange that takes place up to 180 days after the initial disposition of the relinquished property. A Delayed Exchange is subject to strict time limits, which are set forth in the Treasury Regulations. Also known as Deferred Exchange or Starker Exchange. This is the most common type of exchange.
- ❖ **Direct Deeding** – Transfer of title directly from the *Exchangor* to the Buyer and from the Seller to *Exchangor* rather than to the Qualified Intermediary who is often the assignee of the *Exchangors* rights under the Exchange Agreement.
- ❖ **Exchange Period** – The period of time during which the *Exchangor* must be in receipt of the Identified Replacement Property in the exchange. The Exchange Period starts on the date the *Exchangor* transfers the Relinquished Property and ends at midnight on the earlier of the 180th day thereafter or the due date (including extensions) of the *Exchangor's* tax return for the year of the transfer of the Relinquished Property.
- ❖ **Exchangor** – The taxpayer(s) utilizing IRC §1031 to defer capital gains tax.

---

### DISCLAIMER

Attorneys & Accountants 1031 Services, LLC is available to assist *Exchangors* and their advisors with exchange strategies and technical support, however Attorneys and Accountants 1031 Services, LLC cannot provide legal or tax services or advice and the *Exchangor* must consult with their legal and tax professionals as to the intended exchange and any legal or tax implications thereof.

- ❖ **Forward Exchange** – See Delayed Exchange
- ❖ **Identification Period** – The identification period begins on the date the taxpayer transfers the relinquished property and ends at midnight on the 45<sup>th</sup> day thereafter. Identification of all replacement property must be made in writing and delivered to the Qualified Intermediary or other permitted party on or before the 45th day of the close of the relinquished property. You may not identify replacement property or alter the list of replacement properties after the 45th day.
- ❖ **Like-Kind Property** – As described in IRC Section 1031, the words “*like-kind*” have reference to the nature or character of the property and not to its grade or quality. One kind or class of property may not, under that section, be exchanged for property of a different kind or class. Generally, any real property held for use in a trade or business or for investment can be exchanged for any other “*like-kind*” real property for use in a trade or business or for investment. Personal property is subject to more specific classification rules.
- ❖ **Mortgage Boot** – This occurs when the *Exchangor* does not acquire debt that is equal to or greater than the debt that was paid off on the relinquished property. This can create a taxable event.
- ❖ **Qualified Intermediary** – A Qualified Intermediary (QI) as defined by the IRS, is an independent party who is not the taxpayer or a “disqualified person” and who acts to facilitate a deferred exchange by entering into an agreement with the taxpayer for the exchange of properties. The QI is also referred to as the “facilitator” or the “accommodator”.
- ❖ **Relinquished Property** – The property being “sold” in an exchange by the taxpayer/*Exchangor*. Also referred to as Phase I or the “downleg” property.
- ❖ **Replacement Property** – The property being purchased in an exchange by the taxpayer/*Exchangor*. Also referred to as Phase II or the “upleg” property.
- ❖ **Reverse Exchange** – The *Exchangor* acquires the Replacement Property prior to disposing of the Relinquished Property.
- ❖ **Safe Harbor** – The IRS regulations provide taxpayers with four safe harbors based on commonly used security, guarantee, and intermediary arrangements. The use of these safe harbors will result in a determination that the taxpayer is not in actual or constructive receipt of money or other property for purposes of section 1031. The first safe harbor permits certain security arrangements for various components of a 1031 exchange. The second permits the use of a qualified escrow account or a qualified trust. The third permits the use of a QI and the fourth permits the taxpayer to receive interest or a growth factor to compensate for the time value of money

---

**DISCLAIMER**

Attorneys & Accountants 1031 Services, LLC is available to assist Exchangors and their advisors with exchange strategies and technical support, however Attorneys and Accountants 1031 Services, LLC cannot provide legal or tax services or advice and the Exchangor must consult with their legal and tax professionals as to the intended exchange and any legal or tax implications thereof.

during the period between transfer of the relinquished property and receipt of the replacement property.

---

**DISCLAIMER**

*Attorneys & Accountants 1031 Services, LLC is available to assist Exchangors and their advisors with exchange strategies and technical support, however Attorneys and Accountants 1031 Services, LLC cannot provide legal or tax services or advice and the Exchangor must consult with their legal and tax professionals as to the intended exchange and any legal or tax implications thereof.*