

## WHY YOU NEED A QUALIFIED INTERMEDIARY?

Internal Revenue Service safe harbor guidelines necessitate the use of a Qualified Intermediary (QI) in the exchange process and the role of the QI.

A QI, as defined by the IRS, is a third party who is not the taxpayer and who acts to facilitate a deferred exchange by entering into an agreement with the taxpayer for the exchange of properties. Attorneys & Accountants 1031 Services, LLC, is a professional QI and performs several critical functions in an exchange. Without a QI, and a written Exchange Agreement entered into between the *Exchangor* and QI, the IRS may not define a transaction as an "exchange", and the transaction may not qualify for tax deferment treatment.

### To Avoid "Disqualified Person" Issues

A "disqualified person" as defined by the IRS is a person who is an agent of the taxpayer at the time of the transaction or someone who has a relationship with the taxpayer where that person is presumed to be under the control of the taxpayer. If a disqualified person performs the exchange and holds the exchange proceeds the exchange may fail if the IRS determines that the disqualified person's involvement imputed *constructive receipt* of the exchange funds to the *Exchangor*. Other disqualified persons are any parties that are considered "related parties" to the *Exchangor*, or parties that are related to the *Exchangor* in that the *Exchangor* and the related party have more than a 10% interest in the respective related partnership, corporation or trust.

### To Comply with IRS Recognized Safe Harbors

The IRS regulations provide taxpayers with four safe harbors based on commonly used security, guarantee, and intermediary arrangements. The first safe harbor permits certain security arrangements. The second permits the use of a qualified escrow account or a qualified trust. The third permits the use of a Qualified Intermediary and the fourth permits the taxpayer to receive interest or a growth factor to compensate for the time value of money during the period between transfer of the relinquished property and receipt of the replacement property.

### To Hold Exchange Funds and Properties

The *Exchangor* cannot constructively receive any of the proceeds from the sale of their relinquished property. Doing so would create taxable *boot*. If a disqualified person takes possession or control of exchange proceeds or other property, the exchange can fail. Attorneys & Accountants 1031 Services, LLC, as the QI, will hold the proceeds from the sale in

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#### **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.

a segregated, secure account until the funds are needed to purchase the *Exchangor's* replacement property, and will further acquire the replacement property on behalf of the *Exchangor*. All exchange proceeds held by Attorneys & Accountants 1031 Services, LLC are covered by fidelity bond and insurance coverage.

### To Prepare Exchange Documents

Several documents are necessary to facilitate a successful exchange. The QI is responsible for the preparation of the Exchange Agreement, Assignment Agreements, Notices to 3<sup>rd</sup> parties, Closing Instructions and other critical documents for each settlement officer handling the transaction.

### To Provide Peace of Mind

For the *Exchangor*, the process of completing an exchange is relatively straightforward. The rules however are complex and filled with pitfalls for the unwary *Exchangor*. Attorneys & Accountants 1031 Services, LLC has the knowledge and experience necessary to guide the *Exchangor* and their legal and tax professionals successfully through the exchange process.

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