

1031 TAX DEFERRED EXCHANGES

"UNDERSTANDING COMMON EXCHANGE TERMINOLOGY"



Compliments of

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'.



ASSET PRESERVATION
INCORPORATED

A National IRC §1031 "Qualified Intermediary"

National Headquarters

800-282-1031

Eastern Region Office

866-394-1031

apiexchange.com

info@apiexchange.com

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