Exchangor's Alert

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Voice of: America's #1 Qualified Intermediary For Deferred Exchanges

When Is A Real Estate Exchange Not An Exchange

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Today, there has never been a better time for a properly structured real estate exchange. Because of the new regulations published in the "Federal Register" May 1, 1991, the real estate arena is experiencing a boom in the exchange of business and investment held real estate. These new regulations are being called the most favorable Reg.'s, to the real estate investor in the past fifty years.

Because of the immense benefits of a real estate exchange, all taxpayers (owners of business or investment held properties), accountants/cpa's, attorneys title companies and real estate professionals must take the time to learn how this concept can benefit virtually all real estate investors at the time of disposition by **"PAYING NO CAPITAL GAINS TAX".**

Our government has provided us with this opportunity and the I.R.S. has served notice on the Tax and Real Estate community that they will be closely watching real estate exchange transactions, known as a "deferred exchange" under the new regulations. They are requiring that the guidelines of the new regulations be observed in all respects. It is imperative that taxpayers looking to take advantage of this "**Best Kept Secret In Real Estate",** observe the established guidelines to insure the integrity of their proposed exchange.

With the adoption of the new regulations the element of certainty is finally established to allow the taxpayer the flexibility of performing a deferred exchange. One of the biggest problems in the exchanging arena is an improperly structured transaction that will not hold water if the I.R.S. audits the exchange transaction. This can happen in a number of ways. The following are some of the most common reasons why a "Real Estate Exchange would **not** be considered a valid "Exchange".

The Mis-Use Of A "Qualified Intermediary"

One of the major reasons a deferred exchange will not qualify for this favorable tax treatment is the mis-use of a "Qualified Intermediary". The regulations require the use and need of a professional "Qualified Intermediary" to consummate a deferred exchange transaction. This professional "Qualified Intermediary" is in the business of facilitating deferred exchange transactions and needs to have special training in negotiations, contract law, taxation, investment analysis, escrow procedures and real estate practices as well as a proven success record in the business of facilitating deferred exchanges.

Qualified Intermediary Is Not Just An Escrow Agent

The Qualified Intermediary should provide customary services to insure the integrity of the deferred exchange transaction. The Qualified Intermediary should have legal title of both the relinquished and replacement properties conveyed to him or have the rights of the contracts assigned to him. The Qualified Intermediary should be something more than **just** an escrow agent (Qualified Escrow) which is also needed to ensure that the proceeds from disposition are credited to the Qualified Intermediary and **not** the taxpayer or an agent of the taxpayer. That means the Qualified Intermediary **cannot** be the taxpayer, a member of the taxpayers family, an employee of the taxpayer, an agent of the taxpayer at the time of the exchange transaction (that means anyone such as the attorney, accountant/cpa, mortgage broker/banker or real estate agent/broker representing the taxpayer) or an agent of the taxpayer in the past twenty-four months before the exchange transaction. If the Qualified Intermediary were to be one of the above, he or she would be labeled a "**Disqualified Person**" and blow the exchange transaction. If an individual calling himself a Qualified Intermediary is doing nothing more than acting as an escrow agent it is very clear that the exchange transaction will not qualify as a deferred exchange.

If the sale transaction is not converted to an exchange transaction before the legal conveyance (closing) of title you **cannot** go back after the fact and try to treat the sale transaction as an exchange. But you can go back anytime before the closing of the relinquished property and bring into the sale transaction a professional Qualified Intermediary. The rights of the contract are assigned to the Qualified Intermediary and also have the Qualified Intermediary provide all the necessary documents such as the Qualified Intermediary Agreement, Exchange Agreement, Escrow Agreement, Assignments, and Closing Instructions. This will amend the proposed sale to a deferred exchange transaction without the cooperation of the buyer.

Other ways of not having a valid exchange transaction, would be to abuse either or both the "Identification Period" which means that the taxpayer **doesn't** identify the replacement property within forty-five (45) days of the closing date of the relinquished property and **doesn't** acquire legal title of the replacement property within one hundred and eighty (180) days as of the closing date of the relinquished property known as the "Exchange Period".

These are the most common problems of **not** having a valid deferred exchange transaction. All of these problems can be avoided by using a professional Qualified Intermediary which is the most important step toward developing a defensible exchange transaction.

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