THE DELAYED 1031 EXCHANGE

Most 1031 exchanges involve the sale of Relinquished Property with the sale proceeds (exchange funds) going directly to the Qualified Intermediary (QI), which are subsequently used to purchase Replacement Property on behalf of the Exchanger.

Two key deadlines apply to a Delayed 1031 Exchange, which are strictly construed by the IRS:

- **45-Day Identification Period**. Once the Relinquished Property is transferred, the Exchanger has 45 calendar days to identify Replacement Property. IRC §1031(a)(3).
- **180-Day Exchange Period.** The Exchanger must close on identified Replacement Property within the earlier of: (1) 180 calendar days after the Relinquished Property was transferred, or (2) the Exchanger's tax return due date (including extensions) for the tax year during which the Relinquished Property was sold. IRC §1031(a)(3).

Identification of Replacement Property:

- Exchanger identifies Replacement Property by sending an **"Identification Notice"** to the QI before the 45-Day Identification Period ends. Treas. Reg. §1.1031(k)-1(c).
- Valid identification of Replacement Property includes an unambiguous property description, such as a legal description or street address.
- Revocation of an Identification Notice is permissible before the 45-Day Identification Period ends. A new Identification Notice must be sent to the QI before the 45-Day Identification Period ends.

Identification of Multiple Replacement Properties:

- **Three Property Rule.** The Exchanger may identify up to three potential Replacement Properties, without regard to their fair market values (FMV). This is the most common identification method.
- **200% Rule.** The Exchanger may identify any number of potential Replacement Properties, provided their aggregate FMV does not exceed 200% of the FMV of the Relinquished Property.
- **95% Exception.** The Exchanger can identify any number of potential Replacement Properties, and if their aggregate FMV exceeds 200% of the FMV of the Relinquished Property, then Exchanger must receive at least 95% of the aggregate FMV of all the identified Replacement Properties.

"Like-Kind" Property. The Relinquished Property and Replacement Property must be of "like-kind" and held for, or intended to be held for, **investment purposes or for productive use in a trade or business**. The test to determine that the property has been, or will be, used for investment or productive use in a trade or business falls on the Exchanger's purpose and intent, as well as the nature and characteristic of the property.

- Generally, all real estate is considered "like-kind" to other real estate.
- Differences in quality or grade between properties has no bearing on whether they are "like-kind."
- Real estate is not considered "like-kind" to personal property.
- Only property located in the United States qualifies for 1031 tax-deferral treatment.
- Examples of "like-kind" exchangeable property:
    - coop units for condo units
    - apartment building for farmland
    - rental beach bungalow for an urban warehouse
    - fee interest in real estate for a 30-year leasehold or TIC interest in real estate
- Examples of properties that do not qualify for tax-deferral status:
    - stock in trade, including business inventory, or property held primarily for resale
    - interest in a partnership (unless §761(a) applies when the partner has elected out)

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