

## **Exchange Terminology / Glossary of 1031 Exchange Terms**

**3-Property Rule:** Exchangor may identify three or fewer replacement properties. The most common identification rule utilized.

**200% Rule:** Exchangor may identify any number of replacements; however, the total value of those properties identified may not exceed 200% of the value of Exchangor's relinquished property.

**95% Rule:** Exchangor may identify any number of replacements as long as Exchangor receives at least 95% of the value of all properties identified. Note: This rule is not used very often.

**1031 Exchange:** Internal Revenue Code Section 1031, provides that no gain or loss shall be recognized if property held for investment or for productive use in a trade or business is exchange for like-kind property held for investment or for use in a trade or business.

**Boot:** Any non like-kind property received by Exchangor during the exchange.

**Cash boot:** Any cash, note or seller carry back received (or not reinvested) by Exchangor during an exchange period.

**Capital Gain:** Calculation of the difference between the sales price of the Relinquished Property less selling expenses and less the adjusted basis of the Relinquished Property.

**Constructive Receipt:** Violation of the G(6) limitation wherein the Exchanger obtains direct or indirect control over the exchange proceeds through an agent or employer or other person during the exchange period.

**Deferred Exchange:** A 1031 exchange conducted under the safe harbor 1994 Treasury Regulations wherein the Replacement Property is received up to 180 days after the disposition of the Relinquished Property.

**Disqualified Person:** Section 1.1031(k)-1(k) defines a disqualified person to include an agent of the taxpayer at the time of the transaction. An agent includes a person that has acted as the taxpayer's employee, attorney, accountant, investment banker or broker, or real estate agent or broker within two years of the taxpayer's transfer of relinquished property. However, in determining whether a person is a disqualified person, services provided by such person for the taxpayer with respect to section 1031 exchanges of property and routine financial, title insurance, escrow, or trust services provided to the taxpayer by a financial institution, title insurance company, or escrow company are not taken into account. Under § 1.1031(k)-1(k)(4), a person that is related to a disqualified

person, determined by using the attribution rules of sections 267(b) and 707(b), but substituting 10 percent for 50 percent, is also considered a disqualified person.

**Direct Deeding:** At the direction of the Qualified Intermediary, title passes directly to the ultimate owners without the Qualified Intermediary being in the actual chain of title.

**Exchange Period:** Interim time between the disposition of the relinquished property and the earlier of the following:

- (i) acquisition of all replacement properties by the Exchangor;
- (ii) after the 45 day identification period if an identification has not been made or any identified properties have been previously received by Exchangor or revoked as identified properties;
- (iii) after the 180th day following the disposition of the relinquished property;
- (iv) after the Exchangors deadline for filing its federal income tax return for the year in which the Relinquished Property was disposed in (including extensions).

Note: The exchange period includes all weekends and holidays. There are no extensions if the exchange period ends on Saturdays, Sundays, or holidays.

**Exchangor (Taxpayer):** Person intending to conduct a 1031 tax deferred exchange, who transfers a Relinquished Property and thereafter receives a Replacement Property.

**G(6) Limitation:** Section 1.1031(k)-1(g)(6) provides that an agreement with an escrow holder, trustee or qualified intermediary must expressly limit the taxpayer's rights to *receive, pledge, borrow, or otherwise obtain the benefits of money or other property* held in the qualified escrow or trust or by the qualified intermediary.

**Identification:** Section 1031(a)(3) and Section 1.1031(k)-1(c) provides that a written unambiguous description of the intended replacement property or properties, signed by the Exchangor must be sent to the qualified intermediary or other person who is a party to the exchange and who is not a disqualified person.

**Identification Period:** Any Replacements received within the 45 day Identification period are deemed to have been identified. Replacements received after the 45th day must have been properly identified in writing during the 45 day Identification period. This period runs from the day after the close of the Relinquished Property to the 45<sup>th</sup> day thereafter.

**Like-kind Property:** Exchange must be of “like” property (i.e US real property for US real property). Like-kind property is determined by the nature of the property the Exchangor relinquishes and receives in the exchange.

**Partial Tax Exchange:** An exchange in which the Exchangor receives some like-kind property and recognizes some gain due to: (i) failure to receive adequately valued Replacement Property; (ii) mortgage boot; or cash boot.

**Mortgage boot:** Results when an Exchangor is discharged of a debt obligation with the transfer of the relinquished property and this debt is not offset by either: (i) new debt (assumed or purchase money) of equal or greater amount incurred in conjunction with the closing of the replacement property; (ii) additional cash contributed for the acquisition of the Replacement Property equal to the amount of Exchangor's debt relief.

**Non-Qualifying Property:** Property excluded from exchange treatment under IRC § 1031(a)(2), such as inventory or property held primarily for sale; beneficial interests in or an ownership in a trust; interests in a partnership; and securities or evidences of indebtedness.

**Relinquished Property:** Property or properties given up or conveyed by Exchangor as part of a 1031 exchange.

**Replacement Property:** Property or properties properly received by Exchangor as part of a 1031 exchange.

**Reverse Exchange:** Typically conducted under the safe harbor established in Rev Proc 2000-37. These are "*parking arrangement*" where either: (i) a property is purchased and "*parked*" as a potential replacement property for the benefit of a specific Taxpayer by an accommodation party until such time as the taxpayer arranges for the transfer of the relinquished property to the ultimate transferee in a simultaneous or deferred exchange; or (ii) a taxpayer transfers the relinquished property to be "*parked*" by an accommodation party in exchange for immediately receiving the replacement property, and the accommodation party later transfers the relinquished property to the ultimate transferee.

**Qualified Intermediary:** A person acting to facilitate an exchange under section 1031 and the regulations. This person may not be the taxpayer or a disqualified person. Section 1.1031(k)-1(g)(4)(iii) requires that, for an intermediary to be a qualified intermediary, the intermediary must enter into a written "exchange" agreement with the taxpayer and, as required by the exchange agreement, acquire the relinquished property from the taxpayer, transfer the relinquished property, acquire the replacement property, and transfer the replacement property to the taxpayer.

**Simulations Exchange:** A concurrent exchange wherein the Exchanger disposes of the Relinquished Property and immediately receives the Replacement Property. Often conducted as a direct swap between two parties exchanging similar properties.

**Qualifying Purpose:** Both the Relinquished Property and the Replacement Property must be held by Exchangor for a "*productive use in Trade or Business or for Investment purposes*".