Metz Title co., inc.
1031 Qualified Intermediary
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Participating in a 1031 Tax Deferred Exchange (Exchange) should only be executed with the expert advice and approval of a qualified tax preparer and/or attorney. While Metz Title Company (Metz) has operated as a Qualified Intermediary for its clients for more than twenty years, we cannot provide tax or legal advice to our clients.

The purpose of this instruction sheet is to give our clients (Exchangers) basic information regarding the procedures required to administer a successful Exchange pursuant to Internal Revenue Code Section 1031. Please be aware that all issues of an Exchange cannot be covered in this letter.

The purpose of an Exchange is not to avoid paying capital gains taxes, rather to transfer those gains from one piece of real estate to one or more replacement properties.

Frequently asked questions regarding Exchanges:

What real estate qualifies for an Exchange? Most real estate used for investment purposes qualify. You must verify with your tax preparer and/or attorney that your particular property is subject to capital gains tax. If the property is not held for a sufficient period, the tax event could be ordinary income tax which is not eligible for an Exchange.

Are closing costs deductible in an Exchange? Per Revenue Ruling 72-456, Real Estate Broker commissions can be deducted from exchange proceeds to calculate your gain. In addition, most title insurance fees, recording fees, and legal fees associated with the sale of the relinquished property are deductible.

Many fees associated with the purchase of the replacement property are not deductible. Those include, but are not limited to, mortgage points, credit reports, loan policy of title insurance, loan fees, property taxes, and association fees.

What is boot? Boot is the benefit you receive from the sale of the relinquished property that is not re-invested in the replacement property. Boot can be cash received at the first closing, cash drawn from the 1031 account between closings, or funds received in cash or mortgage reduction at the second closing. Boot is capital gain and subject to tax.

How much do I need to re-invest to take full advantage of my Exchange? To move 100% of your gain from the relinquished property to the replacement property or properties, the purchase price(s) of the replacement property or properties must meet or exceed the sales price of your relinquished property. If your purchase price is less than your sales price, you will likely have a boot situation which will result in taxes due on the amount not re-invested.

Can my transaction involve financing? Yes. However, if financing is not handled property in your Exchange, you could end up with mortgage boot, which will result in taxes due on the amount of the boot. You need to talk with your tax preparer and/or attorney about your specific situation prior to entering an Exchange.

Do second homes or vacation homes qualify as replacement properties? They can. Revenue Procedure 2008-16 provides safe harbors for dwelling units that the Internal Revenue Service will not challenge. For a second or vacation home to qualify as replacement properties, the Exchanger must own the unit for at least twenty-four months immediately following the exchange. The Exchanger must rent the property for a minimum of fourteen days in each of the following two twelve-month periods following the purchase; AND the Exchanger cannot use the property for personal use for the greater of fourteen days or ten percent of the days it was rented for each of the following two twelve-month periods following the purchase. Personal use includes allowing friends or relatives to use the unit unless they pay fair market rent during their stay.

How long do I have to re-invest the proceeds from the sale of the relinquished property? You have 180 days from the closing date of the relinquished property to the closing date of the replacement property. However, the closing on the replacement property/properties must occur before due date (including extensions) of the Exchangers tax return for the year in which the relinquished property is transferred. That could shorten the 180-day period in some cases. You should contact your tax preparer and/or attorney for your specific situation.

How many replacement properties can I identify? There are three rules regarding identification of replacement properties per Treasury Regulation 1.1031(k)-1(c)(4).

1. The Exchanger may identify up to three (3) potential replacement properties regardless of the fair market value of the properties.
2. The Exchange may identify any number of replacement properties so long as the total of the fair market values of those properties does not exceed two hundred (200) percent of the fair market value of the relinquished property.
3. The Exchanger may identify any number of replacement properties regardless of the fair market value of those properties so long as they purchase a minimum of ninety-five (95) percent of the total fair market value of all those replacement properties identified.

Any replacement property may be removed from the replacement property list prior to the end of the identification timeframe of forty-five days so long as it is done in writing. A removed property may be replaced by a new replacement property. At midnight of the 45^{th} day after the closing on the relinquished property, the replacement property list becomes fixed.

Steps in the process of an Exchange:

1. Enter into a contract to sell the relinquished property. This contract must be assignable and should have verbiage stating the Exchanger is using the Exchange in the transaction.
2. Deliver the executed contract to Metz immediately.
3. Metz will prepare Exchange documents and contact the title agency handling your sale.
4. Execute the Exchange Agreement and Assignment of Purchase Agreement with Metz.
5. Metz will sign your settlement statement as Qualified Intermediary for your sale. You will sign the settlement statement as an approval of the numbers only. The relinquished property will be transferred from the Exchanger directly to the purchaser pursuant to Treasury Regulation 1.103(k)-1(g)(4)(iv)-(v).

6. Metz will deposit your funds in an account in the name of Metz Title Company. Those funds will be held until the Exchanger delivers a Request for Funds form to Metz.
7. Identify one or more replacement properties. You will notify Metz in writing of the address and tax identification number for each property you identify. Pursuant to Treasury Regulation 1.1031(k)-1(b), (c), (d) and (e), this must be done by midnight on the 45th calendar day after the closing on the Relinquished Property, or first closing. Note, there are specific rules that must be followed in the identification process. Metz will prepare an Acquisition Notice for each property to be used as a replacement property.
8. Enter into a contract to purchase the replacement property. This contract must be assignable and should have verbiage stating the Exchanger is using the Exchange in the transaction. This step must be completed for every replacement property being purchased.
9. Deliver the executed contract to Metz immediately.
10. Metz will prepare an Assignment of Purchase Agreement for the Replacement property.
11. Metz will sign your settlement statement as Qualified Intermediary for your purchase. You will sign the settlement statement as an approval of the numbers only. The replacement property will be transferred from the Seller directly to the Exchanger pursuant to Treasury Regulation 1.103(k)-1(g)(4)(iv)-(v).
12. Once all Exchange funds are used, the Exchange is complete and will be closed.

For more information, please contact Greg Metz at 260-563-4760 or gmetz@metztitle.com.

This FAQ is intended to provide basic information and answer general questions. Metz Title Co. Inc. is not a tax preparer or law firm. Each 1031 exchange is unique and should be reviewed with your tax preparer and/or attorney. This is not intended to give tax advice and is intended for informational purposes only; you should consult with your professional advisors with specific questions.