

## Check List for Exchangers

### **Before listing your property for sale, consult with your tax advisor and consider the following:**

- Your principal residence is excluded from IRC §1031. See, IRC § 121 for the applicable exemption.
- Holding Period — how long did you hold the asset? The holding period is not clearly defined and your initial intent to hold the property for investment is key.
- Basis — your starting point for determining gain or loss and whether you need an exchange.

### **Executing your listing agreement and purchase and sales agreement:**

- Advise your Realtor that you intend to do an exchange.
- Include a cooperation clause in your sales agreement.
- Consult your Realtor to find a Qualified Intermediary (“QI”). This could be someone associated with your title and escrow company. **IMPORTANT:** You must enlist a QI **BEFORE** you sell your property.
- Give a copy of your purchase agreement to your QI.
- Give your QI the contact information for the escrow officer/closer.
- Tell the escrow/closer which company you are using as your QI.

### **Closing the sale of the Relinquished Property:**

- Review your exchange agreement with your tax advisor and QI.
- Sign your exchange agreement and contract assignment before closing — your QI will prepare and send the exchange documents directly to the escrow/closing for signing prior to close.
- Review your settlement statement and make sure you are not using exchange proceeds to pay for non-exchange expenses.
- If you intend to take cash out of the exchange (boot), inform your QI and the closing agent **prior** to close.
- If you sell the relinquished property to a related party, review the related party rules with your tax advisor and your QI.
- If you are providing seller financing for your buyer, tell your QI and your closing agent before the closing so that the promissory note and deed of trust may be properly used in the exchange.

### **Rules to follow for a successful exchange:**

- Reinvest all your equity and debt (boot netting rules).
- You may only buy identified like kind replacement property.
- Identify your like kind replacement property and any contemplated improvements during the 45 day identification period. There are no extensions and the documents cannot be backdated.
- Your QI must abide by the g (6) limitations — the restrictions on the access to your exchange proceeds.

- Make sure that you purchase your replacement property prior to the expiration of the exchange period — 180 days after your closing for the relinquished property or the date you must file your tax return, whichever is shorter. There are no extensions.
- If you agreed to seller financing, make sure that you sell your promissory note to a third party or that the note is paid off during the exchange period so that the funds can be received by your QI and applied to the purchase of your replacement property.
- Make sure you take title to your replacement property exactly as you held title to your relinquished property (some exceptions apply).

### **Closing the purchase of the Replacement Property:**

- Advise your Realtor that you are doing an exchange.
- Make sure that your purchase agreement contains a cooperation clause.
- Give a copy of your purchase agreement to your QI.
- Provide the contact information for the escrow officer/closer to your QI.
- Tell the escrow office/closer which company you are using to do the exchange.
- If you intend to buy identified replacement property from a related party, review the related party rules with your tax advisor and QI and insure that the related party is also doing an exchange.
- Sign your Phase II exchange documents and contract assignment before closing — your QI will prepare and send those documents directly to the escrow/closing for signing prior to close.
- Review your settlement statement and make sure you are not using exchange proceeds to pay for non-exchange expenses.
- Your QI will use your exchange proceeds for the purchase of your identified replacement property. If additional cash is needed, you will be asked to bring that to the closing. Any left over exchange proceeds may only be obtained within the time frames of the g (6) limitations.

**Tax and Legal Advice:** Realtors and Qualified Intermediaries do not give tax or legal advice. The manner in which an exchange is structured will have significant tax consequences. You should consult with your tax and/or legal advisor regarding the structure and specific requirements of the exchange.