Presented to

The American Land Title Association

THE POWER OF EXCHANGE

1031 EXCHANGE AND CLOSING ISSUES FOR ALTA

Presented by

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Asset Preservation, Inc. – A Stewart Title Subsidiary

Instructor: Scott R. Saunders

- Sr. Vice President of Asset Preservation, Inc. (API)
- API has facilitated over 160,000 exchanges
- 28+ years of experience with 1031 exchanges
- Over 180+ articles on 1031 exchanges
- Quoted in the Wall Street Journal
- CE Instructor for many trade organizations

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Outline

- Definitions of Section 1031 Terminology
- The Perfect Storm
- Capital Gain Taxes and other Tax Issues
- The Investment Real Estate Market in 2016
- 1031 Exchange and Tax Issues
- IRC Section 1031 and Exceptions
- Partnership Issues and Related Party Rules
- Exchange Entities: Who is the Taxpayer?
- The Exchange Equation
- Delayed Exchanges and Identification Rules
- Parking Arrangements (Reverse & Improvement)
- Closing Issues and 1031 Exchange Transactions
- Recent Developments, PLRs, etc.
- Qualified Intermediary (QI) Due Diligence

1031 Exchange Terminology

- Boot
- Cash Boot
- Constructive Receipt
- Direct Deeding
- Exchanger / Taxpayer
- Exchange Agreement
- Exchange Period
- Identification Period
- Like-Kind Property
- Mortgage Boot
- Qualified Intermediary
- Relinquished Property
- Replacement Property

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The Perfect Storm

The Perfect Storm (for 1031s)

- Much higher capital gain taxes
- 3.8% net investment income tax (NIIT)
- Robust commercial and residential real estate markets nationwide
- Price appreciation and rising rents
- Investors seeking out ways to reduce their tax burden

Capital Gain Taxation

- 20% capital gain tax rate for high earners
- 3.8% “Net investment income tax” (NIIT) pursuant to IRC Section 1411
- Capital gain taxation now includes 4 components:
  1) Taxation on depreciation recapture at 25% - *plus*
  2) Federal capital gain taxes at 20% (or 15%) - *plus*
  3) 3.8% tax on net investment income - *plus*
  4) The applicable state tax rate (0% - 13.3%)

Capital Gain Taxes

- Taxpayers owe Federal capital gain taxes on their economic gain depending upon their taxable income.

- A 20% tax rate has been added to the tax code for taxpayers exceeding the $400,000 taxable income threshold for single filers and married couples filing jointly with over $450,000.

- The capital gain tax rate of 15% remains for taxpayers below these threshold income amounts.

3.8% Net Investment Income Tax (IRC §1411)

- The Health Care and Education Reconciliation Act of 2010 added a new 3.8% on "net investment income."
- This 3.8% tax applies to taxpayers with "net investment income" who exceed threshold income amounts of $200,000 for single filers and $250,000 for married couples filing jointly.
- Pursuant to IRC Section 1411, "net investment income" includes interest, dividends, capital gains, retirement income and income from partnerships (as well as other forms of "unearned income").

Investment Real Estate Market-2016

Two Investment Markets: Commercial & Residential

COMMERCIAL:

- In 2016, nationwide CRE prices are actually 24% above the previous market peak
- Strong returns at many REITs
- Institutions have solid borrowing/buying capacity
- Increase in CRE financing rates generally won't affect demand much
- Core and grade A buildings have strong demand
- CRE activity in secondary/tertiary markets increasing
- International demand for U.S. CRE assets

Investment Real Estate Market-2016

www.greenstreetadvisors.com/about/page/cppi/

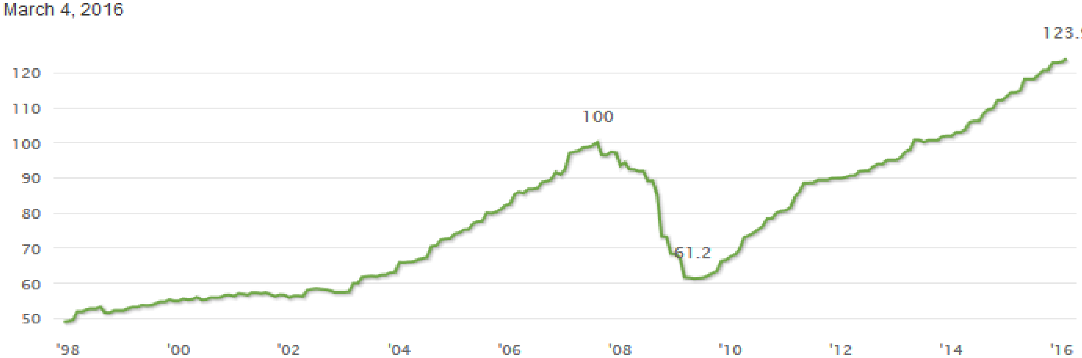
ncrease in commercial real estate price

research for over 30 years

A Reliable, Timely Index for Current U.S. Real Estate Values

Green Street U.S. Commerical Property Price Index

March 4, 2016



Cap Rates Hold Steady

Newport Beach, CA, March 4, 2016 — The Green Street Commercial Property Price Index increased by 1% in February. Property appreciation has slowed materially from the pace of last year, as cap rates have flattened out over the past few months.

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Investment Real Estate Market-2016

Two Investment Markets: Commercial & Residential

RESIDENTIAL:

- Home prices plunged about 40% from the previous market peak but have recovered about 30%+ in value
- Nationally, home prices are 10% below 2007 peak values
- Assuming steady appreciation at forecasted levels, it will take about 1 - 1.5 years for national home prices to reach pre-recession levels.
- Year over year, home prices up 6.5%
- SFR rents up 2.5% year-over-year
- Lack of inventory contributing to price increases
- Home buyers are more sensitive to rising interest rates

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IRC §1031 Exchanges

As tax rates increase, investors look for strategies to reduce or defer taxes – leading to more 1031 exchanges.

- One aspect of the tax code provides real estate investors with a huge tax advantage – an IRC Section 1031 exchange.
- Section 1031 allows taxpayers holding property for investment purposes to potentially defer all taxes that would otherwise be incurred upon the sale of investment property.

Hold, Sell or Exchange?

Provided the taxpayer is not financially distressed, real estate investors face several options:

- **Hold:** Wait as the market continues to come back.
- **Sell:** Sell the property in 2016 and pay taxes owed. Invest funds in other investments outside of real estate. But the challenge to achieving the same ROI is…
- **Exchange:** Defer all capital gain taxes with a fully deferred exchange or receive some "boot" through a partially deferred exchange. Redeploy equity that would have been used to pay capital gain taxes into the purchase of larger replacement property or properties.

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The Code

"*No gain or loss shall be recognized on the exchange of property held for productive use in a trade or business or for investment if such property is exchanged solely for property of like-kind which is to be held either for productive use in a trade or business or for investment.*

Exceptions

- Stock in trade or other property held primarily for sale
- Stocks, bonds, or notes
- Other securities or evidences of indebtedness or interest
- Interests in a partnership
- Certificates of trust or beneficial interest
- Choses in action

Property Held for Sale

- The purpose for which the property was initially acquired
- The purpose for which the property was subsequently held
- The purpose for which the property was being held at the time of sale
- The extent to which improvements, if any, were made to the property
- The frequency, number and continuity of sales
- The extent and nature of the transaction involved
- The ordinary course of business of the taxpayer
- The extent of advertising, promotion of the other active efforts used in soliciting buyers for the sales of the property
- The listing of property with brokers

§1031 - Partnership Issues

- A Partnership/LLC 1031 Exchange Scenario: A property is owned by a partnership/LLC. Some partners may want the partnership to stay together and do a 1031 exchange; others may want to do their own separate exchange with their portion of the property; others may want to receive cash and pay the taxes owed.
- The fact the partnership owns a capital asset does not mean the partners have an ownership interest in that asset.
- The partners merely own partnership interests.
- Partnership interests are specifically excluded from Section 1031 under section 1031(a)(2)(D).
- Therefore, if a partner wants to exchange, they must convert the partnership interest into an interest in the capital asset owned by the partnership.

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§1031 - Partnership Issues

- "Drop and Swap" - involves the liquidation of a partnership interest by distributing an interest in the property owned by the partnership.
- After completing the "drop" the former partner (s) will have converted their partnership interest (s) into an interest in the actual property, as a tenant-in-common co-owners.
- The property can then be sold with the former partner (s) and the entitled to do what they wish (sale or exchange) with their respective interests.
- "Swap and Drop" - This alternative involves the same two steps but in the reverse order. The partnership completes the exchange (the "swap") and then distributes an interest in the replacement property to the departing partner (s).

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§1031 - Partnership Issues

Holding Period Issues:

- If the “drop” occurs close in time to the “swap” (or visa versa) there may be a question as to whether the relinquished property (or replacement property) was “held for investment.”

- If the “drop” occurs too close to the “swap”, the partner’s exchange may be deemed an exchange by the partnership under the *Court Holdings* case.

- The more time that passes between the “drop” and “swap” the better.

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§1031 - Partnership Issues

Holding Period Issues:

- Numerous federal cases (*Bolker, Mason, Maloney*) provide taxpayer-friendly authority against challenges by the IRS.

- Some state tax authorities, such as the Franchise Tax Board (FTB) in California, challenge the federal cases and argue they are not bound by the federal cases.

- Changes made in 2008 to the federal partnership tax return (IRS Form 1065) make it easier to detect when a drop and swap transaction has occurred, thus making such transactions more vulnerable to challenge by taxing authorities.

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Related Party

Who is a Related Party?

Four Different Scenarios:

1. Simultaneous Exchange (Swap)
2. Delayed – Selling to a Related Party
3. Delayed – Purchasing from a Related Party (See Rev. Ruling 2002-83, PLR 9748006)
4. Delayed – Purchasing from a Related Party who is Exchanging (See PLR 2004-40002)

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Exchange Entities - General

Generally, the same tax owner should take title to the replacement property in the same manner they held title to the relinquished property. Some examples are below:

- Wife relinquishes, wife acquires
- Smith LLC relinquishes, Smith LLC acquires
- Gemco Corp. relinquishes, Gemco Corp. acquires
- Durst Partnership relinquishes, Durst Partnership acquires
- However, having the vesting the same is only a guideline.
- The key issue is the 'tax owner' of the relinquished property must acquire tax ownership of the replacement property.

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Exchange Entities - Exceptions

- It is necessary to distinguish between 1) federal tax ownership, 2) state law ownership, and 3) vesting.
- A taxpayer who elects taxation as a sole proprietorship (disregarded entity for Federal tax purposes) can sell relinquished property as an individual but acquire replacement property as a single member LLC.
- An LLC with two members will be considered a single member LLC if the sole role of the other member is to prevent the other member from placing the LLC into bankruptcy and the limited role member LLC has no interest in profits/losses nor any managing rights.


Like-Kind Property

Like-Kind Property Issues

- What Property is Excluded?
  - Principal Residence
  - Property Held for Sale and Dealer Property

- Qualifying Real Property
  - Any real property held for productive use in a trade or business or investment = real property held for productive use in a trade or business or investment

- Qualifying Personal Property

Vacation Homes

Revenue Procedure 2008-16

- Creates safe harbor for vacation home exchanges.
- IRS will consider a dwelling unit held for investment if certain requirements are met.

Requirements:

- The relinquished and replacement properties are owned by the taxpayer for at least 24 months (the qualifying use period);
- Within each of these two 12 month periods constituting the qualifying use period the taxpayer must.
- Rent the property to another person or persons at fair market rent for 14 or more days (family members qualify if they use the property as the primary residence); and
- The taxpayer's personal use of the dwelling unit cannot exceed the greater of 14 days or 10 percent of the time it is rented.

Fractional Ownership

- What is a typical fractional ownership investment?
- Advantages of fractional ownership
- Risks involved in fractional ownership
- Tenant-In-Common (TIC): Rev. Proc. 2002-22
- Delaware Statutory Trust (DST): Rev. Rul. 2004-86
- For more information, visit: www.adisa.org (Alternative and Direct Investment Securities Organization)

Fractional Ownership: DST

- Only for an "accredited investor" (a high net worth investor as defined in Regulation D of the Securities Act of 1933)
- A Delaware Statutory Trust (DST) is a separate legal entity created as a trust under the laws of Delaware in which each owner has a "beneficial interest" in the DST and is treated as owning an undivided fractional ownership in the property.
- Chief advantage of a DST is the lender views the trust as only one borrower.
- Investors only right to the property is receiving distributions and they have no voting authority regarding the operation of the property.
- "Bad boy carve outs" are eliminated and the lender looks to the sponsor for these carve outs from the non-recourse provisions of the loan.

Intent to Hold for Investment

- "Intent" is the taxpayer's subjective intent
- The IRS will look at objective factors that either support or negate the taxpayer's intent to hold for investment
- All facts and circumstances taken into account
- The holding period is just one (of many) factors
- Ideally the taxpayer has multiple factors to establish the intent to hold for investment
- Contrary facts may lead the IRS to conclude the property was not held for investment purposes
- Goolsby v. Commissioner (2010)
- Reesink v. Commissioner (2012)

Goolsby v. Commissioner

- Case where facts <u>did not</u> support investment intent
- Taxpayer moved into the property after only 2 months
- Sold principal residence around the same time
- Replacement property could not be rented per HoA
- No attempts to rent the replacement property
- Finished basement shortly after acquiring
- Non-privileged conversations with QI taken into account

Reesink v. Commissioner

- Recent case where facts <u>did</u> support investment intent
- Taxpayer placed many rental flyers throughout town advertising their house as available for rent
- Taxpayer showed house to two potential renters
- Taxpayer refrained from using the property for recreational use prior to moving into property
- Taxpayer sold their residence 6 months after purchasing replacement property in an exchange
- Taxpayer moved into property 8 months after acquiring
- Other supporting facts

The Exchange Equation

For full tax deferral, a taxpayer must meet two requirements:

1. Reinvest all net exchange proceeds
2. Acquire property with the same or greater debt.

	Relinquished
Value	$900,000
- Debt	$300,000
- Cost of Sale	$60,000
Net Equity	$540,000

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The Exchange Equation

For full tax deferral, a taxpayer must meet two requirements:

1. Reinvest all net exchange proceeds
2. Acquire property with the same or greater debt.

	Relinquished	Replacement
Value	$900,000	$1,200,000
- Debt	$300,000	$660,000
- Cost of Sale	$60,000	
Net Equity	$540,000	$540,000

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The Exchange Equation

For full tax deferral, a taxpayer must meet two requirements:

1. Reinvest all net exchange proceeds
2. Acquire property with the same or greater debt.

	Relinquished	Replacement	Boot
Value	$900,000	$1,200,000	
- Debt	$300,000	$660,000	$ 0
- Cost of Sale	$60,000		
Net Equity	$540,000	$540,000	$ 0

The taxpayer acquired property of greater value, reinvesting all net equity and increasing the debt on the replacement property.

Analysis: There is no boot.

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The Exchange Equation

	Relinquished	Replacement	Boot
Value	$900,000	$700,000	
- Debt	$300,000	$260,000	$ 40,000
- Cost of Sale	$60,000		
Net Equity	$540,000	$440,000	$ 100,000
Total Boot			$ 140,000

The taxpayer acquired property of a lower value, keeps $100,000 of the net equity and acquired a replacement property with $40,000 less debt.

Analysis: This results in a total of $140,000 in total boot.
($40,000 mortgage boot and $100,000 in cash boot = $140,000)

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The Exchange Equation

	Relinquished	Replacement	Boot
Value	$900,000	$800,000	
- Debt	$300,000	$260,000	$ 40,000
- Cost of Sale	$60,000		
Net Equity	$540,000	$540,000	$ 0
Total Boot			$ 40,000

The taxpayer acquired property of a lower value, reinvesting all net equity, but has less debt on the replacement property.

Analysis: This results in $40,000 in mortgage boot.

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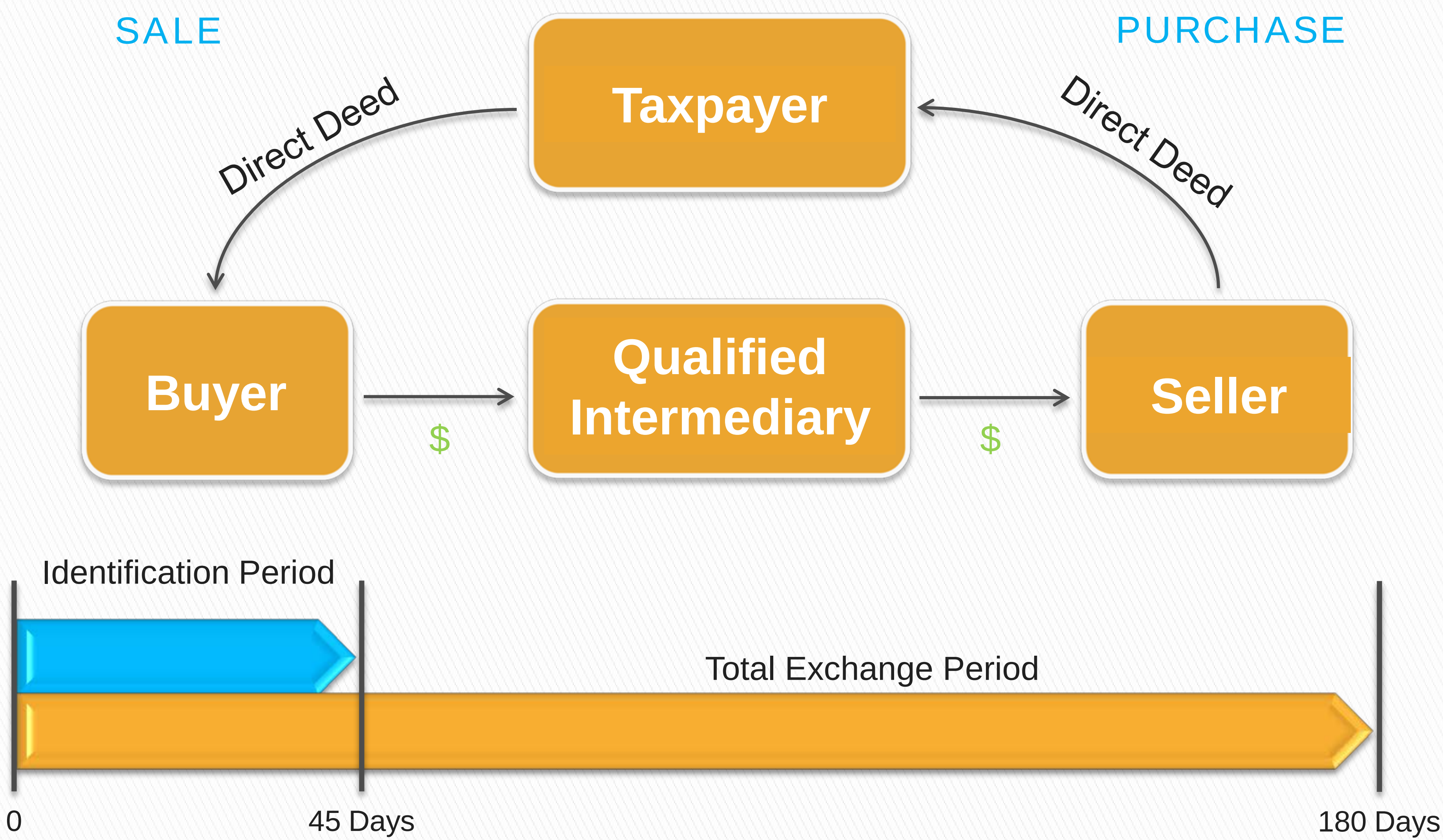
Formats & Variations

- Two-Party Trade (“Swap”)
- Three-Party Format (“Alderson”)
- Delayed Exchange with a Qualified Intermediary (“QI”)
- Reverse Exchange (“Parking Arrangement”)
- Improvement Exchange (“Parking Arrangement”)
- Reverse/Improvement Exchange (“Parking Arrangement”)

The Delayed Exchange



Time Requirements

- **45 Day Identification Period:**
  The taxpayer must identify potential replacement property(s) by midnight of the 45th day from the date of sale.

- **180 Day Exchange Period:**
  The taxpayer must acquire the replacement property by midnight of the 180th day, or the date the taxpayer must file its tax return (including extensions) for the year of the transfer of the relinquished property, whichever is earlier.

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Identification Rules

- **Three Property Rule:** The taxpayer may identify up to three properties of any fair market value.
- **200% Rule:** The taxpayer may identify an unlimited number of properties provided the total fair market value of all properties identified does not exceed 200% of the fair market value of the relinquished property.
- **95% Rule:** If the taxpayer identifies properties in excess of both of the above rules, then the taxpayer must acquire 95% of the value of all properties identified.

Identification Rules

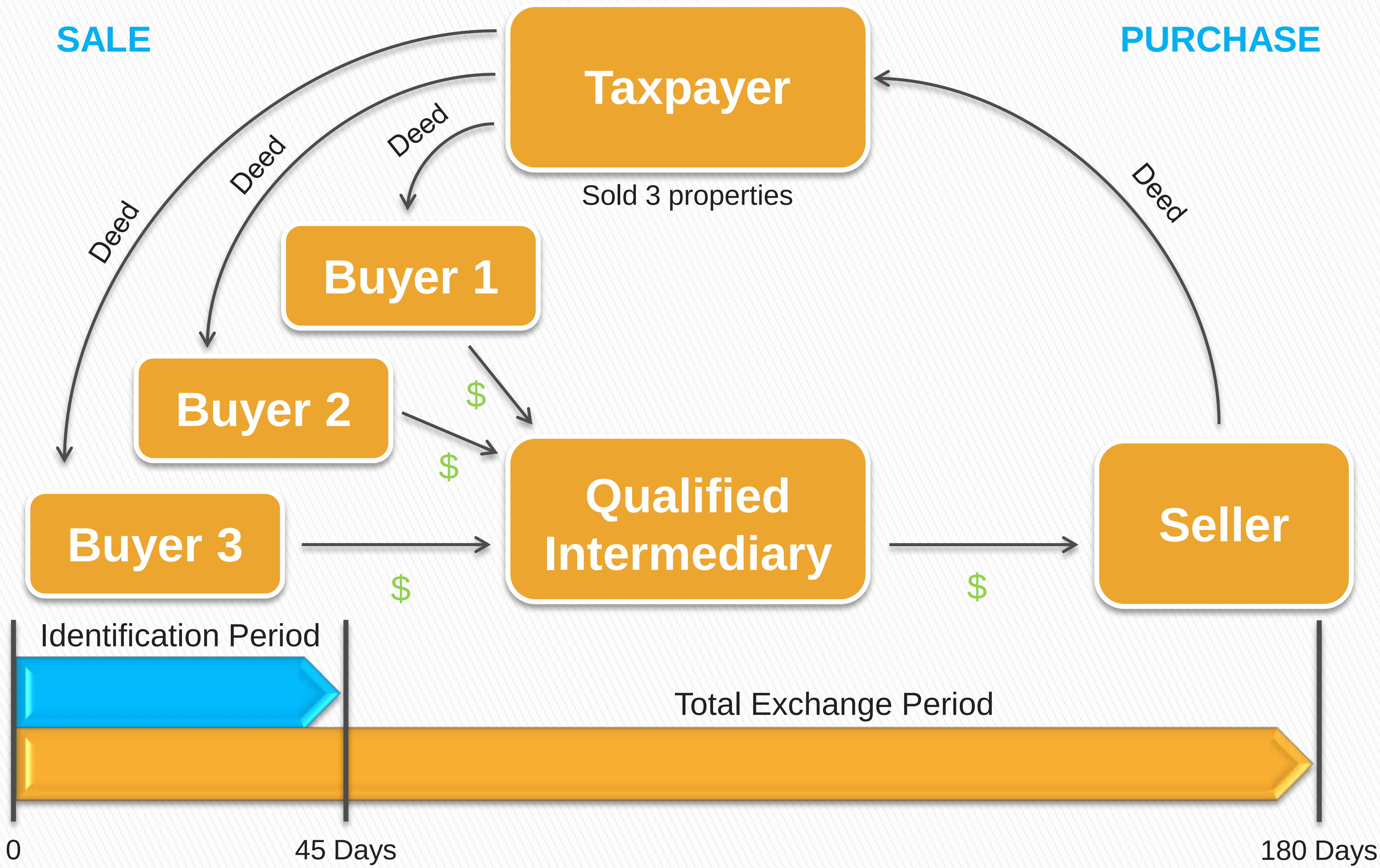
Identification must be:

- Made in writing
- Unambiguously describe the property
- Hand delivered, mailed, telecopied or otherwise sent
- Sent by midnight of the 45th day
- Delivered to the Qualified Intermediary or a party related to the exchange who is not a disqualified person

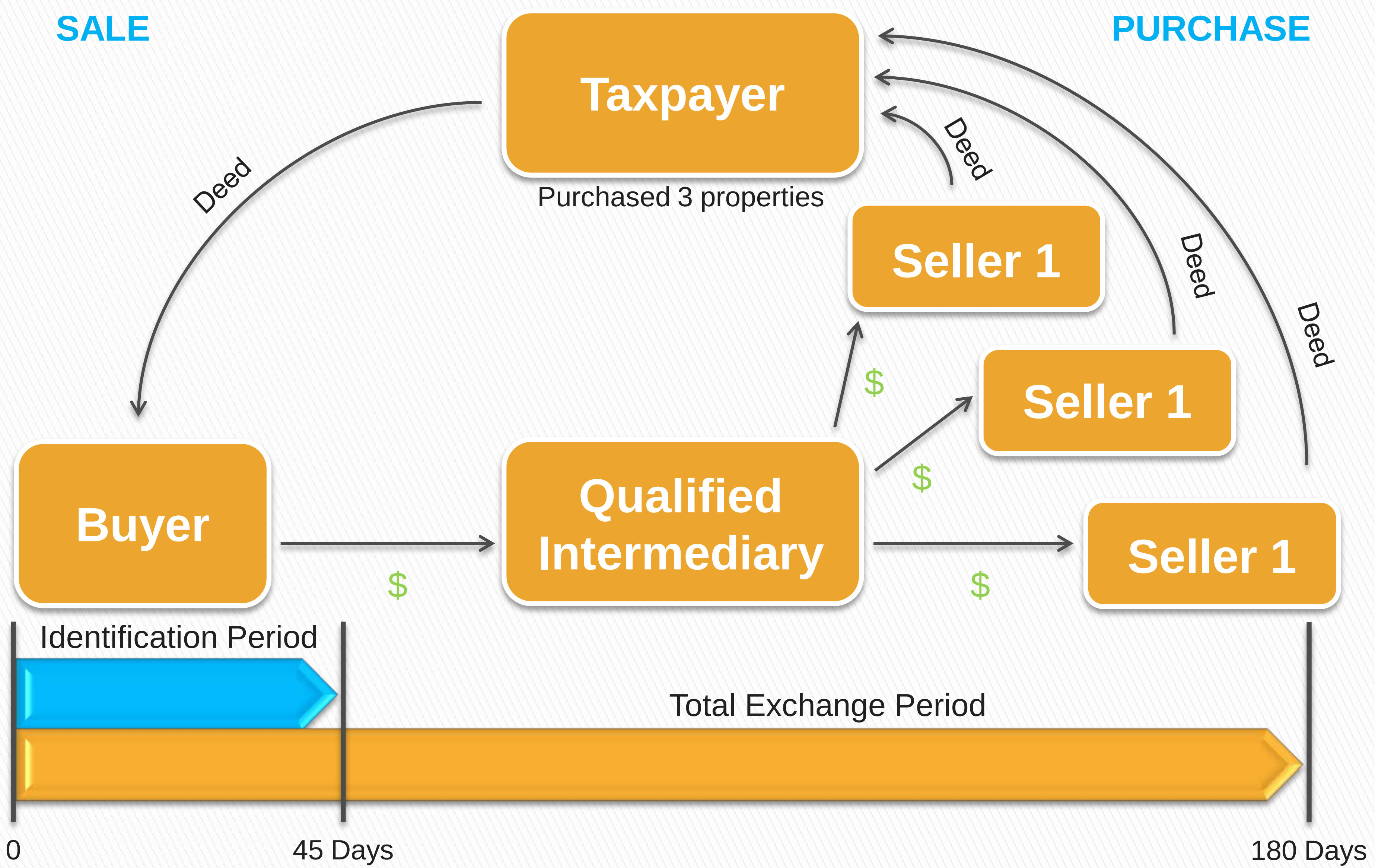
What Not To Do In An Exchange

- Christensen v. Commissioner
  (Didn’t file extension to obtain full 180 days)
- Knight v. Commissioner
  (Closed after the 180th day)
- Dobrich v. Commissioner
  (Backdated the Identification Notice)

Multiple Property Exchange



Multiple Property Exchange



Parking Arrangements

What is a Reverse Exchange?

- Purchasing the replacement property before the sale of the relinquished property.

What is an Improvement Exchange?

- Building a new replacement property from the ground-up or making improvements to an existing replacement property.

What is a Reverse/Improvement Exchange?

- Purchase the replacement first and begin construction before closing on the sale of the relinquished property.

Closing Issues with Exchanges

Can a 1031 Exchange be Set Up at the Last Minute?

- Yes!
- As long as the transaction has not closed
- If the burdens and benefits of ownership have not transferred from the seller to the buyer, a 1031 exchange can be set up at the last minute or at closing table.

What Needs to be Done to Set Up a Last Minute Exchange?

- Stop the closing
- Promptly contact a qualified intermediary and explain you have a transaction closing right now and you need 1031 exchange documents prepared and forwarded immediately.
- Once the 1031 exchange documents arrive, have the seller and buyer sign the appropriate 1031 exchange documents.

Closing Issues with Exchanges

What is Needed to Set Up a New 1031 Exchange?

- Your customer's contact information (email, phone, address)
- Your contact information (email, phone, address, file number)
- Sale property address
- Buyer's vesting
- Copy of the Purchase and Sale Agreement
- Copy of the Title Commitment (if possible)
- Forward this information to the qualified intermediary

Closing Issues with Exchanges

What will the Qualified Intermediary Prepare?

- 1031 exchange agreement
- Assignment Agreement
- Notice of Assignment (for the buyer)
- Exchange Account forms
- Detailed closing instructions noting the changes that need to be made on the settlement statement and transfer of funds at closing to the qualified intermediary to properly document the 1031 exchange

Closing Issues with Exchanges

What Does the Closer Need to do Differently in a 1031 Exchange?

- The qualified intermediary is shown as the seller on the Seller's statement (For example, Asset Preservation, Inc. as Qualified Intermediary for John and Joan Smith)
- Other closing documents (such as escrow instructions) should also show the qualified intermediary as Seller
- The Seller should sign and read/approve all documents and closing statements prior to having the qualified intermediary sign as the Seller
- Prepare Form 1099S in the name of the Seller. Check box #4 on the 1099S Form indicating other property will be received as part of the consideration.
- In most delayed exchanges, direct deeding is used. Prepare a deed directly from the Seller to the Buyer.
- Only in a parking arrangement exchange (reverse or improvement exchange), sequential deeds are prepared and title is transferred to an entity owned by the qualified intermediary called an Exchange Accommodation Titleholder (EAT)
- The exchange proceeds are forwarded directly to the qualified intermediary (generally via a wire transfer)
- If the taxpayer wants some taxable boot from closing on the sale of the relinquished property, these funds can be dispersed to the taxpayer at closing ('cash boot") the difference is forwarded to the qualified intermediary.

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Closing Issues with Exchanges

Handling Earnest Money Deposits in a 1031 Exchange

- Can the Seller in a 1031 exchange accept earnest money? Generally, yes. If the Seller enters into an exchange agreement before closing and deposits earnest money with either the closer or QI – befor*e the closing occurs* – the earnest money should not be treated as the receipt of sale proceeds. If, however, the Seller keeps earnest money, this would be considered boot and taxable to the extent there is a capital gain.

- Can the taxpayer pay an earnest money deposit to the seller of the replacement property? Yes. There are two ways to accomplish this:
- (1) If the assignment agreement for the purchase of the replacement property has been prepared and executed, the QI is now a party to the transaction as the buyer and can forward earnest money from the exchange account to the replacement property closer
- (2) The taxpayer can advance earnest money funds directly to the closing officer and later getting reimbursed by the QI. Assuming the taxpayer has paid the earnest money deposit from their own funds, the QI may direct the closing officer to include a line item on the closing statement to evidence the return of the earnest money deposited to the exchange and designate as “Refund of Earnest Money to Taxpayer.” The QI would then transfer funds to the closing officer in an amount sufficient to reimburse the taxpayer.

Closing Issues with Exchanges

Transaction Costs versus Ownership Costs

- An “exchange expense” is a transaction cost (defined in Section 1.1031(k)-1(g)(7)) and includes the following costs:
- Transfer taxes
- Real estate commissions
- Closing or escrow fees
- Attorney fees
- Recording fees,
- Qualified Intermediary (QI) fees
- Title insurance fees
- Transfer taxes,
- Notary fees
- Payment of an exchange expense will not generate boot

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Closing Issues with Exchanges

Transaction Costs versus Ownership Costs

Non-Exchange Expenses/Ownership Costs

- Mortgage points and assumption fees
- Credit reports
- Lender’s title insurance
- Pro-rated mortgage insurance
- Loan fees and loan application fees
- Property taxes
- Utility charges
- Association fees
- Hazard insurance
- Credits for lease deposits
- Prepaid rents and security deposits

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Closing Issues with Exchanges

Ways to Handle Non-Exchange Expenses on Settlement Statements

- Pro-rated rents, security deposits and other non-exchange expenses could be considered “boot”. There are a couple of ways to handle these issues:

- 1) Offset these non-exchange expenses by the taxpayer paying these items directly to the buyer from an operating account.

- 2) The taxpayer could deposit an amount equal to these non-exchange expenses into the closing/escrow account so that the settlement statement would reflect an offsetting credit for these items.

Recent Developments

Exchanges Face Uncertain Future: Tax Reform

- The JCT (Joint Committee on Taxation) has traditionally scored the lost tax revenue (referred to as a "tax expenditure") due to Section 1031 at $10-15 billion over a 10 year time period.
- In 2014, the JCT increased their estimate of lost tax revenue over 10 years to $41 billion, then later $46 billion and in December increased their estimate to $98.6 billion.
- In an effort to reduce U.S. corporate taxes from the current 35% rate down to a 25% rate, Congress is looking at what are called "revenue offsets" (i.e. eliminating an existing tax benefit) to pay for tax reform without directly increasing tax rates in other areas of the code.
- Due to the JCT's increased tax expenditure figures for Section 1031, exchanges became a part of the tax reform discussion.

Recent Developments

Exchanges Face Uncertain Future: Tax Reform

- Kevin Brady (TX) , the Chair of the House Ways & Means Committee would like to pass a tax reform bill. He is using some aspects of Dave Camp's bill (which eliminated 1031 exchanges) for his tax reform proposals due to time constraints.

- Orin Hatch (UT), the Chair of the Senate Finance Committee, is also working on a tax reform bill.

- President Obama in his 2017 budget proposal wants to limit capital gains in an exchange to $1 million --- and completely eliminate exchanges of collectibles and artwork and personal property. The President has advocated limiting 1031 tax deferral at $1 million, indexed for inflation, in the last 3 budget proposal.

Recent Developments

Exchanges Face Uncertain Future: Tax Reform

- Ernst and Young macroeconomic study, **The Economic Impact of Repealing Like-Kind Exchange Rules**, reveals the repeal of Section 1031 results in less federal revenue, would shrink the economy, discourage investment and is at cross-purposes with tax reform.
- Study shows an estimated reduction in the overall U.S. GDP of $61-$131 billion over 10 years if 1031 exchanges were eliminated. Repeal would increase the cost of capital, discourage business investment to the detriment of the overall economy.
- Repeal would subject many business to higher tax burdens, result in longer holding periods, greater reliance on debt financing and less efficient deployment of capital.

Recent Developments

Exchanges Face Uncertain Future: Tax Reform

- National Association of Realtors (NAR) Study **"Like-Kind Exchanges: Real Estate Market Perspectives 2015"** survey of members found that real estate investors and commercial property owners place a high priority on current 1031 exchange tax rules.
- 63% percent of Realtors participated in a 1031 exchange in the past four years.
- Without Section 1031 exchanges, 40 percent of the respondents said transactions would not have occurred.
- Without Section 1031 exchanges, 56 percent said a project would have been smaller in scale.

Recent Developments

Tell Congress Not to Repeal 1031 Exchanges

- 1031 exchanges benefit millions of American investors and businesses every year. 1031 exchanges encourage businesses to expand and the transactional activity created by Section 1031 keeps dollars moving in the U.S. economy.
- Tell Congress 1031 exchanges have powerful value to economic development in the U.S. Economy. Get involved.
- Go to www.1031taxreform.com and bring your voice to the discussion in Washington D.C.
- ALTA advocacy protecting 1031 exchanges

IRS Form 8824

Form **8824**

Department of the Treasury
Internal Revenue Service

Like-Kind Exchanges
(and section 1043 conflict-of-interest sales)
▶ Attach to your tax return.
▶ Information about Form 8824 and its separate instructions is at *www.irs.gov/form8824*.

OMB No. 1545-1190
2014
Attachment Sequence No. 109

Name(s) shown on tax return | Identifying number

Part I Information on the Like-Kind Exchange

Note: *If the property described on line 1 or line 2 is real or personal property located outside the United States, indicate the country.*

1 Description of like-kind property given up:

2 Description of like-kind property received:

3 Date like-kind property given up was originally acquired (month, day, year) . . . . 3 MM/DD/YYYY

4 Date you actually transferred your property to other party (month, day, year) . . . . . 4 MM/DD/YYYY

5 Date like-kind property you received was identified by written notice to another party (month, day, year). See instructions for 45-day written identification requirement . . . . 5 MM/DD/YYYY

6 Date you actually received the like-kind property from other party (month, day, year). See instructions 6 MM/DD/YYYY

7 Was the exchange of the property given up or received made with a related party, either directly or indirectly (such as through an intermediary)? See instructions. If "Yes," complete Part II. If "No," go to Part III . . . ☐ Yes ☐ No

Part II Related Party Exchange Information

8 Name of related party | Relationship to you | Related party's identifying number

Address (no., street, and apt., room, or suite no., city or town, state, and ZIP code)

9 During this tax year (and before the date that is 2 years after the last transfer of property that was part of the exchange), did the related party sell or dispose of any part of the like-kind property received from you (or an intermediary) in the exchange or transfer property into the exchange, directly or indirectly (such as through an intermediary), that became your replacement property? . . . . ☐ Yes ☐ No

10 During this tax year (and before the date that is 2 years after the last transfer of property that was part of the exchange), did you sell or dispose of any part of the like-kind property you received? . . . . . . ☐ Yes ☐ No

*If both lines 9 and 10 are "No" and this is the year of the exchange, go to Part III. If both lines 9 and 10 are "No" and this is **not** the year of the exchange, stop here. If either line 9 or line 10 is "Yes," complete Part III and report on this year's tax return the deferred gain or (loss) from line 24 **unless** one of the exceptions on line 11 applies.*

11 If one of the exceptions below applies to the disposition, check the applicable box:

a ☐ The disposition was after the death of either of the related parties.

b ☐ The disposition was an involuntary conversion, and the threat of conversion occurred after the exchange.

c ☐ You can establish to the satisfaction of the IRS that neither the exchange nor the disposition had tax avoidance as one of its principal purposes. If this box is checked, attach an explanation (see instructions).

For Paperwork Reduction Act Notice, see the instructions. Cat. No. 12311A Form **8824** (2014)

Name(s) shown on tax return. Do not enter name and social security number if shown on other side. | **Your social security number**

Part III Realized Gain or (Loss), Recognized Gain, and Basis of Like-Kind Property Received

Caution: *If you transferred* ***and*** *received* ***(a)*** *more than one group of like-kind properties or* ***(b)*** *cash or other (not like-kind) property, see* ***Reporting of multi-asset exchanges*** *in the instructions.*

Note: *Complete lines 12 through 14* ***only*** *if you gave up property that was not like-kind. Otherwise, go to line 15.*

12 Fair market value (FMV) of other property given up 12

13 Adjusted basis of other property given up 13

14 Gain or (loss) recognized on other property given up. Subtract line 13 from line 12. Report the gain or (loss) in the same manner as if the exchange had been a sale 14

Caution: *If the property given up was used previously or partly as a home, see* ***Property used as home*** *in the instructions.*

15 Cash received, FMV of other property received, plus net liabilities assumed by other party, reduced (but not below zero) by any exchange expenses you incurred (see instructions) . . . 15

16 FMV of like-kind property you received 16

17 Add lines 15 and 16 17

18 Adjusted basis of like-kind property you gave up, net amounts paid to other party, plus any exchange expenses **not** used on line 15 (see instructions) 18

19 **Realized gain or (loss).** Subtract line 18 from line 17 19

20 Enter the smaller of line 15 or line 19, but not less than zero 20

21 Ordinary income under recapture rules. Enter here and on Form 4797, line 16 (see instructions) 21

22 Subtract line 21 from line 20. If zero or less, enter -0-. If more than zero, enter here and on Schedule D or Form 4797, unless the installment method applies (see instructions) 22

23 **Recognized gain.** Add lines 21 and 22 23

24 Deferred gain or (loss). Subtract line 23 from line 19. If a related party exchange, see instructions . 24

25 **Basis of like-kind property received.** Subtract line 15 from the sum of lines 18 and 23 . . 25

Part IV Deferral of Gain From Section 1043 Conflict-of-Interest Sales

Note: *This part is to be used* ***only*** *by officers or employees of the executive branch of the Federal Government or judicial officers of the Federal Government (including certain spouses, minor or dependent children, and trustees as described in section 1043) for reporting nonrecognition of gain under section 1043 on the sale of property to comply with the conflict-of-interest requirements. This part can be used* ***only*** *if the cost of the replacement property is more than the basis of the divested property.*

26 Enter the number from the upper right corner of your certificate of divestiture. (**Do not** attach a copy of your certificate. Keep the certificate with your records.) . . . . ▶ –

27 Description of divested property ▶

28 Description of replacement property ▶

29 Date divested property was sold (month, day, year) . . . . 29 MM/DD/YYYY

30 Sales price of divested property (see instructions). 30

31 Basis of divested property 31

32 **Realized gain.** Subtract line 31 from line 30 32

33 Cost of replacement property purchased within 60 days after date of sale 33

34 Subtract line 33 from line 30. If zero or less, enter -0- 34

35 Ordinary income under recapture rules. Enter here and on Form 4797, line 10 (see instructions) 35

36 Subtract line 35 from line 34. If zero or less, enter -0-. If more than zero, enter here and on Schedule D or Form 4797 (see instructions) 36

37 **Deferred gain.** Subtract the sum of lines 35 and 36 from line 32 37

38 **Basis of replacement property.** Subtract line 37 from line 33 38

QI Due Diligence

- This is the most important choice a taxpayer will make in a Section 1031 exchange.

- Paramount to every 1031 exchange is the safety of funds held by the Qualified Intermediary (QI).

QI Due Diligence

- Does the QI offer customers the written backing of a large creditworthy entity?
- What is the financial rating and balance sheet of this entity?
- Does the QI conduct due diligence on the depositories holding the funds and monitor them?

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QI Due Diligence

- Does the QI offer segregated accounts?
- Does the QI offer a qualified escrow account?
- Does the QI offer a qualified trust account?
- Does the QI have sufficient fidelity bond coverage?

ASSET PRESERVATION INCORPORATED

Contact Asset Preservation, Inc.

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