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ACCOUNTANT'S CHECKLIST FOR DOING A §1031 EXCHANGE OF REAL ESTATE

Below is a checklist of items you and your client should do in a §1031 exchange of real estate.

ITEM		RESPONSIBLE PARTY
1.	Put provision in the Relinquished Property's sales agreement stating that the buyer of the Relinquished Property will cooperate with taxpayer to do a §1031 exchange.	____________
2.	Determine if the Relinquished Property is used for "investment" or "trade or business" purposes in order to qualify under §1031.	____________
3.	Is the Relinquished Property subject to any indebtedness? If so, then §1031(b)-(c) should be reviewed as to boot issues. Plan to avoid gain on boot by refinancing Relinquished Property or by paying down indebtedness.	____________
4.	Is cash or boot received? If so, then calculate gain on exchange.	____________
5.	Is the taxpayer related to the seller of the Replacement Property or the buyer of the Relinquished Property? If so, then §1031(f) related party rules must be reviewed. Be sure qualified intermediary is not related to the taxpayer.	____________

Disclaimer: This checklist is not, nor is it intended to be, legal advice. You should consult with an attorney and other professionals before utilizing this checklist.

ITEM	RESPONSIBLE PARTY

6. Is the Replacement Property "like-kind" to the Relinquished Property?

   (a) Is there any personal property involved with either the Replacement Property or the Relinquished Property? If so, be sure there is no gain on the exchange.

   (b) Are there any depreciation recapture items? If so, will they cause gain to be recognized? ____________________

7. Is the Replacement Property going to be property which is to be constructed in whole or in part? If so, see rules on reverse exchanges. If a portion of the construction cost of the Replacement Property is to be paid with funds from the Relinquished Property, then must review case law for construction of Relinquished Property. ____________________

8. Put clauses in the Replacement Property purchase agreement stating: (i) that the purchase agreement can be assigned to a Qualified Intermediary; and (ii) the seller will cooperate with the taxpayer in effectuating a tax-free exchange. ____________________

9. If doing a deferred exchange, then choose a Qualified Intermediary. ____________________

10. If using a Qualified Intermediary in a deferred exchange, then review the requirements of Reg. §1.1031(k). ____________________

ITEM	RESPONSIBLE PARTY

11. If there is to be a deferred exchange, must identify the Replacement Property within 45 days of the closing of the Relinquished Property's sale. Within 45 days of the closing of the sale of the Relinquished Property, the Replacement Property should be described in the notice by either a legal description, street address, or other distinguishable name in a written document signed by the exchanger and sent to the Qualified Intermediary or certain other permissible persons under the Regulations.

    (a) If more than three properties are identified, then the exchanger must later revoke designations so that the number of non-revoked properties is three or less. The designations should be revoked by a written signed letter sent to the person to whom the identification statement was sent, not later than 45 days since the closing of the sale of the Relinquished Property.

    (b) As an alternative, identify multiple Replacement Properties whose values are less than or equal to 200% of the fair market value of the Relinquished Property.

    (c) As an alternative, identify an unlimiated number of Replacement Properties so that 95% of the value of all identified properties is received by the taxpayer before the end of the exchange period. ____________________

12. If a Qualified Intermediary is used, then the exchange agreement, along with the other documents, must be drafted to include those provisions required by Reg. §1.1031(k). ____________________

13. For Relinquished Property's sales proceeds being held by the Qualified Intermediary, verify that the taxpayer has no rights to receive, pledge, borrow or otherwise receive these benefits of cash or cash equivalence. ____________________

ITEM	RESPONSIBLE PARTY
14. If the proceeds held by the Qualified Intermediary are to be secured by a deed of trust or by a letter of credit, then verify that this security is structured to comply with the Regulations.	____________________
15. If the monies held by the Qualified Intermediary are to have a growth factor or bear interest, structure so that the taxpayer will not be in constructive receipt of this growth factor pursuant to the Regulations.	____________________
16. The Qualified Intermediary must close the purchase of the Replacement Property within the 180-day exchange period following the closing of the sale of the Relinquished Property.	____________________
17. In a deferred exchange, have two closing statements, one for the taxpayer who is exchanging the Relinquished Property to the Qualified Intermediary, and another closing statement from the Qualified Intermediary to the buyer of the Relinquished Property.	____________________
18. In a deferred exchange, the Relinquished Property escrow closing statement should show that the sales proceeds of the Relinquished Property are paid to a Qualified Intermediary.	____________________
19. In a deferred exchange, have a closing statement, show the transfer from the seller of the Replacement Property to the Qualified Intermediary, and a second closing statement showing the transfer from the Qualified Intermediary to the taxpayer. The closing statement should identify the Qualified Intermediary as the purchaser.	____________________
20. Calculate the tax basis of Replacement Property for depreciation and other tax purposes.	____________________
21. Be sure that the escrow holder exempts the exchange from California withholding requirements.	____________________
22. File federal tax Form 8824 with taxpayer's income tax return.	____________________

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ITEM	RESPONSIBLE PARTY

This checklist is a general list of items which the accountant should verify are completed in a §1031 exchange of real estate. However, since each exchange has unique issues, this list should be modified to fit the specific facts of a particular exchange. Please email Robert A. Briskin at rbriskin@rablegal.com with any questions regarding this checklist.

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