



# Exchange News

Realty Exchange Corporation

Since 1990 - Your Nationwide Qualified Intermediary for Tax Deferred Exchange of Real Estate.

**Change to Reverse Exchange Rules.** In September 2000, IRS Revenue Procedure 2000-37 established 'safe harbor' procedures to permit a taxpayer to accomplish a reverse exchange using an independent third party exchange accommodation titleholder (EAT).

New Revenue Procedure 2004-51 modifies the original procedures to exclude any replacement property owned by the taxpayer within 180 days of transfer of the planned replacement property to the EAT. This means if you have owned a property within the past 180 days it may not be transferred to an EAT as your eventual replacement property. The new rules are in effect for transfers of ownership to the EAT after July 19, 2004.

The IRS is also opposed to and is studying "transactions in which a person related to the taxpayer (*which includes the taxpayer*) transfers a leasehold interest in land to an accommodation party (*like a builder*) and the accommodation party makes improvements to the land and transfers the leasehold with the improvements to the taxpayer in exchange for other real estate".

**Maximum Protection for Exchange Escrow Funds.** The security of the exchange escrow funds being held by a qualified intermediary (QI) is of paramount importance to both the exchangor and the QI. Realty Exchange Corporation has had fidelity bond insurance for a number of years. Now, at the request of some clients, this insurance has been increased to \$5 million dollars per occurrence. The insurance is issued by CNA, one of the largest insurance companies in the United States. The insurance covers losses attributable to both QI employees and owners.

With this increase to \$5 million dollars in fidelity bond insurance clients can be certain their exchange escrow funds will be secure and available when the time comes to purchase their replacement property.

**Delaware Statutory Trust (DST).** After being discussed for a number of years the IRS has issued Revenue Ruling 2004-86 relative to use in a like-kind exchange of an interest in a Delaware Statutory Trust (DST). Under certain circumstances described in the revenue ruling a DST will be treated as a 'disregarded entity' for federal income tax purposes. The beneficial owners of a DST are provided the same liability protection as shareholders in a Delaware corporation.

A basic exchange rule is that the title for the replacement property should be in the same name as the relinquished property. There are some other 'disregarded entity' exceptions to this rule, such as the use of a single member LLC or a revocable trust. Now, if the specific rules in the Revenue Ruling are followed "a taxpayer may exchange real property for an interest in the Delaware Statutory Trust ...without recognition of gain or loss under §1031, if the other requirements of §1031 are satisfied".

This change is of particular importance to sponsors and purchasers of tenant-in-common (TIC) exchange properties.

**The “Morning After” Call.** Sadly we continue to receive phone calls from taxpayers who want to do a like kind exchange but they have already gone to settlement and transferred the investment or business property they were selling. If the IRS required exchange documentation is not in place before settlement of the property to be relinquished then an exchange may not be completed.

A recent article in The Washington Post told how a real estate agent suggested a seller do an exchange. The seller agreed, but unfortunately the agent did not refer the owner to a qualified intermediary(QI). The owner went to settlement and then learned he had not done an exchange. He had to pay over forty thousand dollars in capital gains tax. The owner’s question was a simple one – “Who is responsible?” Is it the real estate agent, the settlement agent or the tax advisor? It is probably anyone who knew the owner wanted to do an exchange but failed to refer him to a professional exchange QI.

When necessary, we can process the required exchange documentation very quickly. If you know of someone who is considering doing an exchange have him or her call us immediately. The opportunity to save thousands of dollars in taxes is lost once the seller goes to settlement without the required exchange documentation in place.

**E-mail Distribution of *Exchange News*.** For those of you currently receiving this newsletter by mail, we encourage you to consider e-mail receipt in the future. This includes ***Special E-mail Editions*** for new changes to IRC 1031 rules and procedures when they occur. Just visit our web site [www.1031.us](http://www.1031.us) and click on the “Subscribe to *Exchange News* by E-mail” button and you will be able to give us your e-mail address.

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