



Exchange News

Realty Exchange Corporation

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

Christine Moore Awarded CES® Designation: The Federation of Exchange Accommodators (FEA) has awarded Christine Moore, our exchange administrator, the prestigious Certified Exchange Specialist® designation. This designation is only awarded to those 1031 exchange specialists who have demonstrated by experience and a comprehensive examination their thorough knowledge of 1031 exchange rules and practices. Mrs. Moore may be reached at cmoore@1031.us. Realty Exchange Corporation is now one of the few qualified intermediaries in the country with four Certified Exchange Specialists® on staff.

Deposit on Relinquished Property: We are often asked if the seller of an investment or business property who plans to do an exchange can take and hold a deposit received directly from the buyer. The answer is yes. However, prior to settlement the amount of the deposit must be given to the settlement agent. In the event part or all of the deposit is not given to the settlement agent, the cash held back will be considered cash boot and will be taxable income. If desired, the deposit may be held by the real estate broker, the settlement agent, or the qualified intermediary. In any event, a cash deposit held by the seller prior to settlement does not disqualify the exchange.

1031 Classification of Second Homes: Ed Horan's latest real estate exchange article categorizes second homes and vacation properties to answer the question – "Does my second home qualify for a 1031 exchange?" To read or print a copy of this article, go to www.1031.us and select the article in the NEW INFO box.

National Continuing Education Conferences: It is important that qualified intermediaries stay current on new developments and IRS decisions relative to 1031 exchanges. In early October, Cynthia Dove, CES®, and Christine Moore, CES®, attended the Annual Conference of the Federation of Exchange Accommodators (FEA). Then later in the month, Bill Horan, CES®, and Mrs. Dove attended in San Diego the 10th annual national conference on "Like-Kind Exchanges Under §1031 I.R.C."

Extension of Hurricane Deadlines: The IRS has extended the deadline for "time sensitive acts" for those taxpayers affected by Hurricanes Katrina, Rita and Wilma. For exchangors, the 45-day identification deadline and 180-day replacement property transfer date, along with the three deadlines for safe harbor reverse exchanges, are considered time sensitive acts. All affected taxpayers now have until February 28, 2006, to complete the required time sensitive acts. For exchangors, they have February 28, 2006, or 120 days after the original time sensitive act was due, whichever is later, to complete the required action. Go to www.irs.gov and select "Help for Hurricane Victims" to get the latest IRS instructions.

Amazon.com: Ed Horan's book "How to Do a Like Kind Exchange of Real Estate – Using a Qualified Intermediary" (ISBN 1-41204614-9) is now available at www.amazon.com. Bulk orders may be sent directly to Ed at www.1031.us/book.

Continuing Education Seminars: Bill Horan, CES®, is presenting the continuing education seminar "How to Do a 1031 Tax-Deferred Exchange" at a number of locations in North Carolina, Maryland, Virginia and Delaware. For seminar info and to register, go to the www.1031.us home page and select "1031 Seminars." Attendees also receive a copy of Ed Horan's new 1031 exchange book.

Debt Payoff on Relinquished Properties: The usual exchange involves simply the payoff by the settlement agent of recorded loans against the relinquished property. What if the loan to be paid off at settlement is not secured by the relinquished property? There is no specific requirement in the IRC 1031 regulations that unsecured liabilities relate to the relinquished property. However, any unsecured liabilities paid off at closing should be related to the relinquished property, and ideally the taxpayer should be contractually obligated to pay these unsecured liabilities off as part of closing.

A 1980 case, *Barker v Comm*, 74TC 555, seems to support the need for a contractual obligation or the payment could be taxable cash boot.

Example: The taxpayer borrows \$20,000 on a signature loan to pay for improvements to the relinquished property. In addition to all the usual terms listed in the Note, the Note is due and payable when the relinquished property goes to settlement. It appears this unsecured loan could be paid off at settlement without creating cash boot.

If the liabilities are unsecured, the taxpayer should be able to trace the liabilities directly to the relinquished property and to establish that these unsecured liabilities were required to be paid off as part of closing. The taxpayer may want to amend the purchase and sale agreement for the relinquished property to specify the amount and identity of the unsecured liabilities and to require that they be paid off at closing. Our thanks to Attorney Mary Foster, CES®, for the above clarifying information which was presented at her recent San Diego 1031 exchange conference.

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Call toll free - Bill Horan, CES® or Cynthia Dove, CES® at 800-795-0769

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