



Compliments of

**Realty Exchange Corporation**

*"Your Nationwide Qualified Intermediary for the Tax Deferred Exchange of Real Estate"*

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# **Reporting the Like-Kind Exchange of Real Estate Using IRS Form 8824**

**January 2005 Edition**

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is presented with the understanding that the publisher is not engaged in rendering legal or accounting service. If legal or other assistance is required, the services of a competent professional should be sought".  
From a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

1. WHEN DO WE REPORT THE EXCHANGE TO THE IRS? The exchange is reported to the IRS for the tax year in which the first relinquished property is transferred. Regardless of the fact that the replacement property(ies) are transferred in the following tax year.

**Example:** Exchangor settles on relinquished property on Dec. 15, 2004 -- and then settles on replacement property May 1, 2005.

Exchangor would file Form 8824 with 2004 return, after filing an on time request for an extension.

2. HOW DO WE REPORT THE EXCHANGE? The Exchange is reported on IRS Form 8824, Like-Kind Exchanges. The Form 8824 is divided into three parts:

- Part I. Information on the Like-Kind Exchange.
- Part II. Related Party Exchange Information, and
- Part III. Realized Gain or (Loss), Recognized Gain, and Basis of Like-Kind Property Received

If the exchangor has recognized gain, in addition to Form 8824, the exchangor may need to report the gain on IRS Form 4797, 'Sales of Business Property', Schedule D (Form 1040), 'Capital Gains and Losses', and/or Form 6252, 'Installment Sale Income'. See paragraph 6 below.

3. COMPLETING PART I – INFORMATION ON THE LIKE-KIND EXCHANGE. For lines 1 and 2 in Part I the exchangor should show for real property the address, and type of property. For personal property a short description should be entered. All property involved in each exchange is included on the single Form 8824. Include an attachment if additional space is required. Line 5 is normally the date the qualified intermediary was provided the identification of the replacement property. In the event the replacement property is settled prior to the 45th day, then separate identification is not required, and the transfer date for the replacement property may be shown on Line 5.

If you made more than one like-kind exchange in the same year - (a) you may report each exchange on a separate Form 8824, **or** (b) you may file only one summary Form 8824 and attach your own statement showing all the information requested on Form 8824 for each exchange. Include your name and tax ID number at the top of each page of the statement. On the summary Form 8824, enter only your name and tax ID number, then the word "Summary" on Line 1, the total **recognized** gain from all exchanges on Line 23, and the total basis of all like-kind property received on Line 25.

4. COMPLETING PART II – RELATED PARTY EXCHANGE INFORMATION. Part II is only completed when either the relinquished property was transferred to a related party and/or the replacement property was purchased from a related party, directly or indirectly. A related party includes the exchangor's spouse, child, grandchild, parent, grand parent, brother or sister, or a related corporation, S corporation, partnership, or trust in which the exchangor has over a

50% interest. See IRC Section 1031(f). If the exchange is made with a related party then you must also file Form 8824 for the 2 years following the year of exchange. See specific IRS Instructions for Line 7.

5. COMPLETING PART III – REALIZED AND RECOGNIZED GAIN, and BASIS OF NEW PROPERTY. Part III is the most important and most difficult part of the form to complete. Part III provides for the reporting of:

a. Ordinary gain (or loss) on 'other property' (i.e. non-like property) given up (see lines 12, 13, and 14)

b. Ordinary income under the recapture rules (see lines 21 and 22, and Instructions). *Do not confuse with recapture of Section 1250 depreciation.* There is no recapture if depreciable real property is exchanged for other depreciable real property. If depreciable real property is exchanged for non-depreciable real property (ex: rental house for land) then the total depreciation taken in excess of straight line could be recaptured. If the value of depreciable property received in the exchange (ex: improvements to the land) exceeds the amount of additional or excess depreciation, then no depreciation will be recaptured. Few properties exist today that have excess depreciation.

c. Multi-Asset Exchanges. Note that Multi-Asset exchanges are covered in detail in Section 1.1031(j)-1 of the regulations. An exchange is only reported as a multi-asset exchange if the exchangor transferred **AND** received more than one group of like-kind properties, or cash or other non-like property. Few real estate exchanges are multi-asset exchanges.

d. Realized Gain, Recognized Gain and Basis of Like-Kind Property Received. This is the primary purpose of Part III and Form 8824. **To complete Part III starting on Line 15 requires the use of the Worksheet enclosed.**

**EXAMPLE:** To show the use of the Worksheet we will use the following example of an exchange transaction. In this example the exchangor will **buy up in value and reinvest all the cash proceeds received.** This situation best demonstrates the vast majority of completed exchanges.

1. Basis. The cost basis in the property being relinquished (with improvements) is \$150,000, and \$45,000 has been taken in depreciation over a ten year period.

2. Relinquished Property. The relinquished property contract price is \$500,000 and the current debt to be paid off at settlement is \$90,000. The exchangor had \$40,000 in exchange expenses and the \$370,000 in proceeds (exchange escrow funds) were placed in a qualified escrow account by the Qualified Intermediary.

3. Replacement Property. The replacement property was purchased for \$550,000 and a new loan was obtained for \$180,000. The cash down payment was \$370,000 and exchange expenses were \$5,000.

**The Worksheet is broken down into four steps as follows:**

**STEP 1 IT IS IMPORTANT TO READ EACH NOTE !!**

**Gain Realized from Property Relinquished.** The first step is to determine the amount of total capital gain that is being realized.

1. FMV of Relinquished Property (Note 1)		\$500,000
Note 1: FMV is normally contract price		
2. Less: Adjusted Basis		
2a. Cost (with improvements)	\$150,000	
2b. Less: Depreciation	<u>- 45,000</u>	- 105,000
3. Less: Total Exchange Expenses (Note 2)		
Note 2: Exchange expenses include allowable selling expenses for the relinquished property and the acquisition cost of replacement properties.		
3a. Relinquished Property	\$40,000	
3b. Replacement Property	<u>+5,000</u>	<u>-45,000</u>
4. Equals Realized Gain		\$350,000

**Line 4 is posted to Line 19 on Form 8824**

**STEP 2**

**Determining Recognized Gain.** This is the most important step in the process as it establishes how much of the Capital Gain realized will in fact be recognized and become taxable income. Line 15 at the end of Step 2 reflects the taxable Boot and is transferred to Line 15 on Form 8824 – “the boot line”

5. Relief of Debt on relinquished property	\$ 90,000
6. Less: Debt acquired on replacement property	– 180,000
7. Equals Net relief of Liabilities [Not less then 0]	-0-
These 3 lines determine if there is any mortgage boot. If debt acquired is less then debt relief mortgage boot results. Answer may not be less then zero because excess mortgage cannot offset cash boot.	

**WORKSHEET TO COMPLETE**  
**Part III of IRS LIKE-KIND EXCHANGE FORM 8824**  
(Bold line numbers on the right refer to Form 8824)

<b>STEP 1. Gain Realized from Property Relinquished –</b>	<b>Line 0n Form 8824</b>
1. FMV of Relinquished Property (Note 1)	\$ 500,000
2. less: Adjusted Basis	
2a. Cost (with improvements)	\$ 150,000
2b. less: Depreciation Allowed	<u>– 45,000</u>
3. less: Total Exchange Expenses (Note 2)	– 105,000
3a. Relinquished Property	\$ 40,000
3b. Replacement Property	<u>+ 5,000</u>
4. Equals <b>Realized Gain</b>	<u>\$ 350,000</u>
	(Line 19)
<b>STEP 2. Recognized Gain –</b>	
5. Relief of debt on relinquished property	\$ 90,000
6. less: Debt acquired on replacement property	<u>– 180,000</u>
7. Equals Net relief of liabilities (Not less then 0)	\$ 0
8. plus: Cash (Down Payment) received (Note 3 )	+ 410,000
9. less: Cash paid (Down payment) (Note 4)	<u>– 370,000</u>
10. less: Total Exchange Expenses - (from Line 3)	<u>– 45,000</u>
11. less: FMV of 'other property' relinquished	– 0
12. Equals total Boot received (Not less then 0)	\$ 0
13. plus: FMV of 'other property', cash & Notes received	<u>+ 0</u>
14. Equals total NET boot received (Lines 12 + 13)	\$ 0
15. <b>Recognized Gain</b> (Taxable income) (the smaller of Line 4 or 14 above)	\$ 0
	(Line 15)
<b>STEP 3. Realized Gain Deferred</b>	
16. Realized Gain (Line 4)	\$ 350,000
17. less: Recognized Gain (taxable income - Line 15 above)	<u>0</u>
18. Equals <b>Realized Gain Deferred</b>	<u>\$ 350,000</u>
	(Line 24)
<b>STEP 4. Basis of New Property</b>	
19. FMV of Replacement Property (Note 1)	\$ 550,000
20. less: Realized Gain Deferred (Line 18 above)	<u>– 350,000</u>
21. Equals <b>Total Basis is New Property(ies)</b>	<u>\$ 200,000</u>
	(Lines 25 & 18)

**NOTES:**

- (1) FMV is normally contract price.
- (2) Exchange expenses are allowable selling expenses for the relinquished property and the acquisition cost of replacement properties. For the replacement property do not include loan costs or prepaids as exchange expenses.
- (3) FMV of relinquished property (Line 1) less debt relief (Line 5) less FMV of 'other property' received, including value of owner held Notes (Line 13) should equal cash received.
- (4) Cash down payment is normally the difference between contract price and loan amount, less any seller non-closing cost credits/allowances.

8. Plus: Cash down payment received (Note 3)	+410,000
Note 3: FMV of relinquished property (line 1) less debt relief (line 5) less FMV of 'other property received, including value of owner held Notes (Line 13) should equal cash received.	
9. Less: Cash paid (down payment) (Note 4)	- 370,000
Note 4: Cash down payment is normally the difference between replacement property contract price and loan amount, less any seller non-closing cost credits/allowances	
10. Less: Total Exchange Expenses (from Line 3 above)	- 45,000
11. Less: FMV of 'other property' relinquished	-0-
'Other property' is non-like property, such as personal property	
12. Equals total boot received (Not less then 0)	\$ -0-
13. Plus: FMV of 'other property', cash & Notes received	+ -0-
If a Note is received and made payable to the exchangor it will be treated in accordance with installment sale rules.	
14. Equals total NET boot received (Lines 12 + 13)	\$ -0-
15. <b>Recognized Gain</b> (Taxable Income) [the smaller of Line 4 or 14 above]	\$ -0-

**Line 15 is posted to Line 15 on IRS Form 8824**

### **STEP 3**

**Realized Gain Deferred.** This step determines how much of the realized gain will be deferred.

16. Realized Gain (from Line 4 above)	\$350,000
17. Less: Recognized Gain (Taxable Income) (Line 15)	<u>0</u>
18. Equals <b>Realized Gain deferred</b>	\$ 350,000

**Line 18 is posted to Line 24 on IRS Form 8824**

Form 8824

Department of the Treasury  
Internal Revenue ServiceLike-Kind Exchanges  
(and section 1043 conflict-of-interest sales)

► Attach to your tax return.

OMB No. 1545-1190

2004

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 ► **Single Family Home**  
**123 Baker Street, Anytown, VA**

2 Description of like-kind property received ► **Single Family Home**  
**456 Beach Rd., Anyplace, NC**

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

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

5 Date like-kind property you received was identified by written notice to another party (see instructions for 45-day written notice requirement) (month, day, year) . . . . .

6 Date you actually received the like-kind property from other party (month, day, year) (see instructions)

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

3	1	/	10	/	95
4	12	/	20	/	04
5	12	/	30	/	04
6	2	/	20	/	05

**Part II Related Party Exchange Information**

8 Name of related party	Relationship to you	Related party's identifying number
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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 directly or indirectly (such as through an intermediary) sell or dispose of any part of the like-kind property received from you in the exchange? . . . . .  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 its principal purpose. If this box is checked, attach an explanation (see instructions).

**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		
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	\$0	00
16 FMV of like-kind property you received	16	\$550,000	00
17 Add lines 15 and 16	17	\$550,000	00
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	\$200,000	00
19 <b>Realized gain or (loss).</b> Subtract line 18 from line 17	19	\$350,000	00
20 Enter the smaller of line 15 or line 19, but not less than zero	20	0	
21 Ordinary income under recapture rules. Enter here and on Form 4797, line 16 (see instructions)	21	0	
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	0	
23 <b>Recognized gain.</b> Add lines 21 and 22	23	0	
24 Deferred gain or (loss). Subtract line 23 from line 19. If a related party exchange, see instructions	24	\$350,000	00
25 <b>Basis of like-kind property received.</b> Subtract line 15 from the sum of lines 18 and 23	25	\$200,000	00

## **STEP 4**

**Basis of New Property.** This step determines what the basis will be in the new properties. From this basis is subtracted the proportionate value of the land. The balance is the value of the improvements for depreciation purposes. See paragraph 7 below for the revised rules on depreciation of the replacement property.

19. FMV of Replacement Property	\$550,000
<b>Line 19 is posted to Line 16 on IRS Form 8824</b>	

20. Less: Realized Gain Deferred (from Line 18 above)	<u>– 350,000</u>
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21. Equals <b>Total Basis in New Property(ies)</b>	\$ 200,000
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**Line 21 is posted to both Lines 18 and 25 on IRS Form 8824**

**Completion of IRS Form 8824.** With the lines posted from the Worksheet the remaining open lines in Part III can then be calculated. (see also IRS Instructions for Form 8824). Visit IRS web site [www.irs.gov](http://www.irs.gov) and search for Form 8824. Select current Form 8824 Fill-in Form. You can type your information in and print out a final copy.

6. ADDITIONAL FORMS MAY BE REQUIRED. Once Form 8824 is completed then any additional forms required may be completed. If Line 22, Form 8824 is **zero** – congratulations – no additional forms are required.

**a. Form 4797, 'Sales of Business Property'.** Use Form 4797 to report the exchange of property used in your trade or business or held for production of rents. In the unlikely event you have gain on Line 21 on Form 8824 to be recaptured as ordinary income it will be shown on Line 16, Form 4797. From Line 22 on Form 8824, transfer the remaining realized gain (that portion not being reported as an installment sale) to Line 5 on Form 4797. For individual taxpayers this gain will be combined with other gains or losses and posted to Line 11, Schedule D, Form 1040.

**b. Schedule D, Form 1040, 'Capital Gains & Losses'.** For investment property not reported on Form 4797 transfer Line 22, Form 8824 (except installment sale amount) directly to Line 11, Schedule D, Form 1040.

If Line 16, Schedule D shows a gain and you took Section 1250 depreciation then on Line 19, Schedule D enter the amount from Line 18 of the Worksheet on Page D-8 of "Instructions for Schedule D". Section 1250 property is basically all rental real estate on which depreciation is taken.

**Important:** Start the Page D-8 Worksheet by entering on Line 12 the **smaller** of (a) the Section 1250 depreciation taken on the relinquished property (see Step 1, line 2.b. of Worksheet enclosed) **or** (b) the recognized gain from Line 22, Form 8824.

**c. Form 6252, Installment Sale Income.** That portion of the amount on Line 22, Form 8824 to be treated as an installment sale is reported on Form 6252. If there is any installment sale income then it is carried forward from Line 26, Form 6252 and reported on Line 11, Schedule D or line 4, Form 4797. (see IRS Publication 537, Installment Sales)

**d. Schedule E and Form 8582, Passive Activity Loss Limitations.** If you have suspended passive losses from the rental property you are exchanging then you may use those losses to offset any taxable boot you may be receiving. Use Worksheet 5 to Form 8582 to determine the amount of allowed loss (column c) for the specific property being exchanged. This allowed loss then is posted to Line 23, Schedule E. Any suspended passive losses on the exchanged property not used are carried forward to the replacement property (see IRS Publication 925, Passive Activity and At-Risk Rules, and the Instructions for Form 8582).

**7. DEPRECIATION OF REPLACEMENT PROPERTY.** In January 2000 IRS Notice 2000-4 described the way a new replacement property was to be depreciated. Then in early 2004 the IRS published in T.D. 9115 detailed temporary and proposed regulations amending Section 168. Under the new regulations the general rule remains that the taxpayer must depreciate the remaining relinquished property adjusted basis (called the *exchanged basis*) over the remaining recovery period using the same depreciation method as if it were a continuation of the relinquished property depreciation schedule. However, if the replacement property is not residential, then the remaining exchanged basis and the new excess basis would be depreciated using the 39 year schedule.

Any increase in the basis (called the *excess basis*) will be treated as newly acquired property and will be depreciated over 27.5 or 39 years using a new straight line depreciation schedule. No depreciation will be claimed for the period between the transfer of the relinquished property and the receipt of the replacement property.

The new regulation does permit the taxpayer to elect out of the rules and to treat the entire replacement property as a new asset. To make this election see IRS instructions for IRS Form 4562, *Depreciation and Amortization*.

Example: An exchangor has been taking depreciation for 10 years on a residential rental purchased for \$150,000. He has taken \$4,500 in depreciation annually leaving an exchanged basis of \$105,000. If he purchases a residential replacement property with a total new basis of \$200,000 (per line 25 of Form 8824) his depreciation schedules for the replacement property would be as follows:

Continuation of Old Schedule for Remaining 17.5 years: \$4,500 per year for 17.5 years

New Schedule for Amount of Excess Basis for 27.5 years: If the value of the new property depreciable improvements were 82.5% then the \$95,000 increase in basis (\$200,000 - \$105,000) would be depreciated as follows:  $\$95,000 \times 82.5\% = \$78,375$  divided by 27.5 years. The result would be \$2,850 in annual depreciation to be taken for 27.5 years.

Note: The above applies to real estate replacement property depreciation. The temporary regulations also cover Involuntary Conversions under IRC 1033, and other like-kind exchanges. For complete text see IRB 2004-14, April 5, 2004, T.D. 9115, at [www.irs.gov](http://www.irs.gov).

## LIKE KIND EXCHANGE ALLOCATION of SETTLEMENT COSTS

### RELINQUISHED PROPERTY

HUD 1 Line #	Item (note 1)	Exchange Expense (note 3)	<u>Non-Exchange Expenses</u>	
			1040 Schedule E Adjustment/Expense	Debt Relief
700	Commission	X		
800	Loan Fees	X		
1100	Title Charges	X		
1200	Recording Fees	X		
1300	Additional Charges	X		
	Termite	X		
	Courier Fees	X		
	Exchange Fees	X		
406 -				
412	Pre-paid by Seller		X	
	HOA/Condo Fee		X	
	Taxes		X	
504 -	Pay-off of Mortgage Principal			X
	Pay-off Interest		X	
	Lender Charges		X	
510 -	Items Unpaid by Exchangor			
519	Taxes		X	
	HOA/Condo Fees		X	
	Escrow for Repairs	X	X	

### REPLACEMENT PROPERTY

HUD 1 Line #	Item	Exchange Expense (note 3)	<u>Non-Exchange Expenses</u>	
			1040 Schedule E Adjustment/Expense	Loan Costs
700	Commission	X		
800-	Loan Fees			X
801 - 802	Loan Points			X(note 2)
803	Appraisal Fee			X
900	Prepays			
	Interest		X	
	Insurance		X	
100	HOA/Condo Fee		X	
1000	Lender Reserves (Taxes + Insurance)		X(note 4)	
1100	Title Charges	X		
	Title Insurance	X		
1200	Recording Fees	X		
1300	Additional Charges	X		
	Exchange Fees	X		
	Termite	X		
	Courier Fees	X		
	Survey	X		

Notes: (1) Include items paid outside of closing (POC), (2) Points paid for loan are amortized over the life of the loan, (3) Exchange expense relates to the costs to dispose of relinquished property and costs to acquire replacement property, (4) Deductible when paid by lender.

**WORKSHEET TO COMPLETE**  
**Part III of IRS LIKE-KIND EXCHANGE FORM 8824**  
(Bold line numbers on the right refer to Form 8824)

**STEP 1. Gain Realized from Property Relinquished –**

**Line On  
Form 8824**

1. FMV of Relinquished Property (Note 1)	\$ _____
2. less: Adjusted Basis	
2a. Cost (with improvements)	\$ _____
2b. less: Depreciation Allowed	- _____
3. less: Total Exchange Expenses (Note 2)	- _____
3a. Relinquished Property	\$ _____
3b. Replacement Property	+ _____
4. Equals <b>Realized Gain</b>	\$ _____ (Line 19)

**STEP 2. Recognized Gain –**

5. Relief of debt on relinquished property	\$ _____
6. less: Debt acquired on replacement property	- _____
7. Equals Net relief of liabilities (Not less than 0)	\$ _____
8. plus: Cash (Down Payment) received (Note 3)	+ _____
9. less: Cash paid (Down payment) (Note 4)	- _____
10. less: Total Exchange Expenses - (from Line 3)	- _____
11. less: FMV of 'other property' relinquished	- _____
12. Equals total Boot received (Not less than 0)	\$ _____
13. plus: FMV of 'other property', cash & Notes received	+ _____
14. Equals total NET boot received (Lines 12 + 13)	\$ _____
15. <b>Recognized Gain</b> (Taxable income) (the smaller of Line 4 or 14 above)	\$ _____ (Line 15)

**STEP 3. Realized Gain Deferred**

16. Realized Gain (Line 4)	\$ _____
17. less: Recognized Gain (taxable income - Line 15 above)	- _____
18. Equals <b>Realized Gain Deferred</b>	\$ _____ (Line 24)

**STEP 4. Basis of New Property**

19. FMV of Replacement Property (Note 1)	\$ _____ (Line 16)
20. less: Realized Gain Deferred (Line 18 above)	- _____
21. Equals <b>Total Basis is New Property(ies)</b>	\$ _____ (Lines 25 & 18)

**NOTES:**

- (1) FMV is normally contract price.
- (2) Exchange expenses are allowable selling expenses for the relinquished property and the acquisition cost of replacement properties. For the replacement property do not include loan costs or prepaids as exchange expenses.
- (3) FMV of relinquished property (Line 1) less debt relief (Line 5) less FMV of 'other property' received, including value of owner held Notes (Line 13) should equal cash received.
- (4) Cash down payment is normally the difference between contract price and loan amount, less any seller non-closing cost credits/allowances.