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Exchange News

New Location and Mailing Address

As we mentioned in our last newsletter, in the fall of 2008 we moved to our new office at 7400 Heritage Village Plaza, Suite 102, Gainesville, Virginia, 20155. There aren't any changes to our office phone numbers or fax number. The office is very easy to find; it's right off of I-66 and Heathcote Boulevard in the Heritage Hunt Village Plaza retail and office complex.

Reminder of Requirements if You Close Late in the Year

If you closed on your exchange relinquished property in the year 2008, you must report the completed exchange on IRS Form 8824, Like Kind Exchanges, as part of your normal 2008 tax return. For those who closed on their relinquished property after October 20, 2008, and have not completed their exchange, the end of the 180-day exchange period can be no later than April 15, 2009, unless you file an on-time extension. To get the automatic six-month extension, you must file the simple IRS Form 4868 prior to April 15, 2009.

Do You Claim a Mileage Write-Off to Check on Your Rental Property?



You can deduct ordinary and necessary travel expenses related to your rental activities, including 50% of meal expenses incurred while traveling away from home. Starting January 1, 2009, the IRS standard mileage rate is fifty-five cents (55 cents) per mile. Last year's Form 1040, Schedule E, instructions stated you can use the standard mileage rate only if you used the standard rate for the first year the vehicle was placed in service or the entire lease period. Also, include on Line 6 of the Schedule E all parking fees encountered. You must also complete Part V of Form 4562. See the instructions for Line 6, Schedule E, for more details on claiming mileage deductions. This is an expense that should not be overlooked.

Change in Gift Tax for 2009

We get a lot of queries from exchangers on how they can gift a property to their heirs. We have clients who are co-owners with their children using a shared equity agreement the ultimate objective is to gift the children the property. Fortunately the federal government has raised the non-reportable tax free gift in 2009 to \$13,000 annually for each individual. For example, that means a couple can gift \$26,000 to one person or \$52,000 to their married daughter and her husband.

IRS Private Letter Ruling 200901020

In a little known private letter ruling, the IRS clarified that existing residential development rights to be transferred by an exchanger as relinquished property were of like-kind to a fee interest in real estate, a leasehold interest in real estate with over 30 years remaining, and land use rights for hotel units on land the exchanger already owns. Under the state law the development rights were also an interest in real property.

SEC Says Tenant-in-Common (TICs) Must Comply With Securities Law

On January 14, 2009, the SEC issued a no-action letter which clarifies that TIC interests must comply with securities law. For over seven years the industry has questioned if TIC interests were securities or could be considered real estate. This SEC action should clarify the issue. Over the years the purchase of a TIC interest in a replacement property has become a popular course for like-kind exchange investors. The letter does not apply to joint small scale tenant-in-common investments made every day by exchangers and investors.

California QI Law

On January 1, 2009, California Law SB1007 went into effect. This law accomplishes the goal of providing protection for exchangors while not unduly burdening the QI. The law requires a \$1 million fidelity insurance bond and \$250,000 in an E&O insurance policy for QIs doing business in California. If there is no fidelity bond, then the exchange escrow funds from the relinquished property in California must be deposited in a qualified escrow account or trust with a financial institution, and any withdrawals require both the QI's and the exchangor's written authorization. Doing business in the State means the relinquished exchange or the EAT property is located in the State. Also a QI cannot transfer control of ownership without notifying all clients within 10 days. The Federation of Exchange Accommodators (FEA) already has such a notification requirement. The law requires that a prudent investor standard not be violated. A violation would include the commingling of exchange funds with QI operating funds, the loaning of escrow funds, failure to preserve exchange fund principal, and investment of exchange funds so that they do not provide sufficient liquidity. While the California law sets forth the minimum fidelity requirements to be followed by QIs, in most cases, as with the our AlwaysSafe™ escrow funds program, the financial security requirements followed by most QIs are well in excess of the law requirements.

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Fannie Mae Changes Four Unit Restriction



At the urging of the National Association of REALTORS®, Fannie Mae will, as of March 1, 2009, fund condo units for investors who have financing on over four properties. They will now provide financing for investors who have mortgages on up to ten properties. Fannie Mae also raised investor loan-to-value ratios and did impose a number of investor tests including documentation of all rental income, two years worth of federal tax returns, strict bank reserve requirements and no bankruptcy or foreclosures in the past seven years. As Columnist Ken Harney has said, Fannie Mae is looking to deal only with the financially stable multi-unit investors. Yet this overall policy change will let those who qualify to at least get Fannie Mae loans instead of the hard-to-get high priced loans from other sources.

This change is in addition to Fannie Mae's earlier change that it will no longer count vacant, bank foreclosed and bank real estate owned units as non-owner occupied. Investors or home buyers often were stopped from getting financing and buying in a condo complex because of the way Fannie Mae counted units. However, they also announced rules not to fund mortgages in a condo complex if more than 20% of the space is not residential, a single entity owns more than 10% of the total units, or if they consider the sales and finance being offered by the developers or owners to be excessive.

Maryland Taxes Transfer of "Controlling Interests" in Real Property

Frequently in a Maryland exchange a property owned by an LLC was transferred to the new owner by transferring all the membership interests in the LLC. As a result this action avoided any recordation and transfer tax. However, effective last year, Maryland makes transfer of "controlling interests" subject to Maryland transfer taxes. A "controlling interest" in a "real property entity" is defined in the law for an LLC as having more than 80% of the capital and profits. A "real property entity" in Maryland is defined as having 80% of the value of the assets, and the Maryland real property has a value of at least \$1 million. This includes the value of all mortgages. The tax is due within 30 days after transfer of a "controlling interest" is complete. The real property entity is responsible for reporting and paying the tax within the 30 days. There is a 10% penalty plus a 12% annum interest fee if the tax is not paid on time. More info is available at: http://www.dat.state.md.us/sdatweb/controllinginterest_inst.html

2009 Stimulus Bill H.R. 1



Many organizations and lobbyists have been actively tracking and have influenced the stimulus bill. Particularly, the National Association of REALTORS (NAR) tried to insure certain items were added and that gains made over years were protected. Of special interest was a tax credit for first-time home buyers. This is defined as those who have not been homeowners in the past three years. According to Mr. Charles McMillan, the 2009 President of NAR, the tax credit with no payback (not a loan) will be \$8,000. This credit is

in fact 10% of the purchase price up to the \$8,000. This is for the purchase of a principal residence by first-time home buyers from January 1, 2009, to December 1, 2009. To qualify your family income may not exceed \$150,000 if filing jointly. For a single taxpayer the income should not exceed \$75,000. The credit will be forfeited if the house is sold within three years. Mr. Lawrence Yun, NAR Chief Economist, says the \$8,000 tax credit should boost home sales by 300,000 for first-time home buyers. If the \$8,000 tax credit is greater than the tax you paid, then you will get a refund check for the difference.

Also, the Bill has \$50 billion for foreclosure mitigation. As he said, NAR preserved what we already had, including mortgage interest and real estate tax deductibility and the \$250,000/\$500,000 capital gains exclusion on principal residence sales (IRC Section 121). Also there was no change in the IRC 1031 Like Kind Exchange regulations. With quick effort real estate agents can increase sales to qualified home buyers and thus increase the sale of relinquished properties for exchangors ready to invest in a replacement property.



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