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Valuable Information for Real Estate Professionals and their Clients

1031 EXCHANGE IDENTIFICATION RULES

WHAT IS AN IDENTIFICATION?

Identification is the act of describing potential replacement properties in writing as part of a 1031 exchange. Section 1031 allows taxpayers 45 days from the time their first property is sold to identify potential replacement property. The IRS has set guidelines on the number and value of identified properties. Failure to follow these guidelines can result in a failed exchange.

IDENTIFICATION RULES

► **The Three Property Rule**

Up to three properties may be identified without regard to their fair market value. This is the most commonly used rule. The Exchanger may choose to purchase any number of the identified properties.

► **The 200% Rule**

More than three properties may be identified as long as their total fair market value does not exceed 200% of the selling price of the relinquished property.

► **The 95% Rule**

Any number of properties may be identified as long as the Exchanger purchases 95% of the fair market value of all identified properties.

The above rules are identification rules only and the properties do not need to be under contract or in escrow to be deemed properly identified. If the Exchanger purchases their replacement property before the 45 day period expires, the act of purchasing the property counts as identification of that property.

IDENTIFICATION REQUIREMENTS

In order to qualify for a 1031 exchange, the IRS requires the identification to be:

- Unambiguously identified by the property address, or the legal description, or the Assessor's Parcel Number, or all three;
- Designated in writing and signed by the Exchanger;
- Sent before the end of the 45 day identification period to a person involved in the exchange who is not considered to be disqualified, generally the "Qualified Intermediary".

ADDITIONAL CONSIDERATIONS

- The Exchanger may substitute new replacement properties by revoking a previous identification and resubmitting a qualified identification within the 45 day identification period.
- An Exchanger who intends to acquire a fractional interest in a property must specify the specific percentage interest they will obtain.
- In the event that the replacement property will consist of improved real property where the improvements are to be produced during the exchange period, the identification must include as much detail regarding the construction of the improvements as is practicable at the time the identification is made. *(Note: Improvement Exchanges have additional requirements. Consult with your Intermediary for further information.)*