

AMERICAN
PROPERTY EXCHANGE, INC.

LIKE KIND PROPERTY

Office Building

Raw Land

Duplex

Motel

30 Year Lease

Ranch

Apartment Building

Single Family Rental

Sonya S. Mortell, *President*
sonyam@apx1031.com

James D. Ogan, *Vice President*
jimo@apx1031.com

Paula Saunders, *Exchange Coordinator*
paular@apx1031.com

**American Property
Exchange, Inc.**

1-888-450-1031

FAX: 1-360-693-4862

www.apx1031.com

AMERICAN
PROPERTY EXCHANGE, INC.

Section 1031

The Tax Deferred Exchange

SPECIALIZING IN:

- FORWARD
- REVERSE
- IMPROVEMENT
- PERSONAL PROPERTY

EXCHANGES

1-888-450-1031

www.apx1031.com



Why Exchange?

Defer Taxes



Leverage Assets



Consolidate



Diversify



Relocate



Change Passive Investment to Active



Change Active Investment to Passive



Remedy Poor Investment Choice



Life Change



Estate Planning

WHY SO MANY PEOPLE CHOOSE AMERICAN PROPERTY EXCHANGE, INC.

FULL SERVICE ACCOMMODATOR:

American Property Exchange, Inc., is a Qualified Intermediary as defined under IRC § 1031. We facilitate exchanges of real property & personal property throughout the nation. Services provided include consultation with the exchange client and advisors, prompt preparation of exchange documents, participation in the sale & acquisition escrows and receipt and disbursement of the exchange proceeds.

EXPERIENCE:

Over 5000 successful exchanges completed! We have the knowledge and expertise to help you successfully complete your 1031 tax-deferred exchange.

SECURITY:

The financial strength of American Property Exchange, Inc., and the assets behind it protect your interests throughout the exchange. We are backed by the largest title insurance company in the nation. This is your best protection!

American Property Exchange, Inc. (APX) provides basic information on various aspects of an exchange. Such information is distributed free of charge to clients and friends of American Property Exchange, Inc. and should not be construed as legal or tax advice. All investors are encouraged to seek the advice of their own tax advisor prior to entering into an exchange.

WHAT IS A COOPERATION CLAUSE?

A good cooperation clause will not only provide the required notice to all parties, it will indicate the Seller's/Buyer's rights may be assigned to an accommodator and will require the Buyer's/Seller's cooperation in the facilitation of the exchange.

Suggested Language:

Buyer (Seller) hereby acknowledges that it is the intention of Seller (Buyer) to complete an IRC §1031 exchange which will not delay the close of escrow or cause additional expense to the Buyer (Seller). Seller's (Buyer's) rights and obligations under this agreement may be assigned to American Property Exchange, Inc. (APX) for the purpose of completing such an exchange. Buyer (Seller) agrees to cooperate with Seller (Buyer) and APX in a manner necessary to complete the exchange.

WHO MAY SERVE AS AN ACCOMMODATOR? WHY USE AMERICAN PROPERTY EXCHANGE, INC.?

Any party not disqualified under the regulations may act as your accommodator. Disqualified parties include relatives and controlled business entities, your realtor, C.P.A. and attorney. You will want to choose a reputable accommodator with experience and financial security.

American Property Exchange, Inc., is backed by one of the nation's most financially secure multi-billion dollar title insurance companies. The expertise on our staff developed through their 100 years of combined service to the real estate industry is your assurance of superior performance.

WHAT HAPPENS AT THE TIME THE FIRST PROPERTY SELLS?

American Property Exchange, Inc., is assigned in as seller. The closing documents are signed by the accommodator (APX) and approved by the taxpayer. To prevent constructive receipt, the proceeds are delivered to the accommodator and held for the purchase of replacement property.

IDENTIFICATION PERIOD:

Begins on the date of transfer of the Relinquished Property and ends at midnight on the 45th day following the transfer of the Relinquished Property.

FORM:

Must be a written document, signed by the taxpayer (exchanger) and delivered to any person involved in the exchange.

American Property Exchange, Inc., provides its clients with an identification form following the transfer of the Relinquished Property. This form needs to be returned to APX via delivery, mail or fax.

CONTENT:

Replacement properties must be listed by legal description, street address and city/state, or distinguishable name.

The regulations require the replacement property be unambiguously described!

IDENTIFICATION RULES:

Exchanger must comply with ONE of the following:

3-PROPERTY RULE

Identify three properties without regard to the fair market value of the properties.

200% RULE

Identify any number of properties as long as their aggregate fair market value does not exceed 200 percent of the aggregate fair market value of all relinquished properties.

95% RULE

Identify any number of properties without regard to value, but must receive 95 percent of the aggregate fair market value of all identified replacement properties before the end of the exchange period.

Receive request for APX to provide services,
Preliminary Title Report (PTR) &
Earnest Money Agreement (EMA).

§
Prepare & Distribute:
Exchange Agreement
Assignment of Sales Agreement
Letter to Exchanger
Instruction Letter to Escrow

Receive, Review & Sign Escrow Closing Documents

§
Receive Proceeds & Fee Check

§
Prepare & Forward Letter to Exchanger:
Verification of Funds Received
45 & 180 Day Deadlines
Form Letter for Identification

§
Receive Replacement Property Identification

§
Receive PTR & EMA for Replacement Property

§
Prepare & Distribute:
Assignment of Purchase Agreement
Instruction Letter to Escrow

§
Receive, Review & Sign Escrow Closing Documents

§
Wire Funds Required to Escrow

§
Prepare & Forward to Exchanger:
Statement of Account
Closing Letter

WHAT IS AN I.R.C. SECTION 1031 EXCHANGE?

It is an exchange of property held for productive use in a trade or business or for investment for other “like kind” property held for productive use in a trade or business or for investment.

WHO BENEFITS FROM AN EXCHANGE?

Any taxpayer who has recognizable gain in qualifying property on which they will pay capital gains tax. We strongly suggest you consult with your tax advisor to determine the actual tax benefit to you.

HOW DO I BEGIN AN EXCHANGE?

It is best to put a “cooperation clause” in the sales agreement. This puts the buyer and the escrow officer on notice that it is the seller’s intent to complete an exchange.

Ask the escrow officer to send a copy of the sale agreement and the preliminary title report to American Property Exchange, Inc. We will prepare exchange documents to be signed at closing. The exchange fee is usually paid from the proceeds.

IS THERE SOME PROPERTY WHICH IS NOT ELIGIBLE FOR A 1031 EXCHANGE?

Yes. Primary residences, second homes, personal vacation property, property held for resale, inventory, interests in partnerships, shares in corporations & collateral are not eligible for 1031 treatment.

WHAT IS “LIKE KIND” PROPERTY?

In a 1031 exchange, “like kind” refers to the character of the property rather than its use. Most real property which is held for productive use in a trade or business or for investment will qualify. Real property must be exchanged for other real property.

CAN THERE BE SELLER FINANCING IN THE FIRST PHASE OF A REAL ESTATE EXCHANGE?

Yes; however, this may complicate the exchange. The reason for this is that the Note and Trust Deed of the Contract of Sale will be a form of proceeds along with the cash received from the buyer. All proceeds, regardless of form, must be used to acquire the replacement property in order to defer tax.

HOW CAN SELLER FINANCING BE SHELTERED THROUGH AN EXCHANGE?

The paper is received in the name of American Property Exchange, Inc. If the seller of the relinquished property is willing to accept the paper as part of the purchase price, American Property Exchange, Inc., will transfer it at closing. If the seller is not willing to accept the paper, it must be converted to cash (sold) and the cash used to acquire the replacement property.

CAN THE SELLER FINANCING BE EXCLUDED FROM THE EXCHANGE?

Yes. The exchange agreement between the exchanger and American Property Exchange, Inc., may be written to exclude all or part of the paper.

That portion of the paper to be excluded from the exchange will be put in the name of the exchanger at closing. This portion of the transaction is taxable.

WHO GETS THE PAYMENTS WHILE THE PAPER IS BEING HELD BY THE ACCOMMODATOR?

The accommodator receives all payments of principal and interest. Most accommodators will apply these payments to the acquisition of the replacement property. The exchanger should check with the accommodator on the subject of interest because some consider themselves entitled to interest received. Any interest earned will be taxable.

MAY THE SELLER HAVE FINANCING DOCUMENTS PUT INTO HIS NAME AND THEN ASSIGN THEM TO THE ACCOMMODATOR?

No. Even in the case of a vendor's interest in a contract of sale, the right to the proceeds is immediate and any monies due are not eligible for 1031 treatment.

CAN THE ACCOMMODATOR USE THE "NOTE AND TRUST DEED" TO ACQUIRE THE REPLACEMENT PROPERTY?

Yes. The exchange finds a seller of replacement property who will accept the note as part of the consideration to be paid. An assignment of the note is provided by the accommodator at closing, together with any available cash.

CAN THE ACCOMMODATOR SELL THE PAPER TO ACQUIRE THE REPLACEMENT PROPERTY?

Yes. The paper is either sold commercially or privately, perhaps even to the exchanger. The cash is then combined with the original cash proceeds and applied to purchase the replacement property.

Caution! Expect a discount on the sale of a note. Such discount will be influenced by the amount, terms & lien position.

WHAT IS THE MOST COMMON TRAP TO AVOID?

Wrap around contracts and all inclusive trust deeds present the greatest problems for an exchange. In this form of financing, an underlying financing instrument is wrapped and included within the total balance of the new instrument. This complicates the exchange because the disposition of this form of financing is so difficult.

WHAT HAPPENS IF THE PAPER IS NOT SOLD AND CANNOT BE USED TO ACQUIRE THE REPLACEMENT PROPERTY?

The accommodator must assign it to the exchanger at the conclusion of the exchange. The monies due under the mortgage, trust deed or contract become "boot." The exchanger may elect to report the income from the paper on an installment basis.

WHAT IS BOOT?

Property or other consideration not “like kind” in an exchange. Cash is not “like kind”; therefore, cash received by the taxpayer is boot. Any debt the taxpayer is relieved of, that is not replaced, can be “boot.” The taxpayer may contribute additional cash to the acquisition of replacement property to offset debt relief; however, debt assumed on the replacement property will not offset cash received.

General Rule:

Even or up in equity and even or up in value
= fully tax deferred.

	SALES PRICES	CASH PROCEEDS	MORTGAGE DEBT
Relinquished Property	250,000	200,000	50,000
Replacement Property	350,000	150,000	200,000
Boot		50,000	

Receipt of boot will not invalidate the exchange.



DO ALL PROCEEDS HAVE TO BE REINVESTED?

No. Escrow may be instructed to disburse a portion of the funds to the taxpayer and the balance to the accommodator. The exchange documents need to be amended to allow for this. Disbursement at the close of the sale or unused funds at the close of the exchange will not disqualify the exchange; however, such funds will be considered “boot.”

CAN THE SELLING PRICE INCLUDE A PURCHASE MONEY NOTE AND MORTGAGE?

Yes; however, it may complicate the exchange. If the note is to be used in the exchange, it must be put into the name of the accommodator. The note must then be assigned to the seller of the replacement property or converted to cash prior to closing on the replacement property. If neither is accomplished, the note will be assigned to the taxpayer who will pay taxes on any recognized gain.

WHY NOT JUST LEAVE THE MONEY IN ESCROW?

The escrow company acts upon receipt of written instructions from the seller and buyer. To leave the money in escrow, it is necessary to give instructions. This is control of the proceeds and may invalidate the exchange.

HOW IS THE REPLACEMENT PROPERTY ACQUIRED?

After the first property closes, American Property Exchange, Inc., will send you a form for the purpose of identifying your replacement property. This form needs to be returned within 45 days of the date the taxpayer transfers the relinquished property. There are rules which limit identification to three properties or 200% of the fair market value of the relinquished property.

You negotiate the terms of your purchase agreement which is then submitted to escrow. American Property Exchange, Inc., is assigned in as buyer and provides the exchange funds to escrow as required for closing. The acquisition of replacement property must be completed within a total of 180 days or by the date your income tax is due, whichever first occurs.