

TAX DEFERRED EXCHANGE TERMINOLOGY

As with any other specific area of real estate law, tax deferred exchanges under IRC §1031 have their own language, which may be confusing to those who are unfamiliar with these transactions. The following are some of the exchange terms and phrases that are often used with their “plain-English” interpretations.

1. **Boot**—Fair Market Value of non-qualified (not “like-kind”) property received in an exchange. (Examples: cash, notes, seller financing, furniture, supplies, reduction in debt obligations.) Receipt of boot will not disqualify an exchange, but the boot will be taxed to the Exchanger to the extent of the recognized gain.
2. **Constructive Receipt**—A term referring to the control of proceeds by an Exchanger even though funds may not be directly in their possession.
3. **Exchanger**—The property owner(s) seeking to defer capital gain tax by utilizing a IRC §1031 exchange. (The Internal Revenue Code uses the term “Taxpayer.”)
4. **Like-Kind Property**—This term refers to the nature or character of the property, not its grade or quality. Generally, real property is “like-kind” as to all other real property as long as the Exchanger’s intent is to hold the properties as an investment or for productive use in a trade or business. With regards to personal property, the definition of “like-kind” is much more restrictive. (See Brief Exchange, Like-Kind Property.)
5. **Qualified Intermediary**—The entity that facilitates the exchange for the Exchanger. Although the Treasury Regulations use the term “Qualified Intermediary,” some companies use the term “facilitator” or “accommodator”.
6. **Relinquished Property**—The property “sold” by the Exchanger. This is also sometimes referred to as the “exchange” property or the “downleg” property.
7. **Replacement Property**—The property acquired by the Exchanger. This is sometimes referred to as the “acquisition” property or the “upleg” property.
8. **Identification Period**—The period during which the Exchanger must identify Replacement Property in the exchange. The Identification Period starts on the day the Exchanger transfers the first Relinquished Property and ends at midnight on the 45th day thereafter.
9. **Exchange Period**—The period during which the Exchanger must acquire Replacement Property in the exchange. The Exchange Period starts on the date the Exchanger transfers the first Relinquished Property and ends on the earlier of the 180th day thereafter or the due date (including extensions) of the Exchanger’s tax return for the year of the transfer of the Relinquished Property.