1031 Exchange Glossary

Accommodator - Qualified Intermediary. An accommodator can also be a Buyer or Seller in a three-way exchange.

Boot - Unlike property or non-qualifying property such as securities, cash, notes, partnership interests, etc. Taxpayer who receives boot ("unlike" property) will have to recognize gain to the extent of the net boot received or realized gain, whichever is less.

Buyer - Individual that would like to purchase Taxpayer's Relinquished Property.

Buyer-Accommodator Exchange - Exchange wherein Buyer acts as accommodator. Exchange occurs after Buyer acquires Replacement Property from Seller.

Constructive Receipt of Cash - Receipt of cash by Taxpayer's agent in transaction or "deemed receipt" by Taxpayer as a result of Taxpayer's legal right "to demand cash" under an improperly structured exchange.

Like-Kind - Refers to the "nature or character" of the property and not to its "grade or quality." That is, real property held for investment or the productive use in a trade or business may generally be exchanged on a tax-deferred basis for other real property. Personal property held for investment or the productive use in a trade or business may generally be exchanged on a tax-deferred basis for other personal property, provided the personal property is of "like kind" or "like class." Professional tax advice should always be obtained when planning exchanges.

"Napkin Test" - A simple test developed by well-known attorney Marvin Starr to determine whether there will be **Boot** in an exchange. As a general rule, the taxpayer who trades up in value, loans ("encumbrances") and equity will not have to recognize any gain. In Example 1, since the Taxpayer goes up or even in value, loans and equity, there is no Boot. In Example 2, the Taxpayer is going down in value and loans and will have $100,000 in Boot (mortgage relief).

Net Effective Equity - Taxpayer's gross equity (Market Value less Loans) less all transaction costs incurred in disposition (Relinquished Property) and acquisition (Replacement Property) phases of the exchange. Similar to Seller's "net proceeds."

Qualified Intermediary - "Fourth party" who assists Taxpayer in accomplishing exchange. Qualified Intermediary enters into formal exchange agreement with Taxpayer and, pursuant to agreement, holds Taxpayer's "Net Effective Equity" and uses same to acquire Replacement Property.

Phase I - Disposition of Taxpayer's Relinquished Property.

Phase II - Acquisition of Taxpayer's Replacement Property.

Relinquished Property ("Down Leg") - Property Taxpayer disposes of in exchange.

Replacement Property ("Up Leg") - Property Taxpayer acquires in exchange .

Taxpayer (Exchangor" or "Exchanger") - Individual or entity desiring an exchange.

Seller - Individual or entity that owns Replacement Property desired by Taxpayer.

Seller-**Accommodator Exchange** - Exchange wherein Seller acts as accommodator. Exchange occurs first; Seller then transfers Taxpayer's property to Buyer.

Realized Gain - Taxpayer's actual gain. This is generally computed by the following formula:

Recognized Gain - Taxable portion of Realized Gain.

Deferred Gain - Portion of Realized Gain that is not currently taxed. Deferred gain reduces the basis in Replacement Property.