



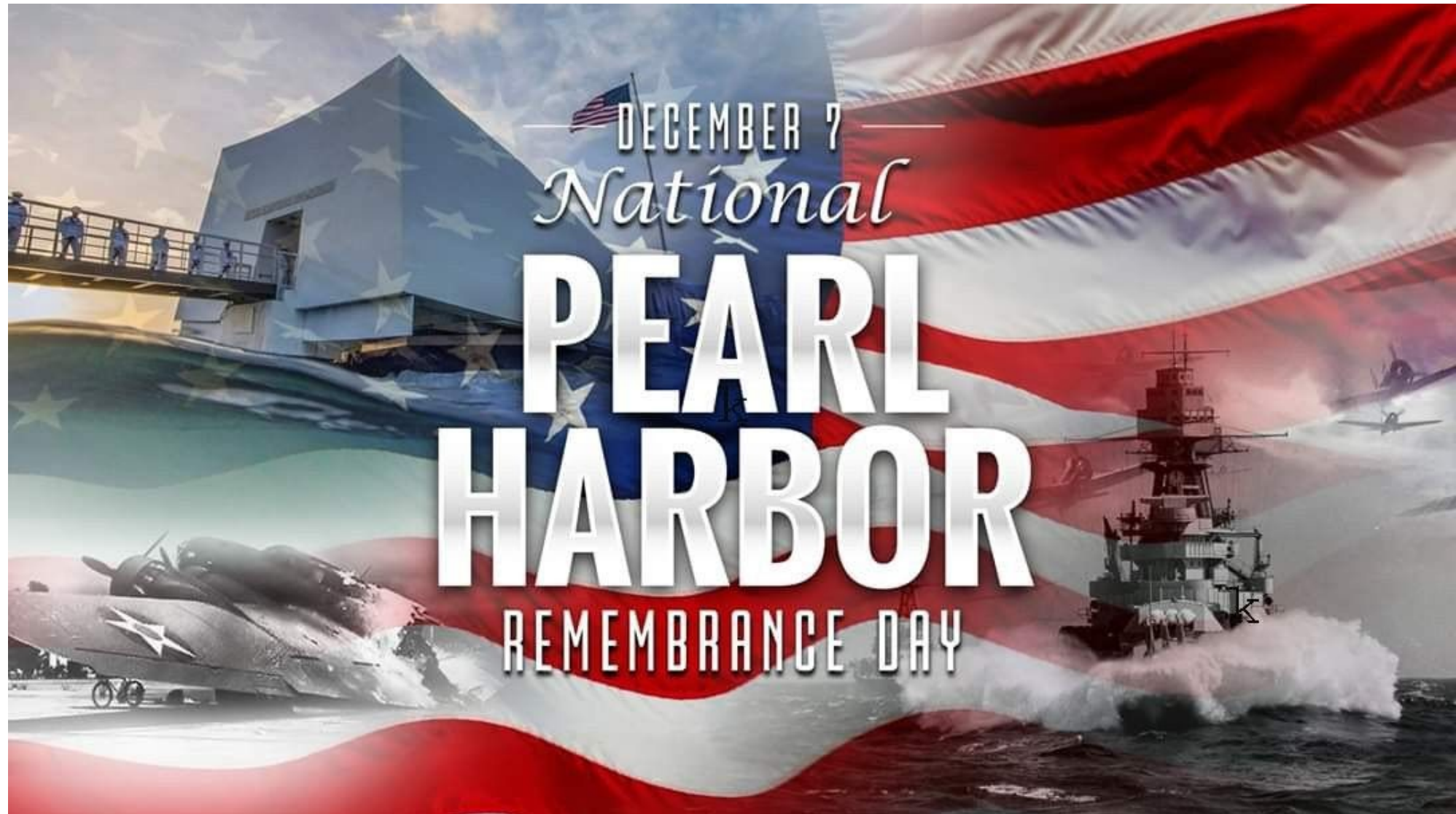
# Real World Application of 1031 Exchanges – The Basics and Beyond

PRESENTED TO:



DECEMBER 7, 2022

# BEFORE WE START



A moment of silence please







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**Managing Director**

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# IMPORTANT DISCLOSURES

- The information contained in this presentation is general in nature and is not intended, and should not be construed, as legal, accounting or tax advice or opinion provided by Accruit, LLC, or the presenter. The presenter does not provide tax or legal advice and is not responsible for advising on the laws or regulations pertaining to any specific 1031 exchange transaction. The presenter will not make any representations regarding the tax consequences of any 1031 exchange transaction. The material contained in this presentation may not be applicable to, or suitable for, your specific circumstances or needs, and may require consideration of non-tax and other factors. It is your responsibility to seek tax and legal advisors in connection with any 1031 exchange transaction.
- Accruit, LLC assumes no obligation to provide updates on any changes in tax laws or other factors that could affect the information contained herein.





# AGENDA

## 1031 EXCHANGE GENERALLY

- Buying the First Property
- Permitted & Prohibited Uses
- Mixed-Use Properties
- Holding Period
- Calculating Capital Gain, and Depreciation Recapture
- Choosing a Qualified Intermediary
- Structuring the Sale of the First Property
- Exchange Expenses
- 45-Day Identification Period & Identification Rules
- Like-Kind Rules
- 180-Day Exchange Period
- Pitfalls to Avoid

## BEYOND THE BASICS

- Acquiring Replacement Property with a New Spouse
- 1031 Exchanges as an Estate Planning Tool
- Related Party Exchange Rules and Restrictions
- Reverse Exchanges
- Improvement Exchanges
- Cash-out Refinancing During or After an Exchange

## BEYOND THE BEYOND

- Easements & Transferrable Development Rights
- Oil/Gas/Mineral Royalties
- Tenants in Common
- Delaware Statutory Trusts
- Partnerships, LLCs, and Related Issues
- Exchange Myths & Overcoming Obstacles to Successful Exchanges



# 1031 EXCHANGE GENERALLY

**Who**  
**What**  
**When**  
**Where**  
**Why**  
**How**





# MEET OUR CLIENT, HARRY



- Young
- Single
- College Grad, Engineering Degree
- Currently Salary = \$75,000
- Lives w/parents & dog



# HARRY'S FIRST INVESTMENT



Single-family home  
on Pennsylvania  
Avenue



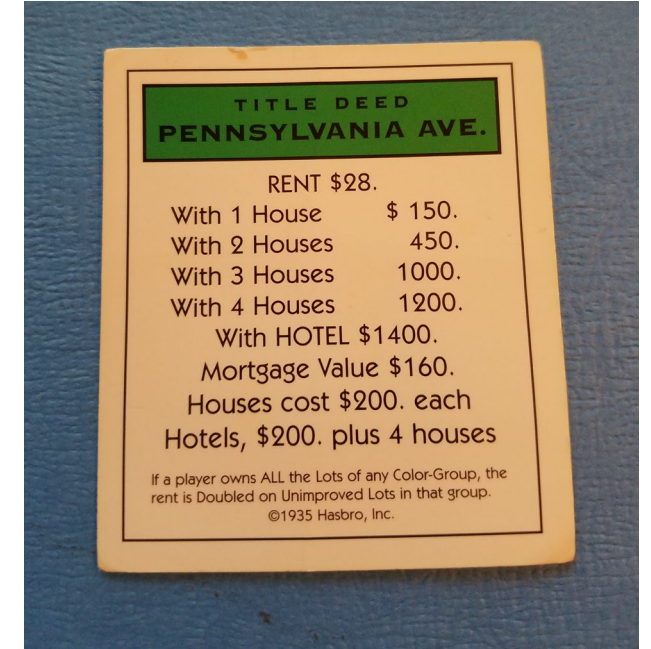
\$100,000 cash  
plus



\$220,000  
mortgage

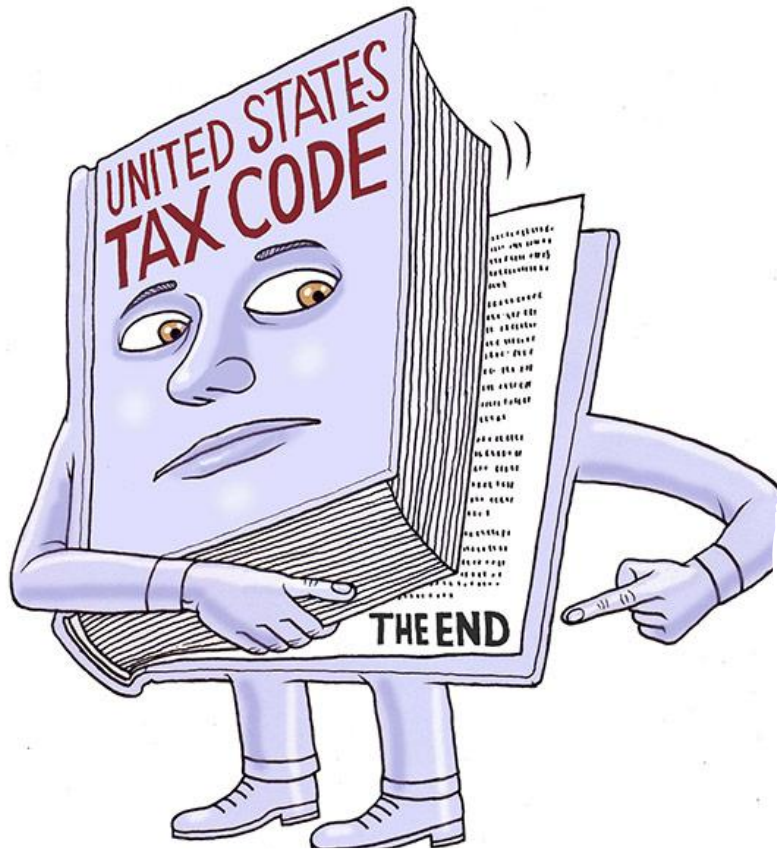


\$320,000 total  
purchase price





# IRC §1031



Section 1031(a)(1) provides:

“No gain or loss shall be recognized on the exchange of real property held for productive *use in or a trade or business or for investment* if such real property is exchanged solely for real property of like-kind which is to be held for productive *use in a trade or business or for investment*.”

Note that Section 1031 provides for deferral of taxes, not complete elimination.

# PERMITTED USES

- “Productive use in a trade or business or for investment”
  - Raw land held for long-term appreciation
  - Rental property
  - Property where you run your business
  - Does not need to have cash flow





# ALSO PERMITTED: MIXED-USE PROPERTIES

- Some common examples of mixed-use property include:
  - A taxpayer who owns a triplex and lives in one of the units, but rents out the other two units;
  - A taxpayer whose home is on 35 acres, most of which is used as farmland, or for boarding and training horses; or
  - A taxpayer who runs a business out of her home and uses the basement (or other room) of the house for this business purpose.



# PROHIBITED USES

- Primary residence
- Second/vacation home
- Property bought to fix & flip





# HOLDING PERIOD



# THEN HARRY MET SALLY



# WHY EXCHANGE?

## Wealth Building

Leverage dollars  
otherwise spent on taxes

## Reallocate Assets

Transfer among  
residential, commercial,  
retail, etc.

## Relocate Assets

To another town, county,  
or state

## Estate Planning

Diversify and/or  
reallocate assets to plan  
for inheritance by heirs

## Tax Strategy

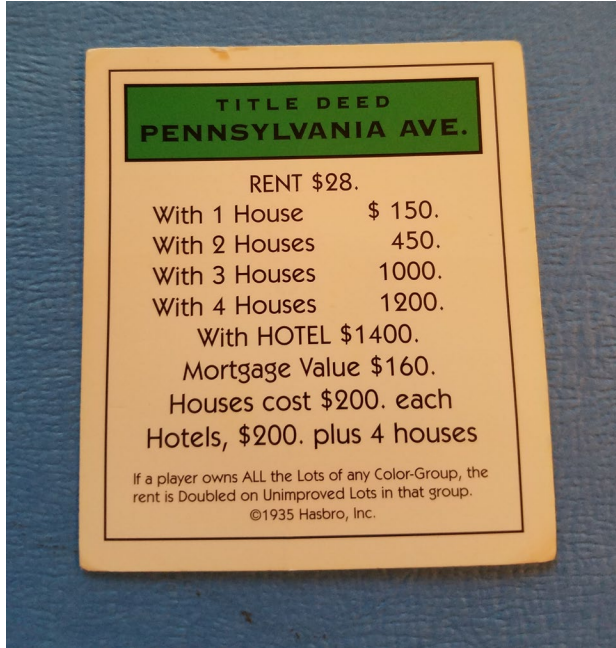
Depreciation recapture  
and capital gains taxes  
can be substantial



# HARRY & SALLY ARE RELOCATING



# HARRY'S FIRST INVESTMENT IS FOR SALE



- Harry paid \$320,000
- Sale contract for \$600,000

# IF HARRY SELLS

## Capital Gain Calculation

Original Price of Property (cost basis)

\$ 320,000

Improvements to Property

\$ 25,000

Selling Expenses

\$ 40,000

Sale Price of Property

\$ 600,000

**Total Capital Gain**

\$ 215,000

~5 years → **Accumulated Depreciation**  
[Use the Depreciation Calculator](#)

\$ 58,200

## Tax Calculation

Federal Capital Gains Tax\*

15 ∨ %

\$ 32,250

Depreciation Recapture

25 %

\$ 14,550

State Capital Gains\*\*

8.97 %

\$ 19,286

Net Investment Income Tax\*\*\*

3.8 ∨ %

\$ 8,170

**Total Tax Liability**

**\$ 74,256**

[HTTPS://WWW.ACCRUIT.COM/CAPITAL-GAINS-CALCULATOR](https://www.accruit.com/capital-gains-calculator)





# IF HARRY SELLS

SALE	
SALE PRICE	\$ 600,000
EXPENSES	\$ 40,000
TAXES	\$ 74,256
NET PROCEEDS	\$ 485,744
BUYING POWER	
LTV	60%
ACQUISITION VALUE	\$ 1,214,360

EXCHANGE	
SALE PRICE	\$ 600,000
EXPENSES	\$ 40,000
NET PROCEEDS	\$ 560,000
BUYING POWER	
LTV	60%
ACQUISITION VALUE	\$ 1,400,000

1031 EXCHANGE	\$ 1,400,000
NO EXCHANGE	\$ 1,214,360
INCREASED BUYING POWER	\$ 185,640
% INCREASE	15%

INCREASED CASH FLOW \$ 11,138 \*Assuming 6% Cash Return

**\*Illustrative purposes only. Example using NJ. Varies by state. Consult your tax advisor.**



# LONG-TERM CAPITAL GAINS RATES

## 2022 Capital Gains Rates

<b>Tax Rate</b>	<b>Single</b>	<b>Married</b>
<b>0%</b>	<b>\$0 - \$41,675</b>	<b>\$0 - \$83,350</b>
<b>15%</b>	<b>\$41,675 – \$459,750</b>	<b>\$83,350 - \$517,200</b>
<b>20%</b>	<b>Over \$459,750</b>	<b>Over \$517,200</b>

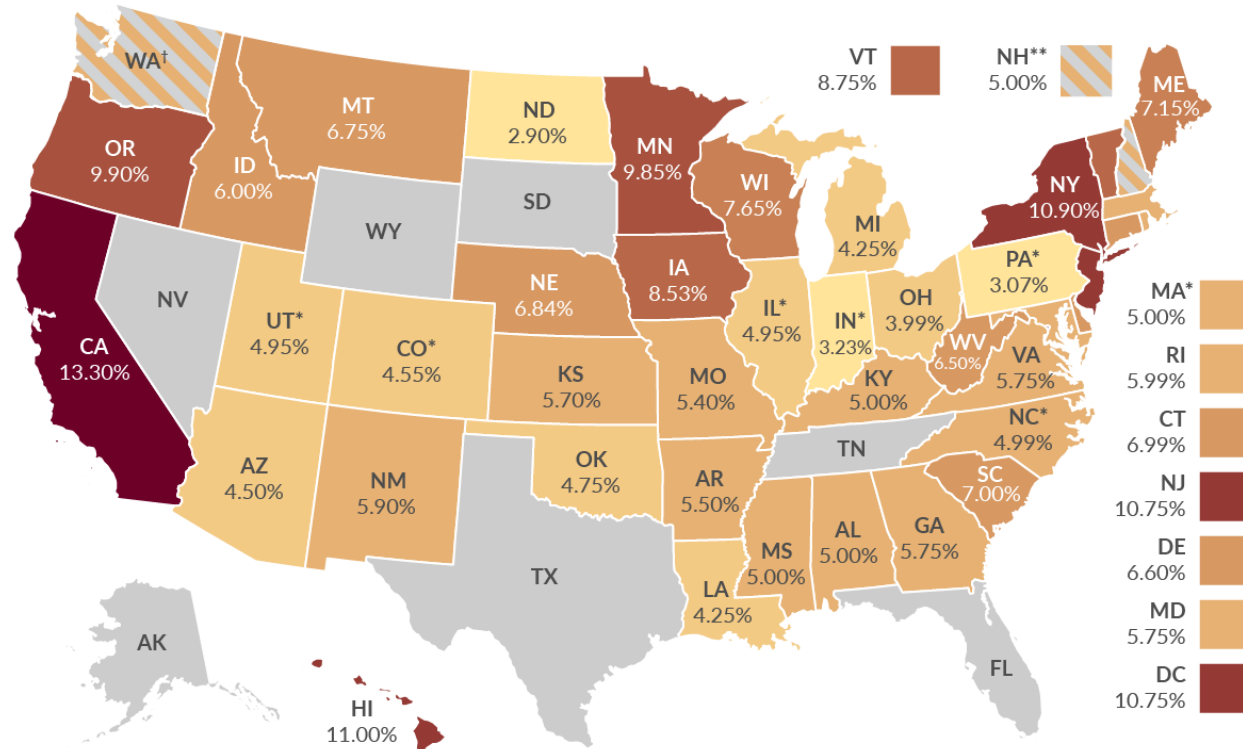


# TAX RATES BY STATE – PERCENT

## How High Are Individual Income Tax Rates in Your State?

Top Marginal State Individual Income Tax Rates (as of January 1, 2022)

NJ = #4  
NY = #3  
PA = #41



NJ 10.75%  
Fed 20%  
Medicare 3.8%  
Combined 34.55%

Note: Map shows top marginal rates: the maximum statutory rate in each state. This map does not show effective marginal tax rates, which would include the effects of phase-outs of various tax preferences. Local income taxes are not included. Missouri's top marginal rate will be reduced to 5.3% if certain revenue triggers are met.

(\*) State has a flat income tax.

(\*\*) State only taxes interest and dividends income.

(†) State only taxes capital gains income.

Sources: Tax Foundation; state tax statutes, forms, and instructions; Bloomberg Tax.

Top State Marginal Individual Income Tax Rates



Lower

Higher







Form **8824**

Department of the Treasury  
Internal Revenue Service

**Like-Kind Exchanges**  
(and section 1043 conflict-of-interest sales)

Attach to your tax return.

Go to [www.irs.gov/Form8824](http://www.irs.gov/Form8824) for instructions and the latest information.

OMB No. 1545-1190

**2022**

Attachment  
Sequence No. **109**

Name(s) shown on tax return

Identifying number

**Part I Information on Like-Kind Exchange**

**Note:** Only real property should be described on lines 1 and 2. If the property described on line 1 or line 2 is real property located outside the United States, state the country.

**1** Description of like-kind property given up:

**2** Description of like-kind property received:

**3** Date like-kind property given up was originally acquired (month, day, year)

Date you actually transferred your property to the other party (month, day, year)

Date the like-kind property you received was identified in writing and your period of day,

**6** Date you actually received the like-kind property from other party (month, day, year). See instructions

**7** Was the exchange of the property given up or received made with a related party, either directly or indirectly (such as through an intermediary)? See instructions. If "Yes," complete Part II. If "No," go to Part III ☐ Yes ☐ No

**Note:** Do not file this form if a related party sold property into the exchange, directly or indirectly (such as through an intermediary); that property became your replacement property; and none of the exceptions on line 11 applies to the exchange. Instead, report the disposition of the property as if the exchange had been a sale. If one of the exceptions on line 11 applies to the exchange, complete Part II.



# CHOOSING A QUALIFIED INTERMEDIARY



Ask about:

- The QI's technical expertise and experience
- Banking processes and guidelines
- Quality control
- Insurance and Bonding
- Membership in Federation of Exchange Accommodators
  - Leadership positions held
- Certified Exchange Specialists® on staff
- References



# DISQUALIFIED PERSONS

- Taxpayer's:
  - Employee
  - Attorney
  - Accountant
  - REALTOR®
  - Investment Banker
  - Broker
  - Relatives (direct line)



# EXCEPTIONS:



No disqualification as QI:

- Services rendered solely with respect to §1031 exchanges
- Providing only routine financial, title insurance, escrow or trust services
  - Includes bank affiliates, and wholly owned subsidiaries

See: T.D. 8982; PLR 200803003; PLR 200803014

# DON'T SETTLE FOR SOMEONE WHO IS MERELY *“NOT DISQUALIFIED”*



# NEGOTIATING THE SALE






# STRUCTURING THE SALE



**NEW JERSEY ASSOCIATION OF REALTORS® STANDARD FORM OF REAL ESTATE CONTRACT**

©1996 New Jersey Association of REALTORS®, Inc.  
THIS FORM MAY BE USED ONLY IN THE SALE OF A ONE TO FOUR FAMILY RESIDENTIAL PROPERTY OR VACANT ONE FAMILY LOT.  
THIS FORM IS SUITABLE FOR USE ONLY WHERE THE SELLER HAS PREVIOUSLY EXECUTED A WRITTEN LISTING AGREEMENT.

**REALTOR®** 

THIS IS A LEGALLY BINDING CONTRACT THAT WILL BECOME FINAL WITHIN THREE BUSINESS DAYS DURING THIS PERIOD YOU MAY CHOOSE TO CONSULT AN ATTORNEY WHO CAN REVIEW AND/OR CANCEL THE CONTRACT. SEE SECTION ON ATTORNEY REVIEW FOR DETAILS.

**CONTRACT OF SALE**

1. PURCHASE AGREEMENT AND PROPERTY DESCRIPTION:

1. \_\_\_\_\_, Buyer,  
2. \_\_\_\_\_,  
3. \_\_\_\_\_,  
4. \_\_\_\_\_,  
5. Soc. Sec. # \_\_\_\_\_ Soc. Sec. # \_\_\_\_\_  
6. \_\_\_\_\_,  
7. whose address is \_\_\_\_\_  
8. \_\_\_\_\_,  
9. AGREEES TO PURCHASE FROM \_\_\_\_\_, Seller,  
10. \_\_\_\_\_,  
11. \_\_\_\_\_,  
12. Soc. Sec. # \_\_\_\_\_ Soc. Sec. # \_\_\_\_\_  
13. \_\_\_\_\_,  
14. whose address is \_\_\_\_\_  
15. THROUGH THE BROKER(S) NAMED IN THIS AGREEMENT AT THE PRICE AND TERMS STATED BELOW,  
16. THE FOLLOWING PROPERTY:  
17. Property Address: \_\_\_\_\_  
18. Shown on the municipal tax map of \_\_\_\_\_ County \_\_\_\_\_  
19. As Lot \_\_\_\_\_ Block \_\_\_\_\_ Approximate size of lot \_\_\_\_\_  
20. THE WORDS "BUYER" AND "SELLER" INCLUDE ALL BUYERS AND SELLERS LISTED ABOVE.  
21. \_\_\_\_\_  
22. \_\_\_\_\_

2. PURCHASE PRICE: THE TOTAL PURCHASE PRICE IS: \$ \_\_\_\_\_

3. MANNER OF PAYMENT

(A) Deposit paid by Buyer on signing of this Agreement to ☐ Listing Broker or ☐ Participating Broker, by ☐ cash or ☐ check, for which this is a receipt: \$ \_\_\_\_\_

(B) Additional deposit to be paid by Buyer on or before \_\_\_\_\_ (date): \$ \_\_\_\_\_  
All deposit monies paid by the Buyer shall be held in escrow in the NON-INTEREST BEARING TRUST ACCOUNT of \_\_\_\_\_, Escrowee,  
until closing of title, at which time all monies shall be paid over to the Seller. The deposit monies shall not be paid over to the Seller prior to the closing of title, unless agreed in writing by both the Buyer and Seller. In the event the Buyer and Seller cannot agree on the disbursement of these escrow monies, the Escrowee may place the deposit monies in Court requesting the Court to resolve the dispute.

(C) IF PERFORMANCE BY BUYER IS CONTINGENT UPON OBTAINING A MORTGAGE.  
The Buyer agrees to apply immediately for a mortgage loan through any lending institution of the Buyer's choice or the office of the Listing Broker or the Participating Broker. The application shall be furnished by the Buyer in writing on an application form prescribed by the lending institution to which the application shall be submitted. Buyer shall also furnish, in a timely manner, such other documents and information as is usually required by said lending institution. Failure of Buyer to comply with the foregoing, in good faith, shall be deemed a breach of this Contract of Sale. The amount of mortgage loan required by the Buyer is \$ \_\_\_\_\_ and will be what is commonly known as the \_\_\_\_\_  
(F.H.A.) (V.A.) (Conventional) (A.R.M.) \_\_\_\_\_ year direct reduction plan with interest at not more than \_\_\_\_\_ % and not more than \_\_\_\_\_ Points. Buyer agrees to pay not more than \_\_\_\_\_ Points. Seller agrees to pay not more than \_\_\_\_\_ Points.  
IF THE MORTGAGE LOAN HAS NOT BEEN ARRANGED, OR IF THE BUYER HAS NOT NOTIFIED SELLER OF BUYER'S DECISION TO COMPLETE THE TRANSACTION WITHOUT OBTAINING A MORTGAGE COMMITMENT, ON OR BEFORE \_\_\_\_\_ (Date) THEN EITHER BUYER OR SELLER MAY VOID THIS AGREEMENT BY WRITTEN NOTICE TO THE OTHER PARTY. The method of notifying the other party shall be in accordance with Section 21 of the Agreement. \$ \_\_\_\_\_

(D) BALANCE OF PURCHASE PRICE. The balance of the purchase price shall be paid by cash, certified check or Attorney's Trust Account check on delivery of a \_\_\_\_\_ (Type of Deed). Title to the Property will be free from all claims or rights of others, except as described in Sections 6, 7 and 8 of this Agreement. The deed shall contain the full legal description of the Property. Payment of the balance of the purchase price by Buyer and delivery of the deed and affidavit of title by Seller occur at the "Closing." The Closing will take place on or before \_\_\_\_\_, at the office of \_\_\_\_\_ or such other place as the Seller and the Buyer may agree. \$ \_\_\_\_\_

TOTAL PURCHASE PRICE: \$ \_\_\_\_\_

4. BUYER FINANCIALLY ABLE TO CLOSE:  
Buyer represents that Buyer has sufficient cash available (together with the mortgage referred to in Section 3) to complete this purchase.

Buyer's Initials: \_\_\_\_\_ Seller's Initials: \_\_\_\_\_

NJAR Form-118-202 Page 2 of 6



# STRUCTURING THE SALE



REALTOR®

NEW JERSEY ASSOCIATION OF REALTORS® STANDARD FORM OF  
REAL ESTATE CONTRACT

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EQUAL HOUSING

THIS IS A LEGALLY BINDING CONTRACT THAT WILL BECOME FINAL WITHIN THREE BUSINESS DAYS. DURING THIS PERIOD YOU MAY CHOOSE TO CONSULT AN ATTORNEY WHO CAN REVIEW AND/OR CANCEL THE CONTRACT. SEE SECTION ON ATTORNEY REVIEW FOR DETAILS.

CONTRACT OF SALE

1  
2  
3  
4

1. PURCHASE AGREEMENT AND PROPERTY DESCRIPTION:

\_\_\_\_\_, Buyer,

638  
639  
640  
641  
642

**37. NO ASSIGNMENT:**

This Contract shall not be assigned without the written consent of Seller. This means that Buyer may not transfer to anyone else Buyer's rights under this Contract to purchase the Property.

674  
675  
676

**43. ADDITIONAL CONTRACTUAL PROVISIONS:**

[PARTY] may assign its rights under this contract, but not its responsibilities, to [QI] as part of an IRC Section 1031 tax-deferred exchange, at no additional cost or obligation to [OTHER PARTY]



# HIRING THE QI



# WRITTEN AGREEMENT WITH QI



Exchange Manager

Exchange R1031

## TAX DEFERRED EXCHANGE AGREEMENT

THIS TAX DEFERRED EXCHANGE AGREEMENT ("Agreement") is entered into on December 27, 2021 ("Effective Date"), between **HARRY** ("Exchanger") and Accruit, LLC ("Qualified Intermediary") for the purpose of establishing an exchange agreement in accordance with Section 1031 of the Internal Revenue Code of 1986, as amended (the "Code") and Treasury Regulations Section 1.1031(k)-1(g) (the "Treasury Regulations").

### Article 1 Definitions





# HARRY ENTERS INTO A CONTRACT FOR SALE OF PACIFIC AVENUE

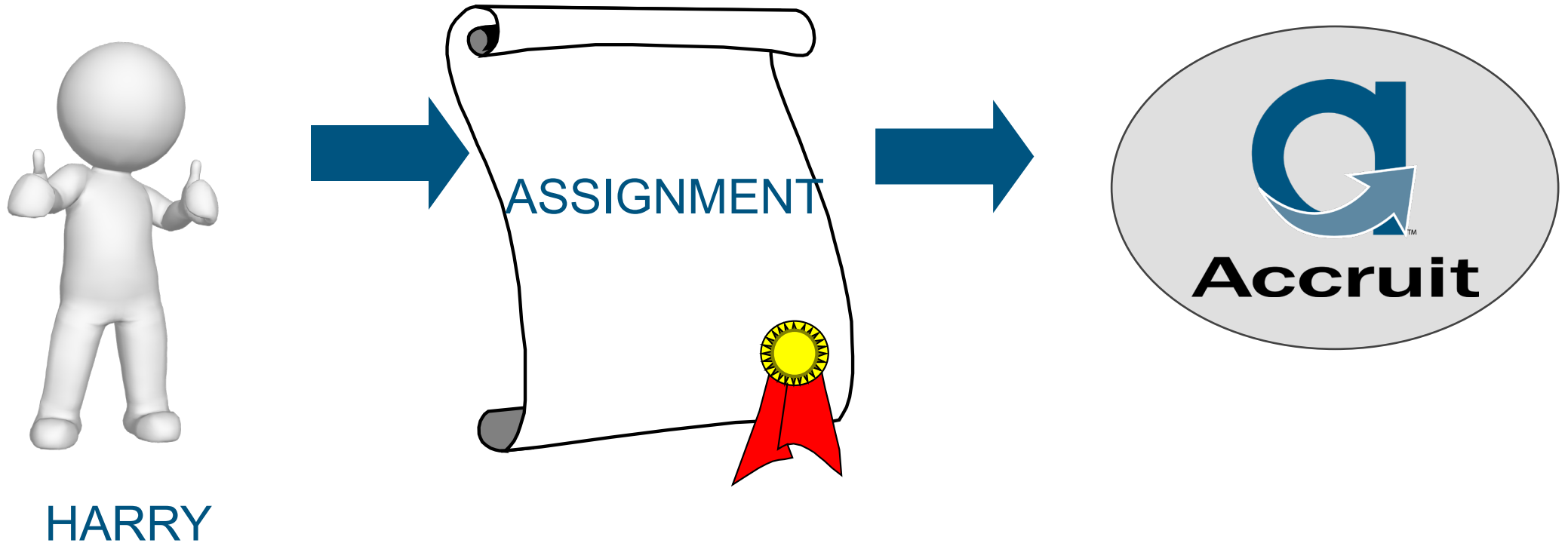
HARRY



BUYER



# HARRY ASSIGNS CONTRACT RIGHTS TO QUALIFIED INTERMEDIARY



# ASSIGNMENT OF RELINQUISHED PROPERTY



## ASSIGNMENT OF RELINQUISHED PROPERTY CONTRACT

Accruit, LLC  
55 Madison Street  
Suite 625  
Denver, CO 80206  
P: (866) 397-1031  
F: (888) 892-5899  
exchangemanager@accruit.com

Relinquished Property Buyer(s)  
Jon Bon Jovi

- A. Effective Date. This Assignment is made pursuant to Tax Deferred Exchange Agreement No. R1031 dated on December 27, 2021.
- B. Assignment. The undersigned ("Exchanger") hereby assigns to Accruit, LLC ("Qualified Intermediary") Exchanger's rights (but not Exchanger's liabilities or obligations), referred to hereafter as the "Assignment", under that certain contract or agreement (the "Relinquished Property Contract") between Exchanger and Relinquished Property Buyer (identified above) dated 12/27/21. In the event Exchanger elects to receive some cash at



# HARRY GIVES NOTICE OF THE ASSIGNMENT

Notice must go to *all parties* to the exchange





# NOTICE OF ASSIGNMENT



## RELINQUISHED PROPERTY NOTIFICATION

12/29/21

To whom it may concern:

Below is a Notification of Assignment of Rights for HARRY regarding the sale of an undivided 3.3729% interest in 87 The Mark. A contract requirement of every like-kind exchange is that notification of assignment be delivered to the buyer (and all parties) of the relinquished property contract.

You are hereby notified that, pursuant to a certain Exchange Agreement between Sammy Hagar and Accruit, LLC as Qualified Intermediary, contract rights under the Contract dated 12/27/21 by and between Jon Bon Jovi as Purchaser and Sammy Hagar, as Seller, have been assigned by Seller to Accruit, LLC.

It is intended that this transaction is to be treated by the Seller as part of a tax deferred exchange rather than as an outright sale.

Notwithstanding the fact that the contract rights have been assigned by HARRY to Accruit, LLC, as Qualified Intermediary, pursuant to the terms of the Exchange Agreement and applicable regulations, you may expect to receive the deed of conveyance directly from Sammy Hagar.

Regards,



**MUST HAVE PROOF NOTICE OF  
ASSIGNMENT WAS GIVEN, OR *ELSE*:**

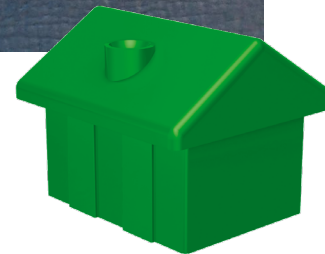
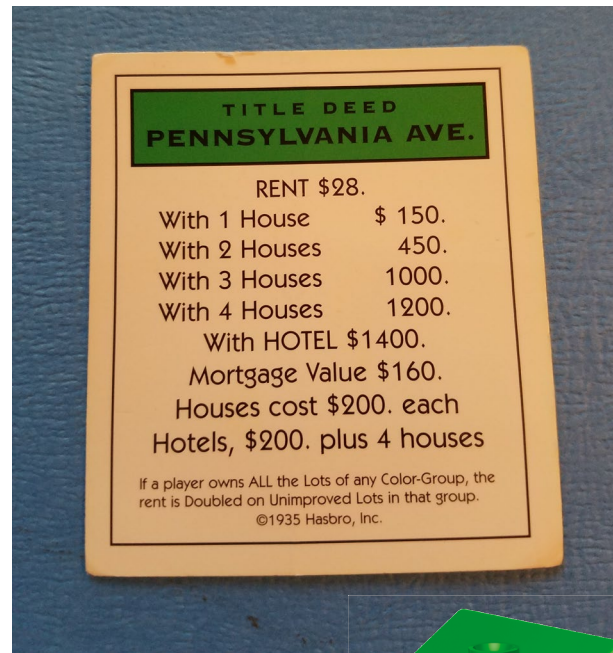


# HARRY TRANSFERS RELINQUISHED PROPERTY DIRECTLY TO BUYER

HARRY



BUYER



# SALE PROCEEDS GO TO QUALIFIED INTERMEDIARY



BUYER





# EXCHANGE EXPENSES REDUCE RECOGNIZED GAIN

Not specifically enumerated by IRS



# EXCHANGE EXPENSES

Allowable closing expenses for IRS 1031 exchange purposes include:

- Real estate broker's commissions, finder or referral fees
- Owner's title insurance premiums
- Closing agent fees (title, escrow or attorney closing fees)
- Attorney or tax advisor fees related to the sale or the purchase of the property
- Recording and filing fees, documentary or transfer tax fees
- Qualified Intermediary fees

Closing expenses which result in a taxable event include:

- Pro-rated rents
- Security deposits
- Utility payments
- Property taxes and insurance
- HOA / Condo Association dues
- Repairs and maintenance costs
- Insurance premiums
- Loan acquisition fees: points, appraisals, mortgage insurance, lenders title insurance, inspections and other loan processing fees and costs – ANY expenses related to a mortgage



## A. Settlement Statement (HUD-1)

OMB Approval No. 2502-0265

I. Type of Loan		
1. <input type="checkbox"/> FHA	2. <input type="checkbox"/> VA	3. <input type="checkbox"/> Conventional
4. <input type="checkbox"/> Other	5. <input type="checkbox"/> Other	6. <input type="checkbox"/> Other
7. Loan Number		
8. Mortgage Insurance Case Number		
9. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "Optional" were paid outside the closing; they are shown for informational purposes and are not included in the totals.		
10. Name & Address of Borrower	11. Name & Address of Seller	12. Name & Address of Lender
13. Property Location	14. Settlement Agent	15. Settlement Date
16. Place of Settlement		
II. Summary of Borrower's Transaction		
17. Gross Amount Due From Borrower		
18. Original Sales Price	19. Personal Property	20. Settlement Charges to Borrower (Line 1400)
21. City/Town Taxes	22. County Taxes	23. Assessments
24. Other Taxes	25. Other Charges	26. Other Charges
27. Adjustments For Items Paid By Seller In Advance		
28. City/Town Taxes	29. County Taxes	30. Assessments
31. Other Taxes	32. Other Charges	33. Other Charges
34. Gross Amount Due From Borrower		
35. Amount Paid By or In Behalf of Borrower		
36. Deposit Or Earned Money	37. Principal Amount Of New Loan(s)	38. Existing Loan(s) Taken Subject To
39. Other	40. Other	41. Other
42. Other	43. Other	44. Other
45. Other	46. Other	47. Other
48. Other	49. Other	50. Other
51. Adjustments For Items Unpaid By Seller		
52. City/Town Taxes	53. County Taxes	54. Assessments
55. Other Taxes	56. Other Charges	57. Other Charges
58. Total Paid By/For Borrower		
59. Cash At Settlement From/To Borrower		
60. Cash Amount Due From Borrower (Line 170)	61. Cash Amount Due To Borrower (Line 170)	62. Cash Amount Paid By/For Borrower (Line 170)
63. Cash	64. From	65. To Borrower

The Public Reporting Burden for this collection of information is estimated at 30 minutes per response for collecting, reviewing, and reporting the data. This agency may not collect this information, and you are not required to complete this form, unless it displays a correctly valid OMB control number. No confidentiality is assured; this disclosure is mandatory. This is designed to provide the public with a HUD-1 covered transaction with information during the settlement process.

Previous editions are obsolete.

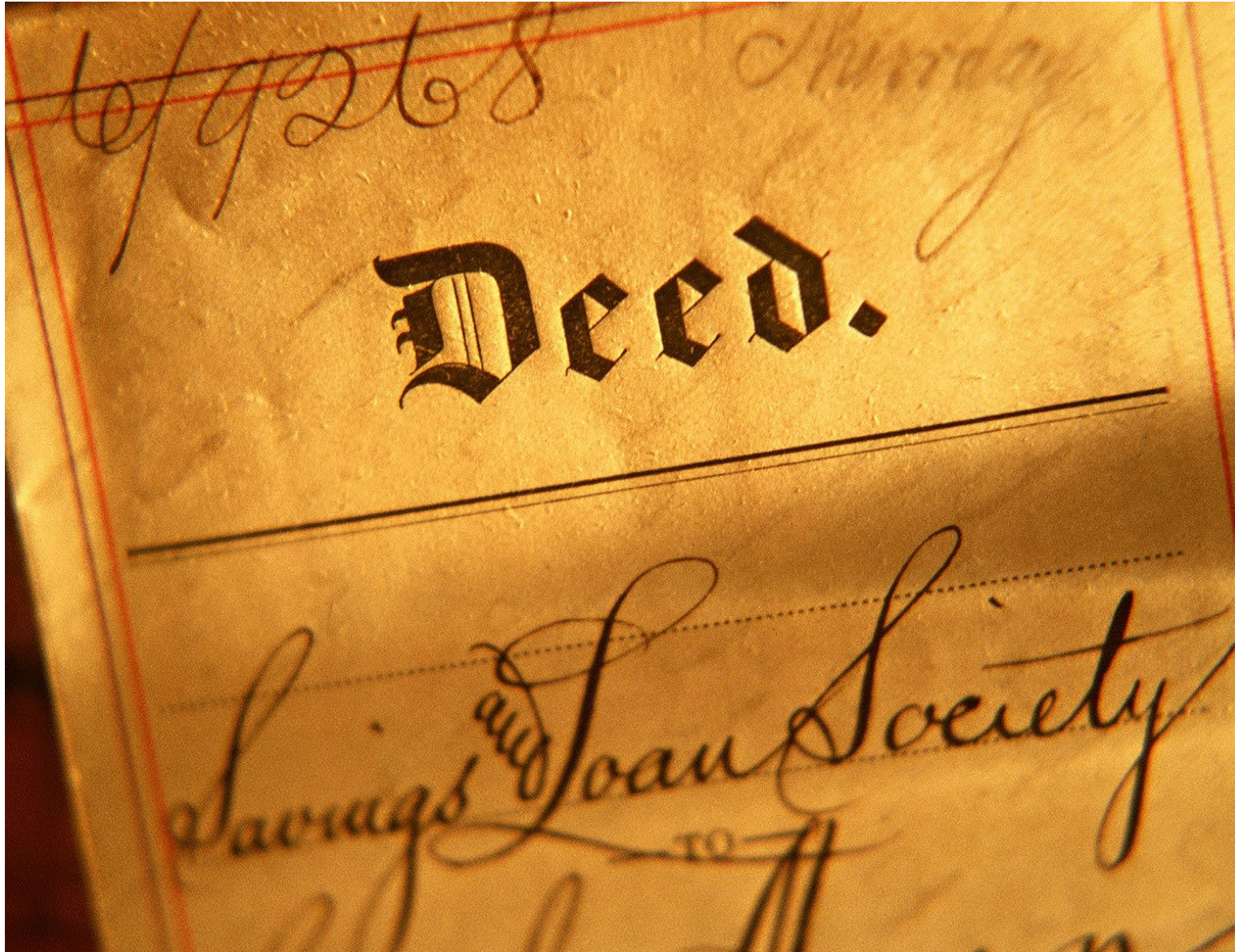
Page 1 of 4

HUD-1





# HARRY'S PROPERTY CLOSED 11/15/2022





# TOTAL TAX DEFERRAL

- To totally defer taxable gain, the Taxpayer must:
- Trade even or up in
  - *Value (as adjusted), and*
  - *Equity*





# TAX ON TRADE DOWN

- Taxed on the *greater* of the trade down in value or equity, but
- Only to the extent of realized gain



# DELAYED EXCHANGE – TIME LIMITS

As a result of *Starker*:

- 1984 Congress amends Section 1031
  - 45-day identification period
  - 180-day exchange period runs concurrently
    - Or due date of tax return, whichever is earlier
  - Calendar days, not business days
  - No extensions\*
- Exchange starts on date of recording, or when burdens and benefits of ownership of relinquished property are transferred, whichever is first





**THESE DEADLINES  
CANNOT BE EXTENDED  
FOR ANY REASON!**



# THERE ARE *ONLY* TWO EXCEPTIONS...



# REV. PROC. 2018-58

- Performance of time-sensitive acts may be postponed under §§7508 and 7508A
- **§7508: Combat Zone**
- **§7508A: Presidential Declaration**
  - Does not by itself provide postponement
  - IRS will publish notice or other guidance providing relief
  - [www.irs.gov/uac/tax-relief-in-disaster-situations](http://www.irs.gov/uac/tax-relief-in-disaster-situations)





# ***FEDERAL DISASTER AREA***



**FEMA**



# SERVICE IN COMBAT ZONES

Rev. Proc. 2007-56

- §1.05: Confirms application of postponement rules to Combat Zones
- Postponement is *automatic* – IRC §7508
- Starts when service in Zone begins
- Ends 180 days after service in Zone ends + remaining ID or exchange period days
- Includes: direct support but outside Zone
- Write “**Combat Zone**” in **RED** on tax return

# IDENTIFICATION REQUIREMENTS

- Signed, and in writing
- Delivered
  - QI or seller of replacement property
- Unambiguously described
  - Legal description
  - Street address
  - Distinguishable name (e.g., Mayfair Apartment Building)
- May be revoked or amended, with same formality as above





# ADDITIONAL IDENTIFICATION ISSUES

- If less than the whole property is to be acquired, identify the applicable fractional interest
- If more than one asset is to be acquired, indicate how many TP intends to acquire
- Consider providing for a contingency beyond TP's control
- TP cannot receive a return of the exchange funds prior to the end of the 45-day ID period
- If more than one property is identified, TP cannot receive excess exchange funds until 180-day exchange period expires



# IDENTIFICATION RULES

- **3 Property Rule** – up to 3 properties, without regard to FMV;

or

- **200% Rule** – any number of properties, so long as aggregate FMV does not exceed 200% of FMV of relinquished properties;

but

- **95% Exception** – if first two rules violated, must acquire 95% of FMV of all identified properties





# LIKE-KIND PROPERTY

“real property held for productive use in a trade or business, or for investment”



**NOTE: Vacation homes and second homes generally do not qualify**



# COOPERATION CLAUSE



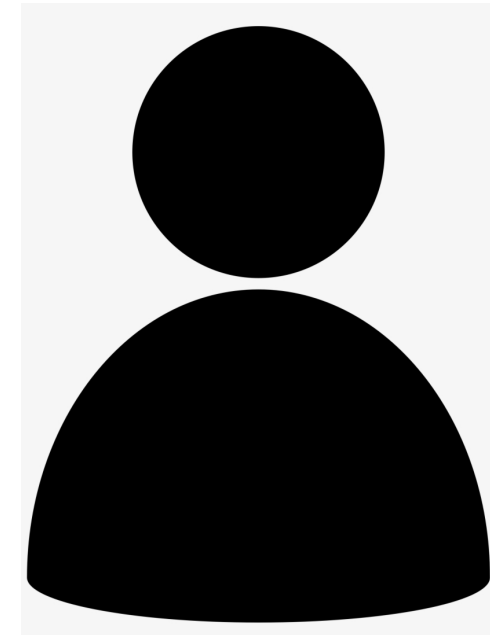
Each of the parties hereto may assign its rights (but not its obligations) to a Qualified Intermediary as defined in the IRC Section 1031 Treasury Regulations. Said exchange will be closed without cost, liability, or delay to the non-exchange party.

# HARRY ENTERS INTO A CONTRACT FOR REPLACEMENT PROPERTY

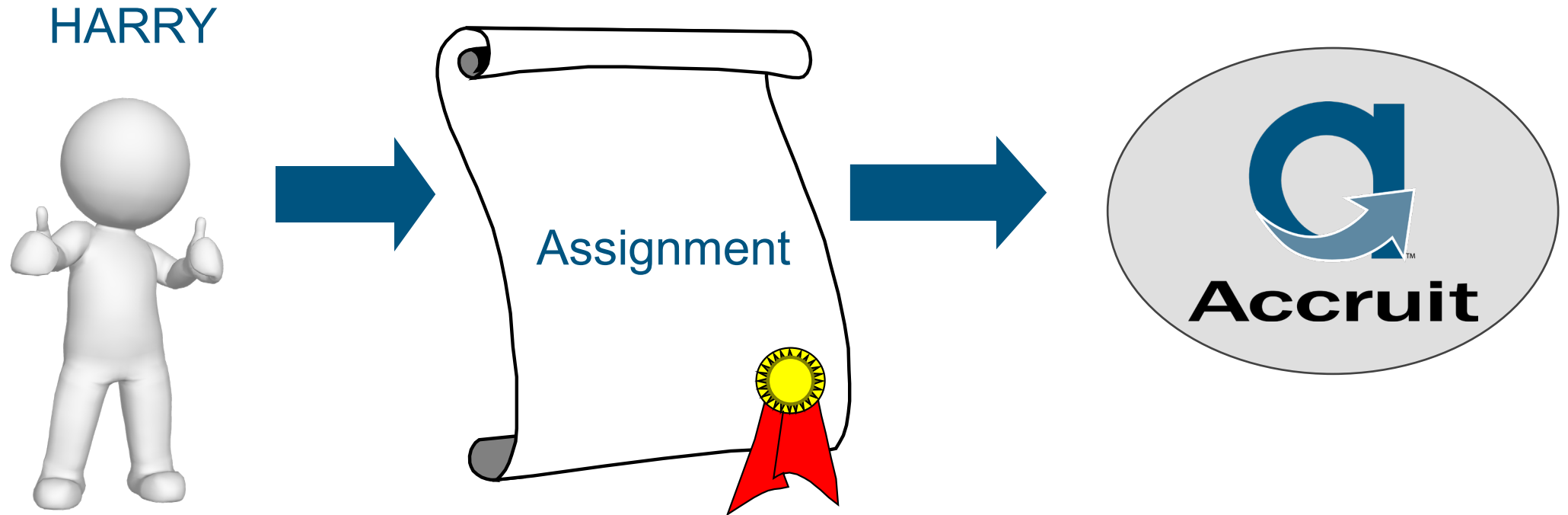
HARRY



SELLER



# HARRY ASSIGNS CONTRACT RIGHTS TO QUALIFIED INTERMEDIARY



# ASSIGNMENT OF REPLACEMENT PROPERTY



## ASSIGNMENT OF REPLACEMENT PROPERTY CONTRACT

Accruit, LLC  
55 Madison Street  
Suite 625  
Denver, CO 80206  
P: (866) 397-1031  
F: (888) 892-5899  
exchangemanager@accruit.com

Replacement Property Seller(s)  
Bruce Willis

- A. Effective Date. This Assignment is made pursuant to Tax Deferred Exchange Agreement No. R1031 dated on December 29, 2021.
- B. Assignment. The undersigned ("Exchanger") hereby assigns to Accruit, LLC ("Qualified Intermediary") Exchanger's rights (but not Exchanger's liabilities or obligations), referred to hereafter as the "Assignment", under that certain contract or agreement (the "Replacement Property Contract") between Exchanger and/or JBJ RP LLC and Replacement Property Seller (identified above) dated 10/16/21. If not previously provided, simultaneously with the execution of this Assignment by the parties, Exchanger shall promptly provide Qualified Intermediary with a copy of any written Replacement Property Contract.





# HARRY GIVES NOTICE OF THE ASSIGNMENT

Notice must go to *all parties* to the exchange



# HARRY REQUESTS FUNDS FOR CLOSING



## DISBURSEMENT REQUEST FORM

Exchanger Name	HARRY		
Exchange Number	R1031		
Purchase Number	REP11695 (v44-0436)		
Property Description	12334 W 113Th Terrace Overland Park, KS 66210		
Disbursement Date	December 30, 2021	Disbursement Purpose	Purchase

Please select one of the following disbursement options:

<input type="checkbox"/> Send all available funds.	<input type="checkbox"/> Send a specific disbursement amount: \$	\$1,286,134.02
--	--	----------------

These Instructions to Disburse Exchange Funds are submitted by the undersigned Exchanger to Accruit, LLC, ("Qualified Intermediary"), in accordance with the Tax Deferred Exchange Agreement for the above referenced exchange, and in turn by Qualified Intermediary to Gotham City Bank ("Bank").

Please select a method of providing wire transfer instructions:

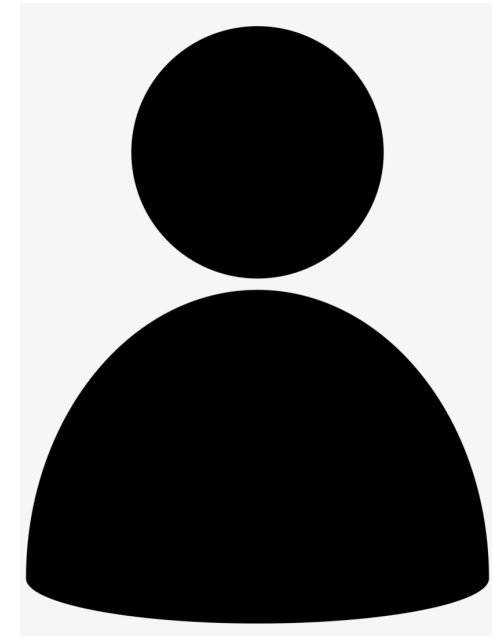
<input type="checkbox"/> See attached wire transfer instructions which <u>must</u> be signed by the Exchanger(s) and include a reference to the Purchase Number and/or Property Description referenced above. Note: Improperly submitted wire transfer instructions will be rejected which may delay the processing of the request.
<input type="checkbox"/> See below entered wire transfer instructions.

Bank Name	Comerica Bank
City	El Segundo
State	CA
ABA/Routing #	987654321
Account #	1234764867
Beneficiary Name	Bruce Willis
Street Address	3001 Leadenhall Road



# QUALIFIED INTERMEDIARY MAKES PAYMENT TO SELLER FROM EXCHANGE FUNDS

SELLER

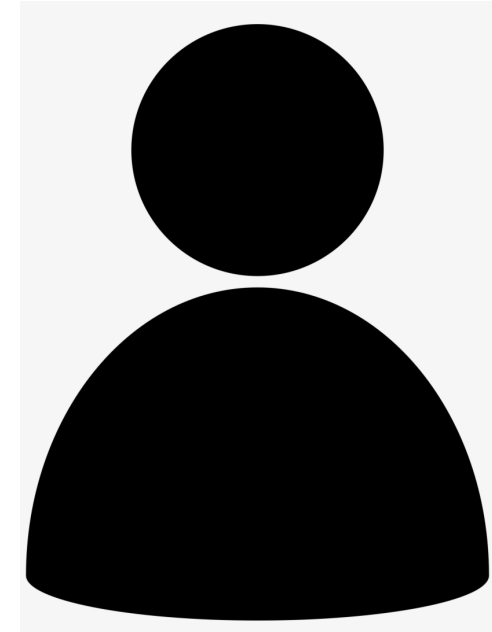


# SELLER TRANSFERS REPLACEMENT PROPERTY DIRECTLY TO HARRY

HARRY

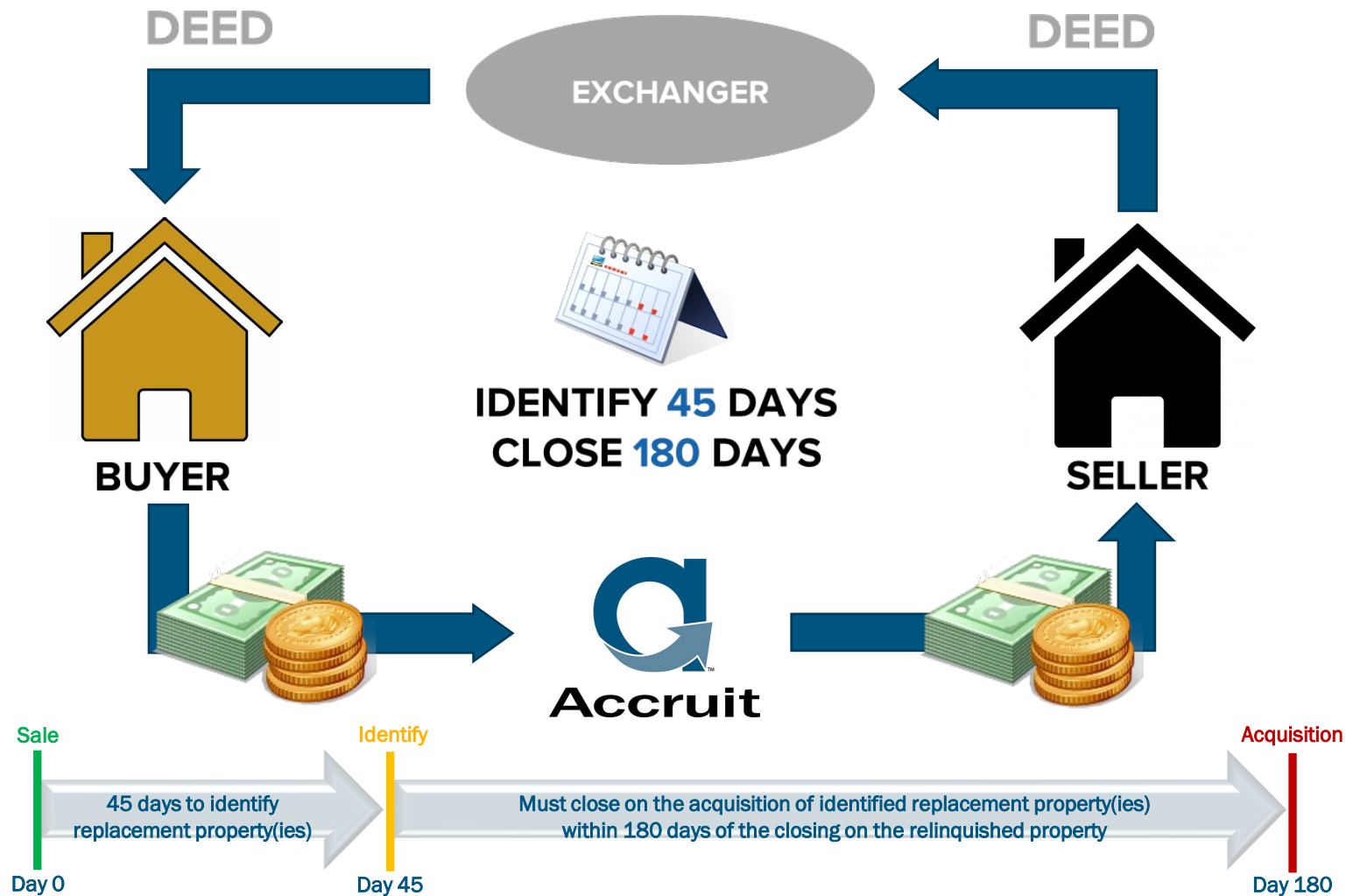


SELLER





# SECTION 1031 EXCHANGE - SIMPLIFIED



# PITFALLS TO AVOID

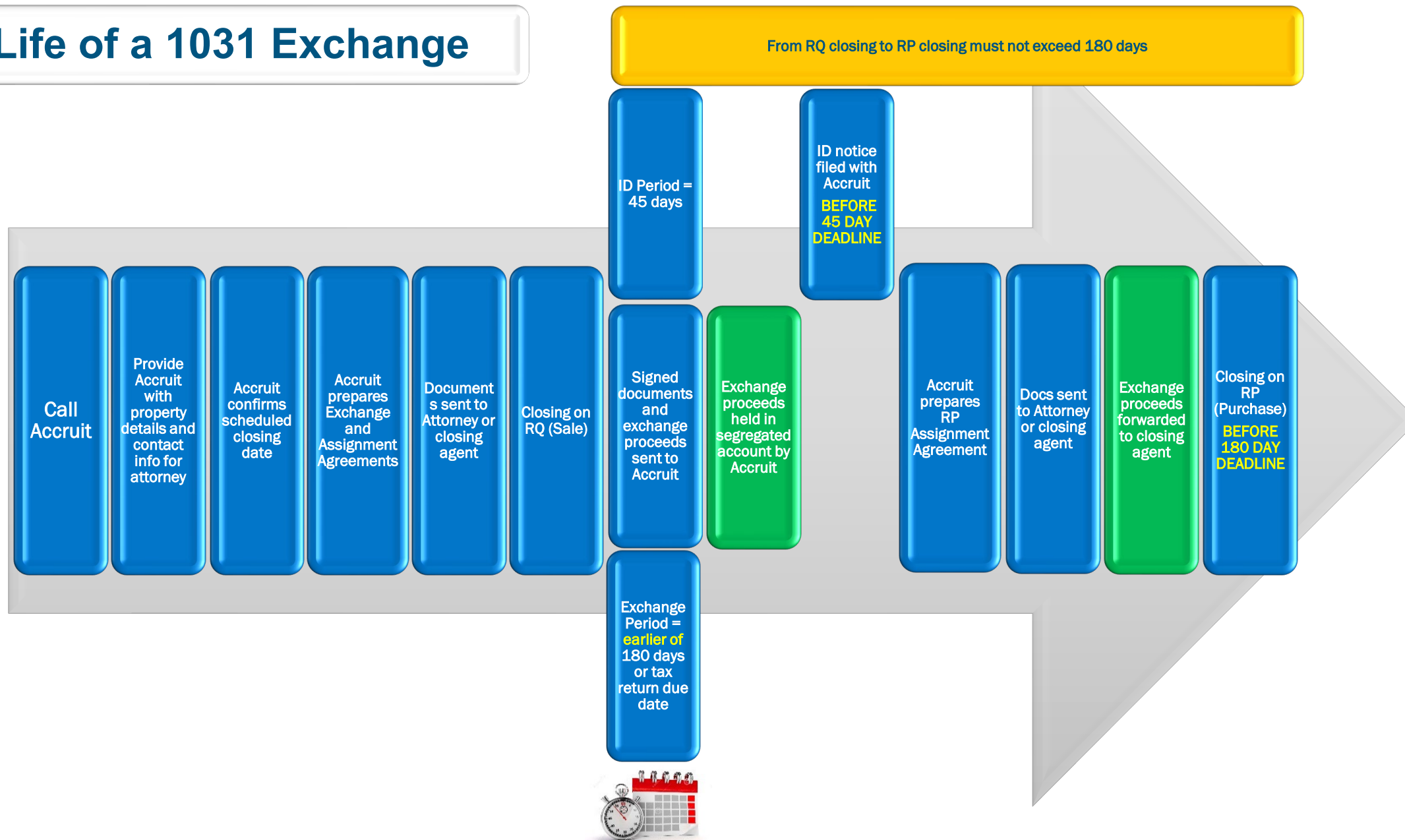


# SECTION 1031 IN A NUTSHELL

- To obtain complete deferral of capital gains taxes, the taxpayer should:
  - Receive **nothing except like-kind** property
  - Adhere to the 45-day and 180-day time limits
  - Replacement property must be **equal or greater in value** to the relinquished property
  - Must have **equal or greater equity** in the replacement property
  - Must **replace the debt** on the replacement property\*
  - Taxpayer must avoid **constructive receipt** of exchange proceeds
    - Use a **qualified intermediary (“QI”)**



# Life of a 1031 Exchange

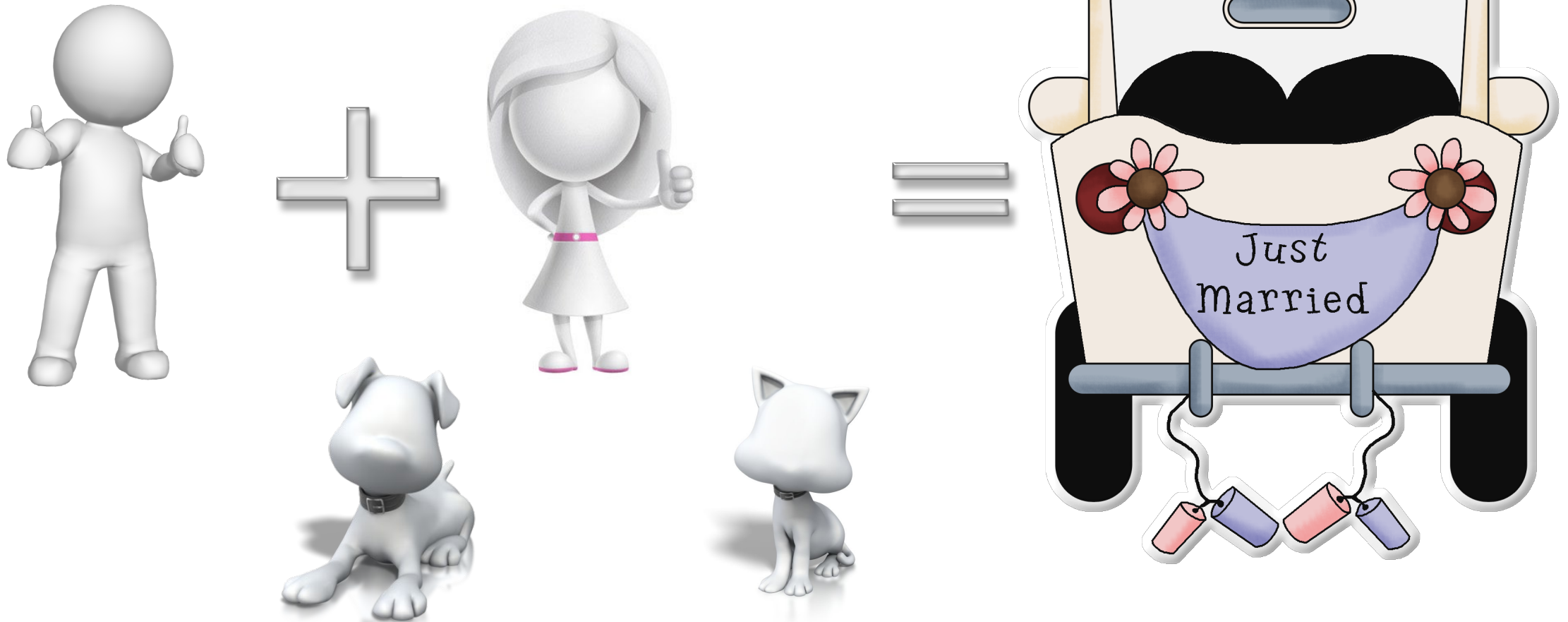




# BEYOND THE BASICS



# WHEN HARRY MET SALLY



# SAME TAXPAYER REQUIREMENT



# SAME TAXPAYER REQUIREMENT

- One of the required elements of a successful Section 1031 exchange is having the same taxpayer that sells the RQ also purchase the RP.

- “Same Taxpayer Rule”

- Harry sells RQ, Harry buys RP
- Harry sells, Harry LLC buys



- Harry sells, Harry & Sally buy\*





# VACATION HOMES



# REV. PROC. 2008-16 – SAFE HARBOR

## Limit Taxpayer Use

- Greater of 14 days per year or 10% of the rental period
- If used additional days for repairs and maintenance, be ready to show actual work done

## Rent It Out

- Rent to unrelated party for at least 14 days per year
- *But* no need to rent more than 14 days; *or*
- Rent to any third party as their principal residence





# 1031 EXCHANGES AS AN ESTATE PLANNING TOOL



- Typical sale results in capital gains and other taxes.
- Holding until death results in “stepped up basis”
- Example:
  - Grandpa owns a highly appreciated shopping center
  - Grandpa has four grandchildren
  - Grandpa uses §1031 to replace the shopping center with:
    - TIC or DST property
    - Hard assets near the grandchildren
    - Etc.

# RELATED PARTIES

Rules regarding like-kind exchanges between related parties {§1031(f)} added in 1989/1990

“Related Party” is defined in §267(b) and §707(b). There are about a dozen categories of related parties. Among the more important categories are:

- family (siblings, spouse, parents, children and grandchildren)
- individual and a corporation or a partnership where the same individual owns 50% or more of the ownership of such entity

The rules were established to prevent taxpayers from using §1031 to shift tax basis between related persons:

- Example: A owns property with a basis of \$10 and a FMV of \$100. B, A's brother, owns property with a basis of \$100 and a FMV of \$10. An unrelated buyer wants to buy A's property for \$100. If A sells, he would have gain of \$90. If instead A swapped with B and B sold to the buyer, B would have a loss.





# RELATED PARTIES

## General rule is related parties shouldn't cash out (for at least 2 years)

If there is an exchange of property between related parties and either party, within 2 years, disposes of a property received as part of the like-kind exchange, the non-recognition treatment afforded the original transaction between the related parties will be denied.

The liability accrues as of the date of that transfer, not the original exchange

## Certain transfers do not trigger this rule

- transfers occurring after the death of one of the related parties
- transfers of property by involuntary conversion (without prior knowledge of such conversion)
- transfers that do not have tax avoidance as a primary purpose



# REVERSE EXCHANGES (A/K/A PARKING EXCHANGES)

Typical Transaction

Sell First



Buy Last



“Reverse” Exchange

Buy First



Sell Last



# GOING BACK IN TIME?



# REVERSE EXCHANGES

- Structure of a Reverse Exchange

## Replacement



- Taxpayer lends \$\$ to Exchange Accommodation Titleholder (“EAT”)
- EAT acquires the replacement property for Taxpayer
- Taxpayer operates property under a Triple-Net Lease (“NNN”) agreement
- Taxpayer takes title when relinquished property sells

## Relinquished



- Relinquished property must sell within 180 days
- Property sells, taxes deferred
- Property does not sell, client owns 2 properties



# REVERSE EXCHANGE IDENTIFICATION

- Same Rules as Forward Exchange
- 45-day Identification Period
- In Writing
- Signed by Taxpayer
- Delivered to QI
- Three Property Maximum\*\*



# CONSTRUCTION / IMPROVEMENT EXCHANGE



- Relinquished property sells
- Proceeds sent to QI
- “EAT” acquires replacement property
- QI holds remaining funds
- QI disburses funds to contractors
- Taxpayer manages construction
- “EAT” transfers completed property to taxpayer



# CASH OUT REFINANCING

- Refinancing Relinquished Property Before Closing
  - Why?
    - Increase Debt/Equity Ratio
    - Access equity for other purposes
    - Others
- Refinancing Replacement Property After Closing
  - Generally, no problem.
  - Timing?





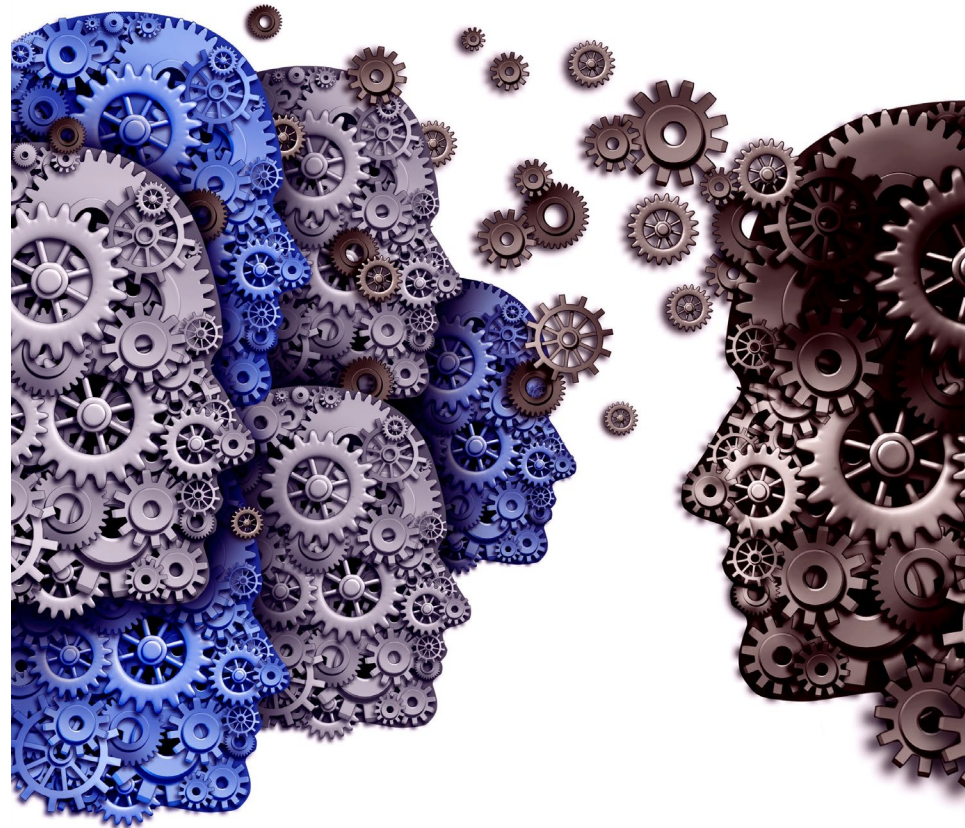
# MULTIPLE PROPERTY EXCHANGE



- Taxpayer can sell multiple properties, to consolidate into fewer properties
- Taxpayer can sell one property to diversify into many properties
- Identification period – all replacement properties must be identified within 45 days of transfer of first relinquished property
- Exchange period – all replacement properties must be acquired within 180 days of transfer of first relinquished property

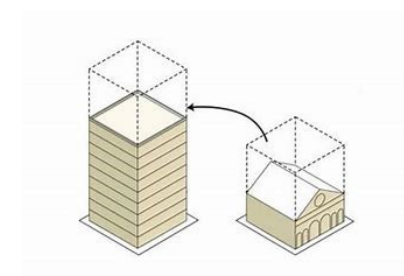
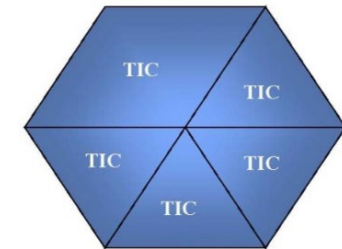


# BEYOND THE BEYOND



# COMMON LESS-THAN-FEE EXCHANGES

- Timber Rights
- Mining
- Oil
- Riparian Rights
- Tenants in Common
- Transferrable Development Rights
- Others



# §1031 EXIT STRATEGY – NNN

- “NNN” or Triple-Net means that the tenant pays for maintenance, taxes and insurance, rather than the landlord.
- Investor typically owns 100% of a property, frequently with a national credit tenant (i.e., Walgreens).
- Usually single tenant.
- Often purpose-built property.



# NNN – PROS & CONS

- Hands-free management
  - Tenant typically responsible for all (or nearly all) maintenance, taxes, insurance, etc.
  - Rent received is “net” of those costs.



- Risks include
  - Lack of diversification.
  - Tenant bankruptcy.
  - Store closures.





# §1031 EXIT STRATEGY – TIC

- Co-ownership, but must be structured to avoid being considered a partnership.
- Rev Proc 2002-22 provides guidance; 15 factors to be considered.
  - Must hold title to the property as a tenant in common, under local law.
  - Pro-rata rights, responsibilities – profits, losses, proceeds, liabilities.



Office ≈ 51%



Multifamily ≈ 21%



Retail ≈ 16%

# TIC – PROS & CONS

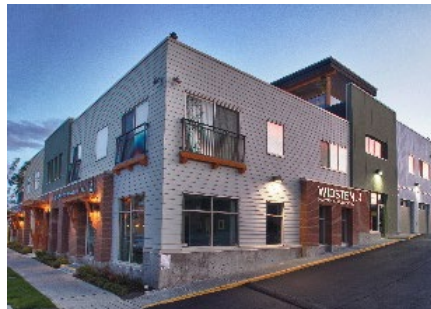
- Generally, institutional grade property.
- Pro-rata voting rights.



- Limited to 35 investors.
- Typically, one property per deal.
- Generally, require unanimous approval for changes, etc.
- Might not be bankruptcy remote.

# §1031 EXIT STRATEGY – DST

- Under IRS Rev. Ruling 2004-86, a beneficial interest in a Delaware Statutory Trust (“DST”), which holds title to the replacement property, can be considered “like-kind” replacement property for a §1031 exchange.
- Rights and obligations of investors governed by DST’s Trust Agreement. DST investors generally have liability protection (non-recourse loans to the DST, rather than the investors), with limited voting rights over the operation and ownership of the properties.
- DSTs are generally, multi-owner (pro-rata investment), multi-property offerings (i.e., ABC Texas Medical Portfolio DST).



# DST – PROS & CONS

- No limit on the number of investors.
- Often own multiple properties.
  - Typically structured on a theme. (i.e., Texas Medical Portfolio DST).
  - May be diversified on geography, asset class, etc.
- Generally, bankruptcy remote.



- No voting rights.
- A portfolio DST counts as multiple properties for identification purposes



# OIL & GAS ROYALTIES

- Under Revenue Ruling 55-526, a royalty interest for oil and gas in place constitutes real property for federal income tax purposes
- An overriding royalty interest in minerals exchanged for a city lot qualified for like-kind exchange treatment. *Comm. V. Crichton*, 122 F3d 181 (5<sup>th</sup> Cir. 1941).
  - “provides guidelines for requesting advance rulings ... [and is] not intended to be substantive rules...”
  - 15 Conditions:
    - Must hold title to the property as tenants in common, as defined by local law
    - Pro-rata rights, responsibilities – profits, losses, proceeds, liabilities



**Note: Oil/gas wells 37 states. (1-Texas; 2-Kansas; 3-Oklahoma; 4-Pennsylvania; 14-New York)**

# OIL & GAS ROYALTIES – PROS & CONS

- DO NOT invest in capital equipment or field operations
- DO NOT get billed for exploration, drilling, or operations costs
- DO NOT share any of the risks or liabilities associated with exploration



- No payout until the resources are developed, produced and sold
- Physical resources may deplete over time, resulting in declining asset value

# WHY 1031 EXCHANGES ARE IMPORTANT

- Like-kind exchanges stimulate business growth
- Like-kind exchanges stimulate needed capital investment
- Like-kind exchanges help repurpose available real estate
- Like-kind exchanges create jobs
- Like-kind exchanges help family farmers
- Taxes are deferred, not eliminated
- Visit [www.1031buildsamera.org](http://www.1031buildsamera.org) for more information









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**Certified Exchange Specialist®**

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