

# RESTRICTIONS ON EXCHANGE PROCEEDS

## "WHY EXCHANGERS CAN'T HAVE ACCESS TO EXCHANGE FUNDS"



### Compliments of

A "Qualified Intermediary" must limit the Exchanger's ability to access funds held in the exchange account in order to meet the safe harbor requirements specified in the U.S. Treasury Regulations. Although the deferred exchange rules provide an Exchanger with the flexibility to take up to 45 days to identify and a maximum of 180 days to purchase a replacement property, there are specific restrictions placed on the Exchanger's ability to access exchange proceeds in the possession of the Qualified Intermediary during the exchange period.

### SECTION 1.1031(k)-1(g)(6)

In a deferred exchange, U.S. Treasury Regulations, Section 1.1031 (k)-1(g)(6), require stipulations in the exchange agreement which limit the Exchanger's ability "to receive, pledge, borrow or otherwise obtain the benefits of money or other property before the end of the exchange period. The Exchanger may have rights to receive, pledge, borrow, or otherwise obtain the benefits of money or other property upon or after:

- a) *The receipt by the Taxpayer of all replacement property to which the taxpayer is entitled under the exchange agreement*
- b) *The occurrence after the end of the identification period of a material and substantial contingency that —*
  1. *Relates to the deferred exchange,*
  2. *Is provided for in writing, and*
  3. *Is beyond the control of the Taxpayer and of any disqualified person (as defined in paragraph (K) of this Section), other than the person obligated to transfer the replacement property to the taxpayer."*

### WHAT IS THE IMPACT OF THESE RESTRICTIONS?

Although a thorough discussion is beyond the scope of this flyer, the following are two examples:

**SCENARIO #1:** The Exchanger identifies multiple replacement properties within the 45-day Identification Period, acquires one of these properties within the Identification Period, and they would like to receive the remaining proceeds (referred to as "cash boot") in the exchange account.

**A SOLUTION:** Revoke the Identification of all other replacement properties, so the remaining proceeds can be released on day 46 by the Qualified Intermediary.

**SCENARIO #2:** The Exchanger identifies multiple replacement properties and acquires at least one, but not all of these properties. However, they are past the 45-day Identification Period, and they would like to receive the remaining proceeds.

**A SOLUTION:** The remaining exchange proceeds must be held by the Qualified Intermediary until either the end of the exchange period (day 181) or one of the occurrences specifically cited in the Section 1.1031 (k)-1(g)(6) restrictions.



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