Identification Rules

1031 Knowledge

Although a taxpayer can identify more than one replacement property, they must adhere to one of the three rules of identification listed below:

1. **3-Property Rule**: Three (3) replacement properties without regard to their fair market value;
2. **200-Percent (200%) Rule**: Any number of replacement properties so long as their aggregate fair market value of all replacement property does not exceed 200% of the aggregate fair market value of all relinquished properties;
3. **95-Percent (95%) Rule**: Any number of replacement properties without regard to the combined fair market value, as long the replacement properties acquired amount to at least 95% of the fair market value of all identified properties.

REQUIREMENTS FOR IDENTIFYING REPLACEMENT PROPERTIES

The identification period in a Section 1031 delayed exchange begins on the date the taxpayer transfers the relinquished property and ends at midnight on the 45th calendar day thereafter. The identification must meet the following requirements:

- Identification must be made in a written document signed by the taxpayer;
- The identification must be hand-delivered, mailed, telecopied, or otherwise sent before the end of the identification period;
- The identification must be sent to either the person obligated to transfer the replacement property to the taxpayer (generally the qualified intermediary) or any other person involved in the exchange other than the taxpayer or a disqualified person;
- Each potential replacement property must be unambiguously described (i.e. legal description, street address or distinguishable name).

If the replacement property consists of property to be produced, in addition to meeting the foregoing requirements, the taxpayer must identify the real property and the improvements to be constructed in as much detail as is practicable at the time the identification is made.

A taxpayer who intends to acquire less than a 100% ownership interest in a replacement property should specify the specific percentage or specific amount of the interest they intend to acquire. Taxpayers should always consult with their tax and/or legal advisors about the specific identification rules and restrictions.

Any replacement properties received by the taxpayer before the end of the 45-day identification period are considered properly identified. A taxpayer has the ability to substitute a new replacement property or properties by revoking a previous identification in the same manner as originally identified and subsequently identifying new replacement properties as long as this is done, in writing and meeting all other identification requirements, within the 45-day identification period.

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