



Although there is no requirement in the federal tax code or regulations that a contract or a purchase and sale agreement contain language specifying that one of the parties is transacting an IRC §1031 tax deferred exchange or a parking exchange, it is a “best practice” There are several reasons to consider including such language in the agreements. The primary reason could be to obtain the cooperation of the other party in documenting that the transaction is an exchange. A secondary reason is with respect to parking exchanges, some states may require specific language in order for the exchanger to be exempt from state transfer taxes on a double transfer (i.e. Florida). Below, please find examples of general language which may be added to a sale or purchase contract. It is highly recommended that Exchangers and their advisors verify that the below language is compliant with any applicable state requirements.

Sale Contract Language:

Buyer hereby acknowledges that it is the intent of the Seller to structure its sale as a tax deferred exchange under IRC §1031 and/ or pursuant to Revenue Procedure 2000-37. Seller covenants that this will not delay the close of the subject transaction nor cause the Buyer any additional expenses. The Seller’s rights under the purchase and sale agreement may be assigned to Legal 1031 Exchange Services, LLC, a Qualified Intermediary for IRC §1031 Tax Deferred Exchanges and/or assigned to Legal 1031 EAT Holdings (“EAT”) as exchange accommodation titleholder. If assigned to EAT, Seller represents that EAT and its wholly owned LLC are not acting as the Seller’s agent for federal tax purposes, and that the EAT and LLC are the agent of Seller solely for real estate transfer, documentary and stamp fees, and similar recording taxes, statutory environmental and regulatory liability purposes. Buyer agrees to cooperate with the Seller and the Qualified Intermediary or EAT to complete the exchange.

Purchase Contract Language:

Seller hereby acknowledges that it is the intent of the Buyer to structure its purchase as a tax deferred exchange under IRC §1031 and/ or pursuant to Revenue Procedure 2000-37. Buyer covenants that this will not delay the close of the subject transaction nor cause the Seller any additional expenses. The Buyer’s rights under the purchase and sale agreement may be assigned to Legal 1031 Exchange Services, LLC, a Qualified Intermediary for IRC §1031 Tax Deferred Exchanges and/or assigned to Legal 1031 EAT Holdings (“EAT”) as exchange accommodation titleholder. If assigned to EAT, Buyer represents that EAT and its wholly owned LLC are not acting as the Buyer’s agent for federal tax purposes, and that the EAT and LLC are the agents of Buyer solely for real estate transfer, documentary and stamp fees, and similar recording taxes, statutory environmental and regulatory liability purposes. Seller agrees to cooperate with the Buyer and the Qualified Intermediary or EAT to complete the exchange.

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