

Section 1031 Exchange Cooperation Clauses

Enclosed are sample exchange cooperation clauses. Such cooperation clauses should be used to prevent any dispute or misunderstanding regarding the form of the transaction. The enclosed sample clauses are designed for a deferred exchange involving PACIFIC REALTY EXCHANGE, INC.

Contracts typically provide that the buyer of the old property (or the seller of the new property) shall "cooperate" with the taxpayer's Section 1031 exchange. The problem with this language is that no one knows what it means. For example, does "cooperation" require that the other party permit the substitution of an exchange accommodator as the seller or buyer of property? Probably not. If the other party refuses to consent to the substitution of the exchange accommodator as the seller or buyer, a taxable sale may result.

To prevent these problems, the enclosed sample clauses should be included in contracts where an exchange is anticipated with PACIFIC REALTY EXCHANGE, INC. These clauses contain basic terms. More detailed provisions may be necessary, depending on the facts of each case. If you have any questions, please do not hesitate to call Gregory J. Rocca or Michael K. Phillips at (415) 759-1983.

SAMPLE BUYER COOPERATION CLAUSE (First Leg - Deferred Exchange)

Seller has the right to assign its rights under this Contract before close of escrow to Seller's exchange intermediary, Pacific Realty Exchange, Inc., a California Corporation, for the purpose of allowing Seller to effect a tax-deferred exchange of properties under Section 1031 of the Internal Revenue Code. Buyer agrees to cooperate in such exchange at no cost, expense or liability to Buyer.

SAMPLE SELLER COOPERATION CLAUSE (Second Leg - Deferred Exchange)

Buyer has the right to assign its rights under this Contract before close of escrow to Buyer's exchange intermediary, Pacific Realty Exchange, Inc., a California Corporation, for the purpose of allowing Buyer to effect a tax-deferred exchange of properties under Section 1031 of the Internal Revenue Code. Seller agrees to cooperate in such exchange at no cost, expense or liability to Seller.