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News From the Firm

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Message From Chris....

1031 Exchanges. We're sure to see a few more between now and the coming, end-of-year, accounting deadline. Good stuff for everyone. When it comes to the handling and treatment of real property in planning to later qualify for a 1031 exchange (or at least be eligible to qualify for an exchange, should the unforeseen or surprise need arise), see below (and don't forget to click on my Facebook or YouTube links below to also see my short video on this material).

1031 Exchanges

Question #1: If you've thus far held properties for the use of either sale or development, and you'd now like to convert them over to a qualifying use of either investment or appreciation, what's one of the first/best things you can do to accomplish this conversion?

Answer: Deed the properties over into new entities. Once deeded, there's obviously a strong argument that a new use has occurred.

Question #2: Before doing a deeding drill, is there anything you might want to consider?

Answer: *First get confirmation from your accountant that the deeding over from the current entity to a new one (or new ones) won't constitute an adverse, taxable triggering event!* If there's danger lurking, go down to **Question #4** below.

Question #3: However, even the foregoing "deeding procedure" can possibly require a little more diligence in order to well accomplish a more ironclad change of use to later ensure 1031 eligibility. *Why??*

Answer: There's an IRS case where a developer held property for 12 years. The property was mostly all held for sale and development, however, there were a few lots in the project (way back in the rear of the development I believe) that the developer held for investment and appreciation. Later on, the IRS didn't believe this intent, and the case went to tax court. During the testimony being given, the IRS attorney asked the developer exactly when the few lots (in the rear of the project) had been switched over from being held for development and sale purposes over into investment and appreciation purposes? ***In response, the developer was speechless. He didn't even have an answer; much less had it even (or ever) occurred to him that such use should have changed over from one to the other. Take away?*** Even though a "deeding over" didn't occur here, it's still important to combine a deeding over strategy ***with an actual change of use strategy*** – which I'll describe more below.

Question #4: So, if it's not possible (or a bad idea) to deed over the properties to a new entity, what needs to happen?

Answer: As I've said above, while it's great to deed properties over into new entities, *it's not always possible or desirable.* So, you need to always demonstrate a *"change of use" – even with or without a deeding procedure. The 3 things below are how you strategically substantiate this "change of use."*

Question #5: What are the 3 things that must be done in order to accomplish a "change of use?"

Answer:

- A) Change of Physical Handling:** The first thing you must do is take down the "for sale" signs, as well as taking them out of industry journals, and off of online exchange mediums. **In otherwords, globally take the property(ies) off the market.**
- B) Change of Intent to the Public:** This is done by sending emails to your attorney, your accountant, your friends and your brokerage/listing partners that the property's use is, as of a certain date, being changed over from being held for development and sale over to investment and appreciation. This isn't necessarily something you need to take out an advertisement for in the local newspaper, however, sending out an email and/or letters to these key people is a great way to have an "Exhibit A" to produce to the tax court, come time.
- C) Change of Bookkeeping:** This one is overlooked sorely, by too many. It involves good communication to your accountant or bookkeeper of your intent and desire to change such use of the properties. However, unless the actual way the properties are handled/treated on the accounting books is actually changed, there is still a huge opportunity for your 1031 Exchange to be contested, due to the fact that the property's accounting treatment was never ALSO changed over from one use to the other. Don't make this mistake! Make sure you don't stumble here and lose your ability to qualify for a 1031 exchange.

What My Clients Are Saying

"Chris Griswold has been a tremendous asset in making my dream a reality! His legal advice, strong business acumen and initiative in helping me find the answers got me started on the right track. His honesty, common sense and strong interest in helping me succeed was a welcome addition in finding the right partner for legal advice and direction – I'll work with him more."

Margaret Holloway / Partner, Café 501 and Boulevard Steakhouse; President, Senior Care Network / Oklahoma City, Oklahoma

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