PARKING THE RELINQUISHED PROPERTY IN A REVERSE EXCHANGE PROCEDURAL OUTLINE

Accruit, LLC is a national provider of Qualified Intermediary (QI) and Exchange Accommodation Titleholder (EAT) services for simple and complex exchanges. Accruit handles all types of like-kind exchanges. Specialized EAT services are providedby Accruit Exchange Accommodation Services, LLC (AEAS).

Step 1

The taxpayer enters into a contract to purchase the replacement property, however, the corresponding relinquished property cannot be sold by the closing date for the replacement property. Therefore, the taxpayer or the taxpayer's professional advisor contacts Accruit to start a reverse exchange and obtain a reverse exchange document package pertaining to parking the relinquished property. The taxpayer may enter into the replacement property contract before contacting Accruit.

- **Call: 800-237-1031**
- **E-mail: info@accruit.com**
- **Start an Exchange Now**

Step 2

To keep all reverse exchange properties separate for each client transaction AEAS accomplishes the Exchange Accommodation Titleholder (EAT) transaction by becoming the sole member of a new LLC which is formed for the specific transaction. This new LLC is generally known as a Special Purpose Entity (SPE). For the purpose of this document, the EAT, LLC and SPE are one and the same.

The taxpayer and AEAS, enter into a Qualified Exchange Accommodation Agreement (QEAA) for the relinquished property whereby the SPE, as the EAT, will take title to the relinquished property just prior to the date of closing of the replacement property. For tax purposes, this ensures that the taxpayer has sold the relinquished property prior to acquiring the replacement property.

Step 3

Within the exchange package there is a simple Real Estate Purchase Agreement whereby the AEAS-owned SPE agrees to buy the relinquished property from the taxpayer. The taxpayer should set the value to be the selling price.

Step 4

Despite the fact that AEAS as EAT is the buyer of the relinquished property, the taxpayer still needs to structure that sale to the EAT, and the associated purchase of the replacement property, as an exchange being facilitated by a Qualified Intermediary (QI). Accruit provides these QI services or, at times, they may be provided by another QI who referred the reverse exchange transaction.

Step 5

Funds need to be loaned to the EAT in the amount of the purchase price for the relinquished property. Often the property can be acquired by the EAT subject to any existing debt on the property. If this is the case, actual funds are only needed in an amount to cover the taxpayer's equity in the property. The taxpayer and taxpayer's counsel should determine whether the intended conveyance will trigger any due on transfer clause contained within the underlying loan documents. This loan to fund the EAT's acquisition of the relinquished property can come from the taxpayer, the taxpayer's lender or a combination of both. Any loan

from an institutional lender is documented with a Note and secured with a Mortgage or Deed of Trust. Any loan from the taxpayer is documented with a Note secured by a Pledge of the Membership Interest in the LLC.

Step 6

The taxpayer and the EAT enter into a Master Lease whereby the EAT leases the property to the taxpayer. This is intended to shift property upkeep and maintenance from the EAT to the taxpayer as well as to allow the taxpayer to lease the property to any actual tenants and to retain those rents. Depending upon the type of property, the EAT may request the execution of an Environmental Indemnity Agreement. Evidence of liability insurance must be furnished to Accruit showing the SPE as the insured party, while the lender and the taxpayer may appear as additional insureds.

Step 7

As part of the forward exchange of the old property for the new, the taxpayer enters into an Exchange Agreement with a QI and assigns the rights under the relinquished property contract (the Real Estate Purchase Agreement) to the QI and provides written notice of the assignment to the taxpayer's buyer, in this case the SPE.

Step 8

A deed from the taxpayer to the EAT for the relinquished property is prepared, executed and recorded. In most jurisdictions this is considered exempt from transfer taxes as the EAT is acting as the taxpayer's agent and is receiving only its fee and no real consideration. The taxpayer should consult with legal counsel to confirm that this structure is exempt from transfer taxes.

Step 9

The amount lent to the EAT is paid from AEAS' account to fund the taxpayer's exchange account.

Step 10

The taxpayer continues the transaction as a forward exchange in which the relinquished property is sold to the EAT and replacement property is acquired from a third party seller through a conventional exchange facilitated by the QI. The exchange is complete at this time, but in order for the reverse exchange transaction to fall within the IRS safe harbor for this kind of transaction, the relinquished property must be sold to a true buyer within 180 days from the date of the sale of the property to the EAT. Note: If the tax filing date falls within the 180 day period, an extension may be filed in order to take advantage of the full 180 days.

Step 11

The taxpayer finds a buyer for the relinquished property and requests that the EAT sign the purchase and sale agreement as the seller/owner of record. The EAT may require a surety addendum be attached to the contract making it clear to the buyer that the taxpayer, and not the EAT, will bear responsibility for any seller representations and warranties.

Step 12

The closing on the sale of the relinquished property takes place, and the proceeds of the sale are used to retire any debt on the relinquished property as well as any sum having been lent by the taxpayer to the EAT in connection with the EAT's original acquisition of the property. If there are variances between the sale value the taxpayer used to begin the reverse exchange and the actual price at the time of sale to the actual buyer, the applicable amounts between the EAT and taxpayer can be adjusted to match the applicable numbers. Upon closing, the LLC is dissolved by the taxpayer's lawyer.

CONTACT US TODAY!

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