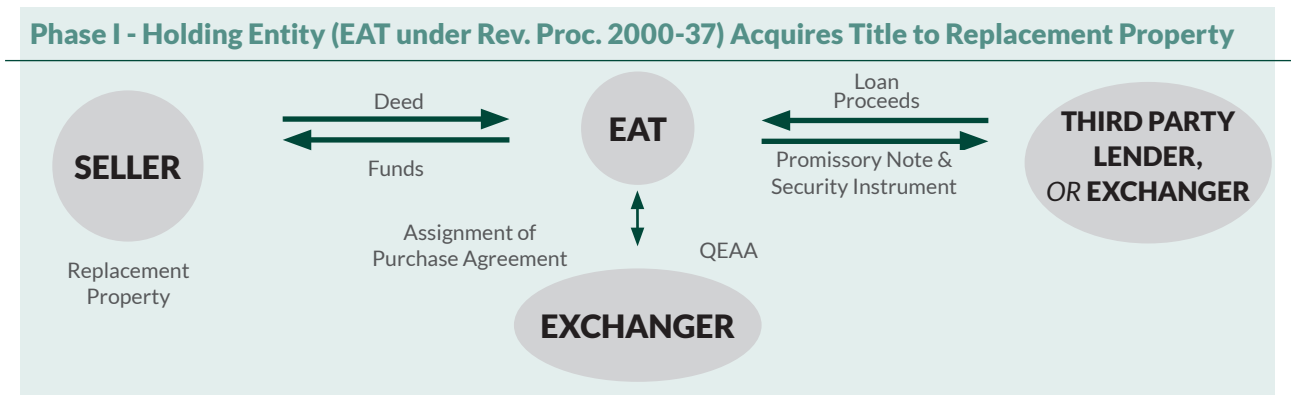# The Safe Harbor Reverse Exchange

IPX 1031®

A "reverse" exchange occurs when the taxpayer acquires the replacement property before transferring the relinquished property. A "pure" reverse exchange, where the taxpayer owns both the relinquished and replacement properties at the same time, is not permitted. The IRS has provided guidance on structuring a reverse exchange, offering a safe harbor under Rev. Proc. 2000-37. An Exchange Accommodation Titleholder (EAT), acquires and holds the target property (the parked property) in a separate special purpose entity, typically a single member LLC (the EAT and LLC are jointly referred to as "EAT"). To complete a reverse exchange, the EAT will take title to either the Relinquished Property or the Replacement Property under a "Qualified Exchange Accommodation Arrangement" (QEAA).

Time Periods: The same 45 day Identification Period and 180 day Exchange Period deadlines of IRC §1031 apply to a safe harbor reverse exchange under Rev. Proc. 2000-37, with a slight tweak. If the EAT has begun the exchange by acquiring the Replacement Property, then the Exchanger must identify within 45 days after the EAT's acquisition of the parked property, one or more Relinquished Properties to be exchanged for the Replacement Property. The identification rules require that written identification be delivered to another party to the exchange, such as the EAT or the Qualified Intermediary, identification permitted under the three property or 200% rules.. The identified Relinquished Property must be sold, and the parked Replacement Property transferred to the Exchanger to complete the exchange within 180 days of parking the Replacement Property with the EAT.
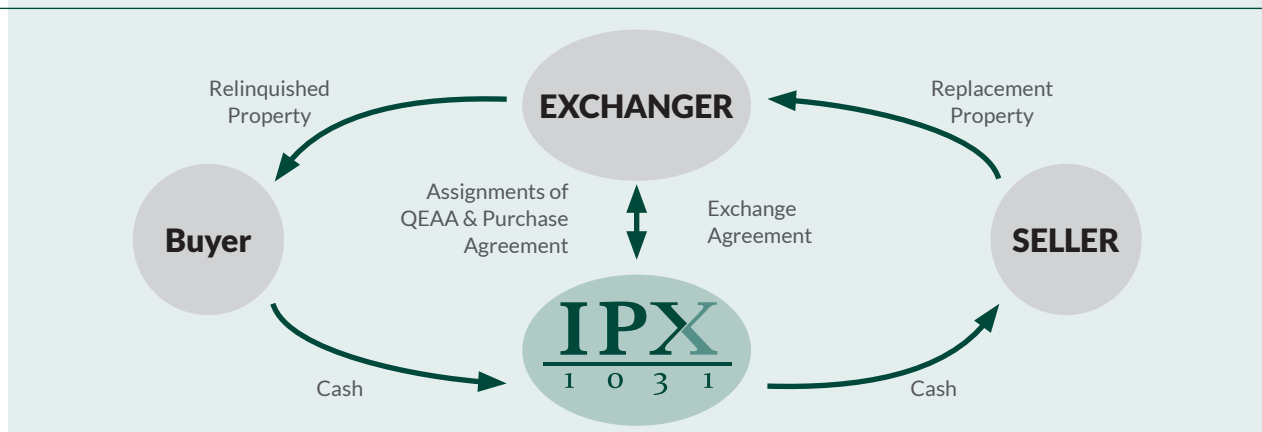
Replacement Property Parked Reverse Exchange

Replacement Property Parked - Phase I: In the most common type of reverse exchange, the EAT acquires and parks legal title to the Replacement Property. The Exchanger or a third party lender loans the funds necessary for the EAT to purchase and take title to the Replacement Property. The EAT leases the property to the Exchanger under a triple net lease. This permits the Exchanger to receive the economic benefits and burdens of the property during the time that it is held by the EAT.

Phase I - Holding Entity (EAT under Rev. Proc. 2000-37) Acquires Title to Replacement Property

SELLER — Replacement Property
Deed → / Funds ← EAT
Assignment of Purchase Agreement
QEAA
EXCHANGER
Loan Proceeds ← / Promissory Note & Security Instrument → THIRD PARTY LENDER, OR EXCHANGER

Replacement Property Parked - Phase II: When the Exchanger sells the identified Relinquished Property, title is transferred directly to the buyer through direct deeding. The cash proceeds of the sale go to the Qualified Intermediary, which uses these Exchange Funds to acquire the Replacement Property from the EAT. Upon receipt, the EAT will first repay the loan from the Exchanger and then use remaining Exchange Funds to pay down the third-party loan on the Replacement Property prior to transferring the parked property to the Exchanger. If the Relinquished Property sale yields more Exchange Funds than necessary for the Qualified Intermediary to acquire the parked property, the Exchanger may identify additional Replacement Property within 45 days of the transfer of the Relinquished Property, and complete the additional acquisition within 180 days of the Relinquished Property transfer.

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Phase II - Simultaneous Exchange

Relinquished Property → **EXCHANGER** ← Replacement Property

Buyer

Assignments of QEAA & Purchase Agreement

Exchange Agreement
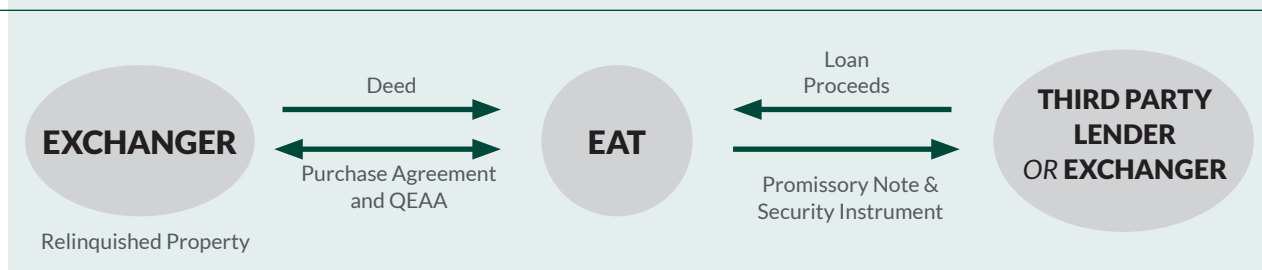
SELLER

IPX 1031

Cash →

← Cash

Replacement Property Parked - Loans to EAT: This type of reverse exchange works best when the Exchanger can pay all cash for the Replacement Property, or when the seller is providing the financing. If the Exchanger is working with a third-party institutional lender, the Exchanger should seek lender approval prior to beginning the reverse exchange. The EAT, as the titleholder of the property, may be required to be the borrower on the loan. Many lenders are not familiar with reverse exchanges, so involving them early in the process will ensure a smoother transaction. To protect the EAT from liability in the event of default by the Exchanger, the EAT will require the loan to be non-recourse as to itself. Lenders typically require the Exchanger to guarantee a loan made to the EAT.

Relinquished Property Parked Reverse Exchange

An alternative to parking the Replacement Property is to park the Exchanger's Relinquished Property with the EAT.

Relinquished Property Parked - Loans to EAT - Phase I: Since the EAT does not have its own funds to purchase the Relinquished Property, it must borrow the money. Typically the consideration consists of (1) the EAT taking the Relinquished Property "subject to" any existing third-party financing, and (2) a purchase money loan from the Exchanger for the balance. For a fully deferred exchange, the loan from the Exchanger should equal the equity the Exchanger has in the Relinquished Property.

Phase I - Holding Entity (EAT under Rev. Proc. 2000-37) Agrees to Purchase Relinquished Property

EXCHANGER

Deed →

Purchase Agreement and QEAA →

EAT

Loan Proceeds ←

Promissory Note & Security Instrument →

THIRD PARTY LENDER *OR* **EXCHANGER**

Relinquished Property

Relinquished Property Parked - Phase II: A Relinquished Property parked reverse exchange begins with a simultaneous exchange involving the Exchanger, the EAT, the seller of the Replacement Property, and the Qualified Intermediary. The Exchanger transfers the Relinquished Property to the EAT and simultaneously receives the Replacement Property from the seller. Both transfers occur through the Qualified Intermediary and the use of direct deeding. The funds the EAT borrowed from the Exchanger will be used to pay closing costs, with any balance flowing through the exchange and being applied toward the purchase of the Replacement Property.

Phase II - Simultaneous Exchange
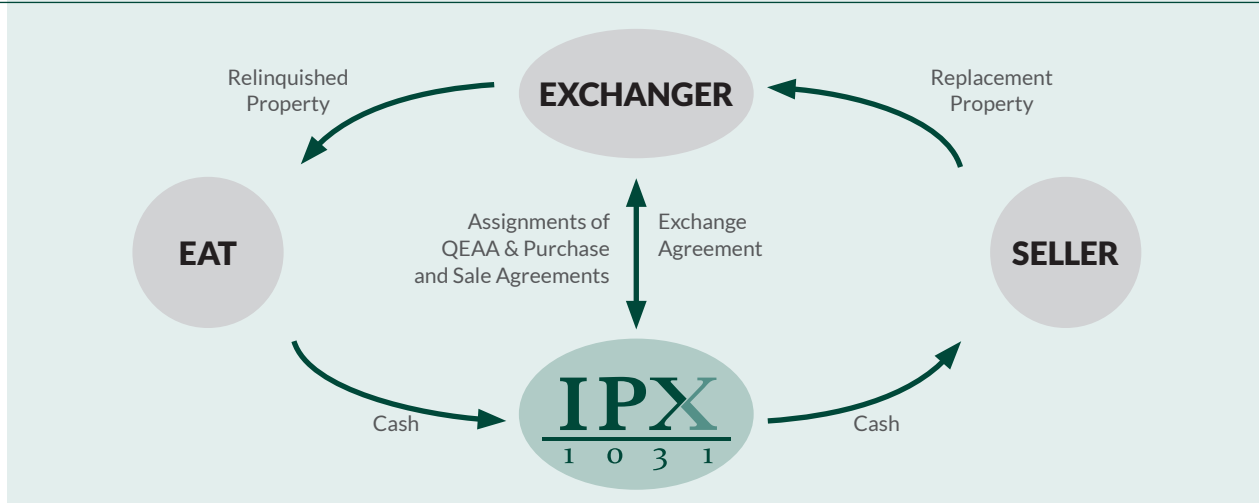
Relinquished Property Parked - Phase III: When the Relinquished Property is sold to the ultimate buyer, the cash proceeds from the sale go to the EAT and are used first to retire any existing third party debt the EAT took subject to, then to repay the Exchanger for the original loan to the EAT. If the price paid by the EAT for the parked property differs from the actual price paid by the ultimate buyer, the Exchanger and the EAT will enter into a purchase price adjustment agreement to increase or decrease the original purchase price and loan amount as necessary to reflect the final purchase price.

Phase III - EAT Sells Relinquished Property