

e-Report

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Understanding The Improvement Exchange

The Improvement, Construction or Build-to-Suit Exchange occurs when the Exchanger uses exchange proceeds to make capital improvements to replacement property. The improvement exchange can occur in the context of a delayed or reverse exchange. In the context of a delayed exchange, the Exchanger first sells the relinquished property using a Qualified Intermediary (“QI”). Once the sale of the relinquished property is complete, the Exchanger has 45 days to identify the replacement property and its improvements. Thereafter, the Exchanger enters into a purchase and sale contract for the replacement

property and enters into a written Qualified Exchange Accommodation Agreement (“QEAA”) with the QI’s Exchange Accommodation Titleholder (“EAT”). The Exchanger then assigns the rights to the purchase and sale agreement to the EAT which uses the exchange proceeds to acquire title to the replacement property and complete the identified improvements. Upon completion of the improvements, or at the end of the 180th day, whichever is earlier, the EAT transfers title to the newly improved replacement property to the Exchanger. If—in addition to the exchange proceeds—construction

financing is required to complete the improvements, the EAT will become the borrower under a nonrecourse loan. When the EAT transfers the property to the Exchanger, the Exchanger is substituted as the borrower and assumes the construction financing.

The replacement property and its improvements must be identified within 45 calendar days. If the replacement property is to be built, the identification requirement is satisfied if a legal description is provided for the underlying land and as much detail is provided regarding construction of the improvements as is practical. It is critical that the Exchanger receive “substantially the same” improvements/replacement property as those identified.

Likewise, the improvements must be completed and title conveyed by the EAT to the Exchanger within the earlier of 180 calendar days from the close of the relinquished property or the tax-filing date for the Exchanger.

Old Republic Exchange does not give tax or legal advice. Please consult with your tax advisor to insure whether an exchange is appropriate for your circumstances and to determine the proper structure for your exchange

