



## SIMULTANEOUS EXCHANGE VERSUS DELAYED EXCHANGE

We are often asked, given a choice, would we recommend a Simultaneous Exchange or a Delayed Exchange?

Many years in the past, a Simultaneous Exchange was preferred because there were few rules or guidelines on how to safely complete a Delayed Forward Tax Deferred Exchange. However, since the IRS has now issued specific Regulations for Forward Tax Deferred Delayed Exchanges, our answer has changed.

The IRS Regulations now provide a "safe harbor" for a Forward Delayed Exchange, which is handled by a Qualified Intermediary. Safe harbor rules are fairly clear and remove much of the uncertainty about how to successfully structure a Delayed Forward Tax Deferred Exchange. There are no corresponding IRS safe harbors for Simultaneous Exchanges.

A Simultaneous Exchange is a transaction in which the disposition of the Relinquished Property and the acquisition of the Replacement Property are accomplished in mutually interdependent escrows. Closing of the Relinquished Property cannot occur without the closing of the Replacement Property and vice versa.

Because the closing of the Relinquished and Replacement Property is mutually interdependent, the buyer of the Relinquished Property and the seller of the Replacement Property must be ready to perform at the same time. It also requires more cooperation from the buyer of the Relinquished Property and for the seller of the Replacement Property than does a Delayed Forward Exchange.

In a Simultaneous Exchange, the buyer of the Relinquished Property and the seller of the Replacement Property must execute an Exchange Agreement and Escrow Instructions that tie all of the property transfers together.

The Relinquished Property and the Replacement Property, possibly being located in different counties or states, can add more complexity to a simultaneous Exchange. A Simultaneous Exchange, taking place in different counties or states and on different dates, is theoretically possible but practically difficult.

Normally, business concerns or practical problems will dictate whether the exchange will be simultaneous or delayed. Sometimes the lender providing purchase money financing or title problems on either property make the simultaneous closing of the properties impossible. The difficulty of holding a Simultaneous Exchange together greatly increases if there are multiple exchanges or multiple target properties involved. Sometimes the Exchangor is unable to find the Replacement Property before the Relinquished Property is to close making a simultaneous transaction impossible.

To cooperate in a Delayed Forward Exchange, on the other hand, the Buyer of the Relinquished Property only has to execute a Substitution Agreement accepting the Qualified Intermediary as the substituted seller of the Relinquished Property. The closing of the Relinquished Property is not tied to the closing of the Replacement Property.

To cooperate in a Delayed Exchange, the seller of the Replacement Property only has to execute a Substitution Agreement accepting the Qualified Intermediary as the substituted buyer of the Replacement Property. The closing of the Replacement Property is not tied to the closing of the Relinquished Property.

The Simultaneous Exchange has one distinct advantage over a Delayed Exchange: the Replacement Property becomes the property of the exchangor on the date of closing of the Relinquished Property. All uncertainties about future events adversely affecting the ability of the exchangor to complete the exchange are removed. Unless the Replacement Property closes; the Relinquished Property does not close.

An unsuccessful Simultaneous Exchange means that the exchangor still has the Relinquished Property. An unsuccessful Delayed Exchange means that the exchangor also has a tax liability.

THIS LITERATURE IS PRODUCED TO PROVIDE A GENERAL OVERVIEW OF THE TAX-DEFERRED EXCHANGE PROCESS. YOU SHOULD NOT DEPEND UPON THIS LITERATURE WHEN DETERMINING WHETHER OR NOT YOU MAY WANT TO COMPLETE A TAX-DEFERRED EXCHANGE. YOUR DECISION TO DO SO RESTS ENTIRELY WITH YOU, WITH THE ADVISE OF YOUR OWN ACCOUNTING AND LEGAL PROFESSIONAL, WHETHER THAT BE YOUR ACCOUNTANT, C.P.A. OR ATTORNEY. WE ARE QUALIFIED INTERMEDIARY'S AND ARE BY I.R.S. REGULATION PRECLUDED FROM ACTING AS YOUR QUALIFIED INTERMEDIARY IF WE HAVE BEEN YOUR ATTORNEY OR ACCOUNTANT DURING THE TWO (2) YEAR PERIOD BEFORE YOUR EXCHANGE. AS YOU CAN SEE, OUR SERVICES AS FACILITATOR DO NOT REPLACE THE TRULY PROFESSIONAL SERVICES OF YOUR ATTORNEY OR ACCOUNTANT!