

# WHAT LANGUAGE SHOULD BE ADDED TO THE CONTRACT IN AN EXCHANGE?



## Compliments of

Although many Exchangers include language in their Purchase and Sale Agreement establishing their intent to perform an exchange, it is not required by the Internal Revenue Code.

### CONTRACTS MUST BE ASSIGNABLE

*It is important, however, that the Purchase and Sale Agreements for both properties are assignable.* In order to structure a typical exchange transaction, Asset Preservation, Inc. (API) must be assigned in as the Seller of the relinquished property and also as the Buyer of the replacement property. An Exchanger should review the contract to confirm they are not prohibited from assigning their position as either a "Seller" or "Buyer" to a Qualified Intermediary. When a typical exchange is initiated by Asset Preservation, API is shown as the Seller on the Settlement Statement instead of the Exchanger being reflected as the Seller.

### "LAST MINUTE" EXCHANGES ARE POSSIBLE

At Asset Preservation, many real estate investors contact our office *just minutes before closing on their transaction* and successfully convert a sale into an exchange. In most situations, a successful exchange can be accomplished as long as Asset Preservation is contacted prior to closing.

Many Exchangers and real estate agents add exchange language to the contract for a couple of reasons:

1. It establishes their intent to perform a §1031 tax deferred exchange;
2. To notify the other party in advance of the need to assign the contract to an Intermediary.

The language below is satisfactory to establish the Exchanger's intent to perform a tax deferred exchange and releases the other parties from costs or liabilities as a result of the exchange:

### SALE OF RELINQUISHED PROPERTY

*"Buyer is aware that Seller intends to perform an IRC Section 1031 tax deferred exchange. Seller requests Buyer's cooperation in such an exchange and agrees to hold buyer harmless from any and all claims, costs, liabilities, or delays in time resulting from such an exchange. Buyer agrees to an assignment of this contract by the Seller."*

### PURCHASE OF REPLACEMENT PROPERTY

*"Seller is aware that Buyer intends to perform an IRC Section 1031 tax deferred exchange. Buyer requests Seller's cooperation in such an exchange and agrees to hold seller harmless from any and all claims, costs, liabilities, or delays in time resulting from such an exchange. Seller agrees to an assignment of this contract by the Buyer."*



**ASSET PRESERVATION**  
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