

## How to Initiate a Build-To-Suit Exchange

**STEP 1**—Select a **QUALIFIED INTERMEDIARY** to assist you with the build-to-suit exchange as early in the process as possible. Key points to consider in selecting a Qualified Intermediary are: the **knowledge and experience** of the staff; the **professional assistance** provided by the Qualified Intermediary to your real estate agent, CPA and attorney; the **security of the property** while it is being held by the Qualified Intermediary, and the **security of the exchange funds** held by the Qualified Intermediary, which is of especially critical importance. **Investment Property Exchange Services, Inc. (IPX1031<sup>®</sup>)** is a subsidiary of Fidelity National Financial, Inc. (NYSE:FNF), a Fortune 500 company, and a leading provider of title and specialty insurance, claims management, information services and other real estate related services.

**STEP 2**—In all types of exchange transactions, always instruct your real estate agent to include an “Exchange Cooperation Clause” as an addendum to the purchase and sale agreement for both the relinquished property(ies) and the replacement property(ies) used in the exchange. IPX1031<sup>®</sup> has sample exchange cooperation addendums available for this purpose.

**STEP 3**—Contact your tax and/or legal advisor as early in the build-to-suit exchange process as possible to determine the advisability of completing a build-to-suit exchange and whether the exchange should be structured as “delayed” or “reverse”. Build-to-suit exchanges are significantly more expensive than delayed or simultaneous exchanges because they are more complex and require additional time and effort by the Qualified Intermediary to set up and administer. In addition, since the Qualified Intermediary or its affiliated Exchange Accommodation Titleholder must hold title to the replacement property to complete the exchange, the Qualified Intermediary has increased risk and liability, which significantly adds to the cost of the exchange.

**STEP 4**—Contact your Qualified Intermediary *as soon as possible after entering into the purchase and sale agreements* for the sale of the relinquished property and purchase of the replacement property and advise the Qualified Intermediary of the timing and closing of these transactions. **IPX1031<sup>®</sup> suggests two weeks prior notice to review the details of the build-to-suit exchange and to prepare the applicable exchange documents.** Both your attorney or accountant and IPX1031<sup>®</sup> must approve the transaction before IPX1031<sup>®</sup> will finalize the exchange documents. IPX1031<sup>®</sup> will work closely with your tax and legal advisors during every step of the transaction. IPX1031<sup>®</sup> has a National Reverse and Improvement Exchange Division that specializes exclusively in these types of transactions. IPX1031<sup>®</sup> will draft the appropriate Exchange Agreement, Assignment, Qualified Exchange Accommodation Agreement, Project Management Agreement, Exchange Closing Instructions, and other documents for execution prior to the close of the property being acquired as replacement property. In either a delayed or “safe harbor” reverse build-to-suit exchange, the timeframe for completing the exchange is only 180 days. Also, in any build-to-suit exchange the replacement property must be identified to the Qualified Intermediary with a description of the underlying land plus a description, in as much detail as practicable at the time of the identification, of the improvements to be completed by the end of the exchange. **DO NOT CLOSE ON THE RELINQUISHED PROPERTY WITHOUT A QUALIFIED INTERMEDIARY IN PLACE, AND DO NOT CLOSE ON THE REPLACEMENT PROPERTY WITHOUT ALL OF THE APPROPRIATE BUILD-TO-SUIT EXCHANGE DOCUMENTS IN PLACE.**

**STEP 5**—Prior to an IPX1031<sup>®</sup> subsidiary, acting as Exchange Accommodation Titleholder, taking title to the replacement property in the build-to-suit exchange, you must have hazard and commercial general liability insurance coverage naming the Exchange Accommodation Titleholder as an insured or additional insured for the amount of liability coverage specified

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### Brief Exchanges

*Investment Property Exchange Services, Inc. cannot provide advice regarding specific tax consequences. Investors considering an IRC §1031 tax deferred exchange should seek the counsel of their accountant and attorney to obtain professional and legal advice.* © 2009 Investment Property Exchange Services, Inc.

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## How to Initiate a Build-To-Suit Exchange *(Continued)*

by IPX1031<sup>®</sup>. In addition, prior to taking title to commercial, industrial, or raw land, IPX1031<sup>®</sup> must be provided with a copy of the Phase I Environmental Site Assessment report or other comparable environmental evaluation that is no more than six months old for review and approval. IPX1031<sup>®</sup> will require that the Phase I be certified to the Exchange Accommodation Titleholder and the Phase I must state that the property is free of contamination. Finally, each contractor or subcontractor that will work on the construction project must be licensed and have the appropriate insurance and a bond satisfactory to IPX1031<sup>®</sup>. IPX1031<sup>®</sup> follows federal 1099 reporting requirements.

**STEP 6**—If an IPX1031<sup>®</sup> Exchange Accommodation Titleholder is taking title to the replacement property, and if there is a third party lender, you must inform your lender that you will be completing a build-to-suit exchange and that the Exchange Accommodation Titleholder will be the borrower on the loan until such time as the replacement property is deeded to you. The loan must be non-recourse to the Exchange Accommodation Titleholder. For both delayed build-to-suit exchanges and “safe harbor” build-to-suit exchanges, IPX1031<sup>®</sup> can require that the Exchanger be a guarantor on the loan and that the Exchanger offer other collateral (other than the relinquished property), if necessary, to meet the lender’s underwriting guidelines. IPX1031<sup>®</sup> will work closely with your lender to assist them in understanding the build-to-suit exchange process.

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