# Build-to-Suit or Property Improvement Exchange

*Real 1031 is a national provider of Qualified Intermediary (QI) services for complex exchanges.*

**When an exchange involves replacement (new) property that is land to be constructed upon or a structure requiring improvements, a build-to-suit or a property improvement exchange will allow for the inclusion of the improvement costs in the exchange value of the replacement property. If the relinquished property is sold prior to the acquisition and improvement of the replacement property, the exchange is a FORWARD build-to-suit or improvement exchange. When the aquisition and improvement of the replacement property precedes the sale of the relinquished property, it is a REVERSE build-to-suit or improvement exchange.**

## FORWARD BUILD-TO-SUIT OR PROPERTY IMPROVEMENT EXCHANGE

### Step 1

The taxpayer or their advisor will contact an exchange facilitator such as Real 1031 to start a forward build-to-suit or property improvement exchange:

- **Call: 844.554.REAL (7325)**
- **E-mail: exchange@REAL1031.com**
- **Start an Exchange Now**

### Step 2

The taxpayer enters into a contract with their buyer for the sale of the relinquished (old) property. They also enter into a standard tax deferred exchange agreement with the QI. The taxpayer assigns their rights (but not their obligations) under the contract for the sale of the relinquished property to the QI and gives to the buyer written notice of this assignment on or before the closing. The net proceeds of the sale are paid directly into an exchange account with the QI.

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### Step 3

The taxpayer enters into a contract to purchase the replacement (new) property. This contract must allow for a third party, the EAT in this case, to acquire the property on behalf of the taxpayer. This third party is customarily a special purpose entity (SPE), typically an LLC, owned by the EAT and created strictly for the purpose of holding title to a specific property. The LLC is also referred to as Titleholder.

The taxpayer and the QI enter into a Qualified Exchange Accommodation Agreement (QEAA) for the replacement property in which the Titleholder will take title on the date of closing to the replacement property. The taxpayer assigns the replacement property purchase contract to the Titleholder so that the EAT may stand in the place of the taxpayer.

### Step 4

The taxpayer and the EAT enter into a contract for the sale of the replacement property to the taxpayer, to take place after the property is improved.

### Step 5

The taxpayer can direct funds from the sale of the relinquished property from the exchange account to the EAT. This is considered a partial payment from the taxpayer to the EAT under the Build-to-Suit or Property Improvement contract. The EAT, in turn will use these funds to purchase the replacement property.

## Step 6

Any improvements are begun following a written agreement with the contractor or other service provider. This agreement is executed by the Titleholder or assigned to the Titleholder by the taxpayer if it has already been executed. The taxpayer directs funds from the exchange account to the Titleholder progressively, as the work is done. Whenever a payment is to be made by the Titleholder, the taxpayer tenders a draw approval form to the Titleholder confirming that they are satisfied with the applicable work and that the Titleholder may make payment.

## Step 7

The taxpayer assigns its rights under the contract for the purchase of the replacement property, now being acquired from the EAT, to the QI and gives written notice of this assignment to the EAT, on or before the closing.

## Step 8

The taxpayer takes ownership of the replacement property via an assignment of the membership interest in the EAT, which transfers the membership interest in the titleholder LLC and the property it holds, from the EAT to the taxpayer. Alternatively, a deed may be issued to the taxpayer by the Titleholder and the LLC may be dissolved. The taxpayer takes the membership interest or the deed for the replacement property subject to the balance of any debt.

# REVERSE BUILD-TO-SUIT OR PROPERTY IMPROVEMENT EXCHANGE

The preceding steps outline a forward build-to-suit or property improvement exchange, in which the taxpayer sells the relinquished property prior to the acquisition of the replacement property. If the taxpayer wishes to acquire and begin the improvements on the new property before the sale of the old property, a reverse build-to-suit or property improvement exchange is necessary.

In the case of a reverse type exchange, funding to cover the purchase price and cost of improvements must be provided to the EAT from a bank and/or taxpayer loan. In this instance, the Titleholder will sign loan documents as the borrower, and the taxpayer signs as the guarantor of the loan. Any earnest money having been put down is considered part of the funds lent from the taxpayer to the Titleholder. These loans get paid back at the conclusion of the transaction when the exchange funds are used by the taxpayer to acquire the property from the EAT.


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