1031 Exchange Basic FAQs

45 days

You have 45 days after the sale of your relinquished property to identify your replacement property(ies). Identification of replacement properties must be unambiguous, using a legal description or physical address. It must be in writing, dated, signed, and received by your QI within the 45 days. The 45-day requirement is strictly enforced with no option for extension.

180 days

You have 180 days after the sale of your relinquished property to purchase your replacement property(ies). The 180-day requirement is strictly enforced with no option for extension. Additionally, your replacement period could be shorter if your tax return due date is prior to the expiration of the 180 days, if that is the case you will want to file an extension on your tax filing.

ID rules

The IRS provides three rules in which you can identify your replacement property(ies). The most common being the **3-property rule**, simply put you can identify three properties. The **200% rule** allows you to identify more than three properties so long as the fair market value of all properties does not exceed 200% of the sales price of your relinquished property. Lastly, the **95% rule** states that should you over identify the first two rules than you have to purchase 95% in value of what was identified.

LIKE kind

For a 1031 exchange to be valid, your properties must be like-kind. As it pertains to real estate, all real estate is like-kind to other real estate. Some examples would include: an apartment complex exchanged for a cell tower easement; an office building for farm land; or a rental home for water rights. Generally speaking, the only real estate that does not qualify under a 1031 exchange is a vacation home and personal primary residency.

ID rules to purchase

You have the option to purchase one or all of the properties you identified, you are not required to purchase all identified properties. Identifying more than one property just provides you with more options to ensure you have a replacement property within the 180-day exchange period. Additionally, you need to state how many properties you plan to purchase.

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1031 Exchange FAQs

1. WHAT IS A QUALIFIED INTERMEDIARY (QI)?

A Qualified Intermediary, or QI, **is an unrelated third party used to facilitate the 1031 exchange transaction.**

2. CAN I DO AN EXCHANGE WITH MORE THAN ONE PROPERTY?

Yes, you are allowed to exchange multiple properties. You can relinquish multiple properties for one replacement property, or vice-versa you can exchange one relinquished property for multiple replacement properties. The key is you want your replacement property(ies) to be equal or greater in value than your relinqished property(ies) to avoid taxable boot.

3. DOES THE NAME OF THE TITLE FOR MY REPLACEMENT PROPERTY MATTER?

Yes, with few exceptions, **the title to the replacement property must be in the same name, or entity,** as the relinquished property was held.

4. CAN I REFINANCE THE RELINQUISHED PROPERTY PRIOR TO THE EXCHANGE OR THE REPLACEMENT PROPERTY AFTER THE EXCHANGE?

While there is nothing in the Regulations on this question, **for technical reasons it is considered bad practice to refinance in anticipation of entering an exchange.** Refinancing after an exchange to pull some equity out is considered proper.

5. AM I ALLOWED TO USE EXCHANGE FUNDS FOR IMPROVEMENTS ON REPLACEMENT PROPERTY?

Yes, as long as your exchange is structured properly. The best method to accomplish this is to have a Special Purpose Entity acquire title to the replacement property, the Special Purpose Entity will complete the improvements and then you, as the exchanger, will acquire the replacement property from the Special Purpose Entity through a built-to-suit or improvement exchange.

6. WHAT IS A REVERSE EXCHANGE?

A reverse exchange is an exchange where the replacement property is purchased before the relinquished property is sold. Reverse Exchanges are more complex and your QI should be involved in all steps and planning to ensure it is completed in accordance with IRC § 1031.

7. CAN SOME OF THE MEMBERS OF AN LLC DO THEIR OWN EXCHANGE OR CASH OUT AT THE TIME OF THE SALE OF THE PROPERTY?

The IRS Code does not allow members/partners to do his or her own exchange, only the entity can do so. Given enough preplanning, there is a technique referred to as a "drop & swap" whereby certain members/partners can drop their interest from the entity and enter the exchange individually and not at a member/partner.

8. IN A REVERSE EXCHANGE, SINCE THE ACCOMMODATOR WILL BE IN TITLE, DOES THAT MEAN IT COLLECTS THE RENT FROM THE PROPERTY TENANTS?

No, typically, the Accommodator will Master Lease the property to the taxpayer enabling the taxpayer to manage the property, collect the rent and pay for expenses.

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