

1031 Exchange Answers to Commonly Asked Questions

Qualified Intermediary

-Is a Qualified Intermediary (AKA accommodator or QI) needed?

Yes. The IRS requires the use of an intermediary in virtually every 1031 transaction and the exchanger must enter into written agreements with the QI before the relinquished property is sold.

Like Kind

-Can I sell my rental house and buy a 4plex? Can I sell my vacant lot and buy a rental house?

Yes, you can buy ANY kind of business or investment real estate, anywhere in the US. You can sell the rental house and buy apartments, commercial, industrial, mini storage, bare land, agricultural, etc.

Timing

-Can I buy the replacement property first?

Yes, but that is called a “reverse exchange”, which is more expensive and more work.

Time Deadlines

-Do I have to be in contract by the 45 days?

The identification form only requires that you give us the addresses to the properties you are identifying by the 45th day. However if they are sold to someone else on Day 46, you are out of luck. So it is recommended that you are in a firm contract by then.

-Do I have to buy from the properties I've identified?

Yes. During the 45 days you can change what you've identified, but once your identification period is up, you must buy from only that list. No substitutions or changes after day 45.

-Can I get an extension on the 45 day identification period?

No. Unless you have been affected by a federally declared disaster, the IRS doesn't have any provisions for extensions or exceptions – not even to the next business day if the deadline falls on a weekend or holiday. The best way to get more time is to start looking for your replacement property well before the closing of your sale property or to extend the closing date on your sale property.

Vesting and Title

-Do I need to buy the replacement property in the exact same vesting as I sold?

No. It needs to be the same TAXPAYER. So you can sell the property in your revocable trust and buy it in your name because you are the same taxpayer. However you cannot sell as a partnership and buy as individuals – those are not the same taxpaying entities.

Money

-Do I just need to reinvest my profit?

No. To defer all your taxes, you need to replace the entire net sales price of what you sell, not just the gain. [“Net” refers to the sales price less the closing costs, such as escrow, title, and broker fees. Do NOT subtract the loan balance.]

-Do I have to replace my existing loan amount?

Yes, you are not just reinvesting the equity, you need to buy equal or greater to the entire net sales price.

-Do I have to get another loan?

You need to replace the VALUE of the loan. Either with another loan or with additional cash you may have.

Moving In

-Can I move into the property I buy?

The replacement property needs to be purchased with the intent of being a business or investment property. In 2008 the IRS issued a safe-harbor (Rev. Proc. 2008-16) that defines how to treat your replacement property for the two-year period after the exchange in order to safe-harbor your exchange. A common belief is that you can then convert it to personal use. However, any type of conversion needs to be discussed with your tax advisor first.

Family

-Can I rent the property to my child or other family member?

Yes, but they need to be treated like a regular tenant, including paying fair market rent for the property.

-Can I buy the property with someone else?

Yes, but you would need to buy the property as tenants-in-common, where your share of the property should be equal or greater to what you sold. Also, do not create a partnership or multiple-member LLC to own the property. How you structure the co-ownership of property coming out of an exchange should be discussed with your tax advisor.

Improvements

-Can I get money back for making improvements to the property before I sold it?

What you did with the property is a separate issue from the exchange itself. If you receive some cash back at the close of escrow to “pay yourself back” that is taxable boot. However, your tax advisor may be able to create some tax deductions to offset your taxable boot.

-Can I use money from the exchange to improve the new property after I buy it?

The day you take title to the property is the end of the exchange for that property. If you have cash left over, that is taxable boot. There is something called a build-to-suit or improvement exchange, where we, as the intermediary, take title to the property to make the improvements before you take ownership. This is also a more expensive and complicated transaction.



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