



Qualified Intermediary

Is a Qualified Intermediary (QI or Accommodator) needed?

Yes, unless you are doing a simultaneous swap with another party. If the exchange is not simultaneous or you are selling to one party and buying from another party, a QI, like IPX1031® must be engaged before the relinquished property is transferred. A QI must not be an agent of the taxpayer.



Like Kind

Can I sell my rental house and buy a 4plex? Can I sell my vacant lot and buy a rental house? Yes, virtually all business or investment real estate located in the U.S. is "like-kind". You can sell the rental house and buy apartments, commercial, industrial, mini storage, bare land, agricultural, etc.



Time Deadlines

Do I have to be in contract by the 45 days? No. The regulations only require that potential replacement property be unambiguously designated in a writing signed by you and delivered to a qualified person (usually the QI) by the 45th day of the exchange. However if the property or properties are sold to someone else on Day 46, you are out of luck. So it is ideal that you are in a firm contract by then and identify backups.

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 has expired, you must buy from only that list. No substitutions or changes are permitted by the statute 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 of your sale property or to extend the closing date on your sale property.



Timing

Can I buy the replacement property first? Yes, but that is called a "reverse exchange", which is more expensive, more complicated and has its own set of rules and regulations that must be followed.



Vesting and Title

Do I need to buy the replacement property in the exact same vesting as I sold? No. However, 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 have a full tax deferral, you need to do three things: buy equal or greater in value compared to the property you sold, reinvest the entire net sales proceeds from the property you sell into your new investment property AND replace the value of the loan that you had on your old investment property.

Do I have to get another loan? Not necessarily. You need to replace the VALUE of the loan. This can be achieved through a loan on the new investment property, additional cash from outside of your 1031 Exchange or a combination of both.



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 Revenue Procedure 2008-16. It provides a procedure to convert an investment property to a personal use property after a two-year period from when the 1031 Exchange is completed. However, a conversion of this type needs to be discussed with your tax advisor.



Family

Can I rent the property to my child or other family member? Yes, but they need to be treated like a non-related tenant, including paying fair market rent for the property.

Can I buy the property with someone else? Yes, but you need to buy the property as tenants-in-common, where your share of the property will be equal or greater to what you sold (to have a fully tax deferred exchange). 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 your 1031 Exchange. If you receive some cash back at the close of escrow to "pay yourself back" that may be considered to be taxable boot. However, your tax advisor may be able to create some tax deductions to offset some or all of the taxable boot.

Can I use money from the exchange to improve the new property after I buy it? No. However there is another option called a build-to-suit or improvement exchange, where the QI, through a separate entity, takes title to the property while the improvements are made and then transfers the improved property to you. Like a reverse exchange, this is a more expensive and complicated transaction so call us today to find out if it makes sense for you.