

Key Requirements

Basic Requirements for a Successful Exchange

IRC §1031 states that:

"No gain ... shall be recognized on the exchange of property held for productive use in a trade or business or for investment if such property is exchanged solely for property of like kind ...".

To qualify, the following requirements must be met:

- ▶ There must be at least two properties in an exchange:

One (or more) that you are selling, and one (or more) that you are replacing it with.

- ▶ The properties being exchanged must "qualify":

They must be held for use in trade or business (e.g., office building, warehouse, industrial space, farmland, retail building) or for investment (e.g., raw land, rental home/apartment/condo). The properties that you are exchanging do not have to be identical. All of the above examples are "like kind" in nature, so you can exchange land for warehouse, office for rental home, etc.

Property that you own for personal use (e.g., your primary residence or a vacation home) does not qualify for a 1031 exchange.

- ▶ To defer ALL of your capital gains:

The purchase price of your replacement property(s) must be equal to or greater than the sales price of your relinquished (sold) property(s).

All of your sale equity (cash) must be reinvested in the replacement property(s).

- ▶ You MUST use a "Qualified Intermediary" (Accommodator).

The IRS will not allow you to receive cash proceeds or take "constructive receipt" of the funds in any way, or else you will be taxed.

It is the accommodator who legally sells Property A to buy replacement Property B on behalf of the taxpayer, creating an exchange of properties. The client has the freedom to identify what he wants to sell and what he wants to replace it with, but the accommodator is the legal vehicle through which the properties are transferred.

The accommodator guides the 1031 process and provides appropriate documentation that enables qualification. Most importantly, the accommodator must be totally independent: it cannot provide tax, legal, or financial advice to you.

- ▶ Timing rules must be met

Failure to meet any of these deadlines will disqualify the exchange:

Prior to closing on the relinquished property: demonstrate intent to perform an exchange via a written agreement with the accommodator.

Within 45 days from the closing date on the relinquished property: identify one or more potential replacement properties.

Within 180 days from the closing date on the relinquished property: acquire one or more of the replacement properties which have been identified.