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INVESTOR GUIDE · UPDATED OCTOBER 3, 2026

The 1031 *exchange*

How real estate investors defer capital gains tax when they sell one property and buy another: the rules, the deadlines, the costs, the mistakes to avoid, and a worked example.

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PLEASE READ FIRST

Education, *not advice*

I am a licensed real estate advisor, not a CPA, tax advisor or attorney. This guide is general education drawn from the Internal Revenue Code, Treasury regulations, IRS guidance and industry sources. It is not tax or legal advice.

Why it matters

A 1031 exchange has strict, unforgiving rules. One misstep, like receiving the sale money, can make the whole gain taxable.

Who should guide it

Your CPA or tax attorney, plus a qualified intermediary engaged before your sale closes.

Where I help

Finding and negotiating replacement property within the 45-day window and coordinating both closings.

What is a *1031 exchange*?

Section 1031 of the Internal Revenue Code lets you sell investment or business real estate and put off paying capital gains tax and depreciation recapture, as long as you reinvest the proceeds in other "like-kind" real estate through a qualified intermediary.

Defer

It is a deferral, not a tax exemption. The gain carries over into the new property's basis.

Real estate only

Since 2018, only real property qualifies. Equipment, vehicles and art no longer do.

Investment use

Both properties must be held for investment or business use. Your home and flips don't qualify.

Six reasons to *exchange* instead of sell



Defer the tax

Capital gains and depreciation recapture are postponed, so the full equity keeps working.



Trade up

Move from smaller properties into a larger one with more income or better appreciation.



Change location

Sell in one market and buy in another, as long as both are U.S. real estate.



Consolidate or diversify

Swap several rentals for one, or one building for several.



Less management

Trade a hands-on rental for net-leased commercial property or a passive DST interest.



Plan for heirs

Keep deferring until death; heirs generally get a step-up in basis and the deferred gain disappears.

ELIGIBILITY

What qualifies, and *what doesn't*

QUALIFIES

- ✓ Rental homes and condos
- ✓ Apartment and commercial buildings
- ✓ Land held for investment
- ✓ Office, retail and industrial property
- ✓ Vacation home rented under IRS safe harbor
- ✓ DST or tenant-in-common interests

DOES NOT QUALIFY

- ✗ Your primary residence
- ✗ Fix-and-flip or dealer inventory
- ✗ Stocks, bonds or LLC/partnership interests
- ✗ Foreign property for U.S. property
- ✗ Personal property (since 2018)

How long must you own it *before you exchange?*

No minimum in the law

Section 1031 only requires the property be “held for productive use in a trade or business or for investment.” Your intent at the time of the exchange is what counts.

Common practice: 1–2 years

Many CPAs and exchange companies suggest holding at least one year, ideally across two tax years, so the property shows up as a rental on two returns.

IRS safe harbor: 24 months

For homes, Rev. Proc. 2008-16 is the only IRS-approved timeline: own 24 months, rent at market rate 14+ days in each 12-month period, and keep personal use to the greater of 14 days or 10% of rental days.

Same rule after the exchange

The safe harbor applies to the replacement property too: rent it on the same terms for 24 months before you use it yourself.

TAXPAYER LOST Goolsby v. Commissioner (T.C. Memo. 2010-64)

Owners moved into the replacement property about two months after the exchange, with little effort to rent it. The exchange was disallowed.

TAXPAYER WON Reesink v. Commissioner (T.C. Memo. 2012-118)

Owners advertised and showed the replacement property for rent, then moved in about eight months later. The court found genuine investment intent.

Not a CPA or attorney. Sourced from 26 U.S.C. §1031, Rev. Proc. 2008-16 and U.S. Tax Court decisions. Confirm with your tax advisor.

You decide to rent out your home. *Does it qualify?*

Second home → rental

Treat it as a business: rent it at market rate, cut back personal use and follow the 24-month safe harbor before exchanging. A home you mostly use yourself won't qualify, however it's titled.

SAFEST PATH: 24 MONTHS

Primary home → rental

Once you move out and rent it, it can become investment property. Rev. Proc. 2005-14 lets you combine the home-sale exclusion with a 1031: exclude up to \$250,000 (\$500,000 married) and defer the rest, including depreciation recapture.

SELL WITHIN ABOUT 3 YEARS OF MOVING OUT TO KEEP THE EXCLUSION

Rented a few months, then sold

There's no safe date, and a short rental invites an audit. If the IRS decides it was still a personal home, the exchange fails and the gain is taxed.

RISKY: TALK TO YOUR CPA FIRST

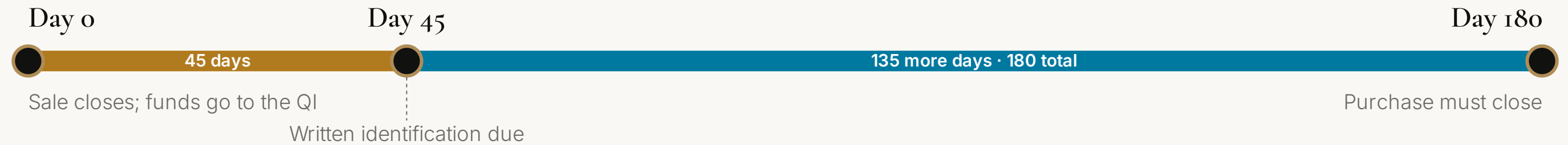
Example · Section 121 + 1031 (Rev. Proc. 2005-14)

Married couple, bought for \$400,000, lived there, then rented it. Sold for \$1,300,000 within 3 years of moving out: \$900,000 gain. Exclude \$500,000 (cash up to that amount is tax-free), and defer the other \$400,000 by buying replacement property worth at least \$800,000. Simplified: ignores closing costs and mortgages.

What proves investment use: market rent, real tenants, little personal use, rental income and depreciation on Schedule E. Not a CPA or attorney; confirm with your tax advisor.

THE CLOCK

45 days to identify. *180 days* to close.



The periods run at the same time and are not extended for weekends or holidays. Day 180 moves earlier if your tax return is due first.

Example

Sale closes March 2. Identification is due April 16. The purchase must close by August 29.

Tax return trap

Sell in December and day 180 lands after April 15. File a tax extension or the deadline shrinks to your return's due date.

Disasters only

The IRS extends these deadlines only for federally declared disasters (Rev. Proc. 2018-58), never for financing delays.

THE RULES

Six rules for a *fully tax-deferred* exchange

Use a qualified intermediary

The sale proceeds must go to a QI, never to you. Touching the money, even briefly, generally kills the exchange.

Identify within 45 days

Name replacement property in writing, signed and delivered to the QI by midnight of day 45. No weekend or holiday extensions.

Close within 180 days

Acquire the replacement by day 180, or by your tax return due date if earlier. File an extension if the return would come due first.

Buy equal or greater value

To defer all tax, the replacement price should be at least the net sale price and you should reinvest all of the net cash.

Replace the debt

If your old mortgage was \$500K, the new property needs \$500K of new debt, or you add cash to make up the difference.

Same taxpayer on title

The person or entity that sells must be the one that buys. A single-member LLC you own counts as you.

How many properties can you *name*?

3-property rule

Identify up to three properties of any value.
This is what most investors use.

200% rule

Identify more than three, as long as their total value is no more than 200% of what you sold.

95% rule

Identify any number of any value, but you must actually buy at least 95% of the total value identified.

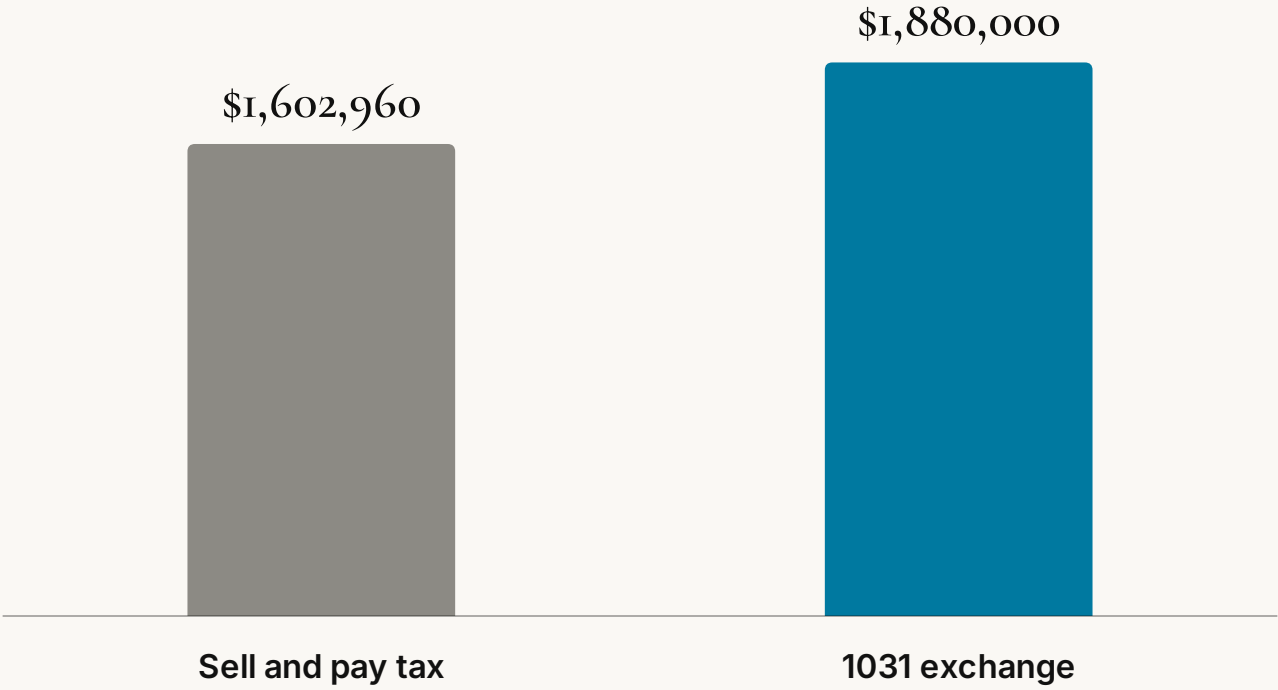
Tip: Identify a backup. If your first choice falls through after day 45, you can only buy what's on your list. Many investors add a DST as a safety net.

Selling a \$2M rental: *sell vs. exchange*

Sale price	\$2,000,000
Selling costs	-\$120,000
Adjusted basis (after \$400,000 depreciation)	-\$800,000
Taxable gain	\$1,080,000
25% on depreciation recapture	\$100,000
20% on the remaining gain	\$136,000
3.8% net investment income tax	\$41,040
Federal tax if sold	≈ \$277,040

Assumes top federal brackets and no Florida income tax. Your rates depend on your income.

Cash available to reinvest



With the exchange, about \$277,040 more stays invested. At a 6% return, that's about \$16,622 a year of extra income.

BOOT

What makes part of an exchange *taxable*

"Boot" is anything you receive that isn't like-kind real estate. It's taxable up to the amount of your gain.

USING THE \$2M EXAMPLE (\$1,880,000 NET SALE)	RESULT
Buy a \$2.1M property, reinvest all \$1,880,000 of net proceeds, replace the debt	Fully deferred
Buy a \$1.7M property	About \$180K of boot is taxable
Keep \$100K of the cash at closing	\$100K of boot is taxable
Old loan \$600K, new loan \$400K, no extra cash added	\$200K of mortgage boot is taxable

Partial exchanges are allowed. You can take some cash and defer the rest.

Six ways to *structure* it

Delayed exchange

The standard: sell first, buy within 180 days.
The vast majority of exchanges.

Simultaneous exchange

Sale and purchase close the same day. Rare today.

Reverse exchange

Buy the new property first; an accommodator holds title until you sell (Rev. Proc. 2000-37).

Improvement / build-to-suit

Use exchange funds to improve the replacement property before you take title.

DST (Delaware Statutory Trust)

Buy a fractional interest in institutional property; fully passive (Rev. Rul. 2004-86).

Tenant-in-common (TIC)

Co-own a property with other investors as a deeded fractional owner.

STEP BY STEP

How a delayed exchange *works*

01

Plan before you list

Talk to your CPA and a qualified intermediary before signing a sale contract.

02

Add exchange language

Both contracts should include a 1031 cooperation clause; the other party signs an assignment to your QI.

03

Close the sale

Proceeds wire directly to the QI. Day 0 starts the clock.

04

Identify by day 45

Send your signed written identification to the QI.

05

Close the purchase by day 180

The QI wires funds to the closing; title goes to the same taxpayer.

06

File Form 8824

Report the exchange on your tax return for the year of the sale.

What it *costs*, and Florida specifics

ITEM	TYPICAL RANGE
Qualified intermediary, standard delayed exchange	\$600 – \$1,500
Each additional replacement property	\$250 – \$500
Reverse or improvement exchange	\$3,000 – \$10,000+
Normal closing costs on both sides	Title, doc stamps, recording, lender fees
CPA to prepare Form 8824	Varies

No Florida income tax

Florida doesn't tax capital gains, so the federal tax is the main concern. Property sold in another state may still be taxed there.

Doc stamps still apply

The exchange defers income tax only. Florida documentary stamp tax and closing costs apply to both deeds.

Foreign sellers

FIRPTA requires 15% withholding unless the IRS issues a withholding certificate; apply before closing.

AVOID THESE

Seven mistakes that *break* an exchange

- | | | | |
|----|---|----|---|
| 01 | Receiving the sale proceeds, even for a day | 05 | Buying from a related party who then sells within two years |
| 02 | Missing day 45 or day 180 (only federally declared disasters can extend them) | 06 | Using your own agent, attorney or CPA from the last two years as the QI (a disqualified person) |
| 03 | Buying a lower-priced property or taking less debt without adding cash | 07 | Exchanging a property held primarily for resale (a flip) |
| 04 | Changing who is on title between the sale and the purchase | | |

"Swap till you *drop*"

Each exchange carries the old basis forward, so the deferred gain keeps growing. But when an investor dies, heirs generally receive the property with a step-up in basis to market value, and the deferred gain is usually never taxed.

Exchange 1

Sell a \$500K condo, buy a \$1M duplex. Gain deferred.

Exchange 2

Sell the duplex for \$2M, buy a \$3M building.
More gain deferred.

At death

Heirs inherit the building at market value.
Decades of deferred gain generally disappear.

See the Trust Education guide for how to hold investment properties so heirs keep the step-up.

Questions clients *ask me*

What is a 1031 exchange?

A tax-deferral strategy under Section 1031 of the Internal Revenue Code. When you sell investment or business real estate and reinvest the proceeds in other like-kind real estate through a qualified intermediary, capital gains tax and depreciation recapture are postponed.

What are the 45-day and 180-day rules?

You have 45 days from the sale closing to identify replacement property in writing, and 180 days from the sale (or your tax return due date, if earlier) to close on it. The two periods run at the same time, and weekends and holidays don't extend them.

Can I do a 1031 exchange on my primary residence?

No. A primary residence doesn't qualify. Homeowners may instead exclude up to \$250,000 of gain (\$500,000 for married couples) under Section 121 if they owned and lived in the home two of the last five years.

Does a vacation home qualify for a 1031 exchange?

It can, under the IRS safe harbor in Rev. Proc. 2008-16: own it at least 24 months, rent it at fair market value for 14 or more days in each of the two years, and limit personal use to the greater of 14 days or 10% of days rented.

How long do I have to own a property before I can do a 1031 exchange?

The tax code sets no minimum holding period. The property must be 'held for productive use in a trade or business or for investment,' which depends on your intent and the facts. Many CPAs and exchange companies suggest at least one year, ideally spanning two tax years, and the only IRS-approved timeline is the 24-month safe harbor for homes in Rev. Proc. 2008-16. The shorter the hold, the more likely the IRS will question it.

If I start renting out my home or second home, how soon can I exchange it?

There's no fixed date, but renting it for only a few months before selling is risky. The IRS and the Tax Court look at whether it truly became an investment: market rent, real tenants, little or no personal use, and rental income and depreciation reported on your return. To be safe, follow the 24-month safe harbor: own it 24 months, rent it at market rent 14+ days in each 12-month period, and limit personal use to the greater of 14 days or 10% of rental days.

Questions clients *ask me*

Can I use the home-sale exclusion and a 1031 exchange together?

Yes, if the home was your primary residence and then became a rental. Under Rev. Proc. 2005-14 you apply the Section 121 exclusion first (up to \$250,000, or \$500,000 married, if you lived there 2 of the last 5 years) and then defer the rest of the gain, including depreciation recapture, with a 1031 exchange. Because of the 2-of-5-year rule, you generally need to sell within about 3 years of moving out.

What if I rented my home for only a few months and then sold it through a 1031?

The IRS could disallow the exchange and tax the gain. Courts have gone both ways: in Goolsby (2010) owners who moved into their replacement property about two months after the exchange lost, while in Reesink (2012) owners who moved in after eight months won because they had genuinely tried to rent it first. Facts and documentation decide these cases, so talk to your CPA before you sell.

What is 'like-kind' property?

For real estate, almost any U.S. investment or business real property is like-kind to any other: a condo for land, an apartment building for a warehouse. U.S. and foreign property are not like-kind to each other.

What is boot?

Cash or debt relief you receive that isn't reinvested. Boot is taxable up to the amount of your gain. Buying a cheaper property, keeping some cash, or taking on less debt all create boot.

Do I have to reinvest all the money?

To defer all of the tax, yes. Reinvest all net proceeds and buy property of equal or greater value. You can keep some cash, but that portion is taxable.

What does a qualified intermediary do?

The QI holds your sale proceeds, prepares the exchange documents, receives your identification and wires funds to the purchase. Your own agent, attorney, CPA or employee from the past two years cannot serve as your QI.

Questions clients *ask me*

How much does a 1031 exchange cost?

Qualified intermediary fees commonly run about \$600 to \$1,500 for a standard delayed exchange, with more for extra properties and \$3,000 to \$10,000 or more for reverse or improvement exchanges, plus normal closing costs.

Can I buy the new property before I sell?

Yes, through a reverse exchange. An exchange accommodator takes title to the new property and holds it until you sell the old one, all within 180 days. It costs more and often needs cash or special financing.

Can I move into a property I bought through a 1031 exchange?

Eventually, but carefully. It must first be held for investment. If you later convert it to a residence, you must own it at least five years before you can use the home-sale exclusion, and part of the gain may still be taxable.

Does Florida tax capital gains?

No. Florida has no state income tax, so the federal tax is the main concern. If you sell property in another state, that state may still tax the gain, and some, like California, track the deferred gain.

What happens to the deferred tax when I die?

Your heirs generally receive the property with a step-up in basis to market value, so the deferred gain is usually never taxed. Investors call this 'swap till you drop.'

Can a foreign seller do a 1031 exchange?

Yes, but FIRPTA generally requires 15% of the sale price to be withheld unless the IRS issues a withholding certificate, which should be applied for before closing.

Questions clients *ask me*

Can I exchange into a DST?

Yes. A Delaware Statutory Trust interest qualifies as real property for 1031 purposes (Rev. Rul. 2004-86). DSTs are passive and are often used as backup identifications, but they are securities with their own fees and risks.

Do doc stamps and closing costs still apply?

Yes. A 1031 exchange defers income tax only. Florida documentary stamp tax, title insurance and other closing costs apply to both the sale and the purchase.

What form do I file?

IRS Form 8824, Like-Kind Exchanges, with your tax return for the year you sold the relinquished property.

Verify before you rely

26 U.S.C. §1031, Exchange of real property, Cornell LII
law.cornell.edu

Treas. Reg. §1.1031(k)-1, Deferred exchanges, Cornell LII
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Instructions for Form 8824 (2025), IRS
irs.gov

Identification rules, IPX1031
ipx1031.com

Qualified intermediary fees, 2026, Universal Pacific 1031
universalpacific1031.com

Exchanges under Code Section 1031, American Bar Association
americanbar.org

Rev. Proc. 2008-16, Vacation home safe harbor, IRS Internal Revenue Bulletin 2008-10
irs.gov

Rev. Proc. 2005-14, Combining Sections 121 and 1031, Tax Notes
taxnotes.com

26 U.S.C. §121, Exclusion of gain from sale of principal residence, Cornell LII
law.cornell.edu

Reesink v. Commissioner, T.C. Memo. 2012-118, U.S. Tax Court (via Asset Preservation)
apiexchange.com

Goolsby v. Commissioner, T.C. Memo. 2010-64, 1031 Corp.
1031corp.com

How long to hold?, Asset Preservation, Inc.
apiexchange.com

Using Sections 121 and 1031 together, IPX1031
ipx1031.com



PLANNING AN EXCHANGE?

Geva Bar P.A.

Real Estate Advisor at Compass. I help investors find and secure replacement property inside the 45-day window, negotiate both sides, and coordinate with your QI, CPA and closing attorney.

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