



The 45-Day 1031 Identification Checklist

What Every Commercial, Multifamily, and Land Owner Needs to Know Before the Clock Runs Out

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Why This Checklist Matters

Two Clocks Are Already Running

If you have closed on the sale of a commercial building, a multifamily property, or a parcel of land and intend to use a Section 1031 exchange, two statutory clocks are already running. You have **45 calendar days** from closing to identify qualified replacement property in writing, and **180 calendar days** to close on it. Both numbers are fixed by the Internal Revenue Code. Neither moves for a holiday, a slow closing table, or a seller who has not yet decided what to buy.

Why Exchanges Fail

Most failed exchanges do not fail because the tax strategy was wrong. They fail because the seller ran out of qualified candidates inside the 45-day window, or accepted an undesirable property, undesirable debt, or an active management burden simply to satisfy the identification rule. This checklist is built to prevent that outcome. It walks through the identification window stage by stage, and it introduces a qualified replacement property category many real estate attorneys and Qualified Intermediaries never raise: a **direct working interest in producing oil and gas property**, which the IRS has long classified as real property eligible for like-kind exchange treatment under Revenue Ruling 68-331.

For owners who have already missed the window, or who know a portion of their proceeds will come back as boot, a second and separate path is outlined below: using a capital contribution into a working interest structured for an IRC Section 263(c) intangible drilling cost deduction to offset the taxable gain.

Before You Begin

Confirm the following before working through the stage-by-stage items:

Closing Date Confirmed

The exact closing date of the relinquished property. This date is **Day 0** for both the 45-day and 180-day clocks.

QI Engaged Before Closing

A Qualified Intermediary was engaged and had an executed exchange agreement in place **before** the relinquished property closed. A QI engaged after closing cannot rescue the exchange.

Gain & Boot Calculated

The realized gain on the sale, and any anticipated boot — cash received or net debt relief — that will not be rolled into replacement property.

Advisors Looped In Early

Your CPA and your exchange attorney are both looped in at the start, **not after Day 45**.

Deadlines on the Calendar

You have calculated Day 45 and Day 180 on an actual calendar. These are **calendar days, not business days**, and they run concurrently from the same closing date, not sequentially.

Day 1 to Day 30: Immediate Actions & Narrowing the Field

DAY 1–10

Immediate Actions

1. Confirm the Qualified Intermediary holds the exchange proceeds directly; funds that pass through your hands first disqualify the exchange.
2. Calendar the exact Day 45 and Day 180 deadlines and share them with your CPA, attorney, and QI.
3. Notify your CPA of the realized gain and any expected boot so tax projections start immediately.
4. Begin sourcing qualified replacement property candidates, including traditional real estate and direct working interest positions in producing oil and gas property.
5. Request working interest documentation from any operator or joint venture sponsor under consideration: lease name, well name, API number, and county and state of the property.
6. Confirm whether the candidate working interest is held directly or through a fund or membership structure. Only a direct interest supports like-kind treatment.

DAY 11–30

Narrowing the Field

1. Narrow your replacement property candidates to a realistic, fundable shortlist.
2. Confirm each candidate is held, or will be held, for productive use in a trade or business or for investment, consistent with Section 1031(a).
3. Decide which identification rule you will use: the **Three-Property Rule**, the **200% Rule**, or the **95% Rule**.
4. Draft the written identification description for each candidate. Real estate requires a legal description; a working interest requires an unambiguous description — lease name, well name, API number, and county and state.
5. Confirm who will receive your written identification: your QI or another party who is not a disqualified person.
6. Review governance rights, capital contribution terms, and the operating agreement for any working interest candidate with your attorney before finalizing identification.

Day 31 to Day 45: Final Identification Window

- ⊗ There is no weekend or holiday extension. Deliver your signed identification before midnight on Day 45 — no exceptions.

1 Finalize and Sign

Finalize and sign the written identification notice before the deadline.

2 Deliver to QI

Deliver the signed identification to your QI or non-disqualified party before midnight on Day 45. Retain proof of delivery: a timestamped email, courier receipt, or fax confirmation.

3 Verify Rule Compliance

If using the 200% Rule, confirm total identified value does not exceed 200% of the relinquished property's sale price. If using the 95% Rule, confirm you can realistically close on at least 95% of everything identified. Treat the 95% Rule as a last resort, not a primary plan.

4 Revoke & Replace if Needed

If a candidate falls through before Day 45, revoke and replace the identification in writing. Identification can be changed any number of times before the deadline, but **never after it**.

Day 46 to Day 180: Closing Window



Complete due diligence on each identified property or working interest position. Confirm title, the joint operating agreement, and governance rights for any working interest acquisition before funds are released. Coordinate closing logistics with your QI for the transfer of exchange funds to the replacement property. Close on the replacement property on or before Day 180, or your tax return due date if that falls earlier. File Form 8824 with the tax return for the year of the exchange. Request a final accounting from your QI reconciling proceeds, any boot, and the cost basis carried into the replacement property.

Direct 1031 Like-Kind Replacement Path: Working Interests Under Revenue Ruling 68-331

A direct working interest in a producing oil and gas lease is a qualified replacement property category that many real estate attorneys and Qualified Intermediaries never raise. The IRS has long classified this as real property eligible for like-kind exchange treatment.

1	Producing Lease Confirmed Confirm the replacement interest is a working interest in a producing lease. Revenue Ruling 68-331 addresses a lessee's interest in a producing oil lease extending until exhaustion of the deposit.
2	Held for Business or Investment Confirm the interest will be held for productive use in a trade or business or for investment — the same standard applied to the real estate being sold.
3	Direct Interest Only Confirm the acquisition is structured as a direct working interest , not a membership interest in an LLC, a limited partnership unit, or a fund share. An indirect interest in an entity that owns qualifying property does not itself qualify for Section 1031, even if the entity's underlying assets would.
4	Attorney Review of Operating Agreement Review governance rights, the capital contribution schedule, and operating agreement terms with your attorney before closing, since you are taking on an active working interest owner position, not a passive security.
5	QI Familiar with Resource-Based ID Confirm your Qualified Intermediary has handled, or has engaged counsel familiar with, a resource-based identification. Many QIs have never identified a working interest and will need the lease name, well name, API number, and county and state spelled out clearly in the identification notice.

Tax Boot Mitigation Path: For Unavoidable Boot or a Missed Window

When Boot Is Unavoidable

For owners who have already missed the window, or who know a portion of their proceeds will come back as boot, a capital contribution into a working interest structured for an IRC Section 263(c) intangible drilling cost deduction can offset the taxable gain.

1. Calculate the exact boot amount — cash received plus net debt relief — that will be taxed as capital gain outside the exchange.
2. Confirm with your CPA whether depreciation recapture also applies to the relinquished property, since recapture is calculated separately from the capital gain on boot.
3. Evaluate a capital contribution into a working interest structured to support an IRC Section 263(c) election for intangible drilling costs in the year the capital is deployed.
4. Confirm the election year lines up with the tax year in which you need the deduction to offset the gain or boot.
5. Ask your CPA how the IDC deduction interacts with the at-risk limitation under IRC Section 465 and the excess-IDC alternative minimum tax preference under IRC Section 57(a)(2).
6. If the 45-day or 180-day window has already closed, document this path as a **separate capital deployment decision** made after the exchange, not a continuation of the original 1031 transaction.

Key IRC Sections to Know

IRC § 1031

Like-kind exchange deferral

IRC § 263(c)

Intangible drilling cost election

IRC § 465

At-risk limitation rules

IRC § 57(a)(2)

Excess-IDC AMT preference

Rev. Ruling 68-331 classifies a direct working interest in a producing oil lease as real property eligible for like-kind exchange treatment.

Timing Reminders and Warning Items

⚠ Day 45 and Day 180 are calendar days. There is no extension for weekends or holidays. The only recognized extension is relief tied to a federally declared disaster under Revenue Procedure 2007-56 and Revenue Procedure 2018-58.

→ **Clocks Run Concurrently**

The 45-day and 180-day periods run concurrently from the same closing date. They are not sequential and do not add up to 225 days.

→ **Written Identification Required**

Identification must be in writing, signed by you, and delivered to your QI or another non-disqualified party. A verbal mention to your broker or a text message to your QI's office does not satisfy the rule on its own — get it in writing.

→ **Know Who Is Disqualified**

A disqualified person — meaning your attorney, your CPA, an employee, an investment banker, or a real estate agent who performed services for you in the prior two years, or a relative — cannot be the party who receives your identification.

→ **Start Sourcing Early**

Do not wait until Day 40 to start sourcing candidates. A working interest identification, in particular, requires lead time to confirm lease details, operator standing, and governance terms.

Advisor Coordination, Final Verification & Checklist Review

FINAL VERIFICATION

Confirm Before Closing

- ☐ Confirm your CPA has reviewed the full exchange structure, including any working interest replacement property and its basis for Revenue Ruling 68-331 treatment.
- ☐ Confirm your real estate or exchange attorney has reviewed the operating agreement and governance rights for any working interest position before closing.
- ☐ Confirm your Qualified Intermediary has acknowledged receipt of your written identification before Day 45, in writing.
- ☐ Confirm Form 8824 preparation is scheduled with your CPA well ahead of your tax filing deadline.
- ☐ Confirm you have a documented fallback candidate in case your primary identified property falls through before Day 180.
- ☐ Confirm every professional on your team — CPA, attorney, and QI — has reviewed and agrees on the final identification language before it is submitted.

CHECKLIST REVIEW

Your Defensible Record

Working through these items in order gives you a defensible, dated record of exactly what was done and when — which is exactly what a CPA or the IRS will want to see if the exchange is ever questioned. The stage-by-stage items keep the 45-day and 180-day clocks from becoming a source of panic, and the two parallel paths give you a way forward whether your goal is a clean like-kind replacement using a working interest under Revenue Ruling 68-331, or a boot mitigation strategy built around an IRC Section 263(c) intangible drilling cost election after a window has already closed.

Either path starts with the same discipline: confirm the facts, document everything in writing, and bring your CPA and attorney in early enough that the decision is deliberate rather than rushed. Working interests are not the right fit for every seller, and whether a specific structure qualifies for 1031 treatment or supports a given deduction depends on your individual facts and elections, so use this checklist alongside — not instead of — your own professional advisors as you evaluate the option.

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