

The 45-Day 1031 Identification Checklist

A Practical Framework for Commercial, Multifamily, and Land Sellers to Protect Exchange Timelines, Qualify Replacement Property, and Address Tax Boot Exposure

Get Expert Guidance

Why This Checklist Matters

Two Clocks. Zero Exceptions.

The moment your relinquished property closes, two federal clocks start running at the same time, and neither one stops for weekends, holidays, or a slow due diligence process.

45

Days to Identify

Calendar days to identify replacement property in writing

180

Days to Close

Calendar days to close on replacement property

Both periods run concurrently from the closing date of the sale, not sequentially, and the only recognized extension is a federally declared disaster under Revenue Procedure 2007-56 and 2018-58. For commercial real estate sellers, multifamily owners, and land or development sellers, this narrow window is where exchanges are most commonly lost — either because suitable replacement property cannot be located in time, or because the owner identifies property on paper that later falls through during the 180-day closing period.

This checklist is built as a verification tool, not a sales document. It walks through the sequence of actions a seller, their qualified intermediary (QI), and their advisors should complete at each stage of the 45-day and 180-day clocks. It also addresses two distinct outcomes sellers should understand before they ever list a property for sale: a completed exchange into qualified like-kind replacement property **(Path A)**, and the tax exposure that results when an exchange fails or produces boot, meaning cash or non-like-kind value received in the transaction **(Path B)**.

Revenue Ruling 68-331 established that a working interest in a producing oil and gas lease, held for productive use in a trade or business or for investment, is real property that is like-kind to a fee interest in improved real estate under Section 1031(a). This makes a direct working interest a qualified replacement property option worth evaluating alongside traditional commercial, multifamily, or land replacement candidates, particularly for sellers who no longer want tenant management, debt assumption, or capital improvement obligations tied to their next property.

Use this checklist alongside your CPA, your 1031 attorney, and your qualified intermediary. It does not replace professional tax or legal advice, and every identification decision should be confirmed in writing with your advisory team before the Day 45 deadline.

Before You Begin

Complete every item below before your relinquished property closes. Skipping any of these steps can disqualify your exchange entirely.

Exchange Structure

- [ ] Confirm your relinquished property sale is structured as a delayed exchange under Treasury Regulation 1.1031(k)-1, not a simultaneous exchange
- [ ] Engage a qualified intermediary (QI) before the relinquished property closes; a QI engaged after closing disqualifies the exchange entirely

QI Qualification

- [ ] Confirm your QI has direct experience with the type of replacement property you are considering, including non-traditional asset classes such as working interests
- [ ] Verify your QI is a non-disqualified party under Treasury Regulation 1.1031(k)-1(k): not your attorney, CPA, employee, real estate agent, or investment banker who performed services for you within the prior two years, and not a family member

Financial Preparation

- [ ] Confirm the exchange agreement explicitly restricts your access to sale proceeds until replacement property closes or the exchange period ends
- [ ] Calculate your adjusted basis, prior depreciation taken, and estimated realized gain with your CPA before closing, so you know the full tax exposure if the exchange is not completed
- [ ] Decide whether you are pursuing Path A (Direct 1031 Like-Kind Replacement) or Path B (Tax Boot Mitigation) as your primary strategy, understanding the two are not mutually exclusive

Days 1–10: Lock In Your Exchange Structure

Day 0

Relinquished property closes — both clocks begin

Days 1–3

Confirm closing date in writing; verify proceeds transferred to QI escrow

Days 4–7

Working session with CPA and QI; begin parallel review of all replacement property categories

Days 8–10

Request documentation for working interest candidates; open shared tracking document

Action Items: Days 1–10

- [ ] Confirm the relinquished property closing date in writing; this date is Day 0 for both the 45-day and 180-day clocks
- [ ] Verify exchange proceeds have been transferred directly to the QI's qualified escrow or trust account
- [ ] Schedule a working session with your CPA and QI to review replacement property categories under consideration
- [ ] Begin a parallel review of direct working interest opportunities in producing oil and gas properties as a qualified replacement property candidate under Revenue Ruling 68-331

Documentation Requirements

- [ ] Request operating, title, and well-level documentation for any working interest candidate under evaluation, including lease name, well name, API number, county, and state
- [ ] Confirm whether the working interest will be held directly or through an entity structure that does not limit liability; an LLC, limited partnership, or fund unit interest does not qualify as like-kind real property for exchange purposes
- [ ] Open a shared tracking document with your advisory team listing every candidate property, its estimated value, and its documentation status

Days 11–30: Build and Narrow Your Replacement Property List

This is the critical evaluation window. You must assess all candidates — traditional and non-traditional — against your financial goals and confirm your identification rule before Day 30.

Three-Property Rule

Up to **3 properties** regardless of combined fair market value. The most commonly used and lowest-risk identification rule.

200% Rule

Unlimited properties, but combined fair market value must be **no greater than 200%** of the relinquished property's value.

95% Rule

Unlimited properties, but you must acquire **at least 95%** of the identified value. Generally the highest-risk option.

Property Evaluation Checklist

- [ ] Evaluate traditional commercial, multifamily, or land replacement candidates against your capital preservation and management-burden goals
- [ ] Evaluate direct working interest candidates against the same criteria, including governance rights, operational transparency, and the absence of tenant or facility management obligations
- [ ] Confirm which identification rule you will use: the Three-Property Rule, the 200% Rule, or the 95% Rule
- [ ] Confirm combined fair market value of all identified candidates against your chosen identification rule

Legal and Financial Review

- [ ] Request a tax opinion letter or legal memorandum addressing like-kind qualification for any non-traditional replacement candidate, including working interests
- [ ] Confirm whether any candidate property involves a related party under Section 1031(f); related-party exchanges carry a two-year holding requirement and additional reporting exposure
- [ ] Review debt replacement requirements with your CPA; generally, replacement property debt should equal or exceed relinquished property debt to avoid boot from debt relief
- [ ] Discuss with your CPA whether a reduced debt load from exchanging into a working interest changes your boot exposure calculation

Days 31–45: Finalize and Deliver Your Identification

⚠ Identification can be revoked and replaced any time before Day 45, but not after. If no suitable replacement property has been identified by Day 40, schedule an immediate call with your CPA and QI.

1 Confirm Your Final List

Confirm your final list of identified replacement properties in writing before Day 45. Verify each identified property is unambiguously described: a legal description or street address for real estate, or lease name, well name, API number, county, and state for a working interest.

2 Sign and Deliver

Confirm the identification notice is signed by the taxpayer, not just prepared by an advisor. Deliver the signed identification to your QI or another non-disqualified party before midnight on Day 45, measured in calendar days from the relinquished property closing.

3 Retain Proof of Delivery

Retain delivery confirmation — overnight courier receipt, email timestamp, or fax confirmation — as part of your exchange file. Confirm you have not exceeded your chosen identification rule's limits on number of properties or combined value.

4 Day 40 Contingency

If no suitable replacement property has been identified by Day 40, schedule an immediate call with your CPA and QI to evaluate Path B tax boot mitigation alongside any remaining Path A options.

Days 46–180: Close on Replacement Property

- ☐ Confirm your purchase and sale agreement for each identified property under contract reflects the same entity, or disregarded entity, as the relinquished property seller
- ☐ Coordinate closing logistics with your QI so exchange funds transfer directly to the replacement property closing, never through your own hands
- ☐ Confirm the replacement property closing occurs on or before Day 180, or the due date of your tax return for the year of the relinquished property sale, whichever is earlier
- ☐ Reconcile final purchase price, debt assumed, and any cash received against your original boot exposure calculation
- ☐ Confirm your CPA has all documentation needed to prepare Form 8824, Like-Kind Exchanges, for the applicable tax year
- ☐ If acquiring a direct working interest as replacement property, confirm title documentation reflects direct ownership of the working interest itself, not an interest in a partnership, LLC, or fund unit that owns the working interest
- ☐ Confirm any unrecaptured Section 1250 depreciation carried over from the relinquished property is addressed in your CPA's basis and recapture analysis for the replacement property

Path A: Direct 1031 Like-Kind Replacement (Working Interest Qualification)

Revenue Ruling 68-331 established that a working interest in a producing oil and gas lease, held for productive use in a trade or business or for investment, is like-kind to a fee interest in improved real estate. This path broadens your replacement property pool significantly.

Qualification Confirmation

- [ ] Confirm the specific working interest candidate is held for productive use in a trade or business or for investment, consistent with Section 1031(a) and Revenue Ruling 68-331
- [ ] Confirm the interest is acquired directly, or through an arrangement that does not limit liability, so it retains its character as a direct real property interest
- [ ] Confirm the interest is not acquired through a partnership interest, LLC membership interest, or fund unit; these structures do not qualify as like-kind real property regardless of the underlying asset

Due Diligence Documentation

- [ ] Request well production history, operator track record, and reserve basis documentation before including the interest on your identification list
- [ ] Confirm governance rights and operational transparency terms available to a direct working interest owner, including reporting access and decision participation

Tax Basis and Opinion

- [ ] Confirm with your CPA how depreciation and depletion basis will carry forward or reset relative to your relinquished property's basis
- [ ] Confirm your tax opinion letter specifically addresses the like-kind qualification of the working interest structure you are acquiring, not a generic oil and gas program

Path B: Tax Boot Mitigation

When the clock cannot be met or boot is unavoidable, understanding your full tax exposure and available mitigation strategies is essential. This path addresses a taxable event that has already occurred — it is not a substitute for a timely completed exchange.

Calculate Your Full Tax Exposure

- ☐ Confirm with your CPA the exact dollar amount of boot — cash boot, debt-relief boot, or both — that will be recognized if the exchange is incomplete or partially completed
- ☐ Calculate expected federal long-term capital gains exposure on the recognized gain, understanding current top federal long-term capital gains rates apply above statutory income thresholds
- ☐ Calculate expected Net Investment Income Tax (NIIT) exposure under IRC Section 1411, generally an additional 3.8% on net investment income above statutory thresholds
- ☐ Calculate expected unrecaptured Section 1250 depreciation recapture exposure, which applies to the depreciation portion of the gain at a rate that can reach 25% federally, separate from and in addition to standard capital gains treatment

IRC Section 263(c) IDC Deduction Strategy

- ☐ Discuss with your CPA whether a direct capital contribution into a working interest, made in the same tax year as the boot is recognized, can generate an IRC Section 263(c) intangible drilling cost (IDC) deduction to help offset the taxable event
- ☐ Confirm the IDC election is made in the correct tax year and documented through the operator's authorization for expenditure (AFE) and drilling cost statements
- ☐ Confirm with your CPA how IRC Section 469(c)(3), the working interest exception to passive activity loss rules, applies to your specific holding structure, since this exception requires direct holding or holding through an entity that does not limit liability
- ☐ Confirm IRC Section 465 at-risk rules with your CPA; deductions are generally limited to actual cash and recourse debt exposure, and nonrecourse debt does not count toward at-risk capital

Additional Path B Verification Items

- ☐ Ask your CPA whether IRC Section 57(a)(2) alternative minimum tax preference treatment on excess intangible drilling costs applies to your specific tax position
- ☐ Confirm the percentage of drilling cost structure allocated to intangible versus tangible costs is documented by the operator; this allocation varies by well design, operator practices, and individual circumstances and should never be assumed at a flat rate
- ☐ Document that Path B is a parallel tax-planning strategy addressing a taxable event that has already occurred, not a substitute for a timely completed exchange

Timing Reminders and Warning Items

⚠️ Calendar Day Rule

The 45-day and 180-day periods run on calendar days, including weekends and holidays; there is no administrative extension outside of a federally declared disaster.

⚠️ Written Identification Required

A verbal or informal description of replacement property does not satisfy the identification requirement; it must be in writing, signed, and delivered to a non-disqualified party.

⚠️ QI Must Be Pre-Closing

Engaging your QI after the relinquished property has already closed disqualifies the exchange; the QI must be in place before closing.

⚠️ Disqualified Persons

Using a disqualified person — such as your own attorney, CPA, broker, or employee from the prior two years — to receive or hold identification documents invalidates that identification.

⚠️ Identification Rule Limits

Exceeding the value or property-count limits of your chosen identification rule can invalidate the entire identification, not just the excess property.

⚠️ Related-Party Holding Period

A related-party exchange under Section 1031(f) carries a two-year holding requirement; early disposition by either party can trigger retroactive gain recognition.

⚠️ Non-Traditional Due Diligence Window

Waiting until after Day 30 to begin evaluating non-traditional replacement candidates, including working interests, significantly compresses the due diligence window and increases the risk of an incomplete 45-day list.

⚠️ IDC Flat-Rate Assumption

Assuming a flat tax deduction percentage for any IDC election without operator-specific documentation can create inaccurate tax planning assumptions.

Advisor Coordination, Final Verification & Sources

Advisor Coordination Checklist

- [ ] Confirm your CPA, 1031 attorney, and QI are all working from the same closing date and the same identification deadline
- [ ] Confirm your advisory team has reviewed and signed off on the specific replacement property structure, whether traditional real estate, a working interest, or a combination
- [ ] Confirm Form 8824 preparation responsibility is assigned and scheduled well ahead of your tax filing deadline
- [ ] Confirm your CPA has modeled both outcomes — a completed exchange and a boot-mitigation scenario — so you understand your tax position under either result
- [ ] Request a written summary from your QI confirming the identification was properly received and the replacement property closing occurred within the required period
- [ ] Schedule a post-closing review with your CPA to confirm basis carryover, depreciation schedules, and any IDC elections were applied correctly on your filed return

Sources and References

- Internal Revenue Code Section 1031(a) and Treasury Regulation 1.1031(k)-1: delayed exchange structure, identification and closing timing rules, qualified intermediary safe harbor, and disqualified person definitions
- Revenue Ruling 68-331 (1968-1 C.B. 352): holding that a lessee's working interest in a producing oil and gas lease is like-kind to a fee interest in improved real estate under Section 1031(a)
- Revenue Procedure 2007-56 and Revenue Procedure 2018-58: disaster relief extensions to the 45-day and 180-day exchange periods
- IRS Form 8824, Like-Kind Exchanges, and related instructions
- Internal Revenue Code Section 1031(f): related-party exchange rules and two-year holding requirement
- Internal Revenue Code Section 263(c) and Treasury Regulation 1.612-4: election to currently deduct intangible drilling costs
- Internal Revenue Code Section 469(c)(3): working interest exception to passive activity loss limitation
- Internal Revenue Code Section 465: at-risk limitation on deductions
- Internal Revenue Code Section 57(a)(2): alternative minimum tax preference treatment for excess intangible drilling costs
- Internal Revenue Code Section 1411: Net Investment Income Tax
- Internal Revenue Code Section 1250: unrecaptured depreciation recapture on real property dispositions

> Working through this checklist in sequence — from engaging a qualified intermediary before closing, through building and narrowing a replacement property list, to finalizing identification by Day 45 and closing by Day 180 — gives commercial, multifamily, and land sellers a structured way to protect an exchange that is otherwise easy to lose to time pressure. Every identification decision, every deadline, and every tax election referenced in this checklist should be confirmed directly with your CPA, your 1031 exchange attorney, and your qualified intermediary before you act, since individual facts, entity structure, and timing all affect the outcome.

Ready to protect your exchange timeline and explore all qualified replacement property options?

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