

The 45-Day 1031 Identification Checklist

What Every Real Estate Owner Needs to Know: A Practical Framework for Meeting IRS Identification Deadlines, Evaluating Qualified Replacement Property, and Protecting Against Capital Gains Exposure

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Why This Checklist Matters

The Section 1031 exchange clock does not pause for due diligence, financing delays, or a thin replacement property market. Once the relinquished property closes, a commercial real estate seller, multifamily property seller, or land and development seller has exactly 45 calendar days to identify replacement property in writing and exactly 180 calendar days to close on it. Both periods run concurrently from the same closing date, not sequentially, and neither period is extended for weekends, federal holidays, or a seller's personal circumstances. The only recognized extension applies to federally declared disasters under Revenue Procedure 2007-56 and Revenue Procedure 2018-58.

This checklist exists to help sellers move through that window in a disciplined, sequenced way rather than a reactive one. It separates the work into four timeline stages, then presents two distinct paths for the capital once the relinquished property has closed: Path A, a direct like-kind replacement completed within the statutory window, and Path B, a boot mitigation approach for capital that cannot be matched to a qualifying replacement property in time or that generates taxable boot for other reasons. Use it as a working document with your qualified intermediary (QI), CPA, and attorney, not as a substitute for their advice.

45

Calendar Days

To identify replacement property in writing

180

Calendar Days

To close on the replacement property

2

Concurrent Clocks

Both periods run from the same closing date

Before You Begin

Complete every item on this pre-exchange checklist before the relinquished property closes. These foundational steps determine whether your exchange is structurally sound from day one.

Confirm Closing Date

Confirm the exact closing date of the relinquished property; this date, not the contract date, starts both the 45-day and 180-day clocks.

Engage a Qualified Intermediary

Engage a qualified intermediary before the relinquished property closes. A QI must be in place prior to closing; the exchange cannot be structured retroactively.

Verify QI Escrow

Confirm the QI holds exchange proceeds in a qualified escrow or trust account and does not permit actual or constructive receipt of funds by the seller.

Identify Disqualified Persons

Identify every person who qualifies as a "disqualified person" under Treasury Regulation 1.1031(k)-1(k): the taxpayer's attorney, CPA, real estate agent, broker, or employee who performed services within the prior two years, and any related family members. Identification notices cannot be delivered to these parties.

Calculate Debt Relief

Confirm with your CPA whether the relinquished property carries any existing debt, and calculate the debt relief amount, since debt relief not replaced on the acquisition side can itself create boot.

Calculate Adjusted Basis

Calculate your adjusted basis, estimated capital gain, and accumulated depreciation on the relinquished property before Day 1, so replacement property value targets are based on real numbers rather than estimates.

Choose Your Path

Decide, in principle and before the clock starts, whether you are pursuing Path A (direct replacement), Path B (boot mitigation), or a combination of both for a partial exchange.

The Four-Stage Timeline



Days 1–10: Immediate Actions After Closing

- Confirm the QI has received and is holding the full net exchange proceeds.
- Open a dedicated tracking document recording the closing date, the Day 45 identification deadline, and the Day 180 closing deadline in writing.
- Begin sourcing candidate replacement properties or qualified replacement property types, including direct working interests in producing oil and gas leases, which are treated as real property for exchange purposes under Revenue Ruling 68-331.
- Notify your CPA and attorney that the exchange clock has started and share the tracking document with them.
- Rule out any candidate property or interest held through a limited partnership, multi-member LLC, or fund unit structure where your liability is limited; this structure generally does not qualify as like-kind real property under Section 1031(a)(2) and forfeits direct real-property treatment.
- Confirm whether any candidate working interest will be held directly or under a Section 761(a) election out of partnership (Subchapter K) treatment, which preserves direct real-property classification.

Days 11–30: Narrowing the Field

- Request lease name, well name or project name, API number (where applicable), county, and state for every oil and gas working interest candidate; identification must unambiguously describe the specific property, not a general category or type.
- For traditional real estate candidates, confirm title status, zoning, and any encumbrances that could delay a Day 180 closing.
- Decide which identification rule you will use: the Three-Property Rule (up to three properties of any value), the 200% Rule (any number of properties, combined fair market value no greater than 200% of the relinquished property's value), or the 95% Rule (any number of properties, but you must actually acquire at least 95% of the identified value, a materially higher-risk identification strategy reserved for last-resort scenarios).
- Confirm whether a working interest candidate can close inside the 180-day window without financing contingencies that could slip past the deadline.
- Evaluate whether the candidate replacement property introduces property management obligations, tenant turnover exposure, or ongoing capital improvement requirements that do not match your stated objective of reducing day-to-day operating burden.
- Confirm your equity amount and any carried-over debt amount are both being matched or exceeded on the replacement side, to avoid partial recognition of gain as boot.

Days 31 to 45: Finalizing and Delivering the Identification

This is the most critical window in the entire exchange. Every action below must be completed before midnight on Day 45.

1 Draft the Written Identification Notice

Draft the written identification notice listing each candidate property with an unambiguous legal description (address and legal description for real estate; lease, well, and county/state detail for a working interest).

2 Confirm Authorized Signature

Confirm the notice is signed by the taxpayer (or an authorized signatory for an entity-held exchange).

3 Deliver Before Midnight on Day 45

Deliver the signed notice to the QI, the seller of the replacement property, or another non-disqualified person, before midnight on Day 45, measured in calendar days from the relinquished property's closing date.

4 Retain Proof of Delivery

Retain proof of delivery (dated email, fax confirmation, or delivery receipt) in the exchange file.

5 Understand Revision Rights

If circumstances change, confirm that a revised identification can revoke and replace the prior notice at any point before Day 45, but not after.

6 Reconfirm No Extension Applies

Reconfirm with your CPA and QI that no identification deadline extension applies unless a federally declared disaster has been issued covering your transaction under Revenue Procedure 2007-56 or Revenue Procedure 2018-58.

7 If Day 45 Passes Without Identification

If Day 45 arrives without a qualifying identified property, confirm with your CPA that the exchange has failed for exchange purposes and begin Path B boot mitigation planning immediately rather than waiting for Day 180.

⚠ A missed Day 45 identification cannot be cured after the fact. Begin Path B boot mitigation planning the moment it becomes clear a qualifying identification will not be made in time.

Days 46 to 180: Closing the Replacement Transaction

Once identification is locked in, the focus shifts entirely to closing. The seller must never take actual or constructive receipt of exchange funds at any point in this window.

1

QI Fund Release

Confirm the QI has released funds directly to close on the identified replacement property; the seller must never take actual or constructive receipt of exchange funds at any point in this window.

2

Track Remaining Days

Track remaining calendar days to the Day 180 deadline (or the taxpayer's tax return due date, including extensions, if earlier).

3

Working Interest Paperwork

For a direct working interest acquisition, confirm the operating agreement, title opinion, and division order paperwork are complete before the closing date.

4

Match Acquisition Value

Confirm the final acquisition value matches or exceeds both the relinquished property's equity and its carried debt, to fully defer recognized gain.

5

File IRS Form 8824

File IRS Form 8824 with the tax return for the year the relinquished property was sold, reporting the exchange details, dates, and any recognized gain or boot.

6

If Closing Cannot Occur by Day 180

If the closing cannot occur by Day 180, confirm with your CPA whether a prior identification can still be modified; after Day 45 it generally cannot, so missed closings at this stage typically result in boot or a fully taxable sale.

Path A: Direct 1031 Like-Kind Replacement

This path applies when a qualifying replacement property or qualified replacement interest can be identified by Day 45 and closed by Day 180.

Productive Use Confirmation

Confirm the candidate property is held, or will be held, for productive use in a trade or business or for investment, consistent with Section 1031(a)'s own statutory language.

Revenue Ruling 68-331

For an oil and gas working interest candidate, confirm the lessee's working interest in a producing lease is being evaluated under Revenue Ruling 68-331, which classifies such a working interest as real property like-kind to a fee interest in other real estate, including commercial, multifamily, or land holdings.

Direct Holding Structure

Confirm the working interest will be acquired directly or through a structure electing out of partnership tax treatment under Section 761(a), since direct holding is what preserves real-property classification.

Operator Documentation

Confirm the operator, lease terms, and governance rights attached to the working interest are documented in writing before closing, so operational transparency is established from day one of ownership.

Operational Profile Comparison

Compare the ongoing operational profile of the replacement property to your stated goal of reducing property management responsibilities; a direct working interest position shifts day-to-day field operations to the operator rather than requiring the owner to manage tenants, leases, or physical maintenance.

Full Exchange Value Match

Confirm the full exchange value (equity plus replaced debt) is matched, so no portion of the gain is recognized as boot.

Form 8824 Reporting

Complete Form 8824 reporting the like-kind exchange for the applicable tax year.

Path B: Tax Boot Mitigation Through Direct Capital Contribution

This path applies when some or all of the exchange capital cannot be matched to a qualifying replacement property in time, when debt relief exceeds replacement debt, or when any other boot is unavoidable, resulting in a partially or fully taxable event.

Confirm Exact Boot Amount

Confirm with your CPA the exact dollar amount of boot or taxable gain that will be recognized, including federal and applicable state capital gains tax, accumulated depreciation recapture, and Net Investment Income Tax exposure under IRC Section 1411 where applicable.

Section 1250 Recapture

Confirm whether any portion of the gain is attributable to unrecaptured Section 1250 property, which is taxed federally at a rate capped at 25%, a materially higher rate than standard long-term capital gains rates.

Direct Capital Contribution Evaluation

Evaluate a direct capital contribution into a working interest in a producing or development oil and gas property as a parallel strategy to offset a portion of the taxable event, rather than as a substitute for a completed exchange.

IRC Section 263(c) — Intangible Drilling Costs

Confirm with your CPA how IRC Section 263(c) treats intangible drilling costs (IDC) associated with a working interest, and request a specific percentage or dollar figure tied to the actual authorization for expenditure (AFE) and well design, since IDC deduction percentages vary by well and should never be assumed at a flat rate.

Passive Activity Exclusion

Confirm the working interest is held directly, or through an entity that does not limit liability, to preserve eligibility for the IRC Section 469(c)(3)(A) statutory exclusion from passive activity treatment.

At-Risk Limitation — IRC Section 465

Confirm your basis and at-risk amount under IRC Section 465 before assuming any deduction is available, since deductions are limited to amounts the taxpayer has at risk in the activity.

AMT Preference Item — IRC Section 57(a)(2)

Ask your CPA whether any excess IDC amount could trigger the IRC Section 57(a)(2) alternative minimum tax preference item, and whether the independent producer exception applies to your situation.

Timing of Capital Contribution

Confirm the timing of the capital contribution relative to the tax year in which the boot or recognized gain occurs, since the deduction generally must align with the same tax year to offset the taxable event.

Document Governance Rights

Document governance rights and capital contribution terms in writing before funding, consistent with an active-member, entrepreneurial joint venture structure rather than a passive fund unit.

Timing Reminders and Warning Items

Calendar Days, Not Business Days

The 45-day and 180-day periods run on calendar days, including weekends and holidays; they are not business days.

Concurrent Periods — No Combined 225 Days

The 45-day and 180-day periods run concurrently from the same closing date; Day 45 is not added on top of Day 180, and there is no combined 225-day period.

How the Interest Is Held Determines Qualification

A property type does not automatically qualify or disqualify as like-kind; the determining factor is how the interest is held (direct real-property interest versus a limited-liability fund, partnership, or LLC unit).

Unambiguous Legal Description Required

An identification notice describing a property only by general category, without an unambiguous legal description, lease name, or well identifier, does not satisfy the identification requirement.

No Delivery to Disqualified Persons

Delivering an identification notice to a disqualified person, including your own attorney or CPA if they performed services for you in the prior two years, does not satisfy the identification requirement.

95% Rule — High Exposure

The 95% Rule carries materially higher exposure than the Three-Property or 200% Rules, since failing to acquire at least 95% of the identified value can unwind the entire exchange.

Missed Day 45 Cannot Be Cured

A missed Day 45 identification cannot be cured after the fact; begin Path B boot mitigation planning the moment it becomes clear a qualifying identification will not be made in time, rather than waiting for Day 180 to pass.

No Constructive Receipt of Funds

Taking actual or constructive receipt of exchange funds at any point, even briefly, disqualifies the exchange in its entirety.

⊗ Taking actual or constructive receipt of exchange funds at any point — even briefly — disqualifies the exchange in its entirety. Never touch the funds.

Advisor Coordination, Final Verification & Checklist Review

Advisor Coordination Checklist

- [ ] Confirm your CPA has reviewed the full transaction, including basis, depreciation recapture exposure, and any Net Investment Income Tax calculation, before Day 45.
- [ ] Confirm your qualified intermediary has experience identifying and closing on working interest or other non-traditional real property replacement interests, since not every QI or real estate attorney is familiar with Revenue Ruling 68-331 mechanics.
- [ ] Confirm your attorney has reviewed the legal description language in the identification notice for accuracy and specificity.
- [ ] Confirm Form 8824 will be prepared and filed with the tax return covering the year of the relinquished property's sale.
- [ ] If pursuing Path B, confirm your CPA has modeled the boot mitigation outcome against the alternative of simply recognizing the full taxable gain, so the capital contribution decision is based on your specific numbers rather than a general assumption.
- [ ] Confirm all documentation, including the identification notice, delivery proof, operating agreement, and governance terms for any working interest position, is retained in a single exchange file for at least the IRS statute of limitations period applicable to your return.

Sources and References

- Internal Revenue Code Section 1031(a) and Section 1031(a)(2); Treasury Regulation 1.1031(k)-1 (identification and receipt rules); Treasury Regulation 1.1031(a)-3 (real property definition).
- Revenue Ruling 68-331, 1968-1 C.B. 352 (lessee's working interest in a producing oil and gas lease classified as real property, like-kind to a fee interest in other real estate).
- Internal Revenue Code Section 761(a) (election out of partnership treatment for certain unincorporated organizations).
- Revenue Procedure 2007-56 and Revenue Procedure 2018-58 (disaster-related extensions of exchange deadlines).
- IRS Form 8824 and accompanying instructions (reporting of like-kind exchanges).
- Internal Revenue Code Section 263(c) and Treasury Regulation 1.612-4 (election to expense intangible drilling and development costs).
- Internal Revenue Code Section 469(c)(3)(A) (working interest exclusion from passive activity treatment).
- Internal Revenue Code Section 465 (at-risk limitation on deductions).
- Internal Revenue Code Section 57(a)(2) (alternative minimum tax preference 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, capped at a 25% federal rate on the recaptured portion).

Working through this checklist in sequence keeps the two statutory clocks visible at every stage, rather than letting the 45-day identification period become an afterthought behind financing, title work, or property searches. A seller who confirms the closing date, engages a qualified intermediary early, and builds a shortlist of qualifying replacement property — including direct working interests evaluated under Revenue Ruling 68-331 — gives themselves the best chance of a timely, fully deferred exchange under Path A. Where the timeline or the available replacement property does not allow for a complete exchange, Path B exists as a parallel, CPA-coordinated approach for addressing the resulting tax exposure through a direct capital contribution and the applicable IDC mechanics under IRC Section 263(c), rather than treating a missed deadline as a closed door. Review this checklist with your CPA, attorney, and qualified intermediary before relying on any single item, since individual circumstances, state tax treatment, and the specific property or working interest involved will all affect the outcome.

Connect With a 1031 Exchange Specialist

Learn More About Path A & Path B