

The 45-Day 1031 Identification Checklist

Using Producing Oil and Gas Working Interests Under Revenue Ruling 68-331

A Practical Framework for Commercial Real Estate Sellers Identifying Qualified Replacement Property, Managing Financing Timelines, and Addressing Boot Exposure Before Day 45

Get Expert Guidance

Why This Checklist Matters

Sellers of retail centers, industrial buildings, and office assets are completing exchanges in a 2026 commercial real estate market that looks different from the slower years that preceded it. Data from Accruit's network of more than 30 national Qualified Intermediaries shows that 1031 exchange volume increased 12.4% year over year during the first half of 2026, with average relinquished-property values increasing 13.5% and replacement-property values rising 10.1%.

That renewed activity has a side effect: high-quality replacement assets, particularly industrial, multifamily, necessity-based retail, medical, and triple net lease properties, remain in high demand, and with more exchangers pursuing a limited inventory of desirable properties, many of the best opportunities are receiving multiple offers or going under contract quickly, leaving exchangers with fewer viable options inside the 45-day identification period.

Financing adds a second pressure point. If debt is not lined up early, a seller risks losing the replacement property, missing IRS deadlines, or triggering taxable boot, and for many buyers the replacement property mortgage must close within the 180-day exchange window. None of that pressure changes the calendar. The IRS deadlines are strict, and they cannot be extended simply because a property falls out of contract, financing is delayed, or unexpected issues arise.

A seller who identifies a single commercial candidate and watches it lose financing or go to a competing bidder on Day 38 has no statutory relief. The full gain and any depreciation recapture on the relinquished property become exposed exactly as if no exchange had been attempted, unless a qualified alternative was identified in parallel.

This checklist walks a Commercial Real Estate Seller through the identification window using two coordinated paths: a **Direct Replacement path** built around a producing oil and gas working interest, which Revenue Ruling 68-331 held to be a lessee's interest in real property eligible for Section 1031 treatment, and a **Boot Mitigation path** for when a commercial replacement only partially closes. The goal throughout: identify qualified replacement property before Day 45 and avoid taxable boot without taking on a new commercial mortgage. This is an educational framework, not tax or legal advice, and every decision point below should be confirmed with a Qualified Intermediary and tax counsel before action is taken.

12.4%

Exchange Volume Growth

Year-over-year increase in 1031 exchange volume, first half of 2026

13.5%

Relinquished Value Rise

Average increase in relinquished-property values

45

Days to Identify

Strict IRS deadline — no extensions for financing delays or lost contracts

180

Days to Close

Total exchange window running concurrently from relinquished property closing

Before You Begin

Complete every item below before the 45-day clock starts running. These foundational steps determine whether your exchange is structurally sound from Day 1.

Confirm Closing Date

Confirm the exact closing date of the relinquished commercial property. This date starts both the 45-day identification clock and the 180-day closing clock running concurrently, not sequentially.

Verify QI Engagement

Confirm a Qualified Intermediary (QI) was engaged and the exchange agreement was executed before the relinquished property closed. A QI engaged after closing cannot cure a failed exchange.

Gather Financial Data

Gather the relinquished property's sale price, outstanding mortgage balance at closing, and net equity proceeds now held by the QI.

Classify the Asset

Classify the relinquished asset type (retail center, industrial building, office property) and note any lease, tenant, or NNN structure that may affect valuation of replacement candidates.

Calculate Deferral Numbers

Calculate the two numbers that govern full deferral: the minimum replacement value needed to match or exceed the relinquished sale price, and the minimum replacement debt needed to match or exceed the mortgage that was paid off at closing.

Assemble Advisory Team

Assemble the advisory team: CPA, 1031 exchange attorney, QI, and, if a producing working interest is being evaluated as part of the identification list, tax counsel experienced in Section 1031 applications to oil and gas property.

Decide Debt Strategy

Decide in advance whether the strategy is to replace the retired commercial mortgage with new commercial debt, or to replace it with additional cash so that no new loan is required on any replacement asset, including a working interest allocation.

Days 1–10: Immediate Actions

Open Parallel Tracks Immediately

The most critical early decision is running a commercial replacement search and a producing working interest review simultaneously — not sequentially. Waiting until a commercial deal stalls to evaluate a working interest leaves insufficient time for due diligence.

- [ ] Confirm in writing with the QI that identification documents must be signed, delivered, and received by a non-disqualified party before midnight on Day 45.
- [ ] Open parallel tracks: a commercial replacement search (retail, industrial, or office) and a review of producing working interest offerings that may serve as qualified replacement property or as a parallel candidate on the identification list.
- [ ] Request current listings, rent rolls, and lease abstracts for any commercial candidates already under consideration.
- [ ] Request lease name, well name, API number, and county and state for any producing working interest candidate. These four data points are what allow a working interest to be "unambiguously described" on a written identification, the same standard applied to a commercial property's legal description.
- [ ] Confirm whether any commercial candidate already has a competing offer or is likely to go under contract with another buyer before Day 45.
- [ ] Begin a financing conversation with at least one commercial lender if a mortgaged replacement is still the preferred path, and compare that timeline against the alternative of a cash-funded working interest allocation that requires no lender underwriting.

Days 11–30: Evaluation Window

This is the window to stress-test every candidate — commercial and working interest alike — against the two governing tests: equal-or-greater value and debt replacement.

1 Run the Dual Tests

Run the equal-or-greater value test and the debt-replacement test against every candidate under consideration, commercial and working interest alike.

2 Confirm Lender Timelines

For any commercial candidate requiring a loan, confirm the lender's documented timeline for appraisal, environmental review, and debt service coverage underwriting against the 180-day closing deadline. Debt on the replacement property may need to match or exceed the debt paid off on the sale, loan timing must align with the exchange identification and closing deadlines, and property cash flow must support lender debt service coverage requirements.

3 Document Backup Plans

Document a backup plan for every commercial candidate that depends on financing, since investors selling properties with low-interest-rate debt often face a difficult choice between accepting reduced cash flow on replacement properties financed at higher current rates or exploring alternative strategies to bridge the gap.

4 Evaluate Working Interest Sizing

Evaluate a producing working interest allocation sized to absorb some or all of the relinquished mortgage payoff in cash, removing the need to qualify for a new commercial loan on that portion of the proceeds.

5 Confirm Direct Interest Structure

Confirm that any working interest under review is held as a direct, undivided interest, not a partnership, LLC membership, or pooled fund unit, since the latter does not carry the same real property treatment.

6 Request Tax Opinion Letter

Request a tax opinion letter addressing the specific working interest's qualification as like-kind real property, consistent with the practice of supporting these exchanges with a tax opinion from qualified counsel that documents the legal basis for treating the interest as like-kind replacement property.

7 Review Sector Context

Review sector context with the advisory team: industrial and multifamily fundamentals are supporting reinvestment, retail's resilience is offering income diversification, and office dispositions continue feeding exchange pipelines, all shaping how competitive the commercial search will be.

Days 31–45: Critical Identification Window

⚠ Day 45 is an absolute deadline. Identification documents must be signed, delivered, and received before midnight. No extensions are available for any reason except a federally declared disaster.

Finalize Identification List

Use one of the three statutory identification rules: up to three properties of any value, an unlimited number of properties whose combined value does not exceed 200% of the relinquished value, or the 95% rule reserved for higher-risk situations.

Position the Working Interest

Decide whether the producing working interest is listed as one of the identified properties outright, or as a 200%-rule addition alongside a commercial candidate, so that a financing failure on the commercial side does not leave the identification list empty.

Verify Specificity

Confirm each identified property, commercial or working interest, is described with enough specificity to satisfy the written, signed, and unambiguous identification standard.

Deliver Before Midnight

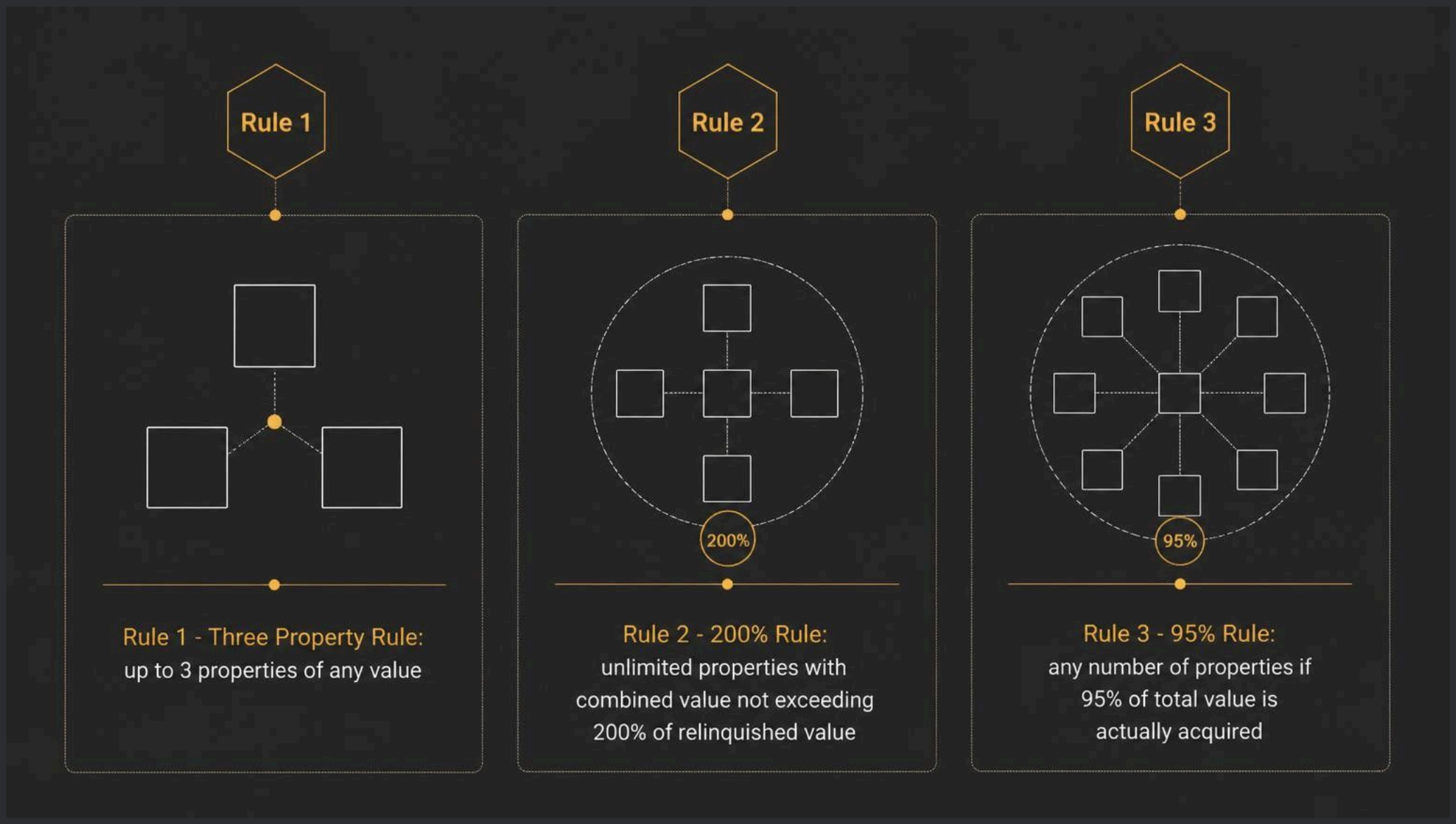
Deliver the signed written identification to the QI or another non-disqualified party before midnight on Day 45, with a dated confirmation of receipt retained for the file.

Revocation Rights

Confirm the identification can still be revoked and replaced with an updated list any time before the Day 45 deadline if a commercial candidate's financing status changes.

Cash Allocation Sizing

If the decision has been made to avoid new commercial debt, confirm the cash allocation planned for the working interest position is sufficient to offset any shortfall between the relinquished mortgage payoff and the debt carried on any commercial replacement being pursued in parallel.



Path A: Direct Replacement Using a Producing Working Interest

Revenue Ruling 68-331 held that an exchange of a leasehold interest in a producing oil lease, held for productive use in trade or business or for investment, for a fee interest in real property held for the same purposes is an exchange of property of a like kind under Section 1031(a). The interest of a lessee in a producing oil lease is treated as an interest in real property for federal income tax purposes, a classification addressed in the companion ruling, Revenue Ruling 68-226.

Qualification Checklist

- ☐ Confirm the working interest is in a currently producing well, not an unproven exploratory prospect, since the ruling addresses a leasehold interest in a producing oil lease.
- ☐ Confirm the holding is a direct working interest, not an interest in an entity, consistent with Revenue Ruling 68-331's holding.
- ☐ Confirm with tax counsel that the interest of a lessee in a producing oil lease is treated as an interest in real property for federal income tax purposes, consistent with Revenue Ruling 68-226.
- ☐ Separate tangible lease and well equipment from the real property component, since equipment is generally classified on its own terms rather than automatically treated as real property.

Structure & Governance

- ☐ Confirm how the capital contribution will be structured: a direct undivided interest held individually, or jointly with other working interest owners in a manner that preserves direct real property treatment rather than converting the position into a partnership interest.
- ☐ Confirm governance rights and operating agreement terms for the well or wells underlying the position, including how operational decisions and distributions are handled among working interest owners.
- ☐ Review Section 1254 recapture rules with tax counsel if the relinquished property included oil and gas interests on which intangible drilling costs or depletion were previously deducted.
- ☐ Confirm any projected intangible drilling cost deduction with a CPA before relying on it. Amounts depend on the well's cost structure, individual tax circumstances, and elections made, and should never be assumed at a flat rate.

- ☐ A working interest held through a partnership, multi-member LLC, or pooled fund structure does not receive the same like-kind treatment as a direct working interest. Confirm the holding structure before relying on it as identified property.

Path B: Boot Mitigation if a Commercial Replacement Falls Through

If a commercial candidate's financing collapses after Day 45 and the identification list cannot be amended, the following steps govern how to minimize taxable boot exposure.

Confirm Closeable Value

Confirm with the QI exactly how much of the identified value can still be closed by Day 180 if a commercial candidate's financing collapses after Day 45.

Calculate Mortgage Boot Exposure

Full deferral generally requires buying a replacement of equal or greater value, reinvesting all net equity, and taking on debt equal to or greater than the debt that was retired at the sale of the relinquished property.

Understand the Netting Asymmetry

The debt-replacement shortfall can be cured by contributing additional cash out of pocket, since cash offsets missing debt, but the reverse is not true: taking on extra debt does not offset cash that was actually received from the exchange.

Size the Cash Contribution

If the goal is to avoid a new commercial mortgage altogether, confirm the cash contribution into a working interest position is sized to match or exceed the mortgage balance that was paid off on the relinquished property, since debt relief is treated as cash received unless it is offset by cash added into the exchange, and a taxpayer who adds cash equal to the debt relief amount eliminates that mortgage boot entirely.

Document Through Closing Statements

Confirm this cash-for-debt structure is documented through the closing statements for both transactions, since boot is measured against what actually occurred at closing, not a later representation.

Quantify Recognized Gain

If full deferral cannot be achieved, quantify the recognized gain and its character with a CPA, since recognized gain is generally taxed in a specific order, with depreciation recapture addressed before the remaining long-term capital gain.

Evaluate IDC Deduction Offset

Discuss whether a capital contribution into a producing working interest, made outside the exchange itself, could support an intangible drilling cost deduction under Section 263(c) to help offset recognized boot, confirming the applicable amount and timing with a CPA rather than assuming a fixed figure.

Consider Installment Reporting

If the 45-day window has already lapsed without a usable identification, discuss with a CPA whether installment reporting or a tax year straddle applies to the proceeds still held by the QI, since this is separate from Section 1031 and depends on when the relinquished property closed relative to year end.

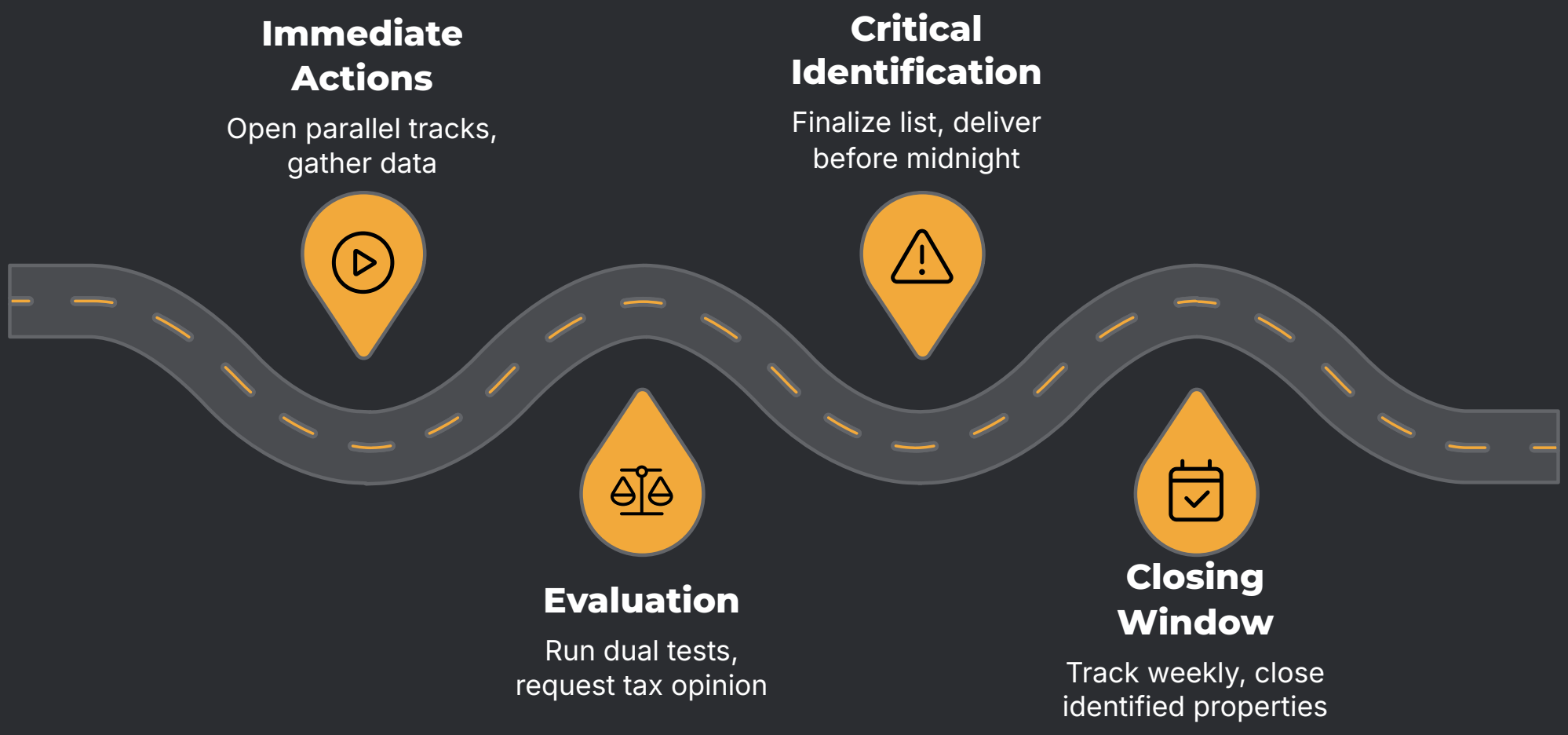
Days 46–180: Closing Window & Timing Warnings

Closing Window Actions

- [ ] Track financing contingencies on every identified commercial candidate weekly, not just at major milestones, given how quickly inventory is moving in the current market.
- [ ] Maintain the working interest allocation as an active parallel path through Day 180, rather than treating it as a discarded backup, until every identified commercial candidate has either closed or definitively fallen through.
- [ ] Confirm appraisal, environmental, and title work on any commercial replacement is proceeding on a timeline compatible with a Day 180 close.
- [ ] Confirm the capital contribution amount, source of funds, and debt structure for whichever replacement property or combination of properties will actually close.
- [ ] Close on or before Day 180, with no exceptions available for financing delay, inspection issues, or seller renegotiation on the commercial side.
- [ ] File Form 8824 for the tax year in which the relinquished property was transferred, with the CPA confirming how any multi-asset allocation between commercial real property and a working interest position should be reported.

⚠️ Critical Warning Items

- The 45-day and 180-day periods run on calendar days, starting on the same closing date, with no extension available except for a federally declared disaster.
- A property falling out of contract, a lender missing its timeline, or an appraisal coming in low does not pause either deadline.
- A disqualified person, including the exchanger's attorney, CPA, employee, real estate agent, or certain relatives, cannot receive the written identification on the QI's behalf.
- A working interest held through a partnership, multi-member LLC, or pooled fund structure does not receive the same like-kind treatment as a direct working interest; confirm the holding structure before relying on it as identified property.
- Extra debt taken on a replacement property can offset debt relief from the relinquished property, but it cannot offset cash boot that was actually received; only additional cash offsets cash boot.
- A commercial seller who waits until after Day 30 to begin evaluating a working interest as a parallel identification option has materially less time to complete the due diligence steps in Path A above.



Advisor Coordination, Final Verification & Sources

1

QI Experience Check

Confirm the Qualified Intermediary has experience coordinating identifications that include both commercial real property and a producing working interest.

2

CPA Dual Modeling

Confirm the CPA has modeled both outcomes — a fully commercial replacement and a blended commercial-plus-working-interest replacement — including the debt-replacement and cash-offset math for each.

3

Counsel Review of ID Language

Confirm 1031 exchange counsel has reviewed the written identification language for the working interest candidate for the unambiguous description standard before Day 45.

4

Title Documentation

Confirm title or assignment documentation for the working interest position names the exchanger directly, consistent with holding a direct real property interest rather than an entity interest.

5

Records Retention

Confirm the final closing statement for the relinquished property and the closing or assignment documentation for every replacement property are retained together for Form 8824 preparation.

6

CPA Confirmation of All Figures

Confirm every deduction, recapture, or boot figure discussed throughout this process has been reviewed and confirmed by a CPA before it appears in any tax filing.

Closing Note

Commercial Real Estate Sellers working through a retail, industrial, or office exchange today are racing more than a calendar. They are racing a shrinking pool of financeable replacement property while avoiding a trade of one problem, a failed exchange, for another, a new commercial mortgage taken on simply to meet a deadline. Running the Direct Replacement and Boot Mitigation paths side by side from Day 1, rather than treating a producing working interest as a last-resort option discovered on Day 40, gives a seller a genuine second track if the first one stalls. None of the steps above substitute for individualized advice. Every identification decision, debt-replacement calculation, and deduction assumption should be confirmed with a Qualified Intermediary, a 1031 exchange attorney, and a CPA before it is acted on.

Sources: Accruit (accruit.com) · Global AgInvesting (globalaginvesting.com) · IPX1031 (ipx1031.com) · Frazier & Deeter (gggllp.com) · Commercial Loan Direct (commercialloandirect.com) · Bankers 1031 (bankers1031.com) · 1031 Capital Advisors (1031capitaladvisors.com) · CPA Validated (cpavalidated.com) · Asset Preservation Inc. (apiexchange.com) · Tax Notes (taxnotes.com) · Anchor 1031 (anchor1031.com) · National Association of REALTORS (nar.realtor)

This checklist is provided for educational purposes to help Commercial Real Estate Sellers understand how a producing oil and gas working interest fits into 1031 identification planning under Revenue Ruling 68-331. It is not tax, legal, or financial advice. Every exchanger's facts are different, and a Qualified Intermediary, 1031 exchange attorney, and CPA should review the specific transaction before any identification or capital contribution decision is made.

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