# Rescuing At-Risk 1031 Listings

A Briefing Deck for Commercial Real Estate Brokers on Using Revenue Ruling 68-331 Producing Leaseholds as a Secondary Identification Target to Keep Hesitant Sellers Moving Toward Closing

**Prepared for:** Investment sales and commercial real estate brokers representing sellers inside a Section 1031 exchange timeline

**Scope:** Educational briefing on a backup identification strategy. Not legal, tax, or investment advice. All identification and exchange determinations remain the responsibility of the exchanger and the exchanger's qualified intermediary, CPA, and attorney.

Learn More at Summit Ventures

# Executive Summary & Core Objective

The primary obstacle keeping many commercial real estate sellers from signing a listing agreement is not pricing. It is **timeline fear**. A seller who understands the tax consequence of a failed exchange will often delay listing until a replacement property is already in hand — a sequence that works against the broker, against the seller's own negotiating leverage, and against the 45-day identification clock that does not start until the relinquished property closes.

This briefing gives brokers a clear, defensible way to address that fear directly in the listing conversation. Revenue Ruling 68-331 established that a lessee's 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 real estate under Section 1031(a). Used correctly, a producing leasehold working interest can occupy one of the three slots available under the Three-Property Rule, alongside the seller's preferred commercial replacement candidates. That slot functions as a backup identification, not a substitute for the commercial purchase the seller actually wants.

The core message: a seller does not need a guaranteed replacement building in hand before listing. A seller needs a **qualified identification strategy** in hand before Day 45. Brokers who can explain that distinction clearly are positioned to convert more hesitant sellers into signed listings on schedule.

# Context & Market Environment

## 2026 Exchange Market at a Glance

**12.4%**

**YoY Exchange Volume Growth**

Per Accruit's QI network, H1 2026

**13.5%**

**Relinquished Property Value Increase**

Average, H1 2026

**10.1%**

**Replacement Property Value Increase**

Average, H1 2026

## What the Data Means for Brokers

The hesitation brokers are encountering in 2026 is grounded in real market conditions, not simple risk aversion. Exchange volume is rising at the same time replacement inventory is tightening. Accruit's own market commentary frames the resulting dynamic directly: exchange activity is not slowing down, but **execution risk is increasing**, because more exchangers are competing for a limited pool of comparable assets.

IPX1031's 2026 trend review describes a market still working through higher interest rates, limited inventory, and general uncertainty, with office dispositions continuing to feed exchange pipelines even as industrial and multifamily fundamentals keep demand for those replacement categories elevated.

Commercial Loan Direct's 2026 financing commentary adds a related constraint: when replacement-property debt is not arranged early, exchangers risk losing the property, missing the identification deadline, or triggering taxable boot, since the replacement mortgage typically has to close within the 180-day window alongside the purchase itself.

None of this changes the statutory clock. As Bankers 1031's 2026 guide states plainly, these deadlines cannot be extended simply because a property falls out of contract, financing is delayed, or unexpected issues arise. A seller facing a tight, competitive replacement market has every reason to want a documented fallback before committing to a sale date — and the broker who can supply that fallback has a meaningful advantage in the listing conversation.

# The Core Problem: Why Listings Stall

The specific failure pattern brokers are seeing: a seller agrees in principle that selling now makes sense, then **withholds signing the listing agreement** until a suitable replacement property is already identified or under contract. In a market where comparable buildings are overpriced, under multiple offers, or simply unavailable in the seller's target geography, that replacement search can stall indefinitely — and the listing never moves forward.

The decision factors driving this hesitation are consistent across sellers:

### Day 45 Fear

Fear of running out of identification options before Day 45 and being forced into a fully taxable sale

### Deadline Overpaying

Fear of overpaying for a replacement building under deadline pressure, simply to avoid a failed exchange

### Three-Property Rule Gap

Lack of awareness that the Three-Property Rule permits identifying more than one category of qualifying replacement property at the same time

### "What If" Uncertainty

Uncertainty about what happens if every commercial candidate falls out of contract between Day 30 and Day 45

Brokers who cannot answer the "what if I do not find a building in time" question with something more concrete than "we will keep looking" are losing listing agreements to this hesitation, even when the seller's underlying motivation to sell is strong.

# Key Findings

## 1 Concurrent Clocks, No Extensions

The 45-day identification period and the 180-day closing period both begin on the closing date of the relinquished property and run concurrently, not sequentially. There is no administrative extension available for a deal that falls through, financing that is delayed, or a seller who simply runs out of time — with the narrow exception of federally declared disaster relief under Rev. Proc. 2007-56 and Rev. Proc. 2018-58.

## 2 Three-Property Rule Flexibility

The Three-Property Rule allows an exchanger to identify up to three potential replacement properties of any value, in writing, signed, and delivered to a non-disqualified party by midnight on Day 45. Those three identification slots are **not required to be the same property type.**

## 3 Revenue Ruling 68-331

Revenue Ruling 68-331 (1968-1 C.B. 352) held 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) of the 1954 Code, provided the interest is held for productive use in a trade or business or for investment. The companion ruling, Revenue Ruling 68-226, classifies the lessee's interest in oil and gas in place as real property for federal tax purposes.

## 4 Direct Holding Requirement

The qualifying interest must be held directly, or through an entity that does not limit liability. Revenue Ruling 78-135 and related guidance confirm that a partnership, LLC, or fund interest in an entity that owns a working interest does not itself qualify for Section 1031 treatment. The exchanger needs title to the actual working interest, not a share of a pooled vehicle.

## 5 Options After Day 45 Narrow Sharply

When a primary replacement candidate falls through after Day 45, the exchanger is not automatically without options, but those options narrow sharply and can include a fully taxable sale, a tax straddle across the calendar year, or an installment sale under Section 453 — none of which are a substitute for a completed exchange.

## 6 Market Friction Is Measurable

Reasonable financing and inventory friction documented across the 2026 commercial market — including rising exchange volume against a tightening pool of comparable assets — is a measurable driver of identification failures, not a seller-specific or broker-specific weakness.

# Evidence & Supporting Data

## Market-Side Evidence

The identification-failure risk described above is not theoretical. Accruit's 2026 commentary on replacement-property competition observes that high-quality assets across industrial, multifamily, necessity retail, medical, and net-lease categories remain in strong demand, with many of the best opportunities going under contract quickly or drawing multiple offers, leaving exchangers with fewer viable options inside the 45-day window.

Commercial Loan Direct's financing analysis reinforces the point from the debt side: lenders in 2026 are weighing debt service coverage, property durability, and sponsor experience more carefully, which slows the financing timeline exchangers depend on to close within 180 days.




## Statutory & Procedural Evidence

On the statutory side, the identification rules themselves have not changed and are not expected to. Multiple qualified intermediary networks — including IPX1031, Accruit, and Legal 1031 — independently confirm the same mechanical requirements: written identification, signed by the taxpayer, delivered to the qualified intermediary or another non-disqualified party, received by midnight Day 45, using an unambiguous description of each identified property.

For a producing leasehold working interest, that description functions differently than a street address. It is identified by **lease name, well name, API number, and county and state** — information the exchanger's qualified intermediary and tax counsel can confirm meets the "unambiguously described" standard before Day 45.

> Exchange activity is not slowing down, but execution risk is increasing — because more exchangers are competing for a limited pool of comparable assets.
> — Accruit, 2026 Market Commentary

# Analysis: The Broker's Strategic Role

For a commercial real estate broker, the practical value of this strategy sits entirely in the listing conversation, not in the exchange mechanics themselves. The broker's job is not to identify, evaluate, or recommend a specific producing leasehold interest. That work belongs to the exchanger's qualified intermediary, CPA, and tax counsel, coordinating with a party such as Summit Ventures that can supply the direct working interest documentation those advisors need to confirm eligibility.

**The broker's job is to reframe the seller's choice.** Instead of "list now and hope a building turns up in time," the conversation becomes "list now, let your advisors hold a qualified backup identification alongside the commercial candidates we are sourcing together." That reframing directly addresses the decision factors identified previously:

### Addressing Day 45 Fear

A backup identification occupying the third slot under the Three-Property Rule means the seller is not relying entirely on the commercial search succeeding. The identification deadline can be met even if the preferred building has not yet been located.

### Addressing Overpaying Under Pressure

Because a qualified backup is already on file, the seller and broker retain more negotiating room on the commercial side. There is less incentive to accept an overpriced or marginal building purely to avoid a failed exchange.

### Addressing Three-Property Rule Awareness

Most sellers — and a meaningful number of real estate attorneys and qualified intermediaries — have not previously encountered a producing leasehold working interest as a qualifying Section 1031 category. Walking a seller through Revenue Ruling 68-331 in plain terms is itself a differentiator for the broker's advisory value.

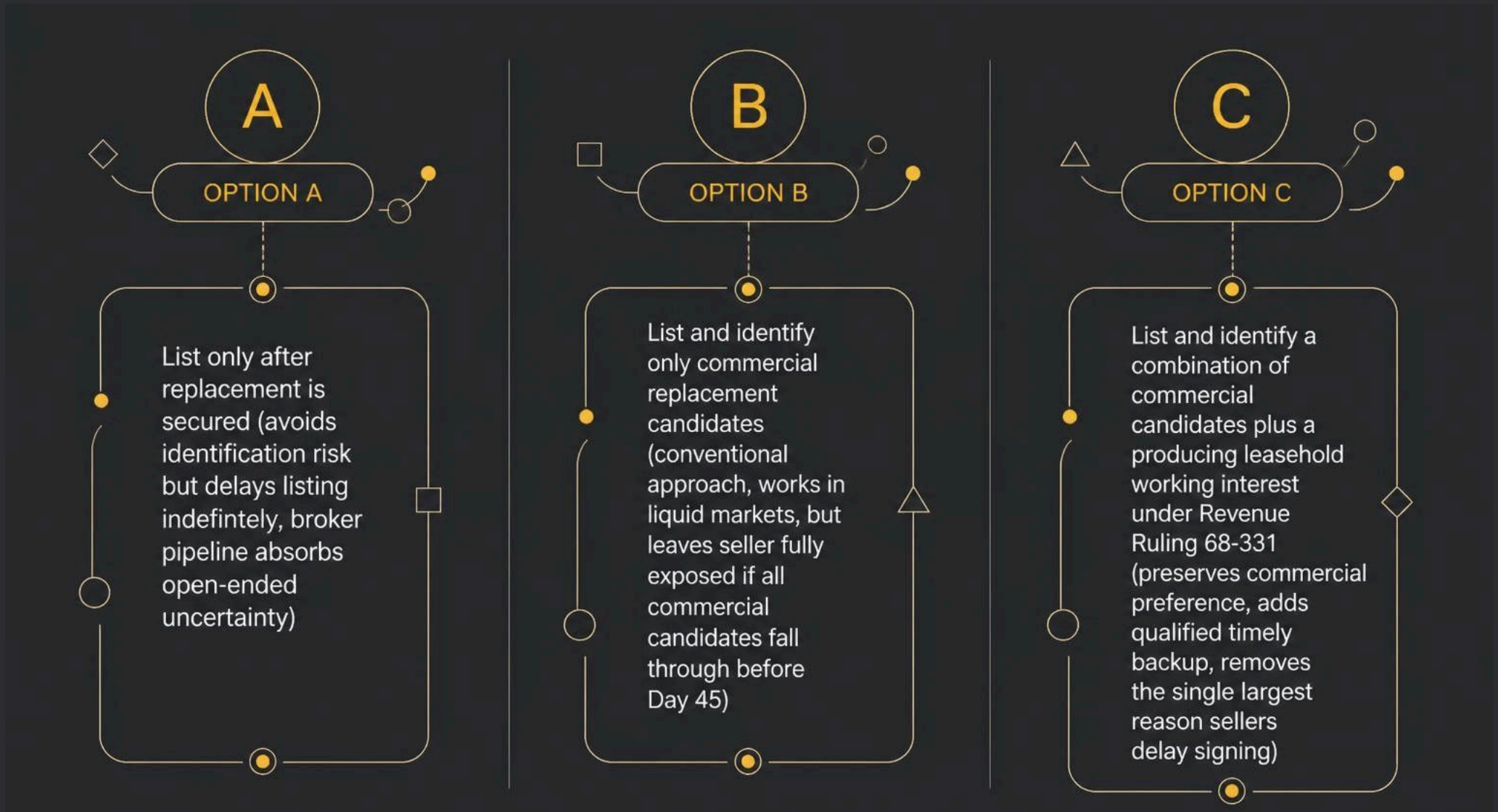
### Addressing the "What If" Scenario

With a backup identification already filed, a seller whose top commercial choices fall out of contract between Day 30 and Day 45 still has a timely, qualified identification on record — rather than facing a scramble or a fully taxable outcome.

This structure works because of how the **identification** — not the closing — functions under the regulations. Identifying a property on or before Day 45 does not obligate the exchanger to purchase it. A seller can identify two strong commercial candidates and one producing leasehold working interest, continue negotiating on the preferred commercial building through Day 180, and only close into the leasehold interest if the commercial path does not come together in time.

# Three Paths Forward

Three paths are available to a seller facing this decision, and each carries a different consequence for the broker's listing pipeline.




**Option C is the structure this briefing is built around** — not because it replaces sound real estate judgment, but because it removes the single largest reason sellers delay signing: the fear of having no qualified fallback if the commercial search runs out of time.

# Recommendation & Implementation Roadmap

## Broker Recommendations

Brokers working with sellers inside, or approaching, a 1031 timeline should raise the backup identification concept during the listing conversation itself — before the relinquished property closes and the clock starts. The recommended sequence:

### → Introduce the Concept Early

Frame it as a timeline safeguard rather than an investment recommendation. Stay close to: *"Your qualified intermediary and CPA can evaluate whether a direct working interest identification makes sense as a third slot alongside the commercial properties we identify together."*

### → Route Advisors, Not the Seller Directly

The broker is not qualified to determine whether a specific interest meets the exchanger's facts, and should not attempt to. That determination belongs to the exchanger's own CPA, tax counsel, and qualified intermediary.

### → Keep Commercial Search Primary

The backup identification exists to protect the timeline, not to replace the broker's core service of sourcing, negotiating, and closing a commercial replacement property that fits the seller's investment goals.

## Implementation Timeline

**1 — Before Listing**

Broker introduces the backup identification concept during the listing presentation, alongside the standard marketing and pricing discussion. Seller is referred to their own CPA, attorney, and qualified intermediary for any technical evaluation.

**2 — Day 0: Close**

Relinquished property closes. The qualified intermediary receives the net proceeds and the 45-day and 180-day clocks both begin.

**3 — Days 1–30**

Broker runs the primary commercial replacement search in parallel with the seller's advisors confirming the documentation needed to identify a producing leasehold working interest as the third slot.

**4 — Days 31–45**

If one or more commercial candidates remain uncertain, the seller's qualified intermediary files the written identification before Day 45, listing the strongest commercial candidates alongside the confirmed backup interest, in accordance with the Three-Property Rule.

**5 — Days 46–180**

The broker continues working to close the seller's preferred commercial replacement property. The identified backup remains available only if the preferred path does not close in time, and the decision to close into it rests entirely with the exchanger and the exchanger's own advisors.

# Expected Impact, Compliance Safeguards & Closing Perspective

## Expected Impact for Brokers

For the broker, the practical benefit of introducing this strategy is measured in **listings signed and retained**, not in exchange outcomes. A seller who has a documented answer to the Day 45 question is positioned to sign a listing agreement sooner, rather than waiting for a replacement building to materialize first. A seller who has a qualified backup identification on file is less likely to withdraw from an active exchange midstream when a preferred commercial candidate falls out of contract — which protects the broker's listing and the pending transaction from timeline collapse.

Brokers who can speak credibly about Revenue Ruling 68-331 and the Three-Property Rule also tend to strengthen their referral relationships with the same CPAs, attorneys, and qualified intermediaries who service these sellers, since the broker is visibly solving a problem those advisors see repeatedly and is routing the technical work to the correct professionals rather than attempting to answer it directly.

## Compliance & Regulatory Safeguards

This briefing is educational and does not constitute legal, tax, or investment advice, and nothing in it should be presented to a seller as a guarantee of Section 1031 qualification. The following safeguards apply to any backup identification built around a producing leasehold working interest:

- **Direct holding confirmation:** the working interest must be held directly by the exchanger, or through an entity that does not limit liability. A fund, limited partnership, or LLC membership interest does not qualify, and any party supplying documentation should confirm direct holding in writing.
- **Tax opinion letter coordination:** 1031-into-working-interest transactions are typically supported by a tax opinion letter from the exchanger's own qualified counsel, confirming the identification and exchange facts meet Section 1031(a) and Revenue Ruling 68-331.
- **Qualified intermediary verification:** the identification must be written, signed by the exchanger, and delivered to the qualified intermediary or another non-disqualified party by midnight Day 45, using an unambiguous description of the interest (lease name, well name, API number, county and state).
- **Advisor-led determination:** the broker's role is limited to introducing the concept and routing the seller to qualified advisors. All eligibility, suitability, and tax determinations remain the responsibility of the exchanger's CPA, attorney, and qualified intermediary.

## Questions for Discussion

### For the Broker

How early in the listing conversation should the backup identification concept be introduced, and how should it be framed so it strengthens, rather than complicates, the pricing and marketing discussion?

### For the Seller

Does a documented backup identification change the minimum acceptable terms you are willing to accept on the commercial replacement search, now that running out of time is no longer the only outcome if the search stalls?

### For the Qualified Intermediary

What documentation is needed from a producing leasehold interest to confirm it meets the unambiguous-description standard before Day 45, and how does that process compare to identifying a commercial building by street address?

### For the CPA or Tax Counsel

What facts need to be confirmed, beyond Revenue Ruling 68-331 itself, to determine whether this specific exchanger's circumstances support a direct working interest identification, including how the interest would be held and whether any prior depreciation recapture considerations apply?

> The sellers brokers are losing to hesitation are not rejecting the sale. They are rejecting the risk of a sale with no qualified fallback if the replacement search does not go as planned. A producing leasehold working interest identified under Revenue Ruling 68-331 does not replace the commercial property a seller wants to buy. It replaces the uncertainty that keeps a listing agreement unsigned.

## Sources & References


- Revenue Ruling 68-331, 1968-1 C.B. 352
- Revenue Ruling 68-226, 1968-1 C.B. 362
- Revenue Ruling 78-135, 1978-1 C.B. 256
- Treasury Regulation 1.1031(k)-1
- Internal Revenue Code Section 1031(a); Section 453
- Rev. Proc. 2007-56 and Rev. Proc. 2018-58
- Accruit, "1031 Exchange Market Trends 2026"
- IPX1031, "1031 Exchange Trends 2026"
- Commercial Loan Direct, "1031 Exchange Replacement Property Financing in CRE, 2026"
- Bankers 1031, "The Definitive Guide to 1031 Exchanges, 2026"
- EPC1031, "1031 Exchanges and Mineral Rights"


Connect with Summit Ventures