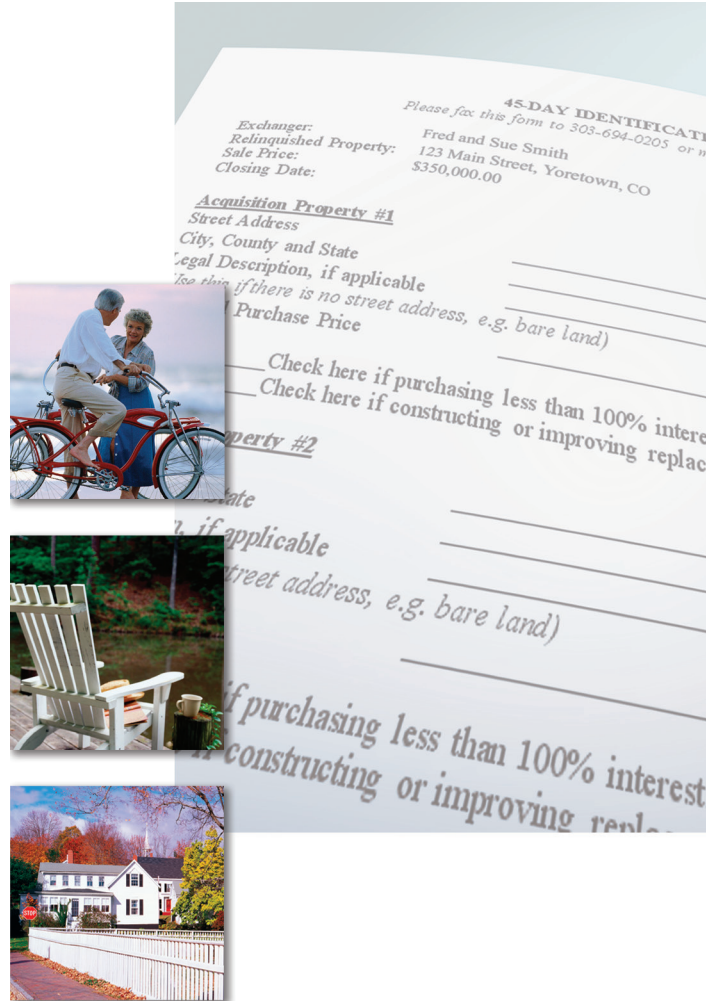


45-Day Identification Process

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*Identifying Replacement Property
for Your 1031 Exchange*

Nationwide Toll-free:

866-694-0204

Visit us at:

expert1031.com

45-Day Identification Process

Identifying Replacement Property for Your 1031 Exchange

You've sold your Old Property, and now it's time to identify your New Replacement Property. Enclosed is an Identification Form prepared specifically for your **ExpertExchange**. Also included are your critical dates and the funds received for your exchange.

We know from experience that you will likely have questions about the identification process. So to help ensure a successful, qualified 1031 exchange, The **1031 Exchange Experts** are available to answer any of these questions at any time.

Additionally, we are providing this booklet that explains the many aspects of the 45-Day Identification Process. We hope that it is helpful in answering questions, relieving some your concerns and building your confidence as the process begins.

Why Do I Have to Identify Property to Buy?

Simply put, because the IRS says so. If you want to defer capital gain through a 1031 exchange, you must either acquire or identify your New Property (Replacement Property) within 45 days of transferring your Old Property (Relinquished Property). This means you have two ways to proceed with your exchange. First, you can close on the purchase of replacement property during the

first 45 days of your exchange. Second, you can identify the property you intend to buy, according to the guidelines discussed in this brochure, within that same 45-day period. After day 45, you may not identify OR purchase any new properties for that exchange.

When is the Form Due?

On the second page of the enclosed letter and again in the heading of the Identification Form is your 45-Day Identification due date. This date is calculated as 45 days from the sale of the Old Property.

By law, we must receive your form via fax or postmarked by the U.S. Postal Service by midnight of your Due Date. If the Due Date is on a weekend or holiday, **the identification form is still due on that date**. The IRS is very strict about this requirement—if you miss the Identification Due Date your exchange has failed!

What Can I Buy?

If you sold investment real estate, then you can buy any other type of investment real estate. As long as both your Old Property and the New Property are **investment or business use real estate**, there are few restrictions on what you can buy as a replacement.

Example:

If you sold a rental house, you can buy an apartment building, an office building, a warehouse or bare land.

If you sold personal property (i.e., things that are not attached to the ground – like furniture or equipment), the identification rules are much more strict. Give us a call and we will walk through the process specifically for your transaction.



How Many Properties Can Be Identified?

If you plan to identify three properties or less, there are no maximum dollar limitations for your identifications. Therefore, you can identify up to three investment properties of any value. In the enclosed form, we've given you space to identify up to three properties.

If you identify more than three properties, the rules change and include dollar restrictions. When four or more properties are identified, the purchase prices for **all** of your identifications added together **cannot exceed twice (200%) of the sale price of your Old Property.**

Example:

If you sold your Old Property for \$100,000, you can identify three properties for \$10 million each – a total of \$30 million. If you wanted to identify four properties, the total combined purchase price of the listed properties cannot exceed \$200,000 (i.e., \$100,000 x 2).

This example may not seem fair—you can identify three properties for \$30 million, but if you identify four properties you are limited to \$200,000. However, these are the parameters in the IRS tax law. In fact, if you identified four properties for \$50,000 each (totaling the \$200,000 in our example) and you actually pay \$50,100 for one of the properties, you've violated this rule which **makes your whole exchange taxable**. So, don't push or stretch this rule.

If you choose to identify more than three properties, simply make a second copy of the enclosed form and mark the pages as 'page 1 of 2' and 'page 2 of 2.'

How Do I Make the Identification?

Your **identification must be specific** enough that an IRS agent could use your identification to physically walk up to the door of the property listed.

Example:

You must specifically list "123 Main Street, City, State, Zip." If you are identifying a condo or townhouse, you must also include the specific unit (i.e., Unit 203). You cannot just ambiguously say, for example, "a 3 bedroom house on Main Street."

If you are identifying bare land, you may need to use the legal description for the property. If a street address has not been assigned to the land, you can attach a map to your identification making the identification more clear.



Occasionally, our clients need to identify a lot in an

'applied for' subdivision. Until the subdivision is approved, there is not an address or legal description. Again, a map with appropriate land marks and cross streets clearly labeled and the lot you are identifying specifically marked is an appropriate identification.

Do I Always Need a 45-Day Identification?

No. If you close on the purchase of all the New Property(ies) you intend to purchase before day 45, then your exchange is complete. Therefore, an identification is not required.

Can I Buy More Than One Property?

Yes, you can purchase one or more of the properties listed to satisfy your exchange. If you buy more than one property, the total of the properties purchased is used to meet the "Equal or Up" and "Reinvestment" rules as discussed below.

Keep in mind that ***all*** of the properties purchased ***must be on your identification form.***

How do I Indicate My Intention to Buy One or Multiple Properties?

I Intend to Buy:

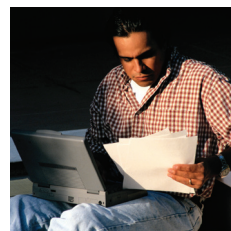
Only One - More Than One - All That I've Listed

At the bottom of the enclosed form, above your signature, there is a line for you to indicate how many of the listed properties you intend to purchase. This line on the form relates to a fairly recent IRS ruling that addresses the timing in which we can return "left over" funds to you. If you, 1) indicate that you intend to buy more than

one property, and then 2) buy only one and 3) have money remaining in your exchange account, then we cannot return the remaining proceeds to you until your 180-Day deadline has passed. Although this ruling only applies in some circumstances, please check the box that best applies to your transaction in light of this recent ruling.

Can I make changes to a 45-Day Identification Form I've already submitted?

Yes, but you must be careful about making any changes. First of all, you can only make changes within the 45-day Identification Period. As of day 46, you cannot alter your Identification Form.



Next, it must be clear exactly how you wish to alter your identification(s). If you submit any additional property identifications, you must specify whether any new properties on your list are *in addition to* or *in place of* properties on your previous form. If you wish only to remove property from your list, you must submit a revocation of your original Identification Form: just like the form itself, the revocation must be in writing, signed by you, and sent to us within the 45-day period. To be safe, you should submit **any** changes to your Identification Form in the form of a written revocation and/or amendment.

How Do I Get My Identification to The Experts?

We need to be able to prove to the IRS that your identification was sent to us before midnight on the 45th day. The best option is to ***fax it to us***

nationwide, toll-free, at 866-399-2511. Our fax machines time/date stamp our faxes as we receive them. If your 45 days end on a Saturday, Sunday or holiday, please call us and let us know that you faxed it. This way, we can go into the office to verify that your fax was received.



You can also mail your identification to us, but sometimes postmarks can be illegible. If you mail it, we prefer that you send it to us with a return receipt, so that we can prove the mailing date.

Do I Need to Buy Equal or Up?

If you don't want to pay any tax on your exchange, the purchase price of your New Property(ies) must **equal or exceed** the sale price of your Old Property.

Example:

If you sell the Old Property for \$100,000 and buy the New Property for \$125,000, no capital gains tax is due. However, if you 'buy-down' and the New Property is only \$90,000, tax is due on the difference of \$10,000. The \$10,000 is **taxable—even if you invested your own money** as a down payment on the original purchase of your Old Property.

Do I Need to Reinvest All of the Cash?

The money that comes to us for safekeeping between the sale and the purchase is called your Exchange Proceeds. The IRS rules require that we hold this money so that the exchanger does

not have control of the funds.

In addition to buying equal or up, ***you must reinvest all of your Exchange Proceeds to defer paying any tax.*** When purchasing multiple properties, as long as all of the cash is used to buy New Property, the cash can be spread across the properties however you choose.

Example:

If you sell your Old Property for \$100,000, of which \$70,000 comes to us, you must reinvest all of this cash in the purchase of the New Property.

Continuing our example: If

you buy the New Property for \$150,000 and you get a loan for \$100,000, then you will only need to use \$50,000 of the



cash we are holding. In this case, the remaining \$20,000 of cash will be taxable. Even if you purchase equal or higher, but you don't use all of the Exchange Proceeds, **tax will be due.**

Do I Need to Have the Same Amount of Debt?

No. This is a common misconception among many exchange intermediaries and tax professionals. As long as you buy equal or up and reinvest all the cash, the IRS does not care how the full purchase price is paid. The funds can either come from additional cash reserves or from a new loan. Therefore, ***you are not required to have debt*** on the New Property equal to the debt that was paid off on the Old Property.

What If I Want Cash from My Exchange?

First of all, the rules about when you can receive cash are very strict. **You cannot touch the money** we are holding in your exchange account. Even if you only touch a small portion of the funds, if the timing is wrong, then your whole exchange is taxable. Therefore, you must take out the money at the sale closing or wait until the New Property(ies) are closed. If you take *any* cash out of your exchange, it is taxable – even if you purchased Equal or Up.

If you have further questions about your Exchange Proceeds or financing, please contact us and we will work with you on your specific transaction.

When Must I Close on the New Property?

Any purchase(s) of New Property must close on or before the 180-Day deadline. This **180-Day period begins at the sale closing** on the Old Property. Any purchase closings that occur after the 180-Day deadline are not included in the exchange. Any exchange funds that we are holding after Day 180 will be returned to you and **will be taxable**.

Can I Use Earnest Money from My Exchange Account?

We can only advance proceeds from your exchange account for items that will come back into the exchange account if the property does not close. This **limits such advances to only earnest money** for your New Property. Call our office or visit our website (expert1031.com) for

the form needed to request an earnest money advance on your New Property.

Please understand that the law **does NOT allow us to reimburse you directly** for earnest money that you advanced personally; however, we can advance it to a third party on your behalf. Earnest money that you have advanced personally can be refunded to you at the purchase closing if it is properly reflected on the closing statement.

Can I Do Construction on My New Property Using Exchange Proceeds?

If you plan to do construction on your New Property as part of your exchange, there are rules you need to know. First and most important, **once you take title to your New Property, your exchange is over** on that property.

Therefore, if you need to do construction after the property is purchased from the seller, we need to structure your exchange very differently. In fact, we will create a temporary entity, a shell company, to take title to the property during the construction period. You can use the money from the sale of your Old Property to help the shell company purchase the property, as well as for construction expenses. If your sale has occurred, you must complete a Construction Exchange within the 180-Day period.

Because of the title and financing complexities with a Construction Exchange, you need to call us several weeks before you close on the New Property.



To indicate on your Identification Form that you intend to do a Construction Exchange, check the box on the form that says “Check here if constructing or improving replacement property.” On the enclosed form, you also need to describe what you are doing.

Example:

Your identification might read something like this: “The purchase of the 1 acre lot at 123 Main Street, City, State, Zip, and the construction of a 3 bedroom, 2 bath, 1200 sq. ft., split level house, with 2-car garage, including interior finish and landscaping.”

Can I Make Improvements on My New Property?

An Improvement Exchange is where you buy a property that needs work, and you plan to pay for the work with exchange proceeds. Like the Construction Exchange discussed above, once title goes into your name, your exchange is finished as to that property.

Therefore, you really only have two choices in structuring an Improvement Exchange: 1) get the seller to delay the closing until you have made the improvements or 2) have us set up a temporary entity to take title to the New Property as discussed above. Although it seems unlikely, our clients are often successful in negotiating with the seller to delay the closing – if they (as the buyer) agree to put up non-refundable earnest money at least equal to the cost of the improvements.

If the seller is not willing to delay the closing and give you authority to improve the property

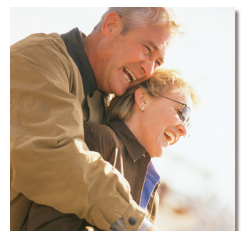
before the closing, call us and we can structure an Improvement Exchange for you. As with any exchange, you must complete an Improvement Exchange within 180 days of the sale of the Old Property.

To indicate on your Identification Form that you intend to do an Improvement Exchange, check the box on the form that says “Check here if constructing or improving replacement property.” On the enclosed form, you also need to describe in detail what you are doing.

List only the improvements needed in order to increase the value of the property to be equal or greater than the sale price of your Old Property. And, list only the improvements that can be completed before the end of the 180-day period. We cannot transfer the property to you from our temporary entity until all of the listed improvements are completed.

Can I Purchase from a Related Party?

Section 1031 has provisions that allow you to acquire your New Property from a related party ***only in certain situations***. A related party is generally defined as your husband or wife, your parents or grandparents, your brothers and sisters, and your children and grandchildren. Corporations, partnerships, etc. owned by you or these people may also be considered related parties. If you think the seller of your New Property is related to you according to these definitions, call us or your tax advisor for further review of the transaction. Generally, we do not advise doing exchanges with related parties.



A Final Reminder

Please plan on getting your identification to us before the 45 days are up, so that we can review it for the correct application of these rules. Unlike many areas in the 1031 rules, the 45-Day Identification Process is black and white, allowing the IRS to easily disqualify an exchange for errors in this part of the exchange process.

As always, if you have any further questions, please call your local 1031 Expert or one of our National Experts at 866-694-0204.

When Should I Contact The Experts Next?

Please contact us when you have gone under contract on the purchase of your New Property. In order to prepare the appropriate documents and to coordinate the transfer of your exchange funds, we will need you to provide the closing date, a copy of the purchase contract, and the contact information for the attorney or title officer that will be handling your purchase closing. Having adequate notice will allow us to complete your exchange with ease.



Nationwide Toll-free:

866-694-0204

Visit us at:

expert1031.com