



1. Select a Qualified Intermediary

A Qualified Intermediary, or QI, is an independent third party to the transaction whose function is to prepare the documents necessary to create the exchange, as well as to act as the independent escrow agent for the exchange funds. Because QI's will be holding your funds it is important that you obtain a copy of their Fidelity Bond and insist that the funds are held in a segregated escrow account. Legal 1031 is always happy to provide a copy of our Fidelity Bond and let our clients interact with our depositing bank.

2. Choose your professionals

Legal 1031 is a great resource for information on §1031 exchanges. However, as a qualified intermediary we are unable to give tax or legal advice to exchangers. Therefore, it is important to have a tax and/or legal advisor who can work with Legal 1031 to give you the advice you may need. Retaining an attorney or accountant is not mandatory to complete an exchange, but it is recommended.

3. Make sure you have the proper language in your contract and sale agreement

Although it is not a requirement, it is good practice to modify your contract or purchase and sale agreement to reflect your §1031 exchange transaction. This language is commonly known as the "exchange cooperation clause addendum".

4. Have Qualified Intermediary prepare your exchange documents

In addition to holding the exchange funds, a QI's role is to prepare the §1031 exchange documents that will convert your transaction into an exchange. Without §1031 documents your sale will most likely be a taxable event even though you reinvest the funds in a new property. Legal 1031 will ask you to send a copy of your relinquished contract or purchase and sale agreement and use the information in the contract to prepare the exchange documents. In order to have a valid exchange the QI must assign into your purchase agreement. These documents must be prepared before you sell your relinquished (sale) property.

5. Start looking for replacement property

Since exchangers only have 45 days from the date of the sale of their first relinquished (sale) property to find their new replacement property, it is often good practice to begin looking before your first sale takes place. The 45-day identification period does not begin to run until the actual sale of the first relinquished (sale) property, and not the contract signing date. You may enter into a contract to purchase before you sell, you may "identify" properties that you may like to purchase, but you may not make an official §1031 identification until you have sold at least one of your relinquished properties.



6. Sell your relinquished property

Once the exchange documents have been prepared by the qualified intermediary, a closing can be scheduled to sell the property just like any other closing. It is important to remember that after closing costs and any debts have been paid, the net proceeds from the sale must come directly to the qualified intermediary, unless you are structuring your transaction as a partially deferred exchange. Your attorney, or any other disqualified party, may not take control of the proceeds from the closing before sending them to the qualified intermediary.

7. Balance the exchange

In order to have a fully tax deferred exchange an exchanger must: 1. buy for as much as it sold for; 2. utilize all of the cash proceeds received from the sale to purchase the replacement property; 3. obtain as much financing on the replacement property as was paid off on the relinquished property or replace all of the debt with new cash if not financing; and 4. obtain nothing but like kind property when purchasing the replacement property. If an exchanger violates any or all of these rules, then the taxpayer may still have a valid exchange but will recognize some capital gains tax.

8. Identify replacement property

The exchanger must identify potential replacement property before midnight of the 45th day from the sale of the first relinquished property. Legal 1031 provides a form to identify property with each set of exchange documentation. This form must be filled out and sent to Legal 1031 by email, fax or mail.

9. Enter into contract or purchase and sale agreement for replacement property

Once the exchanger has decided on the replacement property or properties to be purchased, a contract to purchase the properties must be entered into. As a matter of practice these contracts should also have the exchange cooperation clause language added to them.

10. Confirm that tax ID or social security number is the same on both sides of the transaction

With very limited exception the tax ID number or social security number of the selling person or entity must be the same number when that person or entity is purchasing the replacement property. An exchanger may not sell as an individual and buy in as a corporation even if that individual owns 100% of the new entity. Exchangers may sell and purchase as tenants in common, or, in certain circumstances, in new entities such as single member limited liability companies or a Delaware Statutory Trust (DST). If the exchanging person or entity is not the same on both sides of the transaction, please check with your tax or legal advisor before continuing the exchange.



11. Have Qualified Intermediary prepare §1031 replacement property purchase documents

Once the exchanger has entered into a contract or purchase and sale agreement to purchase the replacement property or properties those contracts should be forwarded to the qualified intermediary so that they can prepare the replacement property exchange documents. In order to make the purchase the qualified intermediary must assign into the transaction.

12. Notify the Qualified Intermediary of the closing of the replacement property

In addition to the documents that must be prepared for the closing, the qualified intermediary will need to send the exchange funds that it is holding from the sale property to make the purchase of the replacement property. Remember to notify Legal 1031 at least a day in advance of your closing to request the exchange funds to make your purchase. Legal 1031 can arrange for a wire transfer of the exchange funds or a bank check to make the purchase.


Contact us today for more information or to start your 1031 Exchange!

QUALIFIED INTERMEDIARY SERVICES NATIONWIDE

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