



## COMMON QUESTIONS

### 1031 BASICS

**Q. Why would someone want to do a 1031 Exchange?**

To defer capital gains tax on the sale of business or investment property.

**Q. Is a 1031 Exchange tax-free?**

A 1031 exchange defers taxes. The replacement property will carry the tax basis of the relinquished property – which means that upon the sale of the replacement property all tax will be due, or the taxpayer can enter into another 1031 exchange.

**Q. What type of property is not eligible for a 1031 Exchange?**

Your residence is not eligible for 1031 treatment. Any other property that is not held for commercial, business, or investment purposes is also not eligible.

**Q. Is 1031 only for federal capital gains?**

No. Section 1031 applies to federal capital gains taxes (15% or 20%), depreciation tax (25%), and potentially state income taxes (0% - 13.3%) and Medicare Tax (0% or 3.8%). Long-term capital gains taxes apply to property held over 1 year – gains from property held less than a year are typically taxed as ordinary income.

### QUALIFIED INTERMEDIARY

**Q. How do I start a 1031 Exchange?**

You must contact a Qualified Intermediary before you sell your property, so that you can complete the appropriate documentation and structure the exchange.

**Q. Do I have to use a Qualified Intermediary?**

Using a Qualified Intermediary is the most common way to receive ‘safe harbor’ protection for your 1031 Exchange.

**Q. Can't my own attorney or CPA serve as my Qualified Intermediary?**

No. A Qualified Intermediary must remain completely independent and cannot have been your agent in the past 2 years.

### RELIABLE

It is important to note that while most qualified intermediaries tout their fidelity bond to promote their financial stability, the fidelity bond in fact only insures against misdeeds by the qualified intermediary, not investment losses. In addition, many qualified intermediaries with a large parent company tout a written “third party guaranty”. A close look at these guaranties shows that they do not provide for any coverage against an investment loss, only a loss attributable to the gross negligence of wrongful acts of its employees.

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