

§1031 Exchange Definitions

1031 Exchange

The sale or disposition of real estate or personal property (relinquished property) and the acquisition of like-kind real estate or personal property (replacement property) structured as a tax-deferred, like-kind exchange transaction pursuant to Section 1031 of the Internal Revenue Code and Section 1.1031 of the Treasury Regulations in order to defer Federal, and in most cases state, capital gain and depreciation recapture taxes.

1031

Internal Revenue Code Section 1031 that authorized tax deferral on like kind exchanges.

1031 Tax Law

See above.

200% Percent Rule

The Exchanger may identify more than three properties, provided their combined fair market value does not exceed 200% of value of the Relinquished Property.

95% Percent Rule

The Exchanger may identify any number of properties, without regard to their value, provided the Exchanger acquires 95% of the fair market value of the properties identified.

Accelerated Depreciation

A depreciation method that allows you to deduct a greater portion of the cost of depreciable property in the first years after the property is placed in service, rather than spreading the cost evenly over the life of the asset, as with the straight-line depreciation method.

Accredited Investor

The federal securities laws define the term accredited investor in Rule 501 of Regulation D as:

1. A bank, insurance company, registered investment company, business development company, or small business investment company;
2. An employee benefit plan, within the meaning of the Employee Retirement Income Security Act, if a bank, insurance company, or registered investment adviser makes the investment decisions, or if the plan has total assets in excess of \$5 million;
3. A charitable organization, corporation, or partnership with assets exceeding \$5 million;
4. A director, executive officer, or general partner of the company selling the securities;
5. A business in which all the equity owners are accredited investors;
6. A natural person who has individual net worth, or joint net worth with the person's spouse, that exceeds \$1 million at the time of the purchase;
7. A natural person with income exceeding \$200,000 in each of the two most recent years or joint income with a spouse exceeding \$300,000 for those years and a reasonable expectation of the same income level in the current year; or
8. A trust with assets in excess of \$5 million, not formed to acquire the securities offered, whose purchases a sophisticated person makes.

Accommodator

A somewhat out of date term for a Qualified Intermediary (see definition of QI below). An unrelated party (1031x.com) who participates in the tax-deferred, like-kind exchange to facilitate the disposition of the Exchanger's relinquished property and the acquisition of the Exchanger's replacement property. The Accommodator has no economic interest except for any compensation (Our \$550.00 exchange fee) it may receive for acting as an Accommodator in facilitating the exchange as defined in Section 1031 of the Internal Revenue Code. The Accommodator is technically referred to as the Qualified Intermediary, but is also known as the Accommodator, Facilitator or Intermediary.

Actual Receipt

Direct access to your exchange funds or other property. Receiving exchange funds during the exchange period will disqualify your exchange. (Also see Constructive Receipt)

Adjusted Basis

The original basis plus improvement costs minus the depreciation of the property.

Adjusted Cost Basis

See definition of Basis below. Agent: An entity that acts on behalf of the taxpayer. A Qualified Intermediary cannot be your agent at the time of or during a tax-deferred, like-kind exchange. For 1031 Exchange purposes, an agent includes your employee, attorney, accountant or investment banker or real estate agent or broker within the two-year period prior to the transfer of your first relinquished property. An agency relationship does not exist with entities that offer Section 1031 Exchanges services or routine title, escrow, trust or financial services. (See Related Parties)

Agreement for Transfer

Purchase agreement, sale agreement, earnest money agreement, offer & acceptance, real estate contract or other contract contemplating the purchase or sale of real property.

Balancing the Exchange

A balanced exchange ensures that the taxpayer defers 100% of his or her taxes on capital gain and depreciation recapture. To achieve a balanced exchange 1) acquire a replacement property that is equal to or greater value than the relinquished property; 2) reinvest all of the net equity from the relinquished property in the replacement property; and 3) assume debt on the replacement property that is equal to or greater than the debt on the replacement property or contribute cash to make up the deficiency. (See Partial Tax Deferment; Boot and Mortgage Boot/Relief)

Basis

The amount you use to determine your capital gain or loss from a sale or disposition of property. To determine the adjusted cost basis for your property, you must start with the original purchase cost. You then add any out-of-pocket expenses such as brokerage commissions, escrow costs, title insurance premiums, sales tax (if personal property) and other closing costs directly related to the acquisition, your cost of capital improvements and principal payments of special

assessments (sewer and streets) to the property, and then subtract depreciation you have taken or were allowed to take, any casualty losses taken and/or any demolition losses taken.

Boot

Non-like-kind property (cash or other property) given by one party to another party in a tax-deferred, like-kind exchange that is taxable. For instance, if you trade in a delivery truck on a new model, the cash you pay in addition to your old truck is boot. Boot received may be offset by boot given. See also Mortgage Boot.

Build-To-Suit Exchange

A tax-deferred, like-kind exchange whereby the Qualified Intermediary and/or Exchange Accommodation Titleholder acquires title and holds title to the replacement property on behalf of the Exchanger, during which time structures or improvements are constructed or installed on or within the replacement property. Also known as an Improvement Exchange.

Business Assets

Real property, tangible depreciable property, intangible property and other types of property contained or used in a business. Exchanging one business for another business is not permitted under INTERNAL REVENUE CODE Section 1031. However, taxpayers may exchange business assets on an asset-by-asset basis, usually as part of a Mixed-Property (Multi-Asset) Exchange.

Capital Gain or Loss

The difference between the selling price of a property or asset and its Adjusted Cost Basis.

Capital Gain Tax

Tax levied by Federal and state governments on investments that are held for one year or more. Investments may include real estate, stocks, bonds, collectibles and tangible depreciable personal property. (See Income Tax)

Capital Improvements

For land or buildings, improvements (also known as capital improvements) are the expenses of permanently upgrading your property rather than maintaining or repairing it. Instead of taking a deduction for the cost of improvements in the year paid, you add the cost of the improvements to the basis of the property. If the property you improved is a building that is being depreciated, you must depreciate the improvements over the same useful life as the building.

Collectibles

Personal property, such as baseball cards, coins, stamps, works of art and memorabilia that is held for investment. Collectibles are exchangeable under INTERNAL REVENUE CODE Section 1031. Collectibles are subject to a higher maximum capital gains tax (28% as of 1/1/04) than other capital assets which are subject to a maximum capital gain rate of 15%.

Community Property

All property acquired by a husband and wife during their marriage. Each spouse has a right to an equal interest in the property. Gifts and inheritances received by an individual spouse during the marriage are treated as separate property. Property acquired by the spouse prior to marriage,

property acquired with separate property or rents or profits generated from separate property are treated as separate property. Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin are community property states.

Concurrent Exchange

A tax-deferred, like-kind exchange transaction whereby the disposition of the relinquished property and the acquisition of the replacement property close or transfer at the same time. A Concurrent Exchange is also referred to as a Simultaneous Exchange. Constructive Receipt: Exercising control over your exchange funds or other property. Control over your exchange funds includes having money or property from the exchange credited to your bank account or property or funds reserved for you. Being in constructive receipt of exchange funds or property may result in the disallowance of the tax-deferred, like-kind exchange transaction thereby creating a taxable sale. (See also Actual Receipt)

Cooperation Clause

Language to be included in the Purchase and Sale Contracts for both relinquished and replacement property that indicates and discloses that the transaction is part of an intended tax-deferred, like-kind exchange transaction and requires that all parties cooperate in completing said exchange.

Construction Exchange

You may purchase replacement property that is not yet built, provided that the improvements on the property are completed prior to the expiration of the 180 days. In a Construction Exchange, the property is held by a specially formed LLC called the EAT (Exchange Accommodation Taxpayer). A Construction Exchange generally has greater complexity and fees than a 1031 Exchange.

Constructive Receipt

A term that refers to the exchanger having unrestricted control of the equity from the property sold. A Constructive Receipt will invalidate a tax deferred exchange.

Contract Exchange

A Contract Exchange is the tax-deferred exchange of: The Buyer's ownership in a Sales Contract on real property, for different real property, or for a contract or option on different real property; or the Option Holder's exchange of an Option to purchase real property, for different real property, or for an option or contract on different real property. Essentially, a contract exchange is an exchange of an open option to purchase, or an open Sales Contract, rather than an exchange of the underlying real estate itself.

Cooperation Clause

Clause added to the purchase on sales agreement requiring the person who is not the exchanger to use their best efforts to assist the exchanger in consummating a 1031 tax deferred exchange.

Deduction

An amount that can be subtracted from gross income, from a gross estate, or from a gift, lowering the amount on which tax is assessed.

Deferred Exchange

The sale or disposition of real estate or personal property (relinquished property) and the acquisition of like-kind real estate or personal property (replacement property) structured as a tax-deferred, like-kind exchange transaction pursuant to Section 1031 of the Internal Revenue Code and Section 1.1031 of the Treasury Regulations in order to defer Federal, and in most cases state, capital gain and depreciation recapture taxes.

Delayed Exchange

A tax-deferred, like-kind exchange where there is a delay or period of time between the close and transfer of the Exchangers relinquished property and replacement property.

Depreciable Property

Property with a useful life of more than one year that is held for investment or used in your trade or business. You spread the cost of the asset over its estimated useful life rather than deducting the entire cost in the year that you placed the asset in service. (See Depreciation Recapture for more information regarding the sale or disposition of assets that have been depreciated.)

Depreciation

Periodic wearing away of property over the property's economic life. The I.R.S. requires investors and business owners to take a tax deduction on the amount of a property's depreciation. The practice of amortizing or spreading the cost of depreciable property over a specified period of time, usually its estimated depreciable life. To put it another way, you are allowed a deduction on your income tax return for the wearing away and expensing over time of property or assets, such as aircraft, vehicles, livestock and buildings. A depreciable asset is a capital expenditure in depreciable property; used in a trade or business or held for the production of income and has a definite useful life of more than one year. Non-depreciable property includes vacant land. For assets that have an expected useful life of more than one year, you spread the cost of the asset over its estimated useful life rather than deducting the entire cost in the year you place the asset in service. The tax code (law) specifies the depreciation period for specific types of assets.

Depreciation Recapture

The amount of gain resulting from the disposition of property that represents the recovery of depreciation expense that has been previously deducted on the Taxpayers (Exchangers) income tax returns.

Direct Deeding

A practice authorized by Treasury Revenue Ruling 90-34 whereby either the relinquished property or the replacement property can be deeded directly from seller to buyer without deeding the property to the Qualified Intermediary. (See Sequential Deeding for industry practices prior to Treasury Revenue Ruling 90-34.) Disposition: The sale or other disposal of property that causes a gain or a loss including like-kind exchanges and involuntary conversions.

EAT

Acronym for Exchange Accommodation Titleholder. (See Exchange Accommodation Titleholder)

Equity

The value of a person's ownership in real property or securities; the market value of a property or business, less any claims or liens on it.

Exchange

The sale or disposition of real estate or personal property (relinquished property) and the acquisition of like-kind real estate or personal property (replacement property) structured as a tax-deferred, like-kind exchange transaction pursuant to Section 1031 of the Internal Revenue Code and Section 1.1031 of the Treasury Regulations in order to defer Federal, and in most cases state, capital gain and depreciation recapture taxes.

Exchange Accommodation Titleholder ("EAT")

An unrelated party (1031x.com) that holds the Qualified Indicia of Ownership (customarily the title) of either the replacement or relinquished property in order to facilitate a reverse and/or build-to-suit tax-deferred, like-kind exchange transaction pursuant to Revenue Procedure 2000-37.

Exchange Agreement

A written agreement between the Qualified Intermediary and Exchanger setting forth the Exchangers intent to exchange relinquished property for replacement property, as well as the terms, conditions and responsibilities of each party pursuant to the tax-deferred transaction, like-kind exchange transaction.

Exchange Funds Account

The account established by the qualified intermediary to hold the exchange funds.

Exchange Period

The period of time during which the Exchanger must complete the acquisition of the replacement property in his or her tax-deferred, like-kind exchange transaction. The exchange period is 180 calendar days from the transfer of the Exchangers first relinquished property, or the due date (including extensions) of the Exchangers income tax return for the year in which the tax-deferred, like-kind exchange transaction took place, whichever is earlier, and is not extended due to holidays or weekends.

Exchanger

The Taxpayer who is completing the tax-deferred, like-kind exchange transaction. An Exchanger may be an individual, partnership, LLC, corporation, institution or business.

Excluded Property

The rules for like-kind exchanges do not apply to property held for personal use (such as homes, boats or cars); cash; stock in trade or other property held primarily for sale (such as inventories, raw materials and real estate held by dealers); stocks, bonds, notes or other securities or evidences of indebtedness (such as accounts receivable); partnership interests; certificates of trust or beneficial interest; choses in action.

Fair Market Value

The price at which property would change hands between a buyer and a seller, neither having to buy or sell, and both having reasonable knowledge of all necessary facts.

Forward Delayed Exchange

A type of exchange which occurs when a property is sold (Relinquished Property) and another property is purchased (Replacement Property) within 180 days following the sale of the Relinquished Property.

Fractional Interest

An undivided fractional interest or partial interest in property. See also Tenancy-In-Common Interests.

Identification Period

The period of time during which the Exchanger must identify potential replacement properties in his or her tax-deferred, like-kind exchange. The period is 45 calendar days from the transfer of the Exchangers relinquished property and is not extended due to holidays or weekends.

Identification Statement

An Identification Statement form is used to identify potential replacement property.

Improvement Exchange

A tax-deferred, like-kind exchange whereby the Qualified Intermediary and/or Exchange Accommodation Titleholder acquires title and holds title to the replacement property on behalf of Exchanger, during which time new or additional structures or improvements are constructed or installed on or within the replacement property. Also known as a Build-To-Suit exchange.

Improvements

For land or buildings, improvements (also known as capital improvements) are the expenses of permanently upgrading your property rather than maintaining or repairing it. Instead of taking a deduction for the cost of improvements in the year paid, you add the cost of the improvements to the basis of the property. If the property you improved is a building that is being depreciated, you must depreciate the improvements over the same useful life as the building.

Intermediary

An unrelated party (1031x.com) who participates in the tax-deferred, like-kind exchange to facilitate the disposition of the Exchangers relinquished property and the acquisition of the Exchangers replacement property. The Intermediary has no economic interest except for any compensation (exchange fee) it may receive for acting as an Intermediary in facilitating the exchange as defined in Section 1031 of the Internal Revenue Code. The Intermediary is technically referred to as the Qualified Intermediary, but is also known as the Accommodator, Facilitator or Intermediary.

INTERNAL REVENUE CODE 1031

Section 1031 of the Internal Revenue Code allows an Exchanger to defer his or her capital gain tax and depreciation recapture tax when he or she exchanges relinquished property for like-kind or like-class replacement property.

Identification Removal

An Identification Removal form is used to remove previously identified Replacement Property within the Identification Period of 45 days.

IRS §1031

Internal revenue code section 1031.

Like-Kind Property

Property that is exchangeable with another property. Refers to the nature or character of the property and not to its grade or quality. The properties involved in a tax deferred exchange must be similar in nature or characteristics. Like-kind real estate property is basically any real estate that isn't your personal residence or a second home.

Like-Kind Personal Property

Personal Property is any property belonging to the Exchanger that is not real estate. The "Like Kind" Rules are more restrictive on personal property exchanges. For example: You can exchange a 4 engine airplane for a 4 engine airplane but not for a 2 engine airplane. You can exchange a painting for a painting, but not for a piece of sculpture, even though both are considered pieces of art.

Like-Kind Exchange

The sale or disposition of real estate or personal property (relinquished property) and the acquisition of like-kind real estate or personal property (replacement property) structured as a tax-deferred, like-kind exchange transaction pursuant to Section 1031 of the Internal Revenue Code and Section 1.1031 of the Treasury Regulations in order to defer Federal, and in most cases state, capital gain and depreciation recapture taxes.

Limited Liability Company (LLC)

Members of Limited Liability companies enjoy the limited liability offered by corporations and the minimum requirements of an S corporation. Limited Liability Companies typically contain two or more members and must file articles of organization with the secretary of state, although single member LLCs are allowed in certain states.

Mixed Property (Multi-Asset) Exchange

An exchange that contains different types of properties, such as depreciable tangible personal property, real property, and intangible personal property. In a Mixed Property Exchange, relinquished properties are segmented in like-kind groups and matched with corresponding like-kind groups of replacement properties.

Mortgage Boot/Relief

When you assume debt on your replacement property that is less than the debt on your relinquished property, you receive mortgage boot or mortgage relief. Generally speaking,

mortgage boot received triggers the recognition of gain and is taxable, unless offset by cash boot added or given up in the exchange. (See Boot)

Multiple Property Exchange

Disposition and/or acquisition of more than one property in a Section 1031 Exchange.

Napkin Rule

An Exchanger must buy a Replacement Property of equal or greater value to the Relinquished Property in order to completely defer the applicable capital gains tax. If you purchase a property of lesser value, you will be responsible for any tax on the difference. You must also use all the cash proceeds from the sale on your purchase in order to completely defer the applicable capital gains tax. If you do not use all your proceeds on the purchase, you will be responsible for any tax on the difference.

Ordinary Income Tax

Tax levied by Federal and State governments on a taxpayer's adjusted gross income. Investments that are held for less than one year are taxed at ordinary income tax rates. (See Capital Gain Tax).

Original Basis

The purchase price of a property. It is used to calculate capital gains or losses for tax purposes.

Partial Exchange

When an exchange entails receiving cash, excluded property and/or non-like-kind property and/or any net reduction in debt (mortgage relief) on the replacement property as well as an exchange of qualified, like-kind property. In the case of a partial exchange, tax liability would be incurred on the non-qualifying portion and capital gain deferred on the qualifying portion under INTERNAL REVENUE CODE Section 1031.

Personal Property

Any property belonging to the exchanger that is non-real estate related.

Personal Property Exchange

A tax-deferred transfer of personal property (relinquished property) for other personal property (replacement property) that are of like-kind or like-class to each other.

Phase 1

The process in which the relinquished property is sold and all respective paper work for that process is completed. This process is also known as the "down-leg" of the tax deferred exchange process.

Phase 2

The process in which the replacement property is bought and all the respective paperwork for that process is completed. This process is also known as the "up-leg" of the tax deferred exchange process.

Principal Residence Exemption

Exclusion from capital gain tax on the sale of principal residence of \$250,000 for individual taxpayers and \$500,000 for couples, filing jointly, under INTERNAL REVENUE CODE Section 121. Property must have been the principal residence of the taxpayer(s) 24 months out of the last 60 months. In the case of a dual use property, such as ranch, retail store, duplex or triplex, the taxpayer can defer taxes on the portion of the property used for business or investment under INTERNAL REVENUE CODE Section 1031 and exclude capital gain on the portion used as the primary residence under Section 121.

Qualified Escrow Account

An escrow account, wherein the Escrow Agent (1031x.com) is not the Exchanger or a disqualified person and that limits the Exchanger's rights to receive, pledge, borrow or otherwise obtain the benefits of the tax-deferred, like-kind exchange cash balance and/or other assets from the sale of the relinquished property in compliance with the Treasury Regulations. The Qualified Escrow Account also ensures that the Exchanger's exchange funds and/or assets are held as fiduciary funds and are therefore protected against claims from potential creditors of the Qualified Intermediary.

Qualified Exchange Accommodation Arrangement

The contractual arrangement between the Exchanger and the Exchange Accommodator Titleholder whereby the EAT holds a parked property pursuant to Revenue Procedure 2000-37.

Qualified Intermediary

An unrelated party (1031x.com) who participates in the tax-deferred, like-kind exchange to facilitate the disposition of the Exchanger's relinquished property and the acquisition of the Exchanger's replacement property. The Qualified Intermediary has no economic interest except for any compensation (exchange fee) it may receive for facilitating the exchange as defined in Section 1031 of the Internal Revenue Code. The Qualified Intermediary is the correct technical reference pursuant to the Treasury Regulations, but the Qualified Intermediary is also known as the Accommodator, Facilitator or Intermediary.

Qualified Use

An Exchanger must intend to use the property in their trade or business, to hold the property for investment or to hold the property for income production in order to satisfy the qualified use test. Real Property: Land and buildings (improvements), including but not limited to homes, apartment buildings, shopping centers, commercial buildings, factories, condominiums, leases of 30-years or more, quarries and oil fields. All types of real property are exchangeable for all other types of real property. In general, state law determines what constitutes Real Property.

Real Estate Exchange

Exchange of real property for real property. All types of real property are like-kind for other real property, including vacant land, residential, commercial, and even long term leases.

Real Estate Investment Trust (REIT)

A trust that invests primarily in real estate and mortgages and passes income, losses, and other tax items to its investors. REITS are typically classified as a security and are therefore not exchangeable.

Real Estate Exchange

The sale or disposition of real estate (relinquished property) and the acquisition of like-kind real estate (replacement property) structured as a tax-deferred, like-kind exchange transaction pursuant to Section 1031 of the Internal Revenue Code and Section 1.1031 of the Treasury Regulations in order to defer Federal, and in most cases state, capital gain and depreciation recapture taxes. Related Person: Any person bearing a relationship to the Exchanger as described in Section 267(b) of the Internal Revenue Code. Related parties include family members (spouses, children, siblings, parents or grandparents but not aunts, uncles, cousins or ex-spouses) and a corporation in which you have more than a 50% ownership; or a partnership or two partnerships in which you directly or indirectly own more a 50% share of the capital or profits.

Relinquished Property

The original property being sold by the taxpayer when making an exchange. AKA, the property to be sold or disposed of by the Exchanger in the tax-deferred, like-kind exchange transaction.

Replacement Property

The new property being acquired by the taxpayer when making an exchange. AKA, the like-kind property to be acquired or received by the Exchanger in the tax-deferred, like-kind exchange transaction.

Reverse Exchange

A tax-deferred, like-kind exchange transaction whereby the replacement property is acquired first and the disposition of the relinquished property occurs at a later date.

Rules of Identification

Guidelines that must be followed when making a 1031 exchange, such as the Three Property Rule, 200% Percent Rule, and 95% Percent Rule.

Safe Harbors

The Treasury Regulations provide certain Safe Harbors that assist Qualified Intermediaries and Exchangers in structuring tax-deferred, like-kind exchange transactions so they can be assured that no constructive receipt issues will be encountered during the exchange cycle.

Seller Carry-Back Financing

When the buyer of a property gives the seller of the property a note, secured by a deed of trust or mortgage. In a Section 1031 Exchange, seller carry-back financing is treated as boot, unless it is sold at a discount on the secondary market or assigned to the seller as a down payment on the replacement property.

Settlement Agent

Title agent, closing officer, escrow officer, settlement officer, closing agent, closing attorney, settlement attorney.

Simultaneous Exchange

A tax-deferred, like-kind exchange transaction whereby the disposition of the relinquished property and the acquisition of the replacement property close or transfer at the same time. A Simultaneous Exchange is also referred to as a Concurrent Exchange.

Starker Exchange

Another common name for the tax-deferred, like-kind exchange transaction based on a court decision that was handed down (Starker vs. Commissioner) in 1979. The Ninth Circuit Court of Appeals eventually agreed with Starker that its delayed tax-deferred, like-kind exchange transaction did in fact constitute a valid exchange pursuant to Section 1031 of the Internal Revenue Code. This ruling set the precedent for our current day delayed exchange structures.

Straight-line Depreciation Method

A depreciation method that spreads the cost or other basis of property evenly over its estimated useful life. Tangible Personal Property: Property other than real estate that physically exists. Aircraft, business equipment and vehicles are examples of tangible personal property. Assets such as trademarks, patents and franchises only represent value and are therefore intangible property.

Tax Advisor

Accountant, CPA, financial advisor, tax attorney.

Taxpayer

Client, investor, exchanger.

Tax-Deferral

The postponement of taxes to a later year, usually by recognizing income or a gain at a later time. Tax-deferred, like-kind exchange transactions are a common method of deferring capital gain and depreciation recapture taxes.

Tax Deferred Exchange

The procedure outlined under Internal Revenue Code Section 1031 involving a series of rules and regulations that must be met in order to take full advantage of deferring capital gains tax on the sale of investment real estate. §1031 tax-deferred exchanges are also commonly known as: Starker exchanges, delayed exchanges, like-kind exchanges, 1031 exchanges, section 1031 exchanges, tax-free exchanges, nontaxable exchanges, real estate exchanges, real property exchanges. Though all of these terms refer to the same thing, the most typical term used today is tax deferred exchange.

Taxpayer

The person or entity that is completing the tax-deferred, like-kind exchange transaction, commonly referred to as Exchanger.

Tenancy-In-Common Interest (Co-Tenancy)

A separate, undivided fractional interest in property. A tenancy-in-common interest is made up of two or more individuals, who have equal rights of possession. Co-tenants interests may be equal or unequal and may be created at different times and through the use of different conveyances. Each co-tenant has the right to dispose of or encumber his or her interest without the agreement of the other co-tenants. He or she cannot, however, encumber the entire property without the consent of all of the co-tenants. In an INTERNAL REVENUE CODE Section 1031 Exchange, an exchanger may acquire a tenancy-in-common interest with one or more other investors, as his or her like-kind replacement property. For purposes of INTERNAL REVENUE CODE Section 1031 Exchanges, a co-tenancy must only engage in investment activities, including supporting services that would typically accompany the investment. Co-tenants that are engaging in separate business activities are treated as partnerships by the I.R.S. Titleholder: The entity that owns/holds title to property. In an INTERNAL REVENUE CODE Section 1031 Exchange, the titleholder of the relinquished property must generally be the same as the titleholder of the replacement property. If a taxpayer dies prior to the acquisition of the replacement property, his or her estate may complete the exchange. When the acquisition and disposition entities bear the same taxpayer identification numbers, such as disregarded entities (single-member LLCs and Revocable Living Trusts), the exchange usually qualifies.

Three Property Rule

The Exchanger may identify up to three properties, without regard to their value.