

A 1031 Tax-Deferred Exchange is a transaction that allows you to preserve the full value of your investment property. By disposing of investment properties and acquiring “like kind” properties in a 1031 Exchange, you can reinvest sales proceeds that would otherwise be payable as capital gains tax. It allows you to use your entire property value to acquire another investment property. Administered correctly, it is a powerful tool that can work to your financial advantage.

As a leader in the industry, First American Exchange has successfully assisted thousands of investors with their 1031 Exchange transactions, nationally. We have the reputation and experience to successfully and safely complete your exchange transaction. First American Exchange, a member of the First American Family of Companies, is a strong, national organization offering the strength and financial security you should demand from a Qualified Intermediary entrusted with your exchange proceeds.

First American Exchange of Skagit County (“FAE”) is a subsidiary of First American Title Insurance Company of Skagit County, and as such, has the full backing of the national organization and has closed hundreds of transactions both locally and nationally since its inception in 1989 under the business trade name “SEAS”. FAE is an experienced and qualified intermediary and a member of the Federation of Exchange Accommodators.

Gale A. Hickok, President and Facilitator for FAE, head a skilled and knowledgeable staff dedicated to excellence and service. Gale is also Manager of First American Title Company of Skagit County. He provides the experience and expertise in the title industry as well as his long-standing knowledge and success in completing tax-deferred exchanges. No intermediary is more committed to ensuring a safe, simple and effective exchange for you.



# Q&A

## Why do I need a Qualified Intermediary?

A Qualified Intermediary simplifies the exchange process by taking your place in the transaction(s) and acting on your behalf as both seller of your relinquished property and as buyer of your replacement property. Because of the complexity of the exchange process, it is a sensitive roll requiring experience, specialized knowledge and extreme care to preserve the tax-deferred character of the transaction.

## Can anyone serve as a Qualified Intermediary?

No, certain persons are considered disqualified to act as your Qualified Intermediary. Generally, these include your employees, certain relatives or someone who, within a two-year period prior to your exchange, has acted as your attorney, accountant, investment banker or broker, or real estate broker or agent.

## If I select a Qualified Intermediary, do I still need a CPA or tax advisor?

Definitely. Qualified Intermediaries are appointed to carry out the exchange and prepare the necessary documentation, but can’t counsel you on the desirability or tax implications of an exchange. You should always discuss your individual exchange with your tax advisor, as each person’s tax situation is unique.

## What is “Boot”?

“Boot” is consideration, such as cash, non-like-kind property, notes, or reduction in mortgage debt (mortgage boot) given in addition to “like-kind” property in an exchange transaction. If you receive boot in an exchange, it is likely all, or some portion, will be taxable. If you wish to receive boot from the transaction, you must receive it from the escrow closing prior to disbursement of funds to FAE. First American Exchange advises you consult your tax advisor, should it appear that you might receive boot.

## IDENTIFICATION PERIOD:

You must identify the property you wish to acquire within 45 days of the closing of your relinquished property.

## IDENTIFICATION RULES:

**3 PROPERTY RULE:** You may identify 3 properties, no matter what their value, OR

**200 PERCENT RULE:** You may identify any number of properties, as long as their combined fair market value isn’t more than twice that of the relinquished property, OR

**95 PERCENT RULE:** You may identify any number of properties, regardless of their combined fair market value, as long as you acquire 95% of that total value.

## EXCHANGE PERIOD:

The acquisition of your new property must be completed within 180 days of the transfer of your relinquished property, or by the filing date of your tax return for the year in which you transferred the first property, whichever comes first. These time restrictions must be *strictly* complied with for the exchange to be allowed by the IRS. The IRS **does not** allow extensions of these time periods under any circumstances.

First American Exchange will not be liable for the taxpayer’s failure to identify and close replacement property within the allotted time frames.

## OVERVIEW AND PROCESS

The general rules governing a 1031 Exchange are clear and simple:

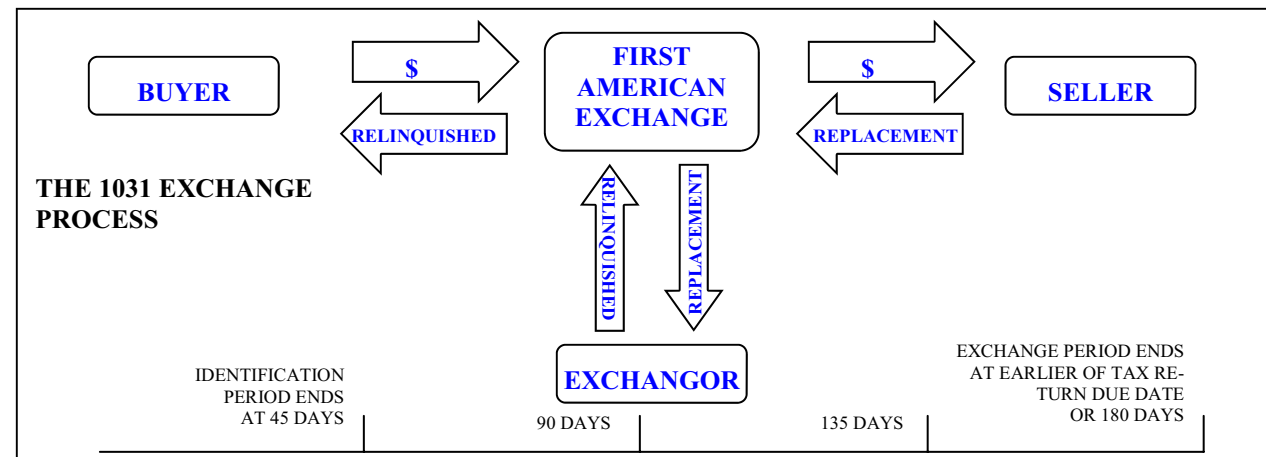
Any kind of property (real or personal) can be exchanged provided your relinquished property must be held for investment purposes. Under most circumstances, your personal residence will not qualify for a tax-deferred exchange.

## LIKE KIND:

Your replacement property must be of “like kind” to your relinquished property and also must be held for investment purposes. “Like kind” does not mean exactly the same, especially in the exchange of real properties. Substantially any real property is considered “like kind” to other real property. You can exchange a single-family rental home for a condominium, warehouse or office building. The like-kind limitations applied to personal property are much more restrictive.

## TRADING UP:

As a rule of thumb, the property you acquire must have both value and equity equal to, or greater than the one you dispose of to be totally tax deferred.



## GENERAL STEPS INVOLVED IN COMPLETION OF SUCCESSFUL EXCHANGE:

**1. Purchase Contract.** A contract is executed between the buyer and you for the purchase and sale of your relinquished property. The purchase contract should contain a "cooperation clause" in which the buyer agrees to cooperate with you in structuring and completing a 1031 exchange. For example: "It is agreed between the Seller and Buyer that Seller (or Buyer) has the option to qualify this transaction as part of a tax-deferred exchange under Section 1031 of the IRS Code, and Buyer (or Seller) agrees to cooperate with the necessary requirements to effect the exchange, at no cost to Buyer (or Seller). Seller (or Buyer) will assign their interest in this agreement to First American Exchange of Skagit County."

**2. Exchange opened.** The exchange is set up with the Facilitator or Qualified Intermediary, usually after escrow has been opened for closing the sale. First American Exchange will prepare the necessary documentation to effect the exchange. The Exchange Agreement (between the taxpayer and the Facilitator) defines the exchange transaction and set forth the obligations of both taxpayer and Facilitator. It also contains your agreement to hold FAE harmless with regard to all the properties involved in the exchange. An Assignment of the relinquished property purchase contract to FAE is prepared, assigning your rights as seller to the Facilitator. And a Release and Warranty Agreement in which all other parties release FAE from any liability or responsibility with regard to representation concerning the properties sold or acquired. First American will also prepare written instructions to the settlement agent necessary to complete the transaction and effect the first "leg" of the exchange.

**3. Closing the relinquished property.** The relinquished property closes when all conditions of sale have been met and the property is conveyed to the buyer. While the conveyance will be directly from you to the buyer, it will represent a transfer from you to FAE in exchange for other property that you will receive at a later date. It also represents the sale from FAE to the buyer for cash. The proceeds from the sale are delivered directly to First American Exchange for investment on your behalf. At no time should you be in either actual or constructive receipt of the cash proceeds.

**4. Identification of replacement property.** The time period to identify the property (or properties) you wish to purchase as your replacement property starts on the closing of the relinquished property. You have 45 days from the date of transfer to identify the acquisition property. First American Exchange will provide you with forms to assist you with the identification process.

**5. Purchase Contract for replacement property.** After you have identified suitable "like kind" replacement property and made a decision as to which property you intend to acquire, you enter into a purchase contract with the seller. This property must be one or more of the properties you have identified by the end of the 45day identification period. The purchase contract should also contain a "cooperation clause" obligating your seller to cooperate with you in completing the 1031 exchange.

**6. Exchange documentation for the acquisition property.** First American Exchange will then prepare the Assignment of the purchase contract for the replacement property to FAE, the Release and Warranty to be executed by you and the seller. First American will also prepare instructions to the settlement agent necessary to complete the exchange.

**7. Closing the replacement property.** When the conditions of closing have been met, First American Exchange will deliver the funds it has been holding on your behalf to the settlement agent to acquire the replacement property. The seller will convey the replacement property directly to you. The closing of the replacement property must occur within 180 days of the transfer of the relinquished property (or by your tax return due date, if earlier) in order for the transaction to qualify for Section 1031 treatment.

**8. Final reconciliation.** Throughout the process, FAE will keep you fully informed. We will advise you as to your 45 and 180 day time periods, the status of your transaction and closings and the funds available for your acquisition, together with interest earned on those funds. In the end, a complete reconciliation of funds received and funds paid will be prepared and delivered to you and any tax or legal advisors you may designate.

## TYPES OF EXCHANGES

**Simultaneous Exchange:** An exchange transaction when both the relinquished property and the acquisition property are closed on the same (or closely to) the same date. The proceeds of the relinquished property can be directly assigned to the acquisition closing.

**Delayed Exchange:** An exchange transaction when the relinquished property closes, the funds are held by the Facilitator and used at a later date (within the required time limitations) to acquire the replacement property. This is the most common type of 1031 Exchange.

**Reverse Exchange:** An exchange transaction when the replacement property is acquired prior to the disposition of the relinquished property. These are more complex transactions and First American Exchange encourages you to consult with your tax advisor before attempting this type of exchange. Certain lending institutions may not wish to participate in this type of exchange.

**Build-to-Suit:** An exchange transaction where the acquisition property is vacant land or a property in need of completion/renovation. The exchange funds are held by the Intermediary and used both for the acquisition and completion of the project. You should proceed with caution on build-to-suit exchanges. There are inherent complications with the identification process of a "to be produced" property and with issues of completion within the 180 day time allotment. Advice from your tax advisor and/or attorney is strongly recommended.

**Fractional (Tenants-in-common) Exchange:** An exchange where the acquisition property is a prepackaged interest in a larger, institutional-grade property as provided by IRS Revenue Procedure (2002-22). This procedure helps overcome the hurdle of identifying a suitable property within the 45-day window.

**Personal Property Exchange:** An exchange where the items being exchanged are depreciable tangible personal property. Some examples would include: art held for investment, construction equipment, and a company-owned boat or airplane.

**Multi-Asset Exchange:** An exchange of real estate and personal property combined. This helps when selling a property that includes a significant portion of personal property such as a restaurant, nursing home or retail business.

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**"A Professional  
Qualified Intermediary"**

**Member Federation of Exchange Accommodators**

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