



# What is a 1031 Exchange and why would an Investor want to use one?



# IRS CODE 1031

“an exchange which, pursuant to an agreement, the taxpayer transfers property held for productive use in trade or business or for investment and subsequently receives property to be held either for productive use in trade or business or for investment



# The 6 Basic Requirements

- 1) Held for Investment
- 2) 45 Day & Identification Rule
- 3) 180 Day Rule
- 4) Qualified Intermediary Requirements
- 5) Title Requirements
- 6) Reinvestment Requirements/Equal or Up Rule



# The 6 Basic Requirements

1) Held for Investment



# Held for Investment

Any property held for income or used to produce income can be exchanged for investment or any income producing property.



# Forms of Investment Property

Rental property is always an investment.

Bare land is always an investment.



# Example

Dick & Jane own a duplex they bought in 2001 and have rented it out to various tenants ever since. They want to sell it and buy a condo at the beach to rent out to others and use a little bit themselves.

Does this qualify for a 1031 Exchange?



# The 6 Basics Requirements

- 1) Held for Investment
- 2) 45 Day & Identification Rule





# 45 Day Rule & Identification Rules

## IRC Code Requirements:

- Identify list of replacement properties within 45 days
- You can identify up to 3 different properties or follow 200% Rule
- **ABSOLUTELY NO EXTENSIONS!!**



# Example #1

Dick and Jane sell their rental for \$100,000. They want to identify 2 or 3 replacements for \$10 Million each.

Is this okay?



## Example #2

Dick & Jane sell a property on Jan. 1 for \$100,000. He wants to identify 4 replacement properties: four little condominiums selling for \$75,000 each.

Is this okay?



# The 6 Basics Requirements

- 1) Held for Investment
- 2) 45 Day & Identification Rule
- 3) 180 Day Rule



# 180 Day Rule

Section 1031 requires that you purchase the replacement property by the 180th day after the closing of the old property. The purchase **MUST** be one or more of the properties on the 45 Day identification list.



# The 6 Basics Requirements

- 1) Held for Investment
- 2) 45 Day & Identification Rule
- 3) 180 Day Rule
- 4) Qualified Intermediary Requirements



# Qualified Intermediary Requirements

- A QI is required by the IRS
- Must provide a Qualified Escrow account



# The 6 Basics Requirements

- 1) Held for Investment
- 2) 45 Day & Identification Rule
- 3) 180 Day Rule
- 4) Qualified Intermediary Requirements
- 5) Title Requirements





# Title Requirements

- However the taxpayer holds title to the old property is how the taxpayer must take title to the new property.



# Example

- Sue is the only one on the title of the rental house. She wants to add Fred to the title right before the sale.
  
- Can she?

**NO**



# The 6 Basics Requirements

- 1) Held for Investment
- 2) 45 Day & Identification Rule
- 3) 180 Day Rule
- 4) Qualified Intermediary Requirements
- 5) Title Requirements
- 6) Reinvestment Requirements/Equal or Up Rule



# Reinvestment Requirements

## Equal or Up Rule

$$\text{Cash} + \text{Debt Relief} = \text{Reinvestment Goal}$$



# Review of the Basics

- 1) Held for Investment /Like-Kind
- 2) 45 Day & Identification Rule
- 3) 180 Day Rule
- 4) Qualified Intermediary Requirements
- 5) Title Requirements
- 6) Reinvestment Requirements/Equal or UpRule



# How To Select a Q.I.

- They must hold fund in a qualified escrow account.
- They must require signature of the client to move funds.
- They must be easily accessible to answer questions (at no charge).



# Common Exchange Issues

## Ownership Issues

1. Corporations
2. Partnerships & LLCs
3. Trusts
4. Tenancies



# Common exchange Issues

## 4. Tenancies

- Joint Tenancy/Community Property
- Tenants-in-Common/Percentage Ownership
- Divorce Issues





# Common Exchange Problems

## Taking Money Out - “BOOT”

1. Timing Issues
2. Taxability Issues
3. Impact on the Exchange



# Identifying 1031 Potentials In a Sale

Two Key Questions:

- 1) What was the property used for?
- 2) What will the money from the sale be used for?

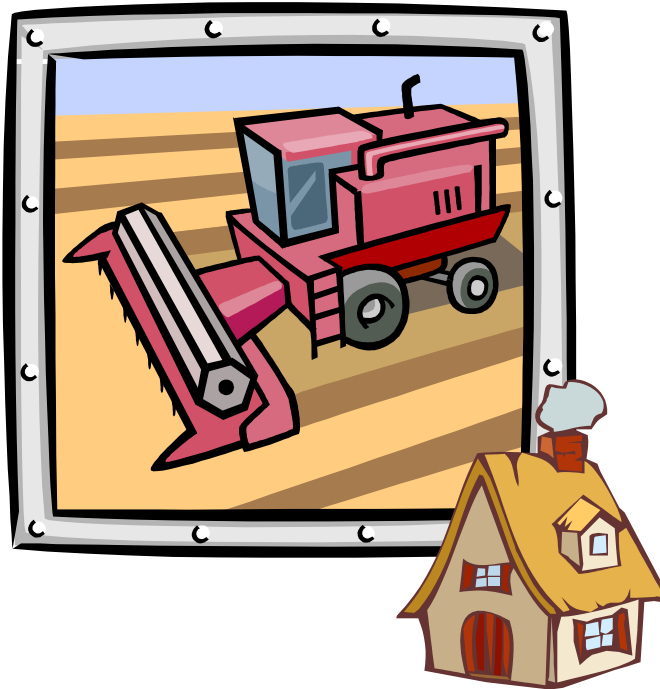


# Designing a 1031 Tax Deferred Exchange

- Consolidation exchanges
- Diversification exchanges
- Retirement needs
- Maximizing investment yield



# Integrating with Estate Planning





## Using Exchanges to Create Permanent Tax Free Income

Dick and Jane have owned their home for many years and have a \$1,000,000 gain. How do they exit this property without owing any tax?



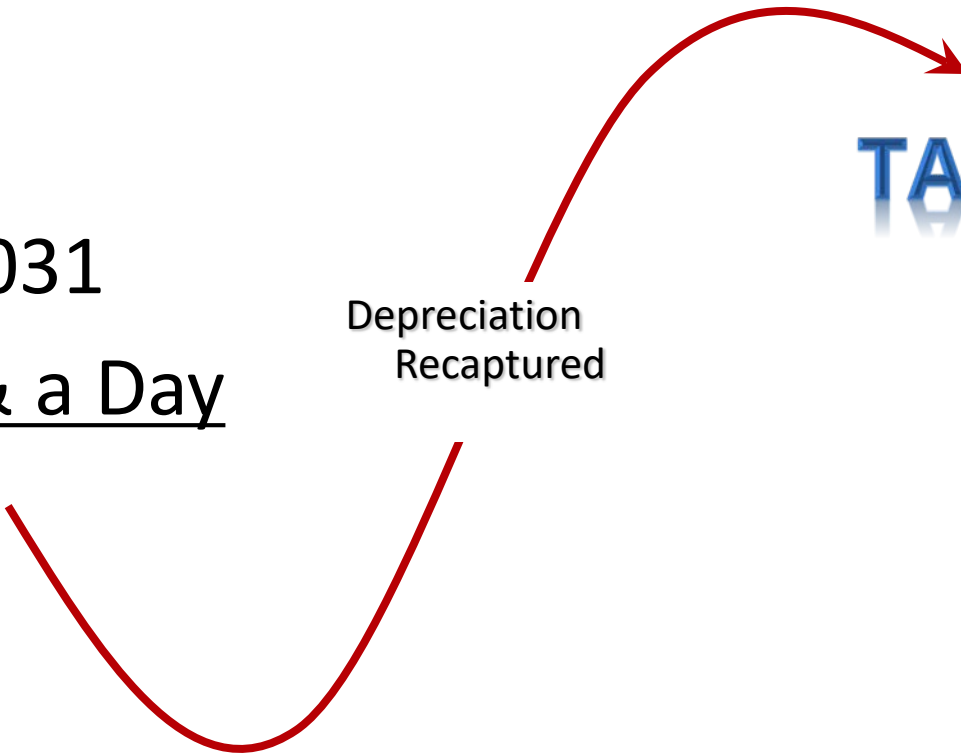
# Using Exchanges to Create Permanent Tax Free Income

§ 1031

1 Year & a Day

Depreciation  
Recaptured

**TAX FREE!**





# Using Strategies to Create Permanent Tax Free Income

Step 1) Rent the house for 1 year and 1 day

Step 2) Do a 1031 Exchange for:

Sales price	\$1,100,000
1031 Exchange	<\$600,000>
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Boot	\$500,000
Section 121 Exclusion	<\$500,000>
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Taxable	\$0
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Recapture of depreciation required



# Advanced Exchange Techniques

- Reverse exchanges
- Construction exchanges
- Improvement exchanges
- Shifting the date of gain recognition
- Integrating with estate planning
- Combining 1031's to tax create permanent tax free income





# Thank you!

## Corporate Office - Lakewood, CO

Phone 303.789.1031

Fax 303.496.1031

[www.erg1031.com](http://www.erg1031.com)

Judge Learned Hand:

Any one may so arrange his affairs that his taxes shall be as low as possible; he is not bound to choose that pattern which will best pay the Treasury; there is not even a patriotic duty to increase one's taxes.