



A LIKE-KIND EXCHANGE IS PERMITTED UNDER SECTION 1031 OF THE U.S. INTERNAL REVENUE CODE.

It allows an investor who holds property “for productive use in trade or business or for investment” to sell that property and purchase another like-kind property without paying capital gains taxes on any appreciation realized in the sale of the first property. This safe harbor only exists if the seller or exchanger never has access to the proceeds from the sale. You can better assist your clients if you understand the benefits and the basic components of the §1031 exchange.

THE FACILITATOR OR QI

Your seller must hire a qualified intermediary (QI) or facilitator to stand in their shoes to 1) relinquish the property they are selling to the new buyer, 2) hold the funds from the sale in escrow until the purchase of the replacement property, and 3) transfer the newly purchased property to your client. The QI cannot be someone related to the exchanger, or anyone who has a financial relationship with the exchanger, such as their real estate agent, attorney or accountant.

LIKE-KIND EXCHANGE

Although the properties exchanged are called “like-kind” it does not mean that the properties “exchanged” have to be a shopping center for a shopping center, but rather that the new property also has to be held “for productive use in trade or business or for investment.” This could mean exchanging a hotel for an office building, a commercial property for unimproved property, or an industrial building for a multi-family property.

TIMING IS EVERYTHING

The time requirements for a §1031 exchange are very straightforward. From the day that your client sells the first property, he or she has 45 days to identify a replacement property or properties. Then your client has 180 days to close on a replacement property. During that time, the QI holds the funds realized from the first sale in escrow, in a segregated account, to be used when the replacement property is purchased.

THE CLOSING OF ESCROW

The closing is handled in traditional fashion by an Escrow or Closing Agent. However, the QI stands in the shoes of a seller, in the case of a relinquished property, or in the shoes of the buyer, in the case of a replacement property. Your client will acknowledge all preliminary and final closing statements, but ultimately, they must be signed by the QI. Since your client never touches the funds, the funds will be wired to or from the QI as well.

For more detailed information, visit www.lennartitle.com/Learning-Center

This information is provided as a general educational resource and is not intended to, and shall not be deemed to, constitute legal advice.
For questions concerning a specific situation, please contact an attorney or tax professional.

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