

# 1031 TAX-DEFERRED EXCHANGES

## WELCOME TO A POWERFUL TOOL THAT CAN WORK TO YOUR FINANCIAL ADVANTAGE.

When you sell your interest in an investment property and buy another, you may face a large capital gain and the prospect of paying federal taxes on it—and in some states, state taxes as well. So your attorney, tax advisor, or real estate professional may suggest a tax-deferred exchange under Section 1031 of the Internal Revenue Code.

A 1031 exchange allows you to dispose of investment properties and acquire “like-kind” properties while deferring federal capital gains taxes. Most states with a capital gains tax offer a similar tax advantage, too. Bottom line: a 1031 exchange lets you reinvest sale proceeds that would otherwise be paid to the government as capital gains taxes.

Let’s assume you acquired a property for \$800,000 four years ago. It has a current mortgage balance of \$600,000 and has appreciated to \$1,800,000. During the period you owned the property you have taken depreciation deductions of \$100,000. Your long term capital gains tax would total \$225,000 calculated as follows:

$\$1,000,000$  appreciation gain  $\times$  20%\* = \$200,000;  
 $\$100,000$  depreciation recapture  $\times$  25%\* = \$25,000.

Current value	\$1,800,000	\$1,800,000
Mortgage payoff	(600,000)	(600,000)
Tax on \$1,000,000 appreciation @ 20%	(200,000)	deferred
Tax on \$100,000 depreciation recapture @ 25%	(25,000)	deferred
Available for reinvestment	\$975,000	\$1,200,000
Value of replacement property assuming 30% down	\$3,250,000	\$4,000,000

*\*Assumes 20% capital gains rate and 25% depreciation recapture rate*



## IT STARTS WITH "LIKE-KIND" PROPERTIES

Any real property can be exchanged, provided it's held "for productive use in a trade or business," or "for investment," and is exchanged for property of like-kind that will also be held for one of these same purposes.

Most real property is considered "like-kind" to other real property. A single-family rental unit, for example, may be used to acquire another like it, or to purchase a warehouse, retail center, or office building.

### THE RULES ARE CLEAR AND SIMPLE:

- ▶ **IDENTIFICATION PERIOD** The property you're acquiring must be identified within 45 days of the transfer of the first relinquished property.
- ▶ **EXCHANGE PERIOD** The acquisition of your replacement property must be completed by the earlier of 180 days from the transfer of the relinquished property or the due date of your tax return for the year in which the relinquished property was transferred.
- ▶ **TRADING UP** To be fully tax-deferred, the property you're acquiring must have value and equity equal to, or greater than, the relinquished property.



### YOU MAY IDENTIFY THE REPLACEMENT PROPERTY BY YOUR CHOICE OF THE:

- ▶ **3-PROPERTY RULE** Three properties, no matter what their value, or
- ▶ **200 PERCENT RULE** Any number of properties, as long as their combined fair market value isn't more than twice that of all relinquished property, or
- ▶ **95 PERCENT RULE** Any number of properties, regardless of their combined fair market value, as long as you acquire 95 percent of that total value.



## FIRST AMERICAN MAKES THE PROCESS SEAMLESS FOR YOU

### STEP 1: PURCHASE CONTRACT—RELINQUISHED PROPERTY

You and your buyer enter into a purchase contract with respect to the sale of your property (known as the “relinquished property”). This relinquished property purchase contract should contain a “cooperation clause” obligating the buyer to cooperate in structuring the transaction as a tax-deferred exchange. Contact us for a sample “cooperation clause.”

### STEP 2: RELINQUISHED PROPERTY EXCHANGE DOCUMENTS

Next, contact First American Exchange to start the tax-deferred exchange process. We will prepare an exchange agreement, an assignment of the relinquished property purchase contract (assigning your rights as seller to us), a notice of the assignment (for delivery to the buyer), and instructions to the settlement agent necessary to complete the transaction. All of these documents must be signed and dated before or as of the date of closing.

### STEP 3: CLOSING THE RELINQUISHED PROPERTY

When the conditions of closing have been met, your relinquished property will be conveyed to the buyer. While the conveyance will be directly from you to the buyer, it will represent a transfer from you to First American Exchange in exchange for other property that you will receive at a later date. It also represents the sale from First American Exchange to the buyer for cash. The cash proceeds from the sale of the relinquished property must be delivered directly to First American Exchange. At no time should you be in either actual or constructive receipt of the cash proceeds.

### STEP 4: RELINQUISHED PROPERTY PROCEEDS AND FORMS

Following the relinquished property closing, First American Exchange will hold the exchange proceeds and provide you with forms to identify potential replacement properties within the 45-day identification period.

### STEP 5: PURCHASE CONTRACT—REPLACEMENT PROPERTY

After you have identified suitable “like-kind” replacement properties and made a decision as to which identified properties you intend to acquire, you will enter into a Purchase Contract with the seller. This replacement property purchase contract should also contain a “cooperation clause” obligating the seller to cooperate with you in completing your tax-deferred exchange. Contact us for a sample “cooperation clause.”

### STEP 6: REPLACEMENT PROPERTY EXCHANGE DOCUMENTS

First American Exchange will then prepare an assignment of the replacement property purchase contract (assigning your rights as buyer to us), Notice of the Assignment (for delivery to the seller), and instructions to the settlement agent necessary to complete the transaction. All of these documents must be signed before or as of the date of closing.





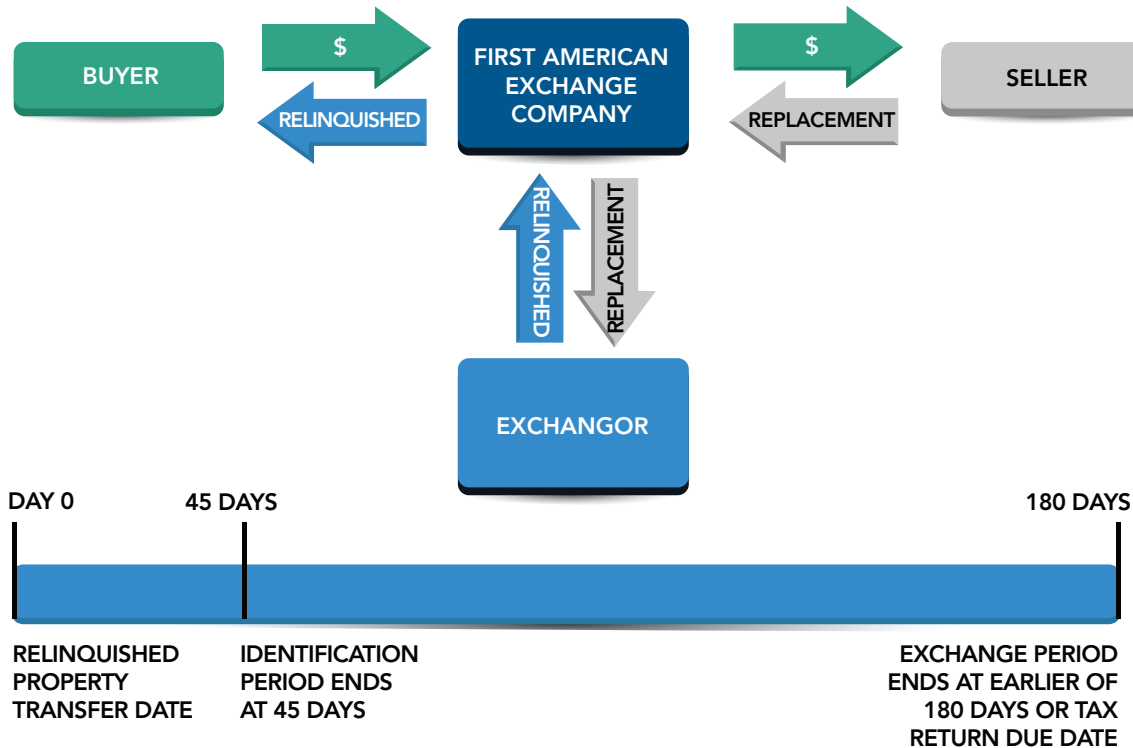
## STEP 7: CLOSING THE REPLACEMENT PROPERTY

When the conditions of closing have been met, First American Exchange will deliver the exchange proceeds to the settlement agent to acquire the replacement property. The seller will convey the replacement property directly to you. This conveyance will represent a purchase from the seller by First American Exchange and a transfer to you in completion of the exchange. Remember that to qualify for tax-deferred treatment, this closing must occur by the earlier of 180 days from the date of closing on your first relinquished property or the due date of filing your federal income tax return for the year in which your first relinquished property was sold, including extensions.

## STEP 8: KEEPING YOU INFORMED AND FINAL RECONCILIATION

Prior to or at the conclusion of your exchange, First American Exchange will provide you with a copy of your exchange documents, including a statement reflecting the receipt and disbursement of all exchange funds. With this information, you and your tax advisor will complete Form 8824 to be filed with your federal income tax return, as well as any state forms required to report the transaction as an exchange.

## THE 1031 EXCHANGE PROCESS



## OUR QUALIFIED INTERMEDIARY ADVANTAGES BRING YOU PEACE OF MIND.

Experience, nationwide service, financial strength—the qualified intermediary you choose should offer these, along with solid credentials in 1031 tax-deferred exchanges. That’s what you can expect from First American Exchange. First American Exchange maintains a multimillion-dollar fidelity bond and errors and omissions insurance from a leading underwriter.

Before starting the process of selling a property that may be a part of an exchange transaction, call First American Exchange company or access our website at [www.firstexchange.com](http://www.firstexchange.com). Let us help you reap the rewards of your investment. It’s a smart move.

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**800.556.2520**  
**1031@firstam.com**  
**[www.firstexchange.com](http://www.firstexchange.com)**

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*First American Exchange is a qualified intermediary and is precluded from giving tax or legal advice. You must consult with your tax or legal advisor about your specific circumstances.*

