

1031 Exchange Agency FAQs

IPX1031® FNTG's 1031 Company

My staff asked for a simple definition of a 1031 Exchange that they can share with customers.

Section 1031 of the Internal Revenue Code allows the owner of investment or commercial property to sell the property and defer the payment of federal, depreciation recapture and, in most cases, state taxes by purchasing investment or commercial property.

I'm at a closing with a customer who is completing a 1031 Exchange, and she wants to know if she has to deposit all of her profits into her 1031 Exchange account.

Taxpayers do not have to reinvest 100% of their net sales proceeds. But the cash that is taken at closing will be subject to depreciation recapture and capital gain income taxes. The portion of the profits that are deposited into the 1031 account can be reinvested and can be tax-deferred. Taxpayers need to reinvest 100% of their net sales proceeds if they want to defer 100% of their income tax liabilities.

What are the 1031 time periods?

The taxpayer typically has 45 days from the closing of the sale to identify new property. The identification must be specific and unambiguous. The taxpayer must close on one of more of the identified properties within 180 days from the closing of the sale. The 45 and 180 day periods run concurrently. Please note that the exchange period can get cut short. The rules say that the taxpayer either has 180 days to or the due date of the tax return to complete the exchange, whichever occurs first.

My customer identified replacement property in an area that was damaged by the recent hurricane, and the lender extended the closing past the 180-day 1031 Exchange period. Is there a chance that the IRS will give my customer a break and recognize her exchange?

Yes. The IRS has already extended the statutory replacement period for many of the flood-damaged counties. However, such an extension option is only available if it was included or explicitly provided in the 1031 Exchange agreement. That is, if the exchange agreement does not provide for a presidentially declared disaster replacement period extension option, taxpayers will not be able to utilize that option.

I have been facilitating 1031 Exchanges for years when the need has arisen for my customers. I read that certain 1031 funds cannot be held in regular escrow accounts. Is this true?

Yes. The IRS passed a regulation called IRC §468(B) to provide 1031 companies with guidelines on how 1031 funds must be held. Most funds can no longer be placed in general escrow accounts. In addition, several states have recently passed legislation requiring 1031 Intermediaries to register with their states if the relinquished or replacement properties fall within their state lines.

Is there any risk to my title company for offering 1031 Exchange services?

Yes. While the concept is simple (sell old property/purchase new property), Section 1031 contains many guidelines and rules. A title company that offered 1031 services was sued by a customer who alleged that the title company set up the wrong type of 1031 Exchange. The customer was awarded in excess of \$300,000, which was not covered by the title company's E&O or other coverages since 1031 Intermediary Services are a separate business. Therefore, title companies should consult with their insurance agents and obtain training for their employees if they plan on offering 1031 services "in-house."

Without acting as a 1031 Intermediary how do I offer 1031 services to my customers and ensure that they, as well as my title company, are protected?

Many title agents refer their customers to FNTG's 1031 company, IPX1031®. With a staff of more than 100 trained 1031 professionals, we are the largest and safest 1031 Intermediary in the country and provide a full array of 1031 Exchange services. Our expert legal team of 10 attorneys is available to address questions and provide solutions to you and your customers. We keep up to date on all of the changes in the 1031 industry, regularly meeting with representatives of the IRS and Treasury. Security of funds is of the utmost importance, with a \$50 million written performance guaranty issued directly by FNTG, and a \$100 million Fidelity Bond.

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