The Delayed Exchange and Identification Requirements

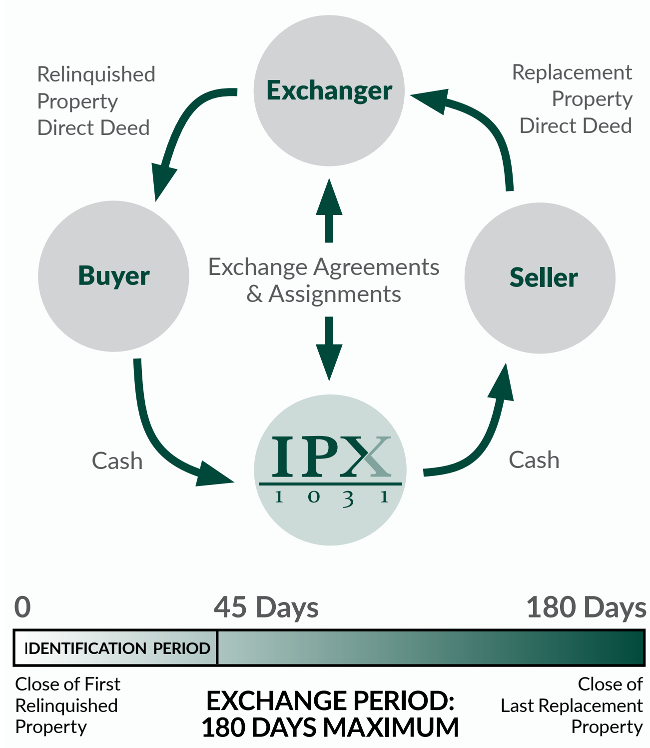
IPX 1031®
Exchange Topics

Delayed Exchange Deadlines and Identification Requirements

The most common exchange structure is the delayed "forward" exchange in which the Relinquished Property is sold, the proceeds (Exchange Funds) are delivered to the Qualified Intermediary, and are subsequently used to acquire Replacement Property from a third party seller. Two critical requirements in a delayed exchange are that the Replacement Property must be properly identified within the Identification Period and acquired before the end of the Exchange Period. IRC §1031(a)(3); Treas. Regs. §1.1031(k)-1(b)-(e).

There are two key deadlines that the Exchanger must meet to have a valid exchange:

- **Identification Period:** Within 45 calendar days of the transfer of the first Relinquished Property, the Exchanger must identify the Replacement Property to be acquired.
- **Exchange Period:** The Exchanger must receive the Replacement Property within the earlier of 180 calendar days after the date on which the Exchanger transferred the first Relinquished Property, or the due date (including extensions) for the Exchanger's tax return for the tax year in which the transfer of the first Relinquished Property occurs.
- The time periods for the 45-day Identification Period and the 180-day Exchange Period are very strict and cannot be extended even if the 45th day or 180th day falls on a Saturday, Sunday or legal holiday. They may, however, be extended by up to 120 days if the Exchanger qualifies for a disaster extension under Rev. Proc. 2007-56.



Replacement Property must be identified within the Identification Period by at least one of the following methods:

- Completed the purchase of the Replacement Property within the Identification Period; or
- Identified in a written document (Identification Notice), signed by the Exchanger, and delivered prior to the end of the Identification Period (by midnight of the 45th day), to the Qualified Intermediary or other permissible party to the exchange that is not a "disqualified person" or agent of the Exchanger. Treas. Reg. §1.1031(k)-1(c). Other allowable recipients of the Identification Notice include the seller of the Replacement Property or the settlement agent. Delivery to the Exchanger's attorney or broker would not qualify as these parties are agents of the Exchanger. Best practice is to send the Identification Notice to the Qualified Intermediary prior to close of business on the last business day prior to the end of the Identification Period, so that the Exchanger can confirm timely delivery and receipt.

The Delayed Exchange and Identification Requirements (CONT.)

Requirements for a Proper Identification Notice:

- Must include a specific and unambiguous description of the Replacement Property
- Must be signed by the Exchanger
- For real property, the Identification Notice must include
  a. the legal description,
  b. a street address, or
  c. a distinguishable name (i.e. "Empire State Building")
- For property to be produced, such as raw land to be acquired after improvements have been constructed, the Identification Notice should include a description of the underlying real estate and as much detail regarding the improvements as is practical, for example, *100 S. Main St., Gotham City, IL, improved with a 6 unit apartment building.*
- When identifying Replacement Property, it is not necessary to separately identify any incidental property included in the purchase that has a value of less than 15% of the total value of the Replacement Property and that is typically transferred with the larger asset. This does not change the rule that only like kind properties qualify for exchange treatment. The value of the non like-kind property may not be attributed to the identified Replacement Property for purposes of deferring gain. For example, Relinquished Property is a rental house valued at $200,000, with $195,000 allocated to real estate and $5,000 allocated to appliances. If the sole Replacement Property is a rental condominium unit valued at $200,000, with $190,000 allocated to real estate and $10,000 allocated to appliances, the Exchanger would recognize $5,000 of boot, notwithstanding that only the condominium unit needs to be identified, and it is not necessary to separately identify the appliances. For purposes of the Three Property Rule, the condominium unit and appliances are treated together as one identified property.
- An identification of Replacement Property may be revoked prior to the end of the Identification Period. The revocation must be in writing, signed by the Exchanger and delivered to the same person to whom the original Identification Notice was sent. No changes or revocations may be made to the Identification Notice after the end of the Identification Period.

Exchangers have flexibility to identify multiple and alternate Replacement Properties.

- **Three Property Rule:** The Exchanger may identify as potential Replacement Property any three properties, without regard to their fair market value.
- **200% Rule:** The Exchanger may identify as potential Replacement Property any number of properties, provided the aggregate fair market value (*as of the end of the Identification Period*) of all of the identified properties does not exceed 200% of the aggregate fair market value of all of the Relinquished Properties.
- **95% Exception:** If the Exchanger identifies more potential Replacement Properties than allowed under either the Three Property or the 200% Rules, the Exchanger will be treated as if ***no*** Replacement Property was identified unless the Exchanger actually receives Replacement Property by the end of the Exchange Period worth at least 95% of the aggregate fair market value of all of the identified Replacement Properties. For this purpose, fair market value of the aggregate Replacement Property is determined *as of the earlier of the date the property is received by the Exchanger or the last day of the Exchange Period.*