



What Qualifies as Like Kind Property in a 1031 Exchange?

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Introduction to Like-Kind Property Requirements

A 1031 tax deferred exchange transaction allows a real estate investor to defer the payment of their capital gain and depreciation recapture taxes generated from the sale of investment property (“relinquished property”) by reinvesting in other like-kind real property (“replacement property”) that is also held as investment property.

To successfully execute this tax-deferral strategy, real estate investors must adhere to strict Internal Revenue Service (IRS) regulations and rulings regarding like-kind property and [qualified use property](#) requirements. This article explains exactly what constitutes like-kind real estate under Section 1031 of the Internal Revenue Code, which real properties do not qualify as like kind, and how to satisfy the essential qualified use requirements.

What Is the Definition of Like-Kind Property?

Like-kind property refers to the nature or character of the real estate rather than its specific grade or quality. This means that any real property is “like-kind” to any other real property and will qualify for tax deferred exchange treatment, provided both are held for productive use in a trade or business or for investment.

The specific type of real estate (i.e., residential rental, commercial office, industrial, storage, retail, multi-family property, etc.) is entirely irrelevant to the like-kind determination. This broad definition gives real estate investors significant flexibility to diversify or consolidate their investment portfolios without triggering immediate capital gain and depreciation recapture taxes. A taxpayer is not required to replace an apartment building with another apartment building or a condo with another condo. Instead, that taxpayer can purchase an entirely different asset class, knowing that the IRS views all real estate as fundamentally similar in nature to each other.

What Qualifies as Like-Kind Property in a 1031 Exchange?

Under Internal Revenue Code Section 1031, any and all domestic real property is considered to be like-kind to any other type of domestic real estate (i.e., U.S. property exchanged for other U.S. property), and any and all foreign real property is considered to be like-kind to any other type of foreign real estate (i.e., international property exchanged for other international property), provided both the relinquished and replacement properties satisfy the qualified use requirement of being held for rental, investment or business use purposes. The relinquished properties and replacement properties being exchanged must all be domestic or must all be non-domestic properties to satisfy the like kind rule.

Key Takeaways

- All domestic real estate is like-kind to any other domestic real estate (i.e., U.S. property exchanged for other U.S. property). A taxpayer can seamlessly exchange vacant land for an apartment building, or a residential single family rental property for a commercial office building, or timberland or vineyard for a commercial storage facility. Your choices are wide open.



- All foreign real property is like-kind to any other foreign real property (i.e., international property exchanged for other international property). A taxpayer can exchange international properties for other international properties but can't exchange a foreign property for a U.S. property and vice-versa.
- The Tax Cuts and Jobs Act of 2017 eliminated personal and intangible property from 1031 exchange eligibility. Only real property qualifies for tax-deferred exchange treatment today.
- Both the property sold and the property acquired must satisfy the [qualified use requirement](#), meaning all of the relinquished and replacement properties must be held for rental, investment, or use in a trade or business to qualify for 1031 exchange treatment.
- Primary residences, second homes, and vacation properties used exclusively or primarily for personal enjoyment, and properties acquired solely to fix and flip or develop (i.e., held for sale) do not qualify for tax-deferred exchange treatment.

What Types of Real Estate Qualify as Like-Kind Property?

Any and all real property is like-kind to any other type of real estate and will qualify for tax-deferred exchange treatment if the qualified use requirement has been met. Investors can exchange between all the following asset classes because they are all considered to be real estate and therefore like-kind property:

- Single or Multi-family residential
- Commercial office buildings
- Retail shopping centers or strip malls
- Industrial warehouses and storage facilities
- Vacant, unimproved raw land
- Farmland or ranch lands
- Timberland or vineyards
- Oil and gas interests
- Mineral rights
- Water rights
- Air rights
- Fractional ownership interests
 - Syndicated tenant-in-common properties (TICs)
 - Syndicated Delaware Statutory Trusts (DSTs)
- Leases with remaining terms of 30 plus years, including options
- Assignment of purchase and sale agreements under certain circumstances

What Assets Do Not Qualify as Like-Kind Property?

Personal property (e.g., primary residence, second home, or vacation property), intangible assets, foreign or international real estate (when exchanging domestic real estate), and real estate held primarily for personal use or immediate resale do not qualify for 1031 exchange treatment.

Following the implementation of the Tax Cuts and Jobs Act of 2017, Section 1031 applies exclusively to real property. Consequently, exchanges of machinery, equipment, vehicles, artwork, patents, aircraft, livestock, and other intangible business assets no longer qualify for the non-recognition of gain or loss through a like kind exchange.

Additionally, Section 1031(h) of the tax code strictly prohibits exchanging domestic real estate for foreign real estate. A taxpayer selling an investment property in California cannot use a 1031 exchange to acquire a rental



property in Europe. U.S. property must be exchanged for U.S. property, and foreign (international) property must be exchanged for foreign (international) property.

How Does the Qualified Use Requirement Work?

The [qualified use requirement](#) mandates that both the relinquished property and the replacement property must be held for rental, investment, or productive use in a trade or business.

The IRS relies heavily on the taxpayer's intent when evaluating the qualified use requirement. A taxpayer must genuinely intend to hold the real estate for investment purposes. Real estate acquired strictly to renovate and sell immediately (commonly known as a "fix and flip" or "rehabbing") or property acquired to develop and then sell are classified as dealer inventory. Because the intent is immediate resale rather than hold as a long-term investment, these properties fail the qualified use test.

Similarly, personal assets do not meet the qualified use requirement. A taxpayer's primary residence or a second home or vacation home used exclusively by the taxpayer's family cannot be utilized in a 1031 exchange. If a property is a rental home, the taxpayer must demonstrate actual rental activity or substantial efforts to rent the property to prove business or investment intent.

While the IRS does not provide a bright-line statutory holding period for qualified use, most tax practitioners advise holding the property for a minimum of one to two years, which will straddle two to three tax periods, depending upon the fact pattern to safely establish investment intent.

Secure Your 1031 Exchange with a Regulated Entity

Navigating the complexities of like-kind property definitions and qualified use requirements demands precision and professional oversight. Because actual or constructive receipt of exchange funds will immediately disqualify a 1031 exchange, taxpayers must use a best practices qualified intermediary to hold and safeguard their exchange proceeds.

Exeter 1031 Exchange Services, LLC (Exeter1031™) is one of the [safest and most secure](#) qualified intermediaries in the industry today. The 1031 exchange industry lacks a national regulatory body, leaving virtually all intermediaries completely unregulated. Exeter 1031 [operates differently](#). Through its affiliate, Exeter Trust Company ([ExeterTrust™](#)), the firm is licensed, regulated, and audited by the Wyoming Division of Banking.

Exeter1031™ deposits, holds, and safeguards its clients' 1031 exchange funds in separate, segregated, dual-signature, restricted [qualified trust accounts](#) with ExeterTrust™. This structure ensures that client funds are legally classified as trust funds rather than corporate assets and segregated from other client funds providing unparalleled protection against commingling or bankruptcy claims.

Consult with your legal, tax and financial advisors to confirm your property meets all IRS requirements, and partner with a qualified intermediary that has some form of regulatory oversight and audit requirements such as Exeter1031™ to execute your transaction safely.

Frequently Asked Questions About Like-Kind Requirements

Can I exchange a single-family rental property for a commercial office building?

Yes. Any and all real property is considered to be like-kind to any other type of real estate and can be exchanged as long as the qualified use requirement has been met. You can freely exchange residential investment property for commercial investment property.



Does personal property qualify for a tax-deferred exchange?

No. Effective January 1, 2018, the Tax Cuts and Jobs Act amended the law to restrict Section 1031 exchanges entirely to real property. Machinery, equipment, aircraft, and intellectual property no longer qualify for tax-deferred exchanges.

How long must I hold a property to satisfy the qualified use requirement?

The IRS does not mandate a specific statutory holding period. However, the taxpayer must prove the intent was to hold the property for investment. Tax practitioners generally consider a holding period of 12 to 24 months (straddles two to three tax years) as a conservative timeframe to substantiate investment intent depending upon the facts and circumstances.

Can I use a 1031 exchange for a property I intend to fix and flip?

No. Properties purchased with the primary intent to renovate and resell are classified as dealer inventory. Because they are held for sale rather than for held for investment, they do not meet the qualified use requirement.

Why should I choose a regulated Qualified Intermediary for my exchange?

The 1031 exchange industry has no licensing or regulatory body, meaning most intermediaries operate without any regulatory oversight. They are not regulated. Using a regulated entity like Exeter Trust Company ensures your funds are protected by regulatory examinations, CPA audits, minimum insurance and equity capital requirements, and dual-signature qualified trust accounts.