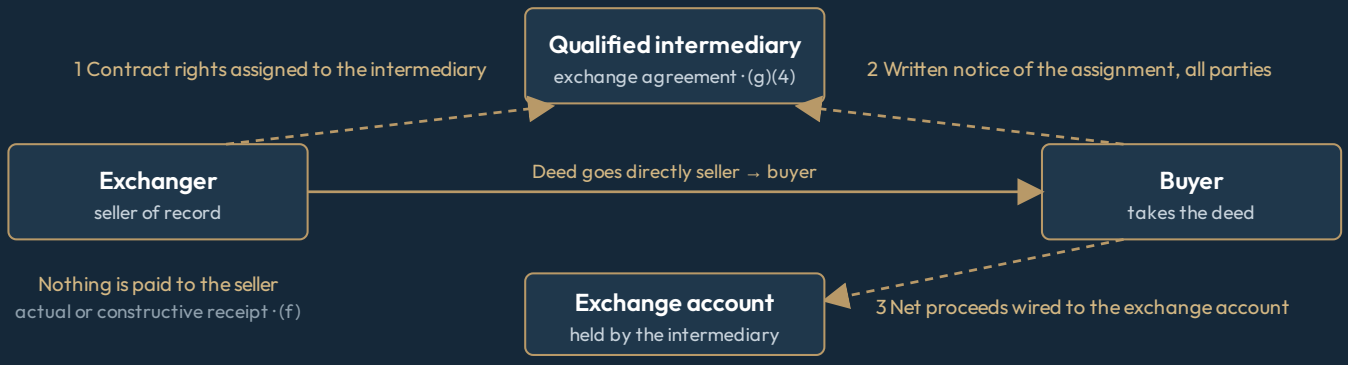
Before the deed records.

What needs to exist for a deferred exchange to work through your closing.



Exchange agreement, in place before transfer

A written agreement between the exchanger and the qualified intermediary, under which the intermediary acquires the relinquished property from the exchanger and which limits the exchanger's access to the funds. After funding there is usually nothing left to build an exchange around. Reg. §1.1031(k)-1(g)(4)(ii), (iii)(B)

Assignment of the purchase contract

The exchanger's rights as seller are assigned to the intermediary. The deed can still go directly from seller to buyer. (g)(4)(iv)(B), (v); (g)(8) Ex. 3

Written notice of the assignment, to all parties

On or before the transfer date, every party to the contract is notified in writing. An easy step to miss on a late file. (g)(4)(v)

Proceeds to the intermediary, not the seller

Net proceeds are wired to the intermediary's exchange account. Funds the seller actually receives, or can draw on, are generally treated as received. (f)(2); (g)(4)(vi)

Settlement statement

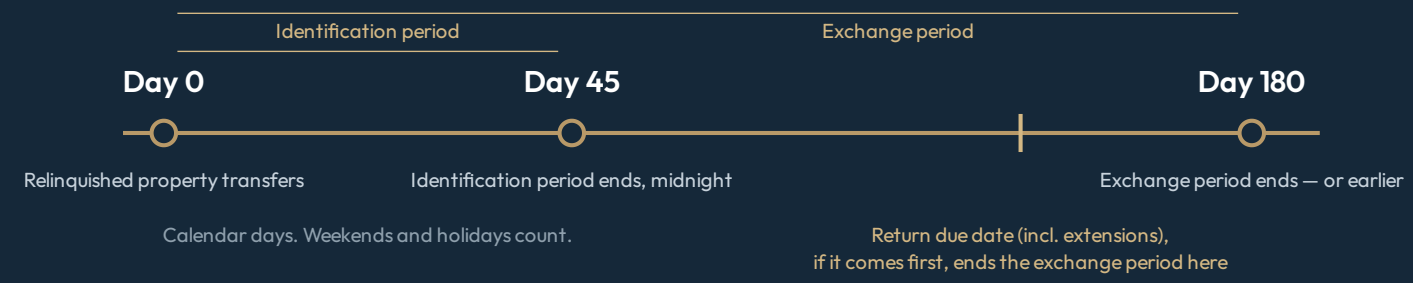
In practice most intermediaries ask that the closing statement show the intermediary as the party receiving net proceeds. Follow the intermediary's written closing instructions.

A qualified intermediary is a safe harbor against actual and constructive receipt, not the only legally possible structure — but for most deferred exchanges it is the structure in use, and these are its moving parts.

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The two clocks.

Both start on the date the relinquished property is transferred — usually the closing date, but it is the transfer, not the wire, that counts.



Day 45 — identification

Replacement property is identified in writing by midnight on the 45th day after the transfer. Calendar days. The regulations contain no extension for weekends or holidays. Reg. §1.1031(k)-1(b)(2)(i)

Day 180 — or the return due date, if earlier

The exchange period ends at the earlier of the 180th day or the due date, including extensions, of the exchanger's return for the year of transfer. A late-year closing without an extension can cut 180 days to far fewer. IRC §1031(a)(3)(B); Reg. §1.1031(k)-1(b)(2)(ii)

Multiple relinquished properties

If several properties are relinquished in one exchange on different dates, both periods run from the earliest transfer. (b)(2)(iii)

What does not move the clocks

A slow lender, a replacement that fell through, a closing that slipped. There is no provision in the regulations for extending either period because a deal became difficult.

What can

Federally declared disaster relief, when the IRS issues a notice covering these acts, the relinquished property transferred on or before the disaster date, and the exchanger qualifies. Generally the later of 120 days or the end of the relief period, but not beyond the return due date or one year. A question for the client's CPA or attorney with the notice in hand.

IRC §7508A; Rev. Proc. 2018-58 §17.02

Useful habit: note the transfer date on the file and count forward 45 and 180 calendar days from it.

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Identification, done properly.

The part that is often done informally — and the part that is unforgiving.

3	200%	95%
Three-property rule	**200% rule**	**95% exception**
Up to three properties, any value	Any number, if total value ≤ 2× the relinquished property	Over both limits? Still valid if ≥ 95% of what was listed is acquired

Reg. §1.1031(k)-1(c)(4). Meet one of the first two; the third rescues a list that exceeded both.

In writing, signed, sent by day 45

A written document signed by the exchanger and hand delivered, mailed, faxed or otherwise sent before midnight on day 45 — either to the person obligated to transfer the replacement property, or to any other party involved in the exchange who is not the exchanger or a disqualified person. Typically the intermediary. Reg. §1.1031(k)-1(c)(2)

Unambiguous description

Legal description, street address, or a distinguishable name. For property to be built, a legal description of the underlying land plus as much detail about the improvements as is practicable. (c)(3); (e)(2)

The three tests

Three properties of any value; or any number whose aggregate value at the end of day 45 does not exceed 200% of the relinquished property's value at transfer; or, if both are exceeded, at least 95% of the aggregate value identified is actually acquired. (c)(4)(i)(A), (B); (c)(4)(ii)(B)

Revocation

An identification can be revoked before day 45 — in writing, signed, sent to the same person the identification went to. After day 45, the list is the list. (c)(6)

Property actually received before day 45 is treated as identified. Everything else needs the paper. (c)(1)

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Exchange funds at the closing table.

What the safe harbor disregards, and what the exchanger cannot do with the money.

Disregarded for the safe harbor · (g)(7)

- Broker commissions
- Prorated taxes and recording fees
- Transfer taxes, title company fees
- Prorated rents received as seller · (g)(7)(i)

Not addressed in the regulation

- Loan costs, points, lender fees
- Lender-required reserves
- Cash to the exchanger at closing
- Anything else — ask before funding

Whether any line item is taxable boot is a question for the exchanger's tax advisor. Flag it; don't decide it.

The limits the agreement must contain

The exchange agreement provides that the exchanger has no right to receive, pledge, borrow, or otherwise obtain the benefits of the money before the end of the exchange period, subject to the regulation's narrow exceptions. This is the core of the safe harbor. Reg. §1.1031(k)-1(g)(4)(ii); (g)(6)

Transactional items

Items that relate to the disposition or acquisition and appear under local standards on a typical closing statement — commissions, prorated taxes, recording and transfer taxes, title company fees — and prorated rents the seller receives: the exchanger's right to these is disregarded in applying the safe harbor, which is why they are routinely paid at closing. (g)(7)(i), (ii)

Other items

Loan costs and lender-required reserves are not addressed in the regulation and are commonly treated as outside that category. Whether any given item creates taxable boot is a question for the exchanger's tax advisor — flag it, don't decide it.

Earnest money on the replacement

In practice deposits are often funded through the intermediary. How a deposit the exchanger paid personally is handled at closing varies by intermediary and advisor — coordinate before the deposit is wired.

Cash out at closing

Money the exchanger receives at the relinquished closing is generally taxable to that extent. The exchange agreement must restrict later draws except in the circumstances the regulation allows, so any cash-out decision belongs with the exchanger's tax advisor before closing, not after. IRC §1031(b); Reg. (f)(1); (g)(6)

When in doubt about a line item, the safe move is to ask the intermediary before funding, not after.

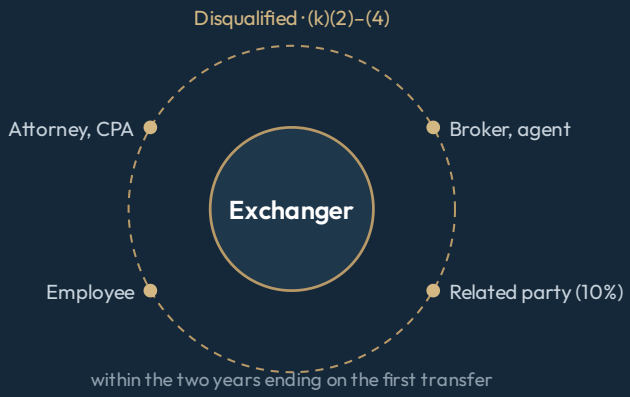
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Who can act as intermediary.

A disqualified person cannot serve — and the title and escrow exception is narrower than people assume.

Qualified intermediary
exchange services only · (k)(2)(i)

Not an agent by reason of these services alone



Title, escrow, bank
routine services only · (k)(2)(ii)

Broader relationship? The answer can change

Disqualified: the exchanger's agent

Anyone who has acted as the exchanger's employee, attorney, accountant, investment banker or broker, or real estate agent or broker in the two years ending on the date the first relinquished property transfers. Reg. §1.1031(k)-1(k)(2)

Disqualified: related parties

Persons related to the exchanger, or to the exchanger's agent, under §267(b) or §707(b) — with 10% substituted for 50%. (k)(3), (k)(4)

The exchange-services exception

Services with respect to §1031 exchanges are not taken into account in deciding whether someone is the exchanger's agent. That is what lets a qualified intermediary be a qualified intermediary. (k)(2)(i)

The title, escrow and financial-services exception

Routine financial, title insurance, escrow, or trust services by a financial institution, title insurance company, or escrow company are not taken into account either. Routine is the operative word — a broader relationship with the exchanger can change the answer. (k)(2)(ii)

Why it matters at your desk

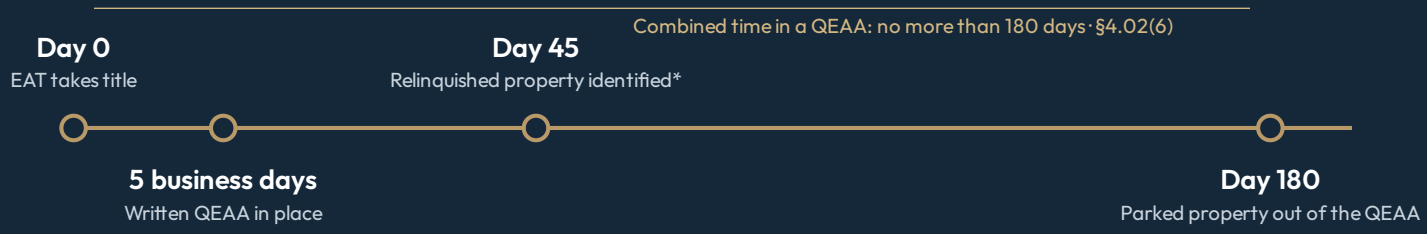
The intermediary must not be the exchanger or a disqualified person. If the party holding the funds turns out to be disqualified, the safe harbor is lost and the exchanger may be treated as having received the money. Worth a question when the intermediary is an affiliate of someone already in the deal. (g)(4)(iii)(A)

None of this is individualized advice. If a relationship looks close, the exchanger's attorney should look at it before closing.

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When the buyer on title is an EAT.

Reverse and improvement exchanges, as they look from the closing table.



*When the replacement property is the one parked. Rev. Proc. 2000-37 §4.02(3)–(6).

What you are seeing

An exchange accommodation titleholder — a taxpaying entity that is not the exchanger or a disqualified person — takes title to the replacement (or relinquished) property and "parks" it under a qualified exchange accommodation arrangement.

Rev. Proc. 2000-37 §4.02(1)

The paper that has to exist

A written QEAA between the exchanger and the EAT, entered into no later than five business days after the EAT acquires the parked property, stating that the EAT holds it to facilitate a §1031 exchange. §4.02(3)

The clocks on a parking arrangement

When the replacement property is parked, the relinquished property is identified within 45 days of the EAT taking title. The parked property leaves the EAT within 180 days, and the combined time any property spends in the QEAA does not exceed 180 days. §4.02(4)–(6)

Lenders and the EAT

The safe harbor permits the exchanger to guarantee the EAT's acquisition debt or to lend to the EAT directly. **In practice,** confirm early that the lender will lend to an EAT, and the title commitment needs to reflect the actual owner. §4.03(2), (3)

What the safe harbor does not cover

Replacement property the exchanger owned within the 180 days before it was transferred to the EAT. Parking arrangements outside the revenue procedure exist but rest on general tax principles and case law rather than a safe harbor, and warrant the exchanger's tax counsel. Rev. Proc. 2004-51 (adding §4.05)

If a file shows an EAT and nobody has mentioned an exchange yet, that is the moment to ask.

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