



# Restrictions on Receiving Cash in a 1031 Exchange

In a 1031 exchange, it's important to understand that federal tax regulations limit your rights to receive, pledge, borrow or otherwise obtain the benefits of the money held by the intermediary during the exchange period. Once your relinquished property has closed and First American Exchange is holding the exchange proceeds, these rules permit us to use the funds to acquire replacement property and to release any remaining funds as follows:

- If you haven't identified replacement property during the 45-day identification period, you may receive the funds as of the 46<sup>th</sup> day.
- If you've identified replacement property, you may receive the funds as of the sooner of (a) the date you acquire all replacement property you identified and (b) the end of the 180-day exchange period. *(If you identify multiple properties but don't acquire all of them, we must retain the funds balance until the 181<sup>st</sup> day.)*
- If a material and substantial contingency occurs that relates to the exchange is provided for in writing and is beyond the control of the investor and any disqualified person other than the seller, then the funds may be delivered to the investor before the 181<sup>st</sup> day. The IRS has stated that a "material and substantial contingency" occurs when the event is truly out of the control of the investor. Examples are if the property is destroyed in a fire or condemned, or if a zoning change request that was a condition of acquiring the property was denied.

## Here's what this means for you:

Plan for the possibility that your exchange funds may not be available until the 181<sup>st</sup> day if you don't acquire all identified properties or if you're unable to acquire any identified properties and have a failed exchange.

If you don't identify any properties, First American Exchange must hold the funds from the sale of the relinquished property until the end of the 45-day identification period.

## Practical tips when planning your exchange:

- If you know you'd like to use only a portion of the equity from a relinquished property in the exchange, have escrow transfer to you the portion that will not be a part of the exchange, with only the balance going to the intermediary. If you do this, you will pay tax on the amount you receive; in some states, there may be withholding on the amount sent to you, but you will have your money immediately.
- If you've identified properties but decide not to do an exchange and you're within the 45-day identification period, revoke your identification and you should be able to receive the funds on the 46<sup>th</sup> day instead of the 181<sup>st</sup> day.

References: Reg. Section 1.1031(k)-1(g)(6) PLR 200027028

We're here to help you have a successful tax-deferred transaction with no surprises.

**Look to us and discover solutions. Call us today.**



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