

# 1031 Exchanges: Unique Examples of Real Property

Despite leaving real estate as the only asset class, sometimes it is not immediately clear if a type of asset owned is like-kind to conventional real estate ownership. While the majority of 1031 Exchanges involve the exchange of one building for another building, or one tract of farmland for another tract of farmland, the term “like-kind” does not mean that the properties being exchanged must be identical in form. Here are some examples of recent transactions involving some less common real property being exchanged. Note that all of these examples were properly structured as 1031 Exchanges.

## Less-Commonly-Known Real Property Examples

### Boat Slip

Mary sold a multi-family rental property but did not want to reinvest in a similar property. She was considering various Replacement Property strategies and ultimately acquired a boat slip. Her plan is to treat the boat slip much like an Airbnb or VRBO for short-term rentals. The boat slip she acquired is in Florida, where such properties are transferred by a deeded interest in the property.

### Mobile Home

Nicholas sold a rental condominium and wanted to get away from the rigors of complying with condo association rules. He identified and acquired a double-wide trailer in a mobile home community. Nicholas will be using this mobile home as a rental property. Mobile homes are typically towed into place on their own axles and are initially registered and licensed as motor vehicles. Nicholas’ mobile home was acquired in Florida, where the law allows the mobile home to be affixed to a foundation and utilities, and for the mobile home to then be treated as real property under state law. This “de-titling” process affords similar treatment for mobile homes and manufactured homes in many other states.

### Floating Home

Tom sold a small mixed-use property near the beach. He likes that the property is near the water, but the mixed-use nature of the property often resulted in conflicts between the residential tenants and the commercial tenants. Tom found a floating home for sale in a nearby community and wondered whether that would qualify as real property for 1031 Exchange purposes. This floating home is moored in a harbor, and loosely attached to water, sewer, and electric lines provided by the harbor. Fortunately for Tom, California, and a couple of other states, classify these floating homes as real property for tax purposes, and generally treat them like real estate. Upon completion of the purchase, Tom will rent out the home, using it entirely as an investment/business use property.

### Easement to Delaware Statutory Trust

Susan owned a commercial property at a busy intersection in her town. Around the corner, there was another small commercial property where the parking lot floods every time there is any substantial rain. To access the nearest storm sewer, that owner needed access across Susan’s property. Susan negotiated for the sale of a perpetual easement for the drain across her property. Susan was advised that the sale of the easement would be fully taxable as capital gains, so she structured the sale as part of a 1031 Exchange. Working with her advisors, she reinvested the entire sale price into a Delaware Statutory Trust (DST).

### Conservation Easement

Joannie owned one of the few family farms left in her part of the county. Encroaching development and increasing costs put pressure on her to sell the property. Because developers placed such high value on the property, there would be a substantial tax bite if she sold the property outright. After consulting with her advisors, Joannie learned about conservation easements. Upon further investigation, Joannie sold a conservation easement restricting future development of her family farm. The sale was structured as part of a 1031 Exchange, and she reinvested the proceeds in a nearby condo that she will use as a rental property.

### **RV Resort**

Nancy and her spouse owned a recreational vehicle resort. Management and maintenance of the resort was a full-time, year-round job. Nancy finally convinced her spouse that they should sell the resort and spend some time traveling around the country. They successfully negotiated the sale of the resort, and on the advice of their tax and legal advisors, structured the sale of the real property portion of the resort as a 1031 Exchange. They reinvested the proceeds into several condos near a university, and enlisted the aid of a property management firm to minimize their management responsibilities

### **Wind & Solar Farms**

David owned a rental condo near his home. His tenants advised him that they would not be renewing the lease, and David had to investigate his options. In the process, his real estate agent presented an offer from a buyer, even before the property was listed for sale. David liked the idea of getting out of the residential landlord business, but did not want to pay the taxes that would be due upon the sale. Working with his advisors, David bought fractional interests in several operating solar and wind farms in several states around the country. The sale and purchase were part of a properly structured 1031 Exchange and took David from one property to a portfolio of properties with existing long-term tenants.

These are examples of a few of the unique opportunities clients can explore. There are many other unique opportunities out there for creative investors, such as oil and gas royalties, mineral rights, water rights, and transferrable development rights, which also qualify for 1031 Exchange treatment. Remember, a properly structured 1031 Exchange can fully shelter both the depreciation recapture and capital gains taxes, at the Federal level, and usually at the state and local level as well.

Some of the strategies discussed here may not work in all states, and some states may impose special rules on some of these transactions. As always, Exchangers are encouraged to discuss their plans with their tax and legal advisors before they embark on the path toward the sale of an investment or business use property, and to engage the services of a Qualified Intermediary, before closing on the sale of the Relinquished Property.