



# 1031 Exchanges & Alternative Strategies

## Maximizing Tax Deferral, Wealth Preservation and Investment Opportunities

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## INTRODUCTION

Dear Colleague:

Thank you for joining me today for a deep dive into one of the most powerful—and sometimes most misunderstood—areas of real estate investment: capital gains taxation and the strategies investors can use to defer, reduce, or even eliminate those taxes.

Our focus will be on the core rules of capital gains and how they apply to real estate transactions, followed by a thorough exploration of the 1031 exchange—the time-tested vehicle for deferring taxes and preserving investment capital. But we won't stop there.

The real world of investing has evolved, and today's sophisticated investors want more than just the basics. That's why this session will also highlight some of the alternative replacement property strategies that are becoming increasingly popular:

- Tenancy-in-Common (TIC) structures
- Delaware Statutory Trusts (DSTs)
- Qualified Opportunity Zone investments.

Each of these offers unique opportunities, benefits, and risks—and it's critical to understand how they work, when they make sense, and how they can fit into a broader tax and investment strategy.

By the end of our 90 minutes together, you should walk away with:

1. A clear understanding of how capital gains taxes impact real estate investors.
2. The mechanics, timelines, and compliance rules for successful 1031 exchanges.
3. A practical look at DSTs, TICs, and Opportunity Zones as flexible alternatives for replacement property—especially in cases where a traditional like-kind exchange might not be feasible.

This isn't just about tax deferral—it's about building and preserving wealth through strategic real estate investing.

Sincerely,

*Marty*

Martin J. Rueter  
REALTOR®

## TAXATION OF CAPITAL GAINS

A taxpayer must report gains or losses resulting from the sale or other disposition) of so-called “capital assets” (including real estate) -- and likely pay additional taxes in the year of sale (there are exceptions).

1. Historically, capital gains have been given preferential tax treatment (lower tax rates) – a decision by the U.S. Congress favoring long term investing versus risky speculation.
2. To receive preferential capital gains tax treatment, the taxpayer must sell or exchange a *capital asset*, such as stocks, bonds, or real estate.
3. A *capital gain* is the profit resulting from a capital asset sale where the net sales proceeds exceed the asset’s “adjusted cost basis” (usually its purchase price). A *capital loss* arises when net sales proceeds are less than the asset’s adjusted cost basis.
4. Capital gains can be either “long term” or “short term” depending on how long the asset is held. Long term capital gains are taxed at lower capital gains tax rates than short term gains taxed at the taxpayer’s “ordinary rate.”
  - Short term capital gain – asset held one year or less.
  - Long term capital gain – asset held for more than one year.

### WHAT ARE CAPITAL ASSETS?

A *capital asset* includes:

1. Personal property like your home, car, furniture, or collectibles.
2. Investment property like stocks, bonds, mutual funds, real estate held for investment, cryptocurrency, and precious metals.
3. Intangible property such as patents, trademarks, and goodwill (if not used in your trade or business in certain ways).

### NON-CAPITAL ASSETS

Certain types of property are excluded from the definition of a *capital asset*, under IRC §1221:

1. Property held for sale to customers in the ordinary course of a trade or business (dealer property).
2. Depreciable business property or real estate used in a trade or business (these fall under different rules in IRC §1231).
3. Copyrights, literary, musical, or artistic compositions created by the taxpayer (or received as compensation for services).

## WHY IT MATTERS?

If you sell or exchange a capital asset, you generally have a *capital gain* or *capital loss*.

- Capital gains are taxed at *lower* rates if held more than one year.
- Short-term capital gains (held one year or less) are taxed as ordinary income.
- Capital losses may be used to offset capital gains from other sources.



### 2025 Long-Term Capital Gains Tax Brackets

TAX BRACKET/RATE	SINGLE	MARRIED FILING JOINTLY	HEAD OF HOUSEHOLD
0%	\$0 - \$48,350	\$0 - \$96,700	\$0 - \$64,750
15%	\$48,351 - \$533,400	\$96,701 - \$600,050	\$64,701 - \$566,700
20%	\$533,401+	\$600,051+	\$566,701+

## NET INVESTMENT INCOME TAX (MEDICARE TAX)

IN ADDITION TO capital gains taxes, there may be additional taxes due upon the sale of real estate assets and other kinds of *net investment income*.

1. The Net Investment Income Tax (NIIT) or Medicare Tax applies at a rate of 3.8% on certain investment income of individuals, estates and trusts *above* statutory threshold amounts.
2. Investment income includes interest, dividends, capital gains, rental and royalty income, non-qualified annuities, income from businesses involved in trading financial instruments or commodities, and businesses that are passive activities to the taxpayer.
3. Individuals will owe the tax if they have Net Investment Income and modified adjusted gross income over certain thresholds

2025 Net Investment Income Tax	
Filing Status	AGI Threshold Amount
Single	\$200,000
Married Filing Jointly	\$250,000
Married Filing Separately	\$125,000
Head Of Household	\$200,000
Qualifying Widower with Dependent Child	\$250,000

## TAX CLASSES OF REAL ESTATE

Depending on its tax classification, there may be valuable tax benefits or tougher penalties that should be considered when evaluating a potential real sale or purchase.

The Internal Revenue Code (IRC) places real estate into one of *four* distinct tax classes or categories:

1. Personal residence (*buy and reside*)
2. Dealer real estate (*buy, build, then flip*)
3. Investment real estate (*buy and hold*)
4. Income producing or business properties (*buy, use, then sell*)

Understanding these four classes and their differences is important.

### PERSONAL RESIDENCE

1. Where you live or plan to live. Includes second homes (not rented out).
2. Combined interest paid on home mortgages for both a personal residence and second home are fully deductible so long as combined loan amounts do not exceed \$750,000.
3. Interest on home equity loans is tax deductible only if are used for capital improvements to the property offered as collateral.
4. Real estate taxes are deductible, but only to the extent they are part of the taxpayer's combined SALT allowance – which includes real estate, personal property, *ad valorem* taxes, and state or local taxes. The maximum deduction that may be claimed for 2025 and later is \$40,000 per year.
5. Operating expenses (utilities, maintenance, association dues, e.g.) for a personal residence are not deductible, except as a portion of a home office used in business.
6. Depreciation is not allowed for tax purposes on personal residences (unless part of home office).
7. Gains realized upon sale of a home must be reported, but are generally offset by a big homeowner's exemption (\$250,000 to \$500,000). If not eligible, such gain is taxable as a capital gain for both federal and state income tax reporting.
8. Losses upon sale of your personal residence are not tax deductible.

## **DEALER PROPERTY**

A real estate “dealer” is a person who purchases real estate and sells it to customers “in the ordinary course of their trade or business.” Because these sales occur as a part of a dealer’s “ordinary course of business,” the dealer records the sale as a gain or loss as ordinary income, and may not claim preferential capital gains rates.

In contrast, a real estate “investor” purchases and holds property over time, typically more than one year, in order to realize appreciation in value. Such property is considered a “capital asset”, subject to capital gains tax rates upon sale or other disposition.

1. There is no set rule for when an investor becomes a dealer (no fixed number of deals), but builders, flippers and many fixer-uppers fit well into this category.
2. No depreciation is allowed on dealer property.
3. No special capital gains tax rates upon sale either! Profits are taxed at ordinary rates. But losses may be fully deductible, and possibly offset other income.
4. If you sell real estate regularly, the IRS probably considers you a dealer. There’s a substantial difference in the tax rates for dealers and investors. The goal is to maintain investor status.

## **INVESTMENT REAL ESTATE (§1221)**

This gets tricky because the term “investment real estate” is often used in general terms to describe all real estate other than one’s home. But, the IRS tax classification of “investment property” is limited to real estate held primarily for appreciation and later sale (a so-called “buy and hold” strategy).

1. Such real estate is usually unimproved (raw land, e.g.). It is not used as part of a business, or production of income.
2. Gains on sale receive capital gains treatment
3. But losses are considered “capital losses” and limited to \$3000 per year. You can carry-over unused losses or use them to offset capital gains from other sources.
4. Gains and losses of §1221 real estate are reported on I.R.S. Form 1040 – Schedule D, along with stocks, bonds, or mutual fund sales.

## INCOME OR BUSINESS REAL ESTATE (§1231)

1. §1231 property is real or depreciable business property held for more than one year. Residential or commercial rental properties fall within this class.
  2. Buildings, other improvements, equipment are depreciable.
  3. Gain from the sale of §1231 property is generally taxed at the lower capital gains tax rate versus the rate for ordinary income. If the sold property was held for less than one year, the §1231 gain does not apply.
  4. While gains are taxed as capital gains, losses on sales are “ordinary,” meaning the entire amount may be deducted in the year of sale. Gains and losses reported on I.R.S. Form 4797.
  5. This provision gives a taxpayer the "best of both worlds" as it allows the favorable capital gains tax rate on §1231 property while avoiding the negative implications of capital loss treatment.
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## CALCULATING CAPITAL GAINS

### DETERMINE ADJUSTED COST BASIS

PURCHASE PRICE (or Beginning Basis)

ADD: PURCHASING COSTS (title, recording fees, etc.)

ADD: IMPROVEMENTS (new furnace, e.g.)

LESS: ACCUMULATED DEPRECIATION

EQUALS: ADJUSTED COST BASIS

### CALCULATE NET SALE PRICE

SALE PRICE

LESS: SELLER CLOSING COSTS (NOT LOAN BALANCES)

EQUALS: NET SALE PRICE

**NET SALE PRICE LESS ADJUSTED COST BASIS = GAIN**



## WHAT IS THE BEGINNING BASIS?

While the beginning basis is most often the purchase price, it could be different in the event the new owner receives the property by gift or inheritance, versus outright purchase.

- BY GIFT – Basis is the adjusted cost basis of the gifting person or the property's current Fair Market Value, whichever is less.
- BY INHERITANCE – Basis is the Fair Market Value on the date of death of the bequeathing individual (often referred to as a "stepped up" basis).

Note: the beginning basis *increases* as you make capital improvements to the property. It is *reduced* annually by depreciation deductions *even if you fail to claim them*.

## "STEPPED UP" BASIS

Under Internal Revenue Code §1014(a), when a person (the beneficiary) receives an asset from a giver (the benefactor) after the benefactor dies, the asset often receives a "stepped-up" basis, which is its *tax market value* at the time the benefactor dies.

A stepped-up basis is often much higher than the before-death cost basis, which was primarily the benefactor's purchase price for the asset. Because taxable capital-gain income is the selling price minus the basis, a high stepped-up basis can greatly reduce the beneficiary's taxable capital-gain income when the beneficiary sells the inherited asset.

## DEPRECIATION RECAPTURE

When property is sold at a gain, a portion of that gain is attributable to the depreciation deductions taken in prior years.

1. Because of depreciation, the adjusted tax basis of the rental property decreases every year. Since the gain is the difference between the selling price and this adjusted basis, the depreciation element of that gain must be separately accounted for. This is called *depreciation recapture*, namely, paying taxes differently on the gains that are attributed to depreciation. This includes any §179 *limited expense* deduction previously claimed.
2. Gains on real estate is "recaptured" at maximum capital gain tax rate of 25%.
3. For non-real estate assets, ALL accumulated depreciation is taxed as *ordinary income*. The remaining gain is then taxed at a preferential capital gains tax rate.
4. When a taxpayer takes a loss on the sale of an asset, there is no depreciation recapture. However, the taxpayer may qualify for ordinary loss treatment under IRC §1231.

## **TAX DEFERRED EXCHANGES (IRC 1031)**

A 1031 exchange is a swap of one real estate investment property for another that allows capital gains taxes to be deferred. The term—which gets its name from Section 1031 of the Internal Revenue Code (IRC)—is often used by real estate agents, title companies, investors, and more. Some people even insist on making it into a verb, as in, “Let’s 1031 that building for another.”

Although most real estate transactions are taxable as outright sales, if you fall within “1031 rules,” you’ll either have no tax or limited tax due at the time of the exchange.

A real estate seller should consider an exchange when he expects to acquire a replacement property subsequent to the sale of his existing property. Otherwise, the seller must pay capital gain taxes that year.

### **HOW IT WORKS**

IRC Section 1031 has many moving parts that real estate investors must understand before attempting its use. An exchange can only be made with “like-kind properties,” and Internal Revenue Service (IRS) rules limit its use with vacation properties. There are also tax implications and time frames that may be problematic.

If you are considering a 1031 exchange, here is what you should know about the rules.

### **KEY TAKEAWAYS**

- A 1031 Exchange allows investors to defer capital gains taxes on the sale of real property held for investment or productive use in a trade or business, provided they reinvest the proceeds into another qualifying “like-kind” property.
- Deferral of income taxes includes capital gains, depreciation recapture, and in some cases, state income taxes.
- The like-kind exchange must involve real estate properties, not personal property. Of the four classes of real estate, only two qualify – real estate held for investment, and/or real estate held for the production of income, or used in a trade or business.
- The exchanged properties must be in the United States to qualify.
- There are strict time limits: The replacement property must be identified within 45 days, and the exchange must be completed within 180 days.
- Cash or mortgage differences, called “boot,” can trigger tax liabilities.

## **MOTIVATIONS TO EXCHANGE**

1. Portfolio Growth – Reallocate equity into higher-yield or more strategic assets without an immediate tax hit.
2. Leverage & Cash Flow – Exchange into larger or higher-income properties.
3. Upgrade from management-intensive to management-light assets (e.g., apartment complex → NNN retail property).
4. Geographic relocation of portfolio to stronger growth markets.
5. Diversification into multiple asset classes.
6. Consolidation of several smaller properties into a larger single asset.
7. Transition into passive income vehicles:
  - DSTs (Delaware Statutory Trusts)
  - TICs (Tenancy in Common)
  - Opportunity Zone Funds (if properly structured—can't combine in a traditional 1031, but strategic sequencing is possible).
8. Estate Planning – Upon death, heirs may receive a step-up in basis, potentially eliminating deferred gains.

## **HISTORICAL OVERVIEW:**

The concept of tax-deferred exchanges was first introduced in the Revenue Act of 1921. It allowed for non-recognition of gain or loss on certain property exchanges to encourage reinvestment and economic activity.

- 1954: The law was formally codified as Section 1031 in the Internal Revenue Code with the Internal Revenue Code of 1954.
- 1984: Major reforms required stricter identification and timing rules (45-day and 180-day deadlines), and introduced the “like-kind” test as we know it today.
- 1991: The IRS issued comprehensive regulations for deferred exchanges, clarifying the role of qualified intermediaries and safe harbor rules.
- 2017: The Tax Cuts and Jobs Act (TCJA) significantly limited 1031 exchanges to real property only, eliminating personal property exchanges (e.g., artwork, vehicles, equipment).

Originally, 1031 exchanges could be done informally through simple property swaps—even simultaneously at the courthouse steps. The rise of complex real estate investment structures led to the creation of deferred exchanges, now the norm.

## KEY RULES & REQUIREMENTS

### 1. Like-Kind Property

In a 1031 exchange, “like-kind property” refers to real estate that is similar in nature or character, regardless of quality or grade—not necessarily identical in type or use. Both relinquished and replacement properties must be held for investment, income or business use (not personal residences or dealer real estate).

EXCHANGED PROPERTY	CAN BE EXCHANGED FOR
Vacant land	Retail shopping center
Industrial warehouse	Apartment building
Office building	Duplex rental property
Rental condo	Self-storage facility
Raw land	Commercial land

### 2. Qualified Intermediary (QI)

- IRS requires a third-party facilitator to hold proceeds during the exchange.
- Taxpayer cannot touch the funds.

### 3. Timing Rules

- *45-Day Identification Period:* Identify replacement property(ies) within 45 days of sale.
- *180-Day Exchange Period:* Close on replacement property within 180 days of the sale or by the tax filing date (including extensions), whichever comes first.

### 4. Identification Rules

- Three-Property Rule: Identify up to three properties of any value.
- 200% Rule: Identify any number of properties as long as total fair market value  $\leq$  200% of the relinquished property’s value.
- 95% Rule: Identify any number of properties and close on at least 95% of their total value.

### 5. Value & Debt Replacement

- Purchase property equal or greater in value.
- Reinvest all net proceeds.
- Replace any debt paid off with equal debt or additional cash.

## **TYPES OF 1031 EXCHANGES**

1. **Simultaneous Exchange** – Old and new property close the same day (rare).
2. **Delayed Exchange** – Most common, property sold first, replacement acquired within 180 days.
3. **Reverse Exchange** – Buy replacement property first, sell relinquished later. To qualify, you must transfer the new property to an “exchange accommodation titleholder,” identify a property for exchange within 45 days, and complete the transaction within 180 days after the replacement property was bought.
4. **Improvement Exchange**—Allows the investor to use some or all of their 1031 proceeds to fund improvements on a replacement property, either on raw land, or on an existing property that is being upgraded (strict rules).

## **COMPLIANCE PITFALLS**

1. Missing the 45-day and 180-day deadlines – no exceptions except federally declared disasters.
2. Improper identification – vague descriptions, changes after day 45.
3. Personal use – for vacation or primary residence immediately after exchange.
4. Related-party transactions – special holding requirements apply.
5. Constructive receipt of funds – touching the money kills the exchange.

## **WHAT IF YOU DON'T REINVEST EVERYTHING?**

Any portion of the proceeds not reinvested is called “boot.”

- Boot is taxable as capital gain (or in some cases as depreciation recapture).
- Boot can be cash received, or mortgage relief (i.e., if you take on less debt in the new property than you had on the old one and don't make up the difference with cash).

## **ALTERNATIVE LIKE KIND PROPERTY**

If you're exploring alternatives to a traditional 1031 exchange, there are several strategies and vehicles investors may use to defer or reduce capital gains taxes while diversifying or reinvesting. These include:

- Tenancy in Common (TICs)
- Delaware Statutory Trusts (DSTs)
- Opportunity Zones (OZs)

## TENANCY-IN-COMMON (TIC)

TICs, or Tenants in Common, is a form of co-ownership of real estate where two or more people hold undivided interests in a property, but not necessarily in equal shares, and without a right of survivorship.

A TIC allows multiple investors to co-own an undivided interest in a single property. Each investor holds a fractional interest. Each investor can sell, mortgage, or transfer their share independently, but the property is managed collectively

Popular Properties are large commercial real estate like office buildings, apartment complexes, or retail centers.

### Key Characteristics of TICs

FEATURE	DESCRIPTION
Ownership Interest	Each co-owner owns a percentage (e.g., 25%, 50%)—which can differ between co-tenants.
Title	All owners are listed on the deed as “tenants in common.”
Transferability	Each co-tenant can sell, transfer, or will their share independently of the others.
No Survivorship	If one owner dies, their share goes to their estate, not to the other co-tenants.
Use & Possession	All owners have equal right to use the entire property, regardless of share size.

### Use Cases in CRE and Investment

1. **Family property inheritance:** Multiple heirs own property jointly after a parent dies.
2. **Investment groups:** Multiple investors pool funds to buy a building, each owning a fractional interest.
3. **1031 exchanges:** A common vehicle for deferring capital gains taxes—especially with fractional ownership of larger institutional properties via TIC sponsors (though subject to IRS limitations and rules).
4. **Alternative to syndications or REITs:** Offers direct deeded interest and potential depreciation benefits.

## TIC VS. JOINT TENANCY VS. PARTNERSHIP

FEATURE	TIC	JOINT TENANCY	PARTNERSHIP
Ownership %	Unequal allowed	Must be equal	Varies
Right of Survivorship	✗ No	☑ Yes	✗ No
Title	Separate shares	Single title	Entity-owned
Transferability	Freely transferable	Restricted	May need agreement
Tax Reporting	Individual (1099/Sch E)	Individual	Usually through entity

## TICS IN A 1031 EXCHANGE

- 1031 Eligibility: TIC interests are considered “like-kind” real estate for a 1031 exchange. You can sell one property and exchange into a TIC interest in another property to defer capital gains taxes.
- Qualified Intermediary (QI): Because the IRS requires an exchange of “like-kind” property, a QI typically facilitates the transaction to ensure compliance.
- Fractional Investment: TICs allow investors to participate in high-value properties that may be unattainable individually.

### 1. Pros of Using TICs in a 1031 Exchange

- Access to Large Properties: Smaller investors can co-own commercial properties.
- 1031 Tax Deferral: Like-kind exchange rules apply, deferring capital gains tax.
- Diversification: You can spread your investment across multiple TIC interests.
- Income Stream: TICs often provide passive rental income proportional to ownership share.

### 2. Cons / Considerations

- Co-Owner Agreements: TICs require detailed agreements covering management, decision-making, and exit strategies.
- Illiquidity: Selling a TIC interest can be slower than selling a full property.
- Financing Challenges: Some lenders are cautious with TIC financing.
- Active Management Decisions: Even though it’s partially passive, major decisions often require agreement among all TIC owners.

## **DELAWARE STATUTORY TRUST (DSTs)**

A Delaware Statutory Trust is a legal entity that holds title to investment real estate. Multiple investors own beneficial interests (shares) in the trust rather than owning the property directly. Each investor holds an undivided fractional interest, similar to a TIC, but the DST is a separate legal entity that manages the property. Typical Properties: large commercial properties—office buildings, apartments, industrial complexes, or retail centers.

### **1. DSTs in a 1031 Exchange**

- **1031 Eligibility:** DST interests are considered like-kind property under IRS rules, making them a qualified replacement property for 1031 exchanges.
- **Qualified Intermediary (QI):** Like other 1031 exchanges, a QI is used to facilitate the transaction to maintain tax-deferred status.
- **Passive Investment:** Investors don't manage the property directly—the trust or professional sponsor handles operations, leasing, and maintenance.

### **2. Pros of Using DSTs in a 1031 Exchange**

- **Passive Ownership:** No active management responsibilities—ideal for investors who want hands-off real estate exposure.
- **Access to Large Properties:** Investors can own a share of high-value commercial real estate with a smaller capital outlay.
- **Diversification:** Easy to spread investment across multiple DST offerings or property types.
- **Simplified 1031 Exchange:** DSTs can be purchased with cash or proceeds from a 1031 exchange, simplifying the process.
- **Predictable Cash Flow:** Professional management often provides stable income distributions.

### **3. Cons / Considerations**

- **Limited Control:** Investors cannot make management decisions—the sponsor controls operations.
- **Illiquidity:** DST interests are generally not easily sold before the property is sold.
- **Investment Risk:** Returns depend on the property's performance; market downturns can impact value and distributions.
- **Finite Life:** DSTs usually have a set exit strategy—often 5–10 years, after which the property is sold and proceeds distributed.



## TOP ACTIVE DST SPONSORS (BY EQUITY RAISED AND MARKET PRESENCE)

These players are among the **largest and most active** sponsors offering DST investments in the market as of the end of 2024.

SPONSOR	Equity Raised	% Market Share
Ares Real Estate Exchange	\$1.02 billion	18%
JLL Exchange	\$566 million	10%
Inland Private Capital Corporation	\$563 million	10%
Hines Real Estate Exchange	\$403 million	
Exchange Right Real Estate	\$397 million	7%

## OTHER SPONSORS FREQUENTLY MENTIONED AND CURRENTLY ACTIVE

Beyond the large equity-raising firms, other reputable sponsors are actively offering DSTs:

- AEI Trust Advisors – A pioneer in net-lease DST offerings; historically significant in 1031 space.
- Blue Owl Real Estate Exchange (OREX) – Subsidiary of Blue Owl Capital; engaged in structuring DSTs for accredited investors.
- Capital Square – Multi-asset sponsor (multifamily, retail, office) featured under DST offerings via Breakwater Resources.
- SmartStop Asset Management (SAM) – Through its affiliate, has offered DSTs like ImageReno Student Housing DST, a Class-A student housing property in Reno, NV.
- Syndicated Equities Group, LLC – Also featured among sponsors working with DST offerings via 1031sponsors.com.
- Kay Properties & Investments (broker) – Not a sponsor itself, but works with numerous sponsors, and holds proprietary offerings. Examples historically include properties like The Thistlewood Townhomes (Nashville-area) and Walgreens pharmacy (Phoenix), though these may now be fully subscribed.
- 1031 Exchange Place – Noted for having a diverse portfolio of high-quality DST offerings and strong client transparency.

## OPPORTUNITY ZONES

Federal Opportunity Zones (OZs) are a tax incentive program created under the Tax Cuts and Jobs Act of 2017 to spur private investment in economically distressed areas.

### 1. What Are Opportunity Zones (OZs)?

- Designated low-income census tracts certified by the U.S. Treasury.
- Created to attract capital to underinvested communities through favorable tax treatment.
- Over 8,700 zones across all U.S. states and territories.
- Zones were nominated by state governors and finalized in 2018.
- Georgia has 260 designated federal Opportunity Zones, including both rural areas (60%) and urban areas (40%).

LOCATION	OPPORTUNITIES
Westside Atlanta	Mixed-use, adaptive reuse, affordable housing
South Downtown Atlanta	Retail/office redevelopment near Five Points
Savannah	Historic redevelopment and tourism-based hospitality
Augusta	Medical campus expansion and workforce housing
Macon, Columbus, Albany	Manufacturing, logistics, and community revitalization

## 2. What are the tax benefits?

- *Deferral*: You can defer capital gains taxes on the original gains until the earlier of the sale of the OZ investment or December 31, 2026.
- *Reduction*: If held for at least 5 or 7 years, a portion of the deferred gain may be excluded from taxes.
- *Exclusion*: If the investment is held for at least 10 years, any new gains from the OZ investment itself can be tax-free.

Essentially, OZs are meant to turn capital gains into a tool for community investment while providing significant tax incentives for investors.

BENEFIT	EXPLANATION
Capital Gains Deferral	Defer federal taxes on capital gains until the earlier of the QOF sale or Dec. 31, 2026
Exclusion on QOF Gains	No capital gains tax on appreciation if QOF investment held 10+ years
Partial Exclusion of Deferred Gain	Only available for investments made before 2022 — now expired

## 3. Qualified Opportunity Zone Property

- Qualified Opportunity Zone Business Property (real estate, equipment, etc.)
- Qualified Opportunity Zone Stock
- Qualified Opportunity Zone Partnership Interests

Real estate is the most common asset class used due to its physical location being easily tied to a zone.

## 4. Common Investment Types

- Real estate development or substantial renovation
- New business or operations
- Partnerships or corporations that operate in OZs.

## 5. CRE applications include:

- Mixed-use developments
- Office buildings
- Industrial warehouses
- Multifamily housing (including affordable housing)
- Hotels and hospitality projects

## 6. Compliance & Structure

- Must be a QOF (a U.S. partnership or corporation)
- 90% of the fund's assets must be Qualified OZ Property
- For existing buildings: the investor must double the basis of improvements within 30 months. Land is excluded from this requirement.
- Annual compliance testing applies

CONCERN	DETAILS
Gentrification	Potential displacement of local residents due to rising rents
Limited Reporting	Lack of robust data on job creation and economic outcomes
Investor Benefit vs. Community Benefit	Critics say some projects favor investors more than local economies

## 7. Role of the CRE Professional

As an agent, broker, or investor, you can:

- Identify Opportunity Zone parcels for buyers and developers
- Help clients structure deals using QOFs
- Layer OZ incentives with local or state tax credits (e.g., TADs, New Markets, LIHTC)
- Guide compliance with improvement timelines and investment rules

## OPPORTUNITY ZONES & THE BIG BEAUTIFUL BILL ACT

The OBBBA eliminated the sunset date that had been set for December 31, 2026, making the Opportunity Zone program **permanent**. The legislation preserved key tax incentives, including the basis step-up for gains held at least 10 years and capital gains exclusion on appreciation, while making the program indefinitely available.

### 1. Permanent Program & Decennial Redesignations

- The Opportunity Zone (QOZ) program is now permanent, eliminating the prior expiration date of December 31, 2026.
- Starting July 1, 2026, state governors may nominate new QOZ census tracts. The Treasury will certify them, and they will become effective on January 1, 2027, for a 10-year designation period.
- Current QOZs will continue to be valid through December 31, 2028.

### 2. Tighter Eligibility for QOZ Designation

Eligibility thresholds for low-income census tracts have been tightened:

- Median family income must now be  $\leq 70\%$  (down from 80%) of the area or state median.
- Poverty rate must be  $\geq 20\%$ , but tracts are now disqualified if median income exceeds 125% of the area/state median.
- The “contiguous tract rule” allowing adjacent non-qualifying tracts is eliminated.
- Puerto Rico loses its blanket low-income designation and will now be subject to the same rules as states.

### 3. Revised Tax Incentives for QOF Investments

- *Rolling 5-Year Deferral*: For investments made on or after January 1, 2027, deferred gains will now be recognized 5 years after the investment date, or earlier if the asset is sold.
- *10% Basis Step-Up Only*: A one-time 10% basis increase is granted after a 5-year hold; the previous additional 5% step-up at year 7 is eliminated.
- *Tax-Free Exit After 10 Years*: Deferred gains and appreciation may be entirely tax-free if the investment is held for 10 years or more. This remains consistent with prior rules.
- *30-Year Freeze in Basis*: If held longer than 30 years, basis is frozen at fair market value at year 30; any appreciation after that must be taxed.

#### 4. Enhanced Benefits for Rural Investments (QROFs)

Qualified Rural Opportunity Funds (QROFs)—funds investing primarily in rural QOZs—receive enhanced tax benefits:

- 30% basis step-up after 5 years, instead of 10%.
- Reduced substantial improvement requirement: 50% of adjusted basis vs. 100% for non-rural investments.

#### 5. New Reporting Requirements & Penalties

- The OBBBA introduces enhanced reporting requirements for QOFs and QOZBs, including mandatory annual electronic filings and communication obligations between QOZBs and their fund.
- Penalties can range from \$500 per day, capped depending on fund size—up to \$10,000 for smaller funds ( $\leq \$10\text{M}$ ), or \$50,000 for larger funds. Higher penalties apply for intentional noncompliance.

FEATURE	PRE-2027 (TCJA)	POST-2026 (OBBBA) EFFECTIVE JAN 1, 2027
Program duration	Temporary, ending Dec 31, 2026	Permanent, with decennial redesignations starting 2026
Eligible zones	Income $\leq 80\%$ , contiguous allowed	Income $\leq 70\%$ , no contiguous tracts, stricter limits
Deferral period	Tied to fixed date (2026)	Rolling 5-year deferral from investment date
Basis step-up	10% at 5 years, 5% at 7 years	10% at 5 years only
Exit tax-free	After 10 years	After 10 years
Long-term hold (30 years)	No change envisioned	Basis frozen at year 30; taxed thereafter
Rural incentives (QROF)	None	30% step-up, 50% improvement threshold
Reporting obligations	Minimal	Mandatory annual reporting with penalties
Redesignation cycle	One-time designations (2018)	Every 10 years (from 2026)

## STRATEGIC IMPLICATIONS

1. **Immediate Action:** If you hold capital gains, investing before December 31, 2026 could yield more favorable terms under the current structure, but timing is tight.
2. **Planning for OZ 2.0:** For post-2026 gains, planning for a January 1, 2027 investment makes sense—especially to leverage the rolling deferral, rural incentives, and tax-free appreciation.
3. **Compliance Focus:** Advise QOFs and QOZBs to prepare for the new reporting and compliance infrastructure to avoid steep penalties.
4. **Geographic Strategy:** Prospective investors and sponsors should analyze the 2026 QOZ redesignation maps, prioritizing the most distressed tracts—and consider QROFs if targeting rural redevelopment.

## FREQUENTLY AVAILABLE OPPORTUNITY ZONE FUNDS

There are many existing Qualified Opportunity Funds open to new investors, offering opportunities across sectors and geographies, including commercial real estate, affordable housing, community revitalization, and more.

Here are several active QOFs you can consider—from national vehicles to regional leads (many accept investment minimums starting around \$25K):

FUND NAME	SIZE	FOCUS / GEOGRAPHY
Virtua Opportunity Zone Fund	~\$200M	Commercial real estate – National
Origin QOZ Fund	~\$200M	CRE & multifamily – Southeast (incl. Georgia)
Cadre Opportunity Zones	~\$350M	Institutional CRE (includes Georgia, TN)
Pollack Shores OZ Fund	~\$30–35M	Multifamily – Georgia, South Carolina
Urban Catalyst QZ Fund II	~\$200M	California mixed-use redevelopment
Tucson/Bakersfield Self-Storage OZF	\$25K minimum	Single-asset self-storage opportunities

## HOW TO IDENTIFY AND EVALUATE EXISTING FUNDS

### 1. Use Curated Directories

- Platforms such as OpportunityZones.com, Novogradac, and regional OZ marketplaces list open funds, deals, and pitch events—many with live investor access.
- Example: their June 2025 “Pitch Day” showcased single and multi-asset deals currently accepting capital with transparent terms.

### 2. Review Fund Focus & Minimums

- Funds vary by investment size, geography, asset type, and strategy.
- Some target specific regions (e.g. Georgia, California), while others invest nationally.
- Confirm the minimum investment threshold (often \$25K to \$250K+).

### 3. Check Compliance & Credentials

When evaluating a fund, consider:

- Status of IRS self-certification (Form 8996)
- Track record of the sponsor
- Types of projects (e.g. multifamily, commercial, rural business)
- Timing and structure for deployment of capital (including substantial improvement for real estate)



## HOW TO FIND OPPORTUNITY ZONE FUNDS IN ATLANTA

### 1. Invest Atlanta's RFQ Process

Invest Atlanta, the city's economic development authority, has issued a Request for Qualifications (RFQ) inviting Opportunity Funds to invest in Atlanta's Federal Opportunity Zones. These zones are designated areas eligible for tax incentives under the federal Opportunity Zone program. Invest Atlanta collaborates with various partners to ensure that investments address public policy needs such as affordable housing, healthy food access, and job creation.

### 2. Georgia Department of Community Affairs (DCA)

The DCA provides information on Georgia's 260 designated Federal Opportunity Zones. While the DCA does not list specific Opportunity Funds, they offer resources and guidance for investors interested in these zones.

### 3. National Opportunity Fund Directories

Platforms like the Novogradac Opportunity Funds Listing and QOZ Marketplace compile directories of Qualified Opportunity Funds (QOFs) across the nation. Some of these funds may have investments in Georgia or the Atlanta area. For instance, the Novogradac listing includes funds such as:

- **Origin Qualified Opportunity Zone Fund**  
Focuses on commercial real estate and multifamily residential projects. While the fund operates nationwide, it includes Georgia in its investment focus.
- **Cresset-Diversified QOZ Fund**  
Invests in real estate development and redevelopment across various asset types. Georgia is listed among its investment regions.

## NEXT STEPS

- **Contact Invest Atlanta:** Reach out to Invest Atlanta to inquire about current or upcoming Opportunity Zone Funds active in the city.
- **Consult with a Financial Advisor:** Engage with professionals who specialize in Opportunity Zone investments to identify suitable funds and understand the associated tax benefits.
- **Monitor National Fund Listings:** Regularly check directories like Novogradac and QOZ Marketplace for updates on funds that may include Atlanta in their investment areas.

## **HOW TO ESTABLISH AN OPPORTUNITY ZONE INVESTMENT FUND**

To set up a Qualified Opportunity Fund:

1. Choose structure: Your fund must be organized as a partnership or corporation.
2. Self-certify via IRS Form 8996 by including it with your federal tax return.
3. Follow asset requirements: At least 90% of fund assets must be invested in qualified OZ properties or businesses within Opportunity Zones.
4. Reinvest eligible gains within 180 days of realizing them to qualify for OZ benefits.
5. Comply with development rules: Real estate must be original use or undergo substantial improvement (doubling basis over 30 months), except in rural zones where only a 50% improvement is needed.
6. Ensure proper reporting: File Form 8997 annually to demonstrate compliance; non-filing can trigger lapses in benefits.
7. Monitor zone designation changes: Know when tracts are redesigned or replaced in each 10-year cycle, especially if planning long-term investments.

## **FINAL THOUGHTS**

1. The OZ program is now a long-term policy tool, not a temporary incentive.
2. Rural areas gain significant advantages, promoting more equitable development.
3. Enhanced oversight and reporting are central to the new framework.
4. Establishing a compliant fund requires strategic planning, legal structuring, and clear operational discipline.

## OTHER ALTERNATIVE STRATEGIES

### 1. Installment Sales

- Description: Seller finances the property sale over time, receiving payments periodically.
- Pros: Spreads capital gains tax over several years, creates cash flow.
- Cons: Risk of buyer default, interest income taxed.

### 2. Charitable Remainder Trusts (CRTs)

- Description: Transfer property into a trust, receive an income stream, and a charitable deduction.
- Pros: Defers capital gains tax, supports philanthropy, income stream.
- Cons: Irrevocable, assets eventually go to charity.

### 3. Deferred Sales Trusts (DST—not the same as Delaware Statutory Trust)

- Description: Property is sold to a trust, which reinvests proceeds and defers taxes.
- Pros: Flexibility in investment choices, spreads out tax liability.
- Cons: Complex legal setup, fees and compliance requirements.

### 4. Direct Reinvestment in Business Assets

- Description: Instead of real estate, proceeds can be invested in eligible business assets under other tax deferral strategies.
- Pros: Diversifies investment, potential for different tax treatment.
- Cons: Must meet IRS rules for like-kind or other qualifying reinvestments.

## KEY CONSIDERATIONS:

1. 1031 exchanges require like-kind property, but these alternative vehicles may qualify under different IRS provisions.
2. Each vehicle has trade-offs in control, liquidity, risk, and timeline.
3. Always consult a tax advisor or CPA experienced in real estate transactions before executing any alternative strategy.

## **WHEN SELLING REAL ESTATE BECOMES A “SECURITY”**

A real estate transaction becomes a “security” when it meets the criteria established under federal securities laws, particularly the Howey Test, set by the U.S. Supreme Court in SEC v. W.J. Howey Co. (1946). This is crucial in commercial real estate, especially in syndications, fractional ownership, and investment offerings.

The sale of real estate becomes a security when the offering meets all four prongs of the Howey Test. A security exists when there is:

- An investment of money
- In a common enterprise
- With an expectation of profits
- Derived primarily from the efforts of others

### **1. Examples Where Real Estate IS a Security**

- Real estate syndications where passive investors pool funds, and a manager (sponsor) handles all operations.
- Tenants-in-common (TIC) or DST offerings with centralized management and no investor control.
- Condo hotels or vacation properties sold with a marketing plan promising passive income.
- Fractional farmland or commercial ownership offered as investment shares online.

In all of these, the investor is not buying real property to use or control—they’re investing in the potential income generated by someone else’s efforts.

### **2. Examples Where Real Estate is NOT a Security**

- A buyer purchases a retail strip center and actively manages leasing and operations.
- A land buyer holds property personally with no expectation of income from others.
- A commercial flipper buys, improves, and sells a property with their own labor and decisions.

These are real estate transactions, not securities, because there is no passive investment in a common enterprise.

### 3. Why It Matters

If a transaction is deemed a security, the seller/sponsor must comply with federal and state securities laws—including:

- SEC registration (or a Regulation D exemption)
- Full disclosure obligations
- Anti-fraud provisions
- Broker-dealer registration (if raising money)

4. **GEORGIA NOTE:** The Georgia Secretary of State's Securities Division regulates securities sold within the state. Failing to comply can lead to civil penalties, criminal charges, or rescission rights for investors.

**THANK YOU!**