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The Most Common Questions About 1031 Exchange

By **Toija Beutler** Attorney/Owner
Beutler Exchange Group, LLC

At Beutler Exchange Group, we facilitate over one hundred exchanges each month. Most of our time is spent talking to our clients or their advisors...answering questions all day long. Every exchange is unique, but many questions are routinely asked. Following are some of those questions:

Do any of the Tax Code changes impact my exchange?

For most clients the answer is “no.” There are just a couple of changes that might affect certain exchanges.

1. The most significant change is that we can no longer exchange personal property. Few of our transactions involve significant personal property. Those that do...large apartment complexes, hotels, gas stations, senior care facilities, ranches, etc. For all other clients this is mostly a non-issue.
2. 100% expensing is now permitted for certain kinds of improvements on commercial properties – roof, HVAC, fire protection, alarm and security. Clients who have utilized an “improvement” exchange for this work may opt to do the work after they close on the new property and fully write it off.

What is meant by “like kind?”

Would you believe that a rental house is like kind with a strip mall? And bare land is like kind with a commercial building?

The generous definition of “like kind” makes this the best rule of 1031. All property is like kind as long as what is being sold and bought are properties held for “investment” or for “productive use in a trade or business.”

continued on page 9

General Meeting

Annual Summer Picnic
@ Ferry Road Park

Thurs., Aug 22nd
Starting @ 5:30pm

Last Names A-P: bring salad
Last Names Q-Z: bring dessert

Make a Contribution TODAY!



RENTAL OWNERS ASSOCIATION OF SOUTHWESTERN OREGON

Who is the ROA?

Rental Owners Association of Southwestern Oregon is an organization that's been around for over 30 years and consists of landlords who care about practical, legal and profitable land lording practices. Through the association, they share problems, solutions, and ideas with other landlords and find information that comes from similar organizations in Oregon and around the country.



Our Association is currently comprised of over 200 landlords!

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Blind Replacement and Repair for Your Rental Property

July 2, 2019

rentalhousingjournal.com

Photo by Marian Kroell on Unsplash



Blinds are popular. And whether your blinds are new or old, broken blinds seem to be an ongoing issue for many rental property owners.

If you were ever wondering why mini-blinds break so frequently, here's your answer: Basically, the holes in the top of each vane – which are also called slats – are squarely “hole-punched” and, unfortunately, aren't as reinforced as they should be.

Sometimes kids rip them out or pets pull them down, but one of the primary reasons blinds break is because people are lazy.

Using blinds correctly can save maintenance time and expense.

Using blinds correctly can seem like a hassle. You have to take the time to turn the wand, open the slats, and then pull the string slowly. Not using the wand and rushing the process causes a bunch of tension on each vane, causing it eventually to crack and snap off. Happily, there are some easy fixes to minimize this from happening...

Blind replacement and repair for your rental property tips!

- Invest in some “vane savers” as reinforcements or as a way to fix broken vanes;
- You may also use paperclips instead of “vane savers,” by taping one over the end of each vane where a piece has broken off;
- Let the cords hang freely, this can help the cords last longer;
- Clean blinds by vacuuming them regularly with a brush attachment on low suction, brushing across the slats for venetian and pleated blinds and down the fabric or slats for vertical and roller blinds;
- Spot-clean any stubborn stains by blotting with a mild detergent solution or alcohol-free wipe (but never spray cleaner directly onto fabric);
- To prevent vanes from getting out of sync, always tilt the vanes open fully before drawing the blinds open or closed.



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The 2019 Forms Manual is Here!



A *must have* for any private landlord or property manager.

Since the passage of SB 608, a number of the forms designed by the Oregon Rental Housing Association have been updated to reflect the changes in Oregon Landlord/Tenant Law. This manual is an instructional guide on how to use these forms.

Only \$50.00

Pick up your copy at E.L. Edwards 2707 Broadway Ave. in North Bend

5 Ways to Collect on a Judgment

By **Laura Agadoni** | April 17, 2019
landlordacademy.com

The bad news: your tenant left owing you money.

The good news: you just won a money judgment in court against that tenant.

Time to celebrate? ...Not really.

Although you're supposed to get the money your tenant owes you after you win a money judgment, actually getting the money is another matter.

The court's job ends with the judgment. Collecting on that judgment is on you. Your ex-tenant might pay you immediately, and if so, great. Now it *is* time to celebrate. But what do you do if they don't?

1. Ask for it

This simple solution often works. Draft a letter to your ex-tenant requesting the money.

- Let this person know what they owe you.
- Tell them if they don't pay by X date, you will begin a collection process.
- Mention that if you begin a collection process, the transaction will appear on their credit report.
- You might wish to remind your ex-tenant that having a collection on their credit report will make it difficult to rent another place or to obtain a mortgage.

Many tenants, not wanting their credit affected, will pay.

2. Garnish wages

Almost every state allows wage garnishment, a process that allows creditors to take up to 25 percent of a debtor's wages until the debt is paid. You must know where your ex-tenant works to do this. You might have this information on the application your ex-tenant filled out. The rest of the procedure varies by state, but typically, you do the following:

- Go to your local courthouse and ask for a garnishment order.
- This goes to your ex-tenant's employer.
- The employer then withholds money from your ex-tenant's paycheck until the debt is paid to you.



Photo by [Mathieu Turle](#) on [Unsplash](#)

3. Garnish bank account

Similar to wage garnishment, you must know something about your ex-tenant—in this case where they bank—and ideally, their bank account number. You might have some bank information on the application your ex-tenant filled out, or you can get the information from a cancelled check. If your tenant paid you by check, then you have it. If not, you might be able to find someone who has received a check by your ex-tenant. You then go to your local courthouse and follow the procedure for garnishing the bank account.

4. Request information from the court

If you don't know where your ex-tenant works or where they bank, you can request a formal procedure at your local courthouse, usually called a "debtor's examination." Your ex-tenant might then be ordered to fill out a form that lists their employer and bank information. Or they may be subpoenaed to appear before the court at a hearing to answer your questions. You will have the opportunity to find out the information you will need to collect money:

- Where they work
- The contact information of their employer
- Where they bank
- Their bank account number

5. Hire a collection agency

You'll have to pay to use a collection agency, but recovering some of your money is better than receiving nothing. Unfortunately, the odds of a collection agent being successful in collecting money your tenant owes you are not that good. But you can increase your chances by hiring a recommended and reputable collection agency that specializes in working with landlords. Ask your lawyer, accountant, or other professional you know for a referral.

Form of the Month



NOTICE OF TERMINATION FIRST-YEAR TENANCIES

5

Tenant(s): 1
Tenant(s): et al (and all others)
Address: Unit:
City: OREGON Zip:

DATE OF SERVICE: 2
[] TIME SERVED PERSONALLY TO EACH INDIVIDUAL NAMED ABOVE:
[] TIME POSTED & MAILED:
[] MAILED:

Owner/Agent hereby serves you:
3 [] 30 days' or [] 60 days' or [] 90 days' notice
of the termination of your tenancy.
(34 days or 64 days or 94 days if served by mail only.)

Your tenancy is being terminated and you must vacate the rental unit you now occupy no later than 11:59 p.m. (end of day) on 4.

This notice is given without stated cause and is allowable because your month-to-month tenancy is within its first year. First year of occupancy includes all periods during which any of the tenants has resided in the dwelling unit for one year or less.

If your termination date is not at the end of your rental period, and you have not paid a last month's rent deposit, you will owe rent for a partial month.

Your prorated rent from 5 through is \$

If you did pay a last month's rent deposit that exceeds the date of termination, the landlord is required to account for those funds separately at the time of security deposit reconciliation within 31 days of surrender of possession of the dwelling unit.

OPTIONAL: Owner/Agent, MAY but is not required to, include an explanation of the reason(s) for the termination. If an explanation is included, this notice is still given without stated cause. Tenant does not have a right to cure the reason(s) for the termination and reinstate the tenancy and Owner/Agent need not prove the reason(s) for termination in a court action.
Reason for termination:

Owner/Agent Signature: 6 Date:

Owner/Agent: 7
Address:
City: State: Zip:
Telephone: Email:

The ending date must be at least 30, 60 or 90 days from the date of service (not including date of service unless personally delivered). If notice is served by mail ONLY, the ending date must include an additional four (4) days to allow for the delivery of notice, including date of mailing.

This notice, if mailed, shall be mailed First Class Mail ONLY (not certified, registered, etc.).

Owner/Agent does not waive the right to terminate by simultaneously or subsequently served notices.

Regardless of length of tenancy, proscribed notice periods may be longer in certain local jurisdictions or in subsidized housing.

If you are a veteran of the armed forces, assistance may be available from a county veterans' service officer or community action agency. Call the 2-1-1 information service to learn about resources in your area.



5 — Notice of Termination First Year Tenancies



What this form is for:

After the *72-Hour Notice (Form #4)*, this is the most widely used termination notice, it is the “no-cause” notice. Use it for terminating your first-year month-to-month rental agreement when you don’t want to have to specify a reason. First year of tenancy includes all periods during which any of the Tenants has resided in the dwelling unit. That means if a new Tenant signs on to an existing agreement, the clock resets in regards to termination time frames and methods. Because termination time frames vary in subsidized housing and certain local jurisdictions, this notice can require 30, 60 or 90 days.

When this form is used:

This form is used when you want to end a month-to-month tenancy and you want your Tenants to move out. A mirror form, *30-Day Notice From Tenant (Form #15)*, exists so the Tenants can give you notice they’re leaving.

This is a “no-cause notice” because you don’t need to explain why. There are certain times you can’t use this notice. If you have a fixed-term rental agreement you can’t terminate with this form. You can only terminate that for a specific reason, using one of the several “for-cause” notices. See *Notice of Termination with Cause (Form #38)* for more about no-cause vs. for-cause notices.

Finally, while you might use a no-cause notice, there always is a cause, and you can’t terminate for “no cause” if the cause is an illegal one. One unlawful reason is retaliation.

Retaliatory terminations are those that occur after:

1. Your Tenant has complained (or told you in writing that they intend to complain) to an appropriate government agency about a violation of:
 - a. A building, health, or housing code affecting health or safety
 - b. Laws regarding delivery of mail
 - c. Laws prohibiting discrimination
2. Your Tenant has complained to you in good faith about anything related to the tenancy
3. Your Tenant is joining or starting a Tenants’ union
4. Your Tenant has testified against you
5. Your Tenant beat you in FED court

It’s the complaints to you about access, habitability, and rules in your rental agreement that occur most often so, think carefully about these before you use a no-cause termination. If your Tenant won in FED court (#5 above), a no-cause notice given within the following six months would be retaliatory unless the only reason you lost was faulty delivery or computation of time in the notice.

Another unlawful reason is illegal discrimination. For instance, their kids are being noisy or distracting but it doesn’t rise to the level of being a rental agreement violation, so you decide just to give them a no-cause notice and be done with them.

Annual Summer Picnic @ Ferry Road Park in North Bend Thursday Aug 22nd - 5:30pm

A great opportunity to meetup with your fellow landlords and talk shop. This is a great way to meet other members and see what your local Rental Owners Association is all about. Plus, there will be games and door prizes!

Please bring a side dish to go along with the delicious fried chicken and hotdogs.

- Last names starting in letters A - P, bring a salad.
- Last names starting in letters Q - Z, bring a dessert.



NEED FORMS?

ORHA Forms are Available Online!

Oregon Rental Housing Forms are just a click away!

- 1 www.oregonrentalhousing.com
- 2 Click (top right): "Click to Get ORHA Forms Online"
- 3 Input your local association code in the field labeled "Enter Your Member ID" to receive ORHA forms 1/2 PRICE
- 4 Choose a form
- 5 Click on the form
- 6 Input your information
- 7 Click "Generate PDF"
- 8 Click "Check Out" – This will direct you to PayPal
- 9 Follow payment directions. Once complete, PayPal will return to the ORHA Forms page to "Print Link." This link will also be sent to your email address.

Forms Are Also Available to Pick Up!

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The Most Common Questions About 1031 Exchange

continued from page 1

With this definition clients are able to dramatically change their real estate portfolio and defer the payment of capital gain taxes. Out of commercial into residential. Out of residential into a mini-storage property or ag land or a Starbucks or... What do they want? Almost anything will qualify as long as the relinquished and replacement properties fall within one or more of these categories.

What doesn't qualify?

Property held for personal use (second homes) and held for sale (flips, new construction and some developer properties).

When do I need to set up the exchange?

Sooner rather than later.

Clients are on the fence. They don't know if they want an exchange. They aren't finding a replacement property. The 45 days is so short. They don't want to trouble anyone...Please trouble us!

What is sometimes overlooked is that fact that the exchange company must get their paperwork to the closing table. Clients get so focused on the 45-day deadline they forget this critical requirement of an exchange. It takes time for the exchange company and escrow to coordinate efforts.

Ideally, we would set up the exchange shortly after the relinquished property inspections have been fully negotiated between the parties. That gives the exchange company and escrow ample time to be ready for the closing.

I want to use the sale proceeds to build on some land I already own.

Not good. We cannot build on something our client already owns. The IRS has been firm on this point.

I'll transfer it to my buddy and buy it from him.

Still not good. There are many issues with this idea including the fact that the client is prohibited from buying a replacement property they owned within the last 180 days.

I want to buy free and clear.

1031 is not a good opportunity to get debt free.

For example, the client is selling a property for \$1.0m and after paying off the loan will net cash of \$600k. They want to be debt free and propose buying rural land for \$600k. Not good. Why not?

1031 comes with two important reinvestment rules. First, the client needs to apply all the cash toward the purchase of the replacement property. Second, they also need to obtain equal or greater replacement debt. In this case that means buying replacement property(ies) worth \$1.0m.

The rationale is best explained by looking at the tax policy behind 1031. It is an incentive program for Taxpayers who are selling and pulling \$1.0m out of the American economy (rental, commercial or land). If they sell they owe tax. If they don't want to pay tax they need to drive back into the American economy the entire \$1.0m. If they only reinvest \$600k they have, as I put it, "shorted America" by \$400k. Taxable on the \$400k.

If they don't want replacement debt they do have the option of "adding cash in." For example, they buy property(ies) that aggregate to \$1.0m but instead of a loan for \$400k they bring an additional \$400k of cash to the closings.

I only have to reinvest my gain, right?

This is similar to the misunderstanding about replacement debt. Of course, the whole point of an exchange is not to pay tax on gain. However, to get the best tax savings the client needs to fully reinvest in the American economy...not just reinvest the gain.

Can I have a partial exchange?

Yes! As long as the client doesn't mind paying some tax they can take cash out of the sale. Caution, however, against taking out so much cash that the exchange fails to shelter any gain. The tax advisor would need to analyze this.

For clarification on these questions and more go to:
www.beutlerexchange.com

Welcome New and Returning ROA Members!

Melody Kaufman & Bobby Kougioulis

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Join Us

Ever wonder what goes on at ROA Board meetings? Have any suggestions to share? Interested in joining? Bring your thoughts and/or ideas. Or just listen in and see what we're all about.

The ROA Board of Directors meets every first Tuesday of the month at 880 California Ave. in North Bend from noon to 1:00pm. Meetings are always open to the public.

Consider joining the board and have a voice in your local Rental Owners Association. Everyone wins when we put our ideas together to achieve a shared goal.



roa-swo.com

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In Case You Missed It: What to do About Lead Based Paint



July's educational meeting was presented by Ryan Barker of the Oregon Health Authority, Public Health Division. He went over what the laws are regarding lead based paint on both the federal and state level. Something all landlords should be aware of, especially local landlords since many of the homes in this area were constructed prior to 1978 meaning there is a good chance they are riddled with lead. Also, being so close to the water, many homes have been painted with boat paint which traditionally was high in lead.

More importantly, Ryan discussed the negative health effects of lead and how we have a responsibility to our tenants to provide a safe living environment. There are also negative effects to the environment. If lead is not contained, it could pollute our water.

Knowing how to test for lead based paint and learning what to do with it are very important. Did you know that even a bare wall that has been stripped can test positive for lead? Lead based paint could've soaked into the surface. Looking for a class that provides certification on how to handle lead contamination is a good idea.

The meeting was well attended and there was plenty of food to go around. Catering was provided by Tai's Dynasty and dessert was included. We had a few maintenance technicians in the audience and even they came away with some valuable knowledge.

For more information, go to oregon.gov/oha, select "Public Health" from the top of the page, then "Environmental Health". Under "Healthy Homes and Neighborhoods", select "Lead Poisoning and Exposure".





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