

# TAKE JUDICIAL NOTICE

## 1031 Exchange and Vacation Homes

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**March 20, 2008**

Section 1031 of the internal revenue Code allows an owner of investment property to exchange property and defer paying federal and state capital gain taxes if they purchase a "like-kind" property.

This is the time of year when people's minds focus on vacation homes. Following is a look at the 1031 treatment of vacation homes.

The threshold issue is whether the relinquished and replacement vacation properties are used primarily for personal use and enjoyment or for investment.

In "Barry E. Moore v. Comm., T. C. Memo 2007-134" two lakefront properties were exchanged, in the decision holding that both properties had been held primarily for personal use, the court laid down certain criteria.

1. Have the taxpayers rented or attempted to rent the property;
2. Have the taxpayers deducted mortgage interest as a "home mortgage interest" expense rather than investment interest expense;
3. Have the taxpayers taken depreciation or other tax benefits associated with an investment property, including deductions for maintenance expenses.

And maybe the most important consideration is the taxpayers' primary purpose in acquiring the properties.

A safe harbor is almost certainly created if the taxpayer rents the property to another person at a fair rental for 14 or more days each year.

If you have any questions about 1031 Exchange you can call our office at 914-381-6700 or contact Peter Brogan, Esq. at [pbrogan@judicialtitle.com](mailto:pbrogan@judicialtitle.com) or Angelo DelliCarpini, Esq. at [adellicarpini@judicialtitle.com](mailto:adellicarpini@judicialtitle.com).