



# November 2024 Newsletter

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Double Board Certified • Commercial and Residential Real Estate Law

## **WHAT DOES “HELD” MEAN WITH A 1031 EXCHANGE?**

### **The Big Picture**

Internal Revenue Code Section 1031 specifies that property relinquished and property acquired in a 1031 exchange must be “held for productive use in a trade or business or for investment.” There is much confusion and misinformation regarding the meaning of the phrase “held for investment.” I am often asked, “How long do I need to hold my property to qualify for a 1031 exchange?” Although some tax and legal advisors say that the property should be held for two or more years, this is only a partial answer. A shorter holding period will work in some cases given the right facts and circumstances. The key in “intent”.

### **Why This Matters**

There is no time period specified in the tax code after which relinquished or replacement property will qualify as “held for investment.” Stated simply, a taxpayer must have the “intent” to hold the property for investment at the time of the exchange. For these purposes, “intent” means the taxpayer’s subjective belief. In assessing this at the time of the exchange, the IRS will consider objective factors that support or negate the taxpayer’s claim that he or she intended to hold property for investment purposes or for use in a trade or business. Time is only one factor to be considered in making this assessment. Ideally, a taxpayer would point to multiple factors to establish their intent to hold property for investment. These factors include a long period of ownership, a use consistent with an investment or business use, and a tax reporting history that demonstrates the investment or business use of the property. All facts and circumstances will be considered.

Contrary facts, such as a sale of the property for a profit within a short period following the taxpayer’s acquisition of the property may lead the IRS to conclude that the taxpayer’s purpose in acquiring the property was to sell for a profit (i.e., an intent to flip) rather than to hold for investment. Whether the exchange will qualify depends on the circumstances precipitating the sale. Were there changes in circumstances that were not foreseen when the purchase was made? Did the taxpayer receive an unsolicited offer? The answers to these questions will inform the conclusion.

Taxpayers must disclose to the IRS the amount of time they held the relinquished property when they report the 1031 exchange on IRS Form 8824 (like-kind exchanges). As discussed, the taxpayer’s intent in holding both the relinquished and the replacement property at the time of the exchange is the central issue.

### **The Takeaway**

Satisfying the “held” requirement of Section 1031 requires substantiation of the proper “intent”. Every taxpayer and his or her tax advisor should consider all facts and circumstances to determine whether the required intent can be established. Duration of holding is only one of the many relevant factors.

## About Us

Greg Lehrmann is the founding member of Excel 1031 Exchange with 42 years of experience in commercial and residential real estate. For the past three decades he has dedicated his career to 1031 exchange work and has handled tens of thousands of exchanges throughout the country.

Mr. Lehrmann is a distinguished attorney double board certified in commercial and residential real estate law by the Texas Board of Legal Specialization. Only 2% of attorneys in Texas meet this exacting standard. He has a B.B.A. with honors in accounting from The University of Texas and a J.D. from The University of Texas School of Law.

Mr. Lehrmann facilitates 1031 transactions while educating and advising fellow real estate professionals about the transformative benefits of 1031 exchanges. He has written and spoken extensively about 1031s, and has published numerous articles including:

"§1031 Tax-Deferred Exchanges: Evolving Rules, Greater Opportunities" (July 2002 Tierra Grande)

"Using Advanced §1031 Exchange Strategies to Improve Client Investment Returns", (Spring 2005 SIOR Professional Report – national publication of Society of Industrial and Office REALTORS®)

"Keeping Uncle Sam Out of The Oil Patch", (January/February 2008 – Landman national magazine)

"Safe Harbor" (July 2008 Texas Realtor article on vacation-home exchanges.)

Mr. Lehrmann and his wife, Texas Supreme Court Senior Justice Debra Lehrmann, have two sons, Gregory & Jonathan, practicing attorneys, and two beautiful grandchildren, Jack (age 4) and Haley (age 3).

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### **BREAKING NEWS FOR TEXAS REAL ESTATE LICENSEES!**


The Texas Real Estate Commission adopts new addendum for Section 1031 Exchanges, effective January 3, 2025. Scan this QR Code for more information:



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