



The Big Tradeoff

by **Greg Lehrmann, Attorney**

Double Board Certified • Commercial and Residential Real Estate Law

The Big Picture

Placing funds with a qualified intermediary (QI) gives taxpayers an opportunity to preserve and build wealth, change the location and type of property owned, increase cash flow, and reduce management responsibilities. These benefits are enormous, but with these advantages come a price – albeit a small one. That is, taxpayer funds cannot be touched by the taxpayer for certain designated periods of time.

Why it Matters

In a 1031 exchange, U. S. Treasury Regulation Section 1.1031 (k)-1(g)(6) places restrictions that limit the taxpayer's ability "to receive, pledge, borrow, or otherwise obtain the benefits of money or other property before the end of the exchange period...the taxpayer may have rights to receive, pledge, borrow, or otherwise obtain the benefits of money or other property upon or after –

- (A) The receipt by the taxpayer of all of the replacement property to which the taxpayer is entitled under the exchange agreement, or
- (B) The occurrence after the end of the identification period of a material and substantial contingency that –
 - (1) Relates to the deferred exchange,
 - (2) Is provided for in writing, and
 - (3) Is beyond the control of the taxpayer and of any disqualified person as defined in paragraph (k) of this section, other than the person obligated to transfer the replacement property to the taxpayer."

In plain language, this means:

1. The QI cannot release exchange proceeds during the 45-day identification period unless it is for a purchase or deposit on a replacement property under contract.
2. If, after the expiration of the 45-day identification period the taxpayer has not identified any replacement property, the QI can return the exchange proceeds on Day 46.
3. If the taxpayer has identified replacement property, is past the 45-day identification period and would like exchange proceeds returned, the taxpayer must either close on all identified property or pass the 180-day exchange period. In the fortuitous event that the relinquished property was closed in a prior tax-reporting period, the taxpayer can file its tax return for that period, thereby terminating the exchange and entitling the taxpayer to the funds.

The Takeway

Taxpayers attempting to perform a 1031 exchange should familiarize themselves with the above parameters, often regarded as “the g(6) restrictions”. The big tradeoff amounts to choosing between 1) utilizing, to the extent possible, maximum tax deferral or 2) being able to get a portion (or all) of your money back, minus fees, at an earlier point in the process.

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 attorneys and 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 three beautiful grandchildren.

TEXAS REAL ESTATE LICENSEES: NEW 1031 ADDENDUM

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



 www.excel1031exchange.org  greg@excel1031exchange.org  (512) 213-9571

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