

## VESTING ISSUES & ENTITY STRUCTURES

Vesting is the manner in which title to property is held. One of the critical requirements for a successful 1031 exchange is that titleholder must be identical (for taxation purposes) on both the Relinquished and Replacement Properties. Exchangors are likewise not allowed to change the form of ownership during the course of an exchange, such as transferring the ownership of a property owned by an LLC to the individual members of the LLC. It is also prohibited to change the form of ownership, such as transferring out of a corporation into an LLC.

There are limited circumstances where changes in ownership do not disqualify the exchange. The key in such situations is whether the potential tax liability transfers. For example, a single member LLC, that is disregarded for taxation purposes, can have relinquished and replacement property vested in either the LLC name or the individual member's name. In states where husbands and wives are considered a single entity ("Community Property" States) the husband and wife (or in some cases "Civil Union" partners) may transfer from an LLC to the individual members, if they elect to disregard the LLC for tax purposes. In some other situations, entities which are disregarded for tax purposes may also be disregarded for vesting purposes under an exchange, such as a beneficiary under a revocable living trust.

As a precaution, if there is a vesting change immediately prior to the closing of a Relinquished Property or immediately following the closing of a Replacement Property, the exchange may be jeopardized.

In some situations it may become difficult for the Exchangor to retain the same vesting from the Relinquished Property to the Replacement Property.

The following examples indicate an exchange where tax deferral may be disallowed:

- ❖ If a husband, as the only Exchangor on the Relinquished Property needs his wife's income to qualify for financing of the Replacement Property, and the lender insists that the wife appear on the deed.
- ❖ If the Relinquished Property was vested in a trust entity and the Exchangor needs funding from a lender to purchase the Replacement Property. Lenders may not loan to trustees, in their capacity as trustee.

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### DISCLAIMER

Attorneys & Accountants 1031 Services, LLC is available to assist Exchangors and their advisors with exchange strategies and technical support, however Attorneys and Accountants 1031 Services, LLC cannot provide legal or tax services or advice and the Exchangor must consult with their legal and tax professionals as to the intended exchange and any legal or tax implications thereof.

- ❖ If the Exchangor's that holds individual Relinquished or Replacement Properties in different LLC's wants to exchange multiple properties within a single exchange.

Exchangors are strongly urged to plan their exchange strategy as far in advance as possible and to consult with their tax and legal advisors in conjunction with Attorneys & Accountants 1031 Services, LLC to anticipate these vesting issues.

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#### **DISCLAIMER**

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