

# Vesting Issues

Information provided by:  
Granite Exchange Services, Inc.  
877-937-1031 • ges1031.com

Professional resources for Investors, Closers, Realtors, CPAs and Attorneys.

Under IRC section 1031 title must be held in the same manner on the replacement property as it was on the relinquish property. Therefore, the entity that begins the exchange must complete the exchange by acquiring title to the replacement property.

## Examples:

1. Wife relinquishes, then wife must acquire
2. ABC Corporation relinquishes, then ABC Corporation must acquire
3. Smith LLC relinquishes, then Smith LLC must acquire

Exchangers need to anticipate vesting issues before the start an exchange. Lending policies and partnership issues may arise when the exchanger is trying to complete their exchange.

## Examples:

1. If the wife relies on the husband's income for financing the purchase of replacement property the lender will require the husband to take title to the property, which may violate the wife's exchange requirements.
2. Lenders are reluctant to lend to Trusts, thereby creating difficulty for a Trust to complete an exchange using the Trust's vesting on the replacement property.
3. Exchangers who sell their property in one entity, such as a Corporation or multi-member LC and wish to acquire replacement property under a different Corporation or multi-member LLC may not do so within the exchange format.

## Exceptions

There are some exceptions to the rule when the replacement property vesting can be different than the vesting on the relinquish property. These exceptions will not destroy the integrity of the exchange because there was no change in Federal tax ownership.

## Examples:

1. The Exchanger's revocable living trust may acquire replacement property in an exchange if the exchanger sold the relinquish property as an individual and the trust is disregarded for Federal tax purposes.
2. The Exchanger may sell relinquish property held as an individual and acquire replacement property in a single-member LLC. Single-member LLC's are disregarded for Federal tax purposes under the "check-the-box" rules.
3. In community property states, a husband and wife may exchange relinquished property held by them individually as community property, for replacement property in a two-member LLC in which the husband and wife are the only two members and the LLC is disregarded for Federal Tax purposes under the "check-the-box" rules.

Exchangers must be aware of these vesting issue before they start an exchange. Changing vesting directly prior to, or during an exchange may invalidate the exchange. Exchangers are encouraged to consult tax or legal advise regarding how vesting issues may affect their exchange.

## Specializing in:

Delayed  
Simultaneous  
Reverse  
Improvement  
Multi-property



**GRANITE  
EXCHANGE  
SERVICES**

National Headquarters:

877-937-1031

www.ges1031.com