



1031 Exchange Qualified Use Requirements: It's the Intent that Really Matters

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When investors consider a 1031 exchange, one of the first questions they ask is whether their property qualifies for tax-deferred treatment. The answer hinges on a concept known as "qualified use." Understanding this requirement is essential, because it determines whether you can defer the payment of capital gain and depreciation recapture taxes under Section 1031 of the Internal Revenue Code—or whether your transaction will be treated as a taxable sale.

There is a great deal of confusing and sometimes inaccurate information circulating about what usage qualifies for 1031 exchange treatment. This article breaks down the qualified use requirement into clear, practical terms: what really counts as qualified use property, why investor intent matters more than how long they owned their property, and how the holding period fits into the picture. As always, our experienced [1031 exchange specialists](#) are available to answer your questions and help you plan your transaction with confidence.

What Is Qualified Use Property?

To qualify for [1031 exchange treatment](#), both your relinquished property (the property you sell) and your replacement property (the property you acquire) must be held for productive use in a trade or business, held for investment purposes, or used as rental or leased property.

Property held primarily for sale does not qualify as held for investment. Property that is your primary residence, a second home, a vacation property or any other real property used solely for personal use or benefit typically will not qualify for tax-deferred exchange treatment. However, those properties that do not satisfy the qualified use test may qualify with a change of use along with a seasoning period.

This is a very broad standard. All real property in the United States is considered "like-kind" property to all other U.S. real property, provided all properties in the tax-deferred exchange are held for a qualified use. The character of the property—not its grade, quality, or specific type—is what really matters. That means you can exchange a single-family rental property for a commercial building, raw unimproved vacant land for an apartment complex, or farmland for a retail center. Qualified use property generally falls into one of three categories: rental, investment or business use.

What Types of Properties Meet the Qualified Use Requirements for a 1031 Exchange?

A property meets the qualified use rule when it is held for rental income, capital appreciation, or productive use in a trade or business. This includes single-family rentals, multi-family properties, commercial office buildings, industrial warehouses, farmland, vacant land held for investment, and business-use equipment or machinery. Examples of qualifying property categories include:

- **Rental and income-producing real estate:** Single-family rentals, duplexes, apartment buildings, and commercial properties that are rented or leased to tenants qualify.
- **Business-use property:** Office buildings, retail stores, manufacturing facilities, storage properties, and warehouses used in an active trade or business will also qualify for tax-deferred exchange treatment.



- **Investment Property:** Vacant unimproved or raw land, farmland, or any kind of real estate that is merely held for long-term appreciation, even if it produces no current income. Property held for investment does not have to produce any kind of cash flow to satisfy the qualified use rules.
- **Specialty assets:** Timberland, vineyards, air rights, water rights, mineral rights, certainly oil and gas royalties, billboards, cell site towers, and conservation easements may also qualify for like-kind exchange treatment.

Property Held for Rental

Income-producing real estate is one of the most common forms of qualified use property. This includes:

- Residential rental properties, such as single-family rentals, duplexes, and multi-family buildings
- Commercial properties, including office buildings, warehouses, storage facilities and industrial buildings
- Retail properties, such as shopping centers and Triple Net Lease (NNN) or just net leased properties
- Syndicated Delaware Statutory Trusts (DSTs) or Tenant-in-Common properties

These properties are acquired and held to generate rental income (i.e., cash flow properties), which clearly demonstrates qualified use for 1031 exchange purposes.

Property Held for Investment

Property held for investment qualifies even if it does not currently produce income or cash flow. The defining factor is that you have the intent to hold the property for growth in value, or capital appreciation. Examples include:

- Raw land and farmland held for appreciation
- Vacant land or unimproved property held for investment
- Other real estate acquired with the expectation of long-term gain

It is important to note that the mere hope that a property will appreciate is not, by itself, always sufficient to establish investment intent. Your actual conduct and the surrounding facts must support that the property was genuinely held for investment to pass the qualified use requirements.

Property Used in a Trade or Business

Real property you buy to use in your trade or business or to operate your business in also qualifies for 1031 exchange treatment. For example, you might acquire a commercial office building to run your company, or a warehouse to store and distribute your products. Property put to productive use in your trade or business satisfies the qualified use requirement.

By contrast, property held primarily for sale—often referred to as inventory or “dealer property”—does not qualify. Acquiring a property to fix it up and quickly resell it, commonly known as flipping or rehabbing, is a classic example of property held for sale rather than held for investment. Converting a multi-family property into condominiums to sell individually is another example of property held for sale and not with the intent to hold for investment purposes. While advanced planning strategies may be available in certain situations, these transactions generally fall outside the protection of Section 1031 of the IRC.

The Real Criteria: Investor Intent, Not Length of Ownership

Many investors and their advisors become preoccupied with how long they have held legal title to a property when determining whether it qualifies for [like-kind exchange](#) treatment. This is understandable, but it misses the central point of what qualifies.

The length of time you have owned a property is not the real issue. Your intent to hold the property for rental, investment or use in a trade or business is what truly matters.



The Internal Revenue Code and Treasury Regulations do not specify a minimum holding period for 1031 exchange eligibility. Instead, the IRS and the courts apply a facts-and-circumstances test, examining your purpose for holding the property at the time of the exchange. If you are audited, you must be able to demonstrate that you intended to hold both your relinquished and replacement properties for a qualified use.

Case Law

The case law makes this clear. In *Bolker v. Commissioner*, the Tax Court and the Ninth Circuit confirmed that the taxpayer's intent to hold property for investment was the determining factor. In *Reesink v. Commissioner*, taxpayers who acquired a replacement property as a rental—but ultimately moved into it after roughly eight months—were still found to have held the property for investment. The court was persuaded by objective evidence of their intent, including rental flyers distributed throughout town, documented showings to prospective tenants, and credible testimony supporting their plans.

The opposite outcome occurred in *Click v. Commissioner*. There, the taxpayer's relatives moved into the replacement properties the day after the exchange closed, and the properties were gifted to those family members several months later. Because there was no genuine rental activity or investment behavior, the court treated the transaction as a sham. A longer ownership period would not have saved it, because the intent to hold for investment was never present.

The lesson is consistent: intent to hold the property is established by what happens before, during, and after the 1031 exchange. Demonstrating intent to hold the property for rental, investment or business use is a case-by-case analysis grounded in your actual conduct and facts, not merely how long you have owned the real estate.

The Role of the Holding Period in Demonstrating Intent

If there is no required holding period to satisfy the qualified use requirement, why do so many advisors emphasize holding property for a year, one year and one day, two years, or longer? The answer is straightforward: while the amount of time the property is held is not the determining factor in satisfying the qualified use rule, it is one of the strongest forms of evidence you can offer to demonstrate that your intent was to hold the property for rental, investment or business use.

One of the best ways to prove that you intended to hold a property for investment is to actually do so—long enough to make that intent unmistakable. A meaningful holding period, combined with supporting evidence, makes your position far easier to defend if your tax-deferred exchange is ever audited.

To strengthen the record of your investment intent, consider the following:

- **Hold the property for a meaningful period.** A longer holding period helps establish that the property was genuinely held for rental, investment or business use rather than acquired for a quick resale.
- **Document your rental efforts.** Keep copies of rental listings, advertisements, flyers, and records of communications with prospective tenants. Hire a leasing agent, property manager or use a listing service to help document your efforts to hold the property out for rental or leasing purposes.
- **Use Legal Documents.** Enter into rental or lease agreements to legally document the relationship between you as the landlord and the tenant or renter.
- **Maintain financial records.** Retain documentation of rental income, operating expenses, and depreciation claims that reflect business or investment use. Monthly income deposits can go a long way to document rental or lease activity.
- **Avoid premature personal use.** Refrain from using a replacement property personally in a way that contradicts your stated investment purpose.
- **Create a consistent paper trail.** A clear, contemporaneous record of business-like behavior tells a credible story that can withstand IRS scrutiny.



Remember that a holding period alone will not rescue a transaction in which the facts show no genuine leasing or investment intent. Conversely, a relatively short holding period may still qualify when the surrounding facts clearly demonstrate that the property was held for a qualified use. The holding period supports your intent; it does not replace it.

What Types of Property Do Not Qualify as Qualified Use Property Under Section 1031?

Property that does not qualify as a qualified use asset includes any property held primarily for sale, personal use, or speculation without genuine investment intent. The Internal Revenue Service (IRS) draws a clear line between real property held for rental, investment or business use vs. inventory — and only investment property is eligible for tax-deferred exchange treatment.

Specifically excluded from 1031 exchange eligibility:

- **Fix-and-flip properties:** Real estate acquired with the intent to renovate, rehab and quickly resell are treated as inventory held for sale and not real property held for investment. These investors are often referred to as flippers or rehabbers. They purchase real estate with the intent to rehabilitate the property and then sell. They are holding for sale and not holding for investment under Section 1031.
- **Primary residences:** Property used exclusively for personal use, such as a primary residence, second home or vacation property, does not meet the investment-use standard
- **Dealer property:** Real estate developers, builders, or contractors who buy property, develop and build on the property, and hold the property for sale to customers cannot exchange those assets under Section 1031. These properties are held for sale and not investment.
- **Condo conversion projects:** Multi-family properties acquired and converted into condominiums (condos) for individual resale are considered held for sale, not held for investment.
- **Stocks, bonds, partnership interests, and notes:** Section 1031 applies exclusively to real property (since the Tax Cuts and Jobs Act of 2018 eliminated personal property exchanges). Non-real estate, technically referred to as personal property, will not qualify for 1031 exchange treatment.

It is possible to convert the use of a property from held for sale to held for rental, investment or business use so that it may qualify for a tax-deferred exchange treatment. When converting a property, it is important to property document the change of intent and season the new usage as long as possible.

Planning Your 1031 Exchange with Confidence

Qualified use is the foundation of every successful 1031 exchange. Both your relinquished and replacement properties must be held for rental, for investment, or for productive use in your trade or business. Property held primarily for sale will not qualify. And while many investors fixate on how long they have owned a property, the true measure of eligibility is your intent to hold for a qualified use—an intent best supported by a meaningful holding period and thorough good documentation.

Because qualified use determinations depend on the specific facts of your situation, careful planning with your legal, tax and financial advisors is crucial. Our experienced [1031 exchange specialists](#) are also available to review your circumstances, answer your questions, and help you structure a successful, compliant exchange. Contact us today to discuss your 1031 exchange and ensure your properties are positioned to qualify for tax-deferred treatment.