



NEW LAW IN COLORADO REGULATES §1031 EXCHANGES

Colorado has enacted a new law regulating §1031 Exchanges in response to problems plaguing the industry. As has been reported, some Qualified Intermediaries have been under scrutiny for investing exchange funds improperly. The law is meant to address these issues and protect the taxpayer from such activity.

Colorado House Bill 09-1254 is a Consumer Protection measure for like-kind exchanges facilitated by an exchange facilitator or what are commonly referred to as a “Qualified Intermediary” (QI). The Act sets out as deceptive trade practices certain actions of exchange facilitators, including the failure to 1). Timely notify clients of a change in control of the exchange facilitator; 2). Maintain adequate insurance or other financial assurance; and 3). Act as a limited fiduciary with regard to exchange funds.

The Act requires an exchange facilitator to:

- 1). Notify current clients of a change in control of the exchange facilitator within two business days after the effective date of the change;
- 2). Maintain a fidelity bond of one million dollars and errors and omissions insurance of at least \$250,000; or deposit the equivalent in cash or irrevocable letters of credit into a financial institution; or deposit all exchange funds into a financial institution in Qualified Escrow or Qualified Trust accounts with withdrawals requiring taxpayer authorization;
- 3). Follow an “ordinarily prudent investor” standard of care for a custodian of the property of another (including no commingling of funds) for all exchange proceeds. This requires that a) both the exchange facilitator and the taxpayer authorize any transfers in excess of \$250,000, b) the exchange facilitator provide written notification of how funds will be invested, and c) the exchange facilitator invest with goals of liquidity and preservation of principal, so that funds are available for completion of the exchange.
- 4). Avoid a list of prohibited activities such as misrepresentations, false statements, failing to provide an accounting, fraudulent or dishonest conduct, conviction of a crime of dishonesty, not fulfilling contractual obligations or delivering assets to the taxpayer, failing to keep appropriate records, discipline by a national certifying or regulating agency, or commission of a felony relating to a person’s employment as an exchange facilitator.

Although the Act recognizes that banks are already highly regulated, and specifically excludes a bank owned exchange facilitator, such as Exchange Services, LLC or its affiliate Vectra Bank, we are and will remain in compliance with this new Act. We carry a \$50,000,000 fidelity bond (50 times the requirement) and \$250,000.00 of errors and omissions insurance. We do not commingle or even aggregate funds, but hold all exchange funds in separate demand deposit or money market accounts. Each is a Qualified Trust account requiring taxpayer authorization for transfers of any size, with FDIC insurance on exchange fund accounts up to the legal limits. If you have any questions about this new law in Colorado or about our exchange services, please feel free to contact Barry J. Seidenfeld at Vectra Bank Exchange Services, 720-947-7642 or barry.seidenfeld@vectrabank.com.

Contact us for more information (877) 596-1031

One South Main Street, 8th Floor, Salt Lake City, UT 84133-1109 | Telephone (801) 596-1031 Fax (801) 524-4848
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