California QI Law

Provides Consumer Protection for Investors

1031
Knowledge

On September 30, 2008, then Governor Schwarzenegger signed into law SB 1007 requiring qualified intermediary (QI) companies to comply with certain requirements if they hold exchange funds for customers who own relinquished or replacement property in California (California Exchange Customer). It also pertains to someone who maintains an office in California or advertises in California provided the relinquished property is in California.

The law provides that QI's must meet certain bonding and insurance requirements as summarized below. They must also notify their California Exchange Customers of any change in the control of the company. In addition, the law requires QI companies to act as a custodian for all exchange funds and to invest those funds in investments that meet the "prudent investor standard" as defined by California law. If a QI violates the provisions of this law they may be subject to civil suit. The injured customer may file a claim on the bonds, deposits, or letters of credit as provided in the law to recover damages. Some highlights of the law are shown below:

Investment Standards - Defines that exchange funds must be invested using the "prudent investor standard" as defined in Article 2.4 (commencing with Section 16045) of Chapter 1 of Part 4 of Division 9 of the California Probate Code.

Insurance and Bonding Requirements - A QI shall at all times comply with one or more of the following: (1) Maintain a fidelity bond or bonds in an amount not less than $1 million, or (2) deposit cash, securities or a letter of credit for not less than $1 million, or (3) use a qualified escrow or trust, and, (1) maintain an Errors and Omissions Insurance Policy in an amount not less than $250,000, or (2) deposit cash, securities or a letter of credit in an amount not less than $250,000.

Change in Ownership - A person who engages in business as a QI shall notify all existing exchange clients who own relinquished property in California or purchase replacement property in California of any change in control of the QI within 10 days of the change in ownership.

Prohibited Acts - The QI must not engage in various "bad boy" ACTS such as material misrepresentations, false advertising, failure to account for money or property, failure to return funds to clients, fraud, criminal conduct, etc.

See CA SB-1007 for the full text of this law. When selecting a QI, many factors should be taken into consideration. Security of the exchange funds is paramount and the experience of the exchange counselors and staff is also critical.

Compliments of:

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