

The State of Connecticut enacted legislature to regulate qualified intermediaries who facilitate tax-deferred exchanges under Internal Revenue Code Section 1031. The law applies to 1031 exchanges wherein relinquished property is located in Connecticut. Public Act 13-135 (the Act), which became effective October 1, 2013, generally tracks the Model Act promoted by the Federation of Exchange Accommodators, a trade organization representing many professional qualified intermediaries.

Asset Preservation, Inc. (API), whose practices are already in full compliance with the Connecticut law, welcomes the legislation because it will protect consumers from qualified intermediaries whose previous practices may not have provided the protection afforded by the Act.

The Act provides several protections for exchangers who engage a Qualified Intermediary (QI) to facilitate a 1031 exchange transaction. Although the full text of this law can be seen at [An Act Concerning Banks, Loan Production Offices, Exchange Facilitators, Public Deposits and Real Property Tax Liens](#) (see sections 5 through 12), some important highlights are reflected below:

EXCHANGE FUNDS - The Act requires the QI to deposit all exchange funds in a separately identified account, as defined in 26 CFR 1.468B-6(c)(2)(ii)(A), and provides that any withdrawal from such account requires the written authorizations of both the client and the QI. The Act further requires that all exchange funds be held in a financial institution (as defined), in a manner that provides liquidity and preserves principal. Similar to regulations established in other states, the Act prohibits the commingling of exchange funds with the QI's operating funds. Further, it prohibits loans of exchange funds to parties related to the QI, with the exception of loans to an Exchange Accommodation Titleholder (EAT) in the case of a reverse exchange. Finally, the Act provides that exchange funds are not subject to attachment or execution resulting from a claim against the QI. [This last feature is of particular importance given bankruptcy decisions concerning exchange proceeds held by an insolvent QI.]

BONDING, ERRORS AND OMISSIONS POLICY REQUIREMENTS - The Act requires the QI to either maintain a fidelity bond in the amount of at least \$1,000,000 and an Errors and Omissions Insurance Policy in an amount not less than \$250,000; or, provide irrevocable letters of credit of at least \$250,000.

CHANGE IN OWNERSHIP - Under the Act, all taxpayers with relinquished or parked property in Connecticut must be notified (by facsimile, email or first class mail, within ten business days) of any change in control of their QI. This is specifically defined as the transfer of more than 50% of the QI's assets or ownership interests. In addition, the QI must post a notice of this change on its website for at least ninety days. There is, however, an exception regarding change in control for publically-held companies that remain public after the transfer.

PROHIBITED ACTS - The Act prohibits a QI from engaging in material and continued misrepresentations, fraudulent activity, and failing to fulfill contractual obligations, to include the failure to provide a timely accounting of exchange funds held by the QI.

When selecting a QI, many factors should be taken into consideration. The security of the exchange funds is paramount.

Compliments of:



HQ 800.282.1031 | NY 866.394.1031
apiexchange.com | info@apiexchange.com