

Due Diligence When Recommending a QI

Accountants, Attorneys and Financial Advisors Beware

1031

Knowledge



Have you examined your Qualified Intermediary (QI) lately? Are you sure your exchange funds are secure?

Although a small number of states have enacted regulations governing Internal Revenue Code Section 1031 exchange QI companies (see [Asset Preservation's website](#) for more information on various state QI regulations), there are no federal regulations regarding QI's and the safeguarding of exchange funds. Accordingly, it is important for both the taxpayer and the taxpayer's tax/legal advisors to perform due diligence before choosing a QI company.

The importance of this can be seen in [Winters v. Dowdall](#) (*Winters v. Dowdall* 63 A.D.3d 650 (2009) 882 N.Y.S.2d 100). In this case, the taxpayer sold a relinquished property in New York and retained Patrick Dowdall, of the law firm Dowdall and Associates, P.C. (Dowdall), purported experts in the field, to provide guidance with their 1031 exchange, and specifically with the selection of a QI.

Dowdall selected Atlantic Exchange Company, LLC (AEC) to act as QI. During the course of the exchange, the taxpayer's proceeds were stolen by AEC and Edward Okun, AEC's sole member. The taxpayer's loss was over \$604,000. The taxpayer argued that his loss was caused by Dowdall's legal malpractice, including:

- Failure to properly investigate AEC before selecting it as QI;
- Failure to confirm that AEC was sufficiently bonded before recommending AEC as the QI, and;
- Failure to confirm that the taxpayer's exchange proceeds were deposited into an account on behalf of the taxpayer as required by the terms of the exchange agreement.

The Court determined that *Dowdall* did not adhere to their duty to perform sufficient due diligence in that they did not sufficiently investigate the QI prior to recommending the company to the taxpayer. Dowdall had represented that they were experts on the subject of 1031 tax-deferred exchanges. The taxpayer had relied upon these representations in hiring Dowdall. The Court specifically determined that the advice given by Dowdall was negligent, and was the proximate cause of the damage to the taxpayer

Tax, legal, and financial advisors should realize the importance of performing sufficient due diligence before recommending a QI to facilitate a 1031 exchange on behalf of their clients. This due diligence should consist of an examination of the practices of the QI regarding the handling of client funds, and the security measures offered by the QI in the event of loss.

Asset Preservation, Inc. (API), adheres to consistent and disciplined practices in handling exchanger funds, overseen by its parent company Stewart Title, a publicly-traded company (NYSE: STC). API maintains fidelity bond coverage, and errors & omissions insurance coverage. In addition, API has implemented protections for its customers which go far beyond the typical protections offered by many other qualified intermediaries. For example, API's parent company, Stewart, provides a "Letter of Assurance" guaranteeing the performance of API.

Compliments of:



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