



The State of Virginia has enacted a new law regulating qualified intermediaries who facilitate tax deferred exchanges involving relinquished property located within Virginia. The Exchange Facilitators Act (the "Act"), which became effective on July 21, 2010, generally tracks the Model Act promoted by the Federation of Exchange Accommodators, a trade organization representing most professional qualified intermediaries. The Act provides several protections for exchangers who engage a qualified intermediary ("QI") to facilitate a tax deferred exchange in a transaction covered by the Act. Although the full text of this law can be seen at Virginia Exchange Facilitators Act, some important highlights are reflected below:

- **EXCHANGE FUNDS:** The Act requires a QI to hold exchange funds either in separately identified accounts that require the taxpayer's written authorization and a written acknowledgement of the QI for any withdrawals, or the use of a qualified escrow or qualified trust account as defined under Treasury Regulation §1.1031(k)-1(g)(3). The Act further requires that all exchange funds be held in a financial institution (as defined), except that the taxpayer may specifically direct the QI to invest exchange proceeds in an investment of the taxpayer's choice, provided the QI provides written acknowledgment to the taxpayer that includes written confirmation of how the exchange funds will be invested. Similar to regulations established in other states, the Act prohibits the comingling of exchange funds with the QI's operating funds and prohibits loans of exchange funds to parties related to the QI, with 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 the attachment or execution on any claim against the QI this last feature is of particular importance given recent bankruptcy decisions concerning exchange proceeds held by an insolvent QI]
- **ERRORS AND OMISSIONS POLICY REQUIREMENTS:** The Act requires the QI to either maintain 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 Virginia must be notified by facsimile, email or first class mail within ten (10) business days of any change in control of their QI, which 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 (90) days. There is 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, including the failure to provide a timely accounting for exchange funds held by the QI.
- **PENALTIES:** Failure to comply with these regulations can result in a civil penalty of not more than \$2,500 per violation.

When selecting a Qualified Intermediary, 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. Call Asset Preservation, to learn more about The API Advantage™ and our commitment to the highest level of security for exchange proceeds and commitment to excellent customer service.

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