Washington QI Law

Provides Consumer Protection for Investors

1031 Knowledge

On April 13, 2009, the State of Washington enacted legislation to regulate 1031 exchange companies (the QI Act). The law, which took effect on July 26, 2009, applies to all qualified intermediaries ("QI") that hold exchange funds for 1031 exchange customers who sell relinquished property in Washington, maintain an office in Washington for the purpose of soliciting business, or act as an exchange accommodation titleholder ("EAT") if the property held by the EAT is located in Washington (e.g., to facilitate reverse and/or improvement exchanges). The law was also subsequently modified, effective July 28, 2013.

Where applicable, the Act requires a QI to maintain a fidelity bond and errors and omissions insurance meeting standards summarized below. The Act also provides a customer with a private civil action for damages that occur as the result of an QI's failure to comply with the Act. Certain specific violations are subject to criminal penalties punishable as a misdemeanor or class B felony. Some specific provisions of the Act are described below:

- **Investment Standards** - Exchange funds must be invested in a manner meeting the "prudent investor standard" described in Revised Code of Washington (RCW) Section 11.100.020. The Act specifies that the QI is a custodian of the taxpayer's property and funds. Exchange funds are not subject to execution or attachment on any claim against the QI.
- **Bonding Requirements** – A QI must maintain a fidelity bond or bonds in an amount not less than $1 million for the benefit of the taxpayer; or, deposit all exchange funds in a qualified escrow account or qualified trust. Errors and omissions insurance must also be maintained. The QI must provide evidence to each client that these requirements are satisfied before entering into an exchange agreement.
- **Segregated Accounts** - All taxpayer funds must be deposited in a separately identified account for the particular taxpayer or taxpayer's matter, and the taxpayer must receive all the earnings credited to the separately identified account.
- **Change in Ownership** - A QI must notify all existing exchange clients of any change in control of the QI within 10 days of any such change. For this purpose, "change in control" means any transfer of more than 50% of the assets or ownership of the intermediary.
- **Prohibited Acts** - The QI must not knowingly, or with criminal negligence, engage in certain acts such as making false, deceptive or misleading material representations or advertising, engage in any unfair or deceptive practice, fail to account for money or property, or fail to return funds to clients, or commit a "covered dishonest act", such as a crime involving fraud, embezzlement, misappropriation of funds, robbery or other theft of property.
- The law does not provide for registration or licensing. Visit WA QI Law and the 2013 Amendments to see the full text of this law.

Compliments of:

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