Qualified Intermediaries Are Not Created Equal

By:
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Investors think 1031 Exchange Qualified Intermediaries are all the same – but Qualified Intermediaries are not created equal – and the differences can be significant and critical. Did you know there is no independent regulatory body or government oversight of Qualified Intermediaries; that very few are licensed, regulated, audited, or have any minimum equity capital requirements? This is very scary when you consider the amount of money Qualified Intermediaries hold on behalf of investors' 1031 Exchange transactions.

I have seen numerous Qualified Intermediaries fail during my 38 years in the 1031 Exchange industry. Most of these failures could have been prevented had there been government or regulatory oversight, including an independent audit.

Qualified Intermediaries are a crucial part of successful 1031 Exchanges and have three especially important responsibilities. They prepare the necessary documents to structure the investor's 1031 Exchange, work with the investor and their legal, tax, financial advisors and closing agent to ensure a successful and compliant 1031 Exchange transaction and – arguably – the most important responsibility – to receive, hold, and safeguard the investors' 1031 Exchange funds throughout the 1031 Exchange.

Investors should be extremely careful and diligent when evaluating and selecting the Qualified Intermediary that will administer their 1031 Exchange transaction since Qualified Intermediaries hold significant amounts of 1031 Exchange funds on behalf of thousands of investors' 1031 Exchange transactions.

Regulatory Oversight Ensures Safety, Soundness and Security

Oversight and audit by a regulatory agency or government body, such as a State Division of Banking ("DOB"), Office of the Comptroller of the Currency ("OCC"), Office of Thrift Supervision ("OTS"), Federal Deposit Insurance Corporation ("FDIC") or the Federal Reserve Bank ("FRB"), is crucial to ensure the Qualified Intermediary is operating in a safe, sound and secure manner.

Exeter Trust Company is licensed, regulated, and audited by the Wyoming Division of Banking.

The importance of regulatory oversight and an independent audit cannot be emphasized enough since Qualified Intermediaries have such tremendous fiduciary duties and responsibilities. Government oversight with an independent audit provides third-party verification that the Qualified Intermediary is operating in a safe, sound, and secure manner. I know I already said this, but most Qualified Intermediary failures could have been prevented with government oversight and independent audits.

Exeter 1031 Exchange Services, LLC takes its fiduciary duties and responsibilities in the administration of clients' 1031 Exchange transactions very seriously. Exeter 1031 Exchange Services, LLC chose to be one of the few Qualified Intermediaries to proactively go through a rigorous regulatory review and approval process to form and launch Exeter Trust Company to better protect its clients' 1031 Exchange funds. Exeter Trust Company is licensed, regulated, and audited by the Wyoming Division of Banking. This makes Exeter 1031 Exchange Services, LLC one of the safest Qualified Intermediaries in the industry today.

Bonding, Insurance and Equity Capital Provide Financial Strength and Stability

The Exeter Group of Companies, including Exeter 1031 Exchange Services, LLC and Exeter Trust Company, have $5.0 million in Fidelity Bond coverage, $5.0 million in Errors & Omissions Insurance and more than $4.0 million in equity capital to protect clients' 1031 Exchange funds.

Qualified Intermediaries should carry significant amounts of fidelity bond and errors and omissions insurance coverage to protect their investors from risk of theft or loss. Qualified Intermediaries should also maintain substantial equity capital as an added and essential safety net against errors or losses that may occur in a 1031 Exchange transaction due to administrative errors.

The Exeter Group of Companies, including Exeter 1031 Exchange Services, LLC, Exeter Trust Company, and Exeter Asset Services Corporation, maintain $5.0 million in fidelity bond coverage, $5.0 million in errors & omissions insurance, a general blanket financial institution bond and more than $4.0 million in equity capital to protect its clients' 1031 Exchange funds.

Qualified Trust Accounts Protect Investors' Funds

Qualified Intermediaries should always deposit, hold, and safeguard clients' 1031 Exchange funds in separate, segregated Qualified Trust Accounts or Qualified Escrow Accounts to protect their clients' 1031 Exchange funds.

Exeter 1031 Exchange Services, LLC always deposits, holds, and safeguards clients' 1031 Exchange funds in separate, segregated Qualified Trust Accounts with Exeter Trust Company for each individual 1031 Exchange account.

The bankruptcy court ruled in the LandAmerica 1031 Exchange Services bankruptcy case that the clients' 1031 Exchange funds were corporate funds (not client trust funds) and were therefore subject to the general creditor claims in the bankruptcy filing since the 1031 Exchange funds were not held in Qualified Trust Accounts or Qualified Escrow Accounts as permitted and authorized under the Department of the Treasury Regulations.

Separate, Segregated Qualified Trust Accounts or Qualified Escrow Accounts are crucial to clearly classify clients' 1031 Exchange funds as client trust funds and not corporate funds in the event the Qualified Intermediary files for bankruptcy protection for any reason.

Exeter 1031 Exchange Services, LLC always deposits, holds, and safeguards clients' 1031 Exchange funds in separate, segregated Qualified Trust Accounts with Exeter Trust Company.

Internal Controls and Processes Provide Additional Safety

Investors should inquire into the methods and processes used by the Qualified Intermediary to receive, hold, track, monitor, reconcile and protect their clients' 1031 Exchange funds through internal controls, checks and balances. Internal controls, checks and balances are crucial and should always be an integral part of any fiduciary operation.

Exeter Trust Company utilizes a sophisticated trust accounting system that allows it to accurately track, monitor, and account for its clients' 1031 Exchange funds in real time. Exeter Trust Company reconciles its entire 1031 Exchange funds position down to the penny every day, and has implemented stringent internal controls, checks and balances to ensure the safety of its clients' 1031 Exchange funds.

It takes four (4) separate Exeter team members, acting together, and the client's written authorization, to request, authorize, process, and complete any transfer or disbursement of clients' 1031 Exchange funds.

It takes four (4) separate team members within The Exeter Group of Companies, acting together, and the client's written authorization, to request, authorize, process, and complete any transfer or disbursement of clients' 1031 Exchange funds. Exeter 1031 Exchange Services, LLC implemented these additional internal controls to better protect its clients.

There's NO Substitute for Experience

Investors need more than just a transaction processor. Investors should be able to turn to a Qualified Intermediary, along with their legal, tax and financial advisors, for guidance on best practices in structuring and administering their 1031 Exchange. Investors should interview prospective Qualified Intermediaries to ensure they have the technical depth, experience, and expertise necessary due to the extraordinarily complex and technical nature of 1031 Exchange transactions. Investors need and deserve knowledgeable support, so the Qualified Intermediary should be consultative in nature, be willing, and able to work with investors and their legal, tax and financial advisors to ensure a successful and compliant 1031 Exchange. Exeter 1031 Exchange Services, LLC delivers consultative services to its clients and their professional advisors.

Exercising Diligence Affords Protection

It is not the size of the Qualified Intermediary that matters, but how they manage the clients' 1031 Exchange funds and control risks through internal controls. It is critical to understand the importance of regulatory oversight, equity capitalization, bonding, insurance, experience, expertise, internal controls and processes, and quality control measures. Bring this knowledge to bear to successfully execute a 1031 Exchange transaction. Everyone will rest easier knowing the investors' goals have been safely achieved.