

New 1031 Exchange Regulation in Colorado

In April, Colorado Governor Bill Ritter signed a new law regulating 1031 exchanges in the state of Colorado. This legislation was in response to several recent failures of Qualified Intermediaries (QIs). The first involved an attorney in Breckenridge who disappeared in April 2007 with over a half million dollars in 1031 exchange proceeds. A second case, of an independently owned QI based in Denver, resulted in a much larger \$132 million dollar loss of client funds. In November 2008, a third case involving a failed title insurance QI resulted in an estimated \$400 million bankruptcy filing.

For the past two years, I have worked with a group of Colorado QI firms representing the Federation of Exchange Accommodators (FEA) as a resource team for legislators promoting this bill. The FEA, the national trade organization for the QI industry, requires that its members follow a strict code of ethics. FirstBank's 1031 Corporation has been a member of the FEA since 1990.

This new law creates consumer protections relating to Section 1031 Like-Kind Exchanges facilitated by QIs and Exchange Accommodation Titleholders, otherwise known as Exchange Facilitators that do business in Colorado.

Specifically:

Written Authorization - The law requires a client's written authorization for the movement of any exchange funds exceeding \$250,000. It also requires the QI to disclose the manner in which the exchange proceeds will be held. At FirstBank's 1031 Corporation, we separately hold each client's funds in an segregated FirstBank deposit account. Clients have always been asked to sign an authorization for any movement of funds out of their exchange account.

Bonding - QIs must maintain minimum financial assurances including Fidelity bonding of at least \$1 million and Errors and Omission insurance of \$250,000. At FirstBank's 1031 Corporation, we maintain \$25 million in fidelity bonding and \$15 million in E & O insurance.

Alerts - Firms are required to notify their clients if there is a change in control. FirstBank has owned 1031 Corporation since June 2006. Prior to that, the firm was independently owned by Larry Jensen, CPA and has operated since 1990.

Higher Standards - The law also prohibits a QI from acting in a manner that would jeopardize not meeting a standard of care that an ordinary prudent investor would use when dealing with the property of another. While the act specifically excludes regulated, bank-owned QIs, FirstBank's 1031 Corporation has always maintained these prudent and ethical business practices.

We at 1031 Corporation applaud Governor Ritter, Representative Joel Judd and Senator Ted Harvey for supporting legislation that protects the integrity of the services provided by QIs doing business in Colorado.

For further information on the new Colorado regulation and the protections it provides -- or for more about 1031 Corporation's specific operating principles that protect client funds -- please give us a call at **888-367-1031** or email us at 1031@1031cpas.com.

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