Qualified Intermediary Due Diligence

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A Qualified Intermediary is an independent third party to the transaction whose function is to prepare the documents necessary to create the exchange, as well as to act as the independent escrow agent for the exchange funds. The Qualified Intermediary is defined by the Treasury Regulations and may not give tax or legal advice.

A Qualified Intermediary may not be a "disqualified person" as further defined in the Treasury Regulations. A disqualified person normally includes, but is not limited to, your attorney, CPA or accountant, realtor, agents, employees, relatives, and entities that you have an interest in.

When choosing a Qualified Intermediary it is important to look for the following items:

1. What is the experience of the person who you are speaking with? How long have they been in the industry? How often do they lecture on IRC §1031 tax deferred exchanges? Are they a published author, and were the articles published in a major legal publication such as a law journal? Remember, the person on the other end of the phone may be from a big company but may only have a few months experience. It is important to ask!

2. Does the Qualified Intermediary segregate the Exchange Funds into separate Qualified Escrow Accounts as provided in the Treasury Regulations or do they co-mingle the Exchange Funds? A Qualified Intermediary that uses internal "memorandum accounts" is not providing you or your client with the maximum protection that the Safe Harbors of the Treasury Regulations allow.

3. Have you received a copy of the Fidelity Bond and Errors & Omissions coverage before you have started your Exchange? Is the amount of coverage for each transaction greater than the cash proceeds you will be sending? Have you verified that the Fidelity Bond and E&O coverage are in full force and effect? And perhaps most importantly, does the Fidelity Bond provide for principal liability? Many Fidelity Bonds only provide protection from employee malfeasance but leave the Exchanger uninsured in the case of malfeasance of a principal. Remember a Qualified Intermediary will be holding onto your funds or your client's funds. It is imperative that you do some due diligence.

It goes without saying that service is an extremely important part of an IRC §1031 tax deferred exchange. Exchanges are subject to strict guidelines and requirements. Unless you can receive your exchange documents in a timely fashion and have your exchange proceeds. It is important that you are able to reach the people who have the expertise and have the ability to close your transaction in a timely fashion.

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