



1031 CONSUMER PROTECTION BILL PASSED BY COLORADO LEGISLATURE!

BY: MARY LOU SCHWAB CPA, CES

House Bill 09-1254, was unanimously passed by the 67th General Assembly of the State of Colorado on March 25, 2009. It is expected to be signed by Governor Ritter by mid April. The bill provides consumer protection requirements for any lawyer or company who provides qualified intermediary services to Colorado residents or to people selling their Colorado real estate property. Over the past several years, many Colorado consumers lost significant amounts of money due to poor investment management, improper use of funds and fraud.

Colorado consumers were victimized in 2007 by a mysterious lawyer named Scoop Daniels who disappeared from Breckenridge absconding with over \$500,000 of 1031 funds. Later on in 2007 an estimated \$14 million of Colorado consumers exchange funds held with the Investment Exchange Group of Denver, were stolen by its parent company, 1031 Tax Group. This holding company filed bankruptcy and was controlled and owned by Edward Okun. He was personally convicted in March 2009 on 23 counts from a Federal Grand Jury Investigation of misappropriating over \$126 million of exchange proceeds. Okun will be sentenced later in 2009 to up to 400 years in jail. Additionally, in the fall of 2008, a nationwide title company that operated Land America Exchange held \$419 million of exchange funds in illiquid auction rate securities. They also filed bankruptcy and most of the exchanger funds are in jeopardy. There are a number of class action lawsuits in process against the officers and the holding company owner of Land America Exchange.

With this new legislation, Colorado consumers will have recourse and additional consumer protection for their real estate exchanges. Any party, excluding bank owned exchange companies that provides qualified intermediary or exchange facilitator services will be required to:

1. Notify the exchanger of any change of ownership of a qualified intermediary company within two business days after the effective date of the change.
2. Maintain a Fidelity bond in the amount of \$1,000,000
3. Maintain errors and omission insurance of \$250,000
4. Requires both the exchange facilitator and exchangers authorization for withdrawal of exchange funds exceeding \$250,000
5. Prohibits the commingling of funds of multiple taxpayers
6. Written notification is required from the qualified intermediary informing the exchanger of the manner in which the exchange funds will be invested or deposited.

Criminal prosecution and civil penalties will result if the party providing qualified intermediary services does not adhere to these Colorado legislative requirements and they are convicted of any crime involving fraud, misrepresentation, deceit, embezzlement, misappropriation of funds, or theft.

This new Colorado legislation is very similar to the California 1031 consumer protection legislation passed in 2008. Through the Federation of Exchange Accommodators (FEA), a national organization of 1031 Exchange Facilitators, this model legislation is currently being introduced in the states of Arizona, Oregon, Washington and Texas. The efforts of the FEA Colorado legislative committee members of which the author, Mary Lou Schwab was part of, had worked diligently over the last two years resulted in this 1031 consumer protection law passed in Colorado.



The author, Mary Lou Schwab CPA, CES is Vice President at Bankers Escrow and oversees the 1031 Exchange Division. She obtained her Certified Exchange Specialist (CES) designation in 2004. She has over 27 years of real estate taxation experience and is also a real estate investor. Mary Lou's expertise is with the structuring of complex exchanges including reverse exchanges and construction improvement exchanges. Mary Lou can be reached at 303-986-4848 or toll free at 800-571-6595

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