

Security of Exchange Funds and the Qualified Escrow Agreement



A Publication of Starker Services, Inc.

One of the main responsibilities of the Qualified Intermediary is to provide accurate documentation required by the IRS for the defensibility of the exchange by following the strict guidelines found in the tax code. In addition, the Intermediary should provide a level of security in the handling of Exchange proceeds during the exchange process. As taxpayers have seen in recent times, even some of the very largest and publicly traded firms have mismanaged funds held on behalf of clients. There are practical ways to be assured this will not be the case.

The most common reason for problems with fund mismanagement is a lack of visibility on the part of the client allowing for monies to be used in ways that are unsuitable given the current volatile markets.

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Separate accounts versus commingling

Starker Services, Inc. has never held client funds in commingled accounts. Each exchanger has their own account, used only one time for the purposes of completing their exchange. Funds are wired directly from the closing attorney or title company to the account. Once the exchange is over, the account is closed.

The Qualified Escrow Account

Starker will only hold client funds in a Qualified Escrow Account. A Qualified Escrow Account is defined as 'an account where the taxpayer is not the trustee and the trustee is not a 'related party'. There are significant restrictions to the beneficiary. They have no rights to receive, pledge, borrow, or otherwise obtain the benefits of the cash. This protects the exchanger by staying within the safe harbor regulations provided by the IRS under §1031. Like-wise the Intermediary is restricted to using the cash to secure the purchase of the Replacement property designated by the exchanger or if the exchange cancels returning the proceeds to the exchanger.

Dual Signatures – What this means

Starker will be holding the account FBO (For the Benefit of) the exchanger. The exchanger(s) will be signers on the account along with two (2) officers of Starker. The bank holding the trust funds will be provided with the Notarized original signatures of the exchangers to serve as the signature card for the account. Once the exchange funds are wired to this Qualified Escrow Account, no money can be released from the account without the signatures of the exchanger(s) who opened the account and two signatures from Starker.

What this means

These exchanger signatures will be provided to the financial institution for verification for any funds to be wired from the account. The exchanger must approve by signing any instructions to do so. Starker will only hold client funds in a Qualified Escrow Account for the benefit of the Exchanger.

For more information contact:

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