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### **SAFEGUARDING 1031 EXCHANGE FUNDS**

Did you know that your 1031 funds held by a 1031 exchange agent can be at risk to general creditors should the exchange agent become insolvent?

In order to safeguard your exchange funds and, hopefully, avoid such issues you should ensure that:

- 1) your exchange funds are deposited directly into one or more segregated accounts and never commingled with other funds of the exchange agent or the funds of other exchange clients in the general operating account or other accounts from which the 1031 exchange agent runs its business;
- 2) the segregated accounts should be named "[name of 1031 agent] in trust for [name of exchange client]"; and
- 3) the exchange agreement should contain specific language obligating the exchange agent to set up the accounts as outlined in paragraphs 1 and 2 above and clearly stating that your exchange funds are held in trust for your benefit.

If the funds are simply deposited into the exchange agent's operating account without these safeguards and the agent becomes insolvent, your money may be at risk in any resulting bankruptcy proceeding. In a bankruptcy proceeding, there is a significant risk such funds may be held to be general funds of the exchange agent, subject to the claims of all creditors of the agent. In such circumstances, exchange clients are at risk of being treated as general creditors of the bankrupt exchange agent and may receive mere pennies on the dollar, instead of the full value of the funds held they thought were being held by the exchange agent for their benefit.

As always, your trusted legal resource for practical advice.

For more information about me, click below.

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