1031 Exchange Fund Safety Due Diligence Checklist

Washington State · RCW 19.310.040

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Washington law requires every exchange facilitator to either maintain a $1 million fidelity bond **or** hold client funds in a qualified escrow/trust account with dual-signature controls. These are not equivalent protections. Use this checklist to evaluate how your exchange funds will be held before you sign an exchange agreement.

1 **"Which compliance path under RCW 19.310.040 do you use — fidelity bond or qualified escrow?"**

This is the threshold question. Everything else follows from this answer.

If "fidelity bond" → ask Questions 2 & 3. If "qualified escrow" → ask Questions 4 & 5.

Facilitator's answer:

2 **"Does your fidelity bond cover acts committed by the owners and principals of your company, or only employees?"**

Many fidelity bond policies exclude losses caused by the firm's owners or principals. If the bond excludes principals, it does not protect you against the most dangerous category of fraud — theft by the person who controls the firm. Ask for the declarations page and exclusion clauses.

Facilitator's answer:

3 **"Is your bond per-occurrence or aggregate, and what is the total coverage limit?"**

A per-occurrence bond pays the full limit on each claim. An aggregate bond is the total for *all* claims combined. If your exchange involves $3M and the bond is $1M aggregate, your exposure exceeds the coverage before the first exclusion is considered.

Facilitator's answer:

4 **"Does your bank enforce dual-signature controls that require my independent authorization before any funds are released?"**

The control must be **bank-enforced** — not an internal approval process within the QI's office. Internal dual-authorization protects the QI from its employees. It does not protect you from the QI.

Facilitator's answer:

5 **"Will I receive direct access or a current statement from the depository bank to verify my funds independently?"**

Under the qualified escrow path, the statute requires this. If the facilitator cannot or will not provide independent verification through the bank, the escrow structure may not be what it appears.

Facilitator's answer:

Red Flags — Responses That Should Concern You

- × "We're a large company, so your funds are safe." — Size does not change policy exclusions or eliminate the risk of internal fraud.
- × "We require two of *our* people to approve wires." — Internal controls protect them from their staff, not you from them.

- ✕ "Our bank can't do external dual-signatures." — Major commercial banks routinely support external client authorization for wire releases.
- ✕ "We're fully bonded — that meets the law." — Meeting the statutory minimum does not mean your funds are safe. A $1M bond on a $5M exchange leaves $4M exposed.
- ✕ "A segregated account will delay your closing." — Reputable QIs can open a segregated account immediately. Do not let time pressure compromise fund safety.
- ✕ "Ask your tax advisor about fund safety." — Fund safety is the QI's responsibility. A QI who deflects this question may not have a satisfactory answer.

Olympic Exchange Accommodators
Qualified Escrow at Columbia Bank · Dual-authentication · No possession of client funds

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