12 Questions Every Investor Must Ask Before Sending Funds to a 1031 Exchange Qualified Intermediary

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Introduction: The Hidden Risks of an Unregulated Industry

Most investors assume that qualified intermediaries, the third-party professionals required by the IRS to hold and protect your money during a 1031 exchange, are licensed, regulated, and subject to routine oversight. That assumption is dangerously wrong.

The 1031 exchange qualified intermediary industry has no licensing body, no regulatory authority, no mandatory insurance or bonding requirements, no minimum equity capital reserves, and no requirement for independent audits or examinations. In most states, anyone can establish a business, call themselves a qualified intermediary, and begin holding millions of dollars in client funds with no government scrutiny whatsoever.

The consequences of choosing the wrong qualified intermediary (also referred to as an accommodator, facilitator, or just QI) can be severe: a disqualified exchange, immediate recognition of substantial taxable gains, or the complete loss of an investor's equity capital. The collapse of LandAmerica 1031 Exchange Services in 2008 where the bankruptcy court ruled that client funds held outside of qualified trust accounts were treated as corporate funds subject to general creditor claims is perhaps the most prominent example of what can go wrong when investors trust without verifying.

The size of a 1031 QI is not a proxy for safety. What matters is how they manage your funds and control risk. The following 12 questions are designed to help investors conduct rigorous, informed due diligence before entrusting a qualified intermediary with their 1031 exchange funds.

1. Are you licensed by any government or regulatory agency, and if so, by whom?

This and the following question are the most important questions an investor can ask, and the answers will immediately separate the most secure qualified intermediaries from the rest. Because the 1031 industry has no licensing body, very few qualified intermediaries are licensed by any government or regulatory authority. Most QI's operate entirely outside the oversight structures that govern banks, trust companies, and other regulated financial institutions.

A qualified intermediary that holds a license from a state Division of Banking, the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), or the Federal Reserve Bank is subject to a fundamentally higher standard of financial conduct. Licensing requires these institutions to meet strict requirements for equity capital reserves, fund segregation, insurance coverage, and fiduciary duty.

Exeter 1031 Exchange Services, LLC (Exeter1031™) is one of the very few qualified intermediaries that has proactively pursued regulatory oversight. Through its affiliate, Exeter Trust Company (ExeterTrust™), the company is licensed, regulated, and audited by the Wyoming Division of Banking making it one of the most secure qualified intermediaries operating in the industry today.

2. Do you have any form of government or regulatory oversight, and if so, by whom?

Licensing and oversight are related but distinct. A qualified intermediary may operate under a licensed corporate structure without being subject to meaningful ongoing government oversight. Investors should ask specifically whether a regulatory body independently monitors the qualified intermediary's operations on a continuing basis.

Regulatory oversight, particularly from a state Division of Banking or a comparable federal agency, establishes enforceable standards for how client funds are held, invested, safeguarded and disbursed. It requires the regulated entity to follow established banking best practices, and it creates a transparent operating environment in which financial discrepancies are identified and addressed promptly. Without this oversight, investors have no independent verification that the qualified intermediary is handling funds responsibly and operating in a safe and sound manner.

Most qualified intermediary failures documented over the past several decades could have been prevented with proper regulatory oversight and independent annual examinations.

3. Are you subject to any form of government or regulatory audit or examination, and if so, by whom?

Oversight without examination is, in practice, meaningless. Investors should ask whether the qualified intermediary is subject to periodic regulatory examinations, surprise or scheduled, conducted by a government agency or regulatory authority.

Regulatory examinations assess the institution's financial stability, adherence to fiduciary standards, internal controls, and compliance with applicable law. They provide third-party verification, independent of the qualified intermediary's own representations, that the organization is operating in a safe and sound manner.

ExeterTrust™ undergoes periodic regulatory examinations by the Wyoming Division of Banking. These examinations provide an objective, government-conducted assessment of the company's financial health and operational integrity, a level of scrutiny that unregulated qualified intermediaries never face.

4. Do you have an independent annual CPA audit of your financial statements and policies and procedures?

In addition to regulatory examinations, investors should ask whether the qualified intermediary commissions annual, independent audits conducted by a certified public accounting firm. Internal audits by an in-house team are not equivalent; they lack the independence and objectivity necessary to provide meaningful assurance.

An independent CPA audit of financial statements verifies that the qualified intermediary's accounts are accurately maintained, that client funds are properly segregated and accounted for, and that the organization's financial position is accurately represented. An independent CPA audit of policies and procedures confirms that the qualified intermediary is following its own stated protocols; a critical check on operational integrity.

As a regulated entity, ExeterTrust™ is required to undergo both an annual independent CPA audit of its financial statements and an annual independent CPA audit of its policies and procedures.

5. Do you carry fidelity bond coverage, and if so, how much?

A fidelity bond is effectively crime insurance. It protects investors against theft, embezzlement, misappropriation, and other fraudulent acts committed by the qualified intermediary's employees or officers. Given the significant sums that qualified intermediaries hold on behalf of investors, substantial fidelity bond coverage is a foundational requirement, not an optional feature.

Investors should not only confirm that the qualified intermediary carries fidelity bond coverage but also verify the dollar amount of the coverage that the 1031 company holds.

The Exeter Group of Companies maintains $15.0 million in fidelity bond coverage. Investors should request a copy of the insurance binder as proof of coverage and contact the insurance agency that wrote the policy to confirm that the fidelity bond coverage is still in full force and effect. Trust, but verify.

6. Do you carry errors and omissions insurance, and if so, how much?

While a fidelity bond addresses intentional misconduct, errors and omissions (E&O) insurance protects investors against honest administrative mistakes. The rules governing 1031 exchanges are technically complex and subject to strict IRS requirements. An administrative error, a missed deadline, a documentation mistake, or a procedural misstep, can disqualify an exchange entirely, exposing the investor to immediate and potentially substantial tax liability.

E&O insurance provides financial recourse if the qualified intermediary's error results in a failed exchange or a financial loss. As with fidelity bond coverage, the dollar amount of the policy matters. Investors should verify the amount of coverage maintained by the exchange company.

The Exeter Group of Companies carries $10.0 million in errors and omissions insurance.

7. Do you carry cyber and wire fraud insurance coverage, and if so, how much?

Wire transfer fraud and cyber fraud have become the fastest-growing threats in real estate and financial services. Cybercriminals specifically target title, escrow and 1031 exchange transactions because of the large sums involved and the compressed timelines under which funds must move. A qualified intermediary that does not carry dedicated cyber fraud insurance and wire transfer fraud insurance leaves investors exposed to a risk that is not covered by fidelity bonds or E&O policies.

Investors should ask for the specific coverage amount and inquire about the qualified intermediary's internal protocols for verifying wire transfer instructions, including whether verbal confirmation is required before any disbursement of exchange funds is processed.

The Exeter Group of Companies carries $15.0 million in cyber and wire fraud insurance coverage. In addition, Exeter1031™ requires a telephone callback on a trusted phone number to verbally verify and confirm all wire transfer instructions before any funds are disbursed.

8. How much equity capital do you maintain as a financial reserve to protect clients' funds?

Equity capital functions as the final financial backstop. If a loss exceeds the combined coverage provided by fidelity bonds, E&O insurance, and cyber and wire transfer fraud insurance, the qualified intermediary's equity capital reserves are the last line of defense for investor funds. An organization with minimal or no equity capital reserves has no meaningful ability to absorb unexpected losses.

Regulated financial institutions are required by their regulators to maintain minimum levels of equity capital reserves. Unregulated qualified intermediaries have no such requirement and may be operating without any meaningful financial cushion. Investors should ask for specific dollar figures, not vague assurances, about the equity capital reserves the qualified intermediary maintains.

The Exeter Group of Companies maintains more than $8.0 million in equity capital reserves.

9. Do you hold clients' 1031 exchange funds in separate, segregated, dual-signature, restricted qualified trust accounts or qualified escrow accounts?

This question addresses one of the most consequential structural decisions a qualified intermediary makes. The LandAmerica 1031 Exchange Services bankruptcy case demonstrated, in the most direct terms possible, why this matters: the bankruptcy court ruled that client funds held outside of qualified trust accounts or qualified escrow accounts were treated as corporate funds subject to general creditor claims. Investors who assumed their money was protected found themselves classified as unsecured creditors.

Treasury Regulations permit qualified intermediaries to hold client funds in qualified trust accounts or qualified escrow accounts. These accounts must be separate and segregated from the qualified intermediary's corporate operating accounts, restricted in purpose, and require written authorization from both the investor and the qualified intermediary (dual signatures) before any funds can be disbursed.

Exeter1031™ deposits, holds, and safeguards all client 1031 exchange funds in separate, segregated, dual-signature, restricted qualified trust accounts with Exeter Trust Company, one account per individual exchange transaction, at no additional cost to the client.

10. What internal controls and checks and balances do you have in place to safeguard the transfer or disbursement of clients' funds?

Strong external controls (i.e., regulatory oversight, insurance, and qualified trust accounts) must be reinforced by equally rigorous internal controls. Investors should ask for specific details about the processes the qualified intermediary follows before any funds are transferred or disbursed. Who initiates a transfer request? Who authorizes it? Who processes it? Who confirms it?

The more steps and independent parties involved in a disbursement, the more difficult it becomes for an unauthorized transfer to occur, whether through internal fraud or external wire fraud.

At Exeter1031™ and ExeterTrust™, it requires four (4) separate Exeter team members, acting together, along with the client's written dual-signature authorization, to request, authorize, process, and complete any transfer or disbursement of client funds. No funds can be moved without the client's written authorization.

11. How much FDIC insurance coverage do you provide on clients' funds, and how is it structured?

The standard FDIC insurance limit is $250,000 per depositor per institution. For investors with significant 1031 exchange proceeds, this coverage may be entirely inadequate. Investors should ask how the qualified intermediary structures its banking relationships to maximize FDIC insurance coverage on client funds, and whether any additional insurance vehicles are available.

As a licensed trust company, Exeter Trust Company automatically allocates client funds across multiple commercial banks, providing FDIC insurance coverage well in excess of the standard $250,000 limit. Specifically, Exeter Trust Company's structure provides each client with $3.25 million in base FDIC coverage. For larger transactions, ExeterTrust™ offers an Insured Cash Sweep (ICS) vehicle that can provide up to $150.0 million in FDIC insurance coverage when needed.

12. What is the depth of your knowledge, experience, and expertise in administering 1031 exchange transactions?

Financial safety is the foundation, but technical competence is equally critical. The IRS regulations governing 1031 exchanges are intricate, complicated, and subject to strict deadlines. Investors need more than a transaction processor, they need a qualified intermediary with the depth of knowledge, experience, and expertise to serve as a trusted resource throughout the exchange process.

Investors should ask about the 1031 QI's experience with a full range of exchange structures, including standard forward exchanges, reverse exchanges, improvement exchanges, leasehold improvement exchanges, foreign property exchanges, and zero-equity exchanges. They should also evaluate the accessibility of senior professionals: Can the investor speak directly with experienced exchange officers? Is the executive leadership team accessible when complex issues arise?

William L. Exeter, Founder and Chief Executive Officer of The Exeter Group of Companies, has been a senior executive in the 1031 exchange industry for more than 42 years, has administered more than 125,000 1031 exchange transactions, and is one of the original founders of the Federation of Exchange Accommodators.

Maureen H. Brown, Co-Founder, President and Chief Operating Officer of The Exeter Group of Companies, has been a senior executive in the 1031 exchange industry for more than 25 years, and has extensive experience in title insurance and escrow closing services as well.

Exeter 1031 Exchange Services, LLC delivers consultative, expert-level services to individual, corporate, and institutional investors and their legal, tax, and financial advisors across all 50 states, the U.S. Territories, and foreign properties.

Conclusion: Due Diligence Is Your Best Protection

The 1031 exchange qualified intermediary industry is unregulated. Qualified intermediaries are not licensed, not regulated, not audited, and not subject to any minimum bonding, insurance, or equity capital requirements. The failures that have occurred throughout the industry's history, including San Diego Realty Exchange, Inc. (Don Cook), LandAmerica 1031 Exchange, The 1031 Tax Group, and Southwest Exchange Corporation, to name a few, share a common thread: their failures could have been prevented with proper regulatory oversight and independent examinations.

It is not the size of the 1031 intermediary that determines the safety of your funds. It is how they manage those funds and control risk. The 12 questions outlined in this article provide a structured framework for conducting the due diligence that the industry's lack of regulation requires investors to perform themselves.

Exeter1031™ and ExeterTrust™ welcome this level of scrutiny. We are prepared to provide written proof of our regulatory status, insurance coverages, equity capital reserves, and fund security protocols. Our team of 1031 specialists are available to answer every question on this list — and any others you bring to the conversation.

1031 exchange transactions are complex income tax strategies. You should always consult with competent legal, tax, and financial advisors before entering into any 1031 exchange. The Exeter Group of Companies does not provide legal, tax, or financial advice. To speak with a 1031 exchange specialist, call (866) 393-8377, email ask@exeterco.com, or visit exeterco.com, 24 hours a day, 7 days a week. You can reach Alineh Mouradian, Business Development Officer, Exeter 1031 Exchange Services, LLC, in our Los Angeles Regional Office.