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David P. Greenberger, Esq.
1031 Exchange Advantage®
5355 Avenida Encinas Ste 203
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RE: Issues Related to Broker Revenue Share Agreement

Dear David:

You have asked me, as outside RESPA counsel for 1031 Exchange Advantage®, to address certain issues related to potential revenue share agreements between your company and real estate brokerage firms, and potentially individual agents or agent teams of brokerages, and this letter is in response to that request.

The first issue for consideration deals with the protection of customer privacy. The customer's privacy and the safety of the customer's information is rightfully of primary concern to 1031 Exchange Advantage® and broker partners. It is my understanding that a message to both the client and the client's agent regarding the availability of your company's exchange service will be triggered automatically by the broker's transaction tracking system, based upon the data inputted by the agent, and the subsequent decision to contact the vendor is solely made by the consumer, or the agent at the consumer's direction. No initial contact is made by 1031 Exchange Advantage® - that decision is in the hands of the consumer, the broker's client. Additionally, since the triggered message is sent automatically, 1031 Exchange Advantage® will have no customer information unless it is given voluntarily by the consumer. Once the consumer provides information, 1031 Exchange Advantage's® own systems fully protect the information the company receives from what will then be its own customer.

The flip side of this same consideration is that when the broker/agent has the information from the client that indicates the client might be able to benefit from a potential 1031 exchange on the sale of income property, the notice to the client protects both the broker and agent from potential claims that they failed in their fiduciary duty to notify the client of a potential exchange opportunity and thus cost the client in lost tax monies. While such claims are not common, neither are they unknown and I have personally dealt with such a claim against a broker which was favorably resolved thanks to the agent's ability to demonstrate a written advisory to the client to seek 1031 exchange assistance on the sale of income property.

Next, you indicate that potential broker partners have expressed concern regarding providing notice to consumer of the existence of the revenue share due to concerns related to federal RESPA law. I note that payment of a referral fee for a 1031 exchange service does not fall under the provisions of the federal RESPA requirements (the Real Estate Settlement Procedures Act), as it involves a commercial business transaction. To that end, and for the reasons discussed above, I propose that the following disclosure be provided to

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clients which are referred to 1031 Exchange Advantage® as a result of the broker notification that they might potentially benefit from a 1031 exchange on the sale of their income property:

1031 Exchange Advantage® has a referral agreement with (XXX Realty) by which (XXX Realty) will receive a referral fee or revenue share when a consumer utilizes the services of 1031 Exchange Advantage®. These referral fees are legal under state and federal law. Federal RESPA law does not apply to commercial business transactions, such as a 1031 exchange. Payment of the referral fee/revenue share will not increase the fee to the consumer in this transactions, as those fees are disclosed in the 1031 exchange agreement entered into with 1031 Exchange Advantage®

Next, you indicated that 1031 Exchange Advantage® might enter into a revenue share agreement with an individual agent or an agent team whose brokerage team is not yet a part of a similar revenue share agreement. Note that direct payments under such individual or team agreements might violate the individual's or team's independent contractor agreement with its brokerage. While I believe a claim of interference with contract from a broker is unlikely and would not be substantiated, you should advise the agent/team to discuss the revenue share with their broker to avoid any issues which might disrupt the agent/team business. Additionally, since the agent/team will be using the broker's "back office" and transaction management system, you will likely have to find some means to ensure that appropriate clients are notified of your company's services without resort to an automatic notification system through the broker's transaction management system. For the reasons discussed above, such notification is highly recommended, along with some reasonable means of verification that it is being provided.

Finally, you indicated that potential partners had indicated a concern regarding 1031 Exchange Advantage's® insurance coverage for potential claims which might arise from any referred customers. 1031 Exchange Advantage® is a qualified, experienced expert in the area of handling 1031 exchanges. It carries full E&O and Fidelity Bond insurance coverage for its actions and has an exemplary track record of exchange work. Broker liability for improper referral is extremely rare, but in any case depends upon the referral being inappropriate, which would not apply to a qualified, insured expert in the field, such as 1031 Exchange Advantage®.

Let me know if you have any additional requests or concerns.

Sincerely,

Peter K. Solecki
Larson & Solecki LLP