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September 19, 2017

David Greemberger
Managing Member, 1031 EA, LLC
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RE: Current Analysis of Morrison Foerster Letter Re: Inapplicability of RESPA to 1031 Exchange Programs

Dear David:

You have asked me to review the December 27, 2005 letter, drafted by an attorney in the law firm of Morrison Foerster, regarding "Inapplicability of RESPA to Compensation Paid in Connection with 1031 Exchange Advantage Program" and to comment on its applicability and validity today. RESPA refers to the federal Real Estate Settlement Procedures Act, 12 U.S.C. 2601, *et seq.*, which among other things governs payments in connection with referrals of settlement services.

Since it was originally drafted, the Morrison Foerster letter has been cited frequently in relation to 1031 exchanges and their inapplicability to RESPA laws and regulations. The issue has been revisited frequently, given first HUD's and now the CFPB's shifting analysis of what constitutes a settlement service that falls within the strictures of RESPA. Despite the CFPB's broad belief in its powers and its strict interpretations of RESPA, in my research I have not found any statements from the federal authorities that contradict or negate the conclusions of the letter. The analysis in the letter, and most specifically the "business purpose" discussion that takes 1031 exchanges outside of the purview of RESPA, is still sound.

Sincerely,



Peter K. Solecki
Larson & Solecki LLP

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December 27, 2005

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Judd Kessler
President
Abacus Data Systems, Inc.
5230 Carroll Canyon Road, Suite 306
San Diego, CA 92121

Re: Inapplicability of RESPA to Compensation Paid in Connection with 1031 Exchange Advantage Program

Dear Judd:

This letter is to confirm our advice that, as discussed below, when Abacus Data Systems, Inc. (the "Company") acts as an intermediary in a "1031 exchange" commercial real estate transaction through the "1031 Exchange Advantage" program and compensates real estate brokers, escrow companies, or mortgage brokers for business referrals, such compensation is not prohibited by Section 8 of the Real Estate Settlement Procedures Act of 1974, as amended ("RESPA").

A. Description of Program

Under the 1031 Exchange Advantage program, real estate brokers, escrow companies or mortgage brokers ("Real Estate Professionals") will refer persons to the Company when the Real Estate Professionals believe those persons might be interested in structuring a transaction as an "exchange" under Section 1031 of the Internal Revenue Code (the "Exchange Transactions"). The Exchange Transactions will all be for commercial or investment purposes and will never be for personal, family or household purposes because alternative transaction structures are available for personal residential transactions. The Company will compensate the Real Estate Professionals for the referral of Exchange Transactions to the Company.

B. Analysis of RESPA

Section 8(a) of RESPA prohibits any person from giving or accepting any "fee, kickback, or thing of value" for the referral of a "real estate settlement service" involving a "federally related mortgage loan." 12 U.S.C. § 2607(a). Section 8(b) of RESPA prohibits any person from giving or accepting any "portion, split, or percentage of any charge made or received

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for the rendering of a real estate settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed." 12 U.S.C. § 2607(b).

These provisions by their express terms apply only when a transaction involves, among other things, a "federally related mortgage loan." While the definition of "federally related mortgage loan" in Section 3 of RESPA refers to loans secured by liens on "residential real property" without distinguishing between commercial purpose loans and consumer purpose loans, Section 7 of RESPA expressly exempts "credit transactions" that involve "extensions of credit - (1) primarily for business, commercial, or agricultural purposes." 12 U.S.C. §§ 2602(1) and 2606(a). Section 7 and Regulation X further specify that the exemption is to be interpreted consistently with the Truth in Lending Act. *Id.*, 24 C.F.R. § 3500.5(b)(2). The Official Commentary to Federal Reserve Regulation Z, which implements the Truth in Lending Act, states that

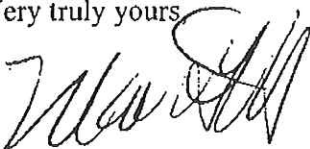
"credit extended to acquire, improve, or maintain rental property (regardless of the number of housing units) that is not owner-occupied is deemed to be for business purposes. This includes, for example, the acquisition of a warehouse that will be leased or a single-family house that will be rented to another person to live in. If the owner expects to occupy the property for more than 14 days during the coming year, the property cannot be considered non-owner-occupied and this special rule will not apply." Official Comment 226.3(a)-3 and -4.

The Official Commentary then goes on to state that even if this special rule does not apply, that does not mean that the credit is not business purpose, but means merely that additional factors must be considered. For example, a loan to expand a business is considered a business purpose loan even if it is secured by the borrower's personal residence, as is a loan to improve a principal residence by putting in a business office. Official Comment 226.3(a)-2.

So long as the Exchange Transactions represent transactions for business purposes as described above, and we understand from you that all such transactions will fall within these parameters, RESPA will not apply.

Please let us know if we can be of any further assistance.

Very truly yours



Mark T. Gillett