



General Assembly

January Session, 2013

Amendment

LCO No. 7142

HB0635507142HRO

Offered by:
REP. ALBERTS, 50th Dist.

To: Subst. House Bill No. 6355 File No. 286 Cal. No. 196

"AN ACT CONCERNING HOMEOWNER PROTECTION RIGHTS."

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. (NEW) (*Effective October 1, 2013*) As used in this section
4 and sections 2 to 7, inclusive, of this act:

5 (1) "Affiliated with" means that a person, directly or indirectly,
6 through one or more intermediaries, controls, is controlled by or is
7 under common control with another specified person;

8 (2) "Client" means a taxpayer with whom an exchange facilitator
9 enters into an agreement, as described in subparagraph (B) of
10 subdivision (3) of this section;

11 (3) "Exchange facilitator" means a person who: (A) Maintains an
12 office in this state for the purpose of soliciting business facilitating the
13 exchange of like-kind property, as described in subparagraph (B) of
14 this subdivision; or (B) for a fee (i) facilitates an exchange of like-kind

15 property by entering into an agreement with a client pursuant to
16 which the exchange facilitator acquires from such client the contractual
17 rights to sell such client's relinquished property located in this state
18 and transfer a replacement property to such client as a qualified
19 intermediary, within the meaning of 26 CFR 1.1031(k)-1(g)(4), (ii)
20 enters into an agreement with a client to take title to a property in this
21 state as an exchange accommodation titleholder, as defined in Revenue
22 Procedure 2000-37 issued by the Internal Revenue Service, or (iii)
23 enters into an agreement with a client to act as a qualified trustee or
24 qualified escrow holder, as such terms are defined in 26 CFR 1.1031(k)-
25 1(g)(3); but shall not include:

26 (I) Any financial institution, as defined in subdivision (6) of this
27 section, that is acting solely as a depository for exchange funds or
28 solely as a qualified escrow holder or qualified trustee, as such terms
29 are defined in 26 CFR 1.1031(k)-1(g)(3), and is not otherwise facilitating
30 exchanges in accordance with this subparagraph;

31 (II) An individual or entity that is teaching seminars or classes or
32 giving other presentations to attorneys, accountants, real estate
33 professionals, tax professionals or other professionals where the
34 primary purpose is to teach about tax deferred exchanges or to train
35 such professionals to act as exchange facilitators, or any individual or
36 entity advertising for such seminars, classes or other presentations; or

37 (III) An entity that is wholly owned by an exchange facilitator or by
38 a person representing the exchange facilitator and used by such
39 exchange facilitator or person to facilitate exchanges or take title to
40 property in this state as an exchange accommodation titleholder;

41 (4) "Exchange funds" means the funds received by an exchange
42 facilitator from or on behalf of a client for the purpose of facilitating an
43 exchange of like-kind property;

44 (5) "Fee" means compensation of any nature, direct or indirect,
45 monetary or in-kind, that is received by a person or related person, as
46 defined in Section 267(b) or Section 707(b) of the Internal Revenue

47 Code of 1986, or any subsequent corresponding internal revenue code
48 of the United States, as amended from time to time, for any services
49 relating or incidental to the exchange of like-kind property under
50 Section 1031 of said Internal Revenue Code;

51 (6) "Financial institution" means any bank, federal credit union,
52 Connecticut credit union, savings and loan holding company, savings
53 and loan association, savings bank, trust company or trust bank, as
54 such terms are defined in section 36a-2 of the general statutes,
55 chartered under the laws of this state or the United States whose
56 accounts are insured by the full faith and credit of the United States of
57 America, the Federal Deposit Insurance Corporation, the National
58 Credit Union Share Insurance Fund or other similar or successor
59 programs;

60 (7) "Person" means a natural person, cooperative association, limited
61 liability company, firm, partnership, corporation or other legal entity,
62 and includes any agent or employee of any such person;

63 (8) "Pool" means to (A) aggregate exchange funds of multiple
64 taxpayers for investment purposes to achieve common investment
65 goals and efficiencies, and (B) ensure that such exchange funds are
66 readily identifiable as to each taxpayer for whom they are held,
67 through an accounting or subaccounting system;

68 (9) "Prudent investor standard" means the prudent investor rule, as
69 set forth by the Connecticut Uniform Prudent Investor Act, or as
70 otherwise defined by part VII of chapter 802c of the general statutes;
71 and

72 (10) "Publicly traded company" means a corporation whose
73 securities are publicly traded on the New York Stock Exchange, the
74 American Stock Exchange, or the national market system of the
75 National Association of Securities Dealers Automated Quotation
76 System established pursuant to the Securities Exchange Act of 1934,
77 and the subsidiaries of any such corporation.

78 Sec. 2. (NEW) (*Effective October 1, 2013*) An exchange facilitator shall
79 notify each client whose relinquished property, as defined in 26 CFR
80 1.1031(k)-1(a), is located in this state or whose replacement property,
81 as defined in 26 CFR 1.1031(k)-1(a), held under a qualified exchange
82 accommodation agreement is located in this state, of any change in
83 control of the exchange facilitator. The exchange facilitator shall notify
84 each such client not later than ten business days after the effective date
85 of such change in control by facsimile, electronic mail transmission or
86 first class mail and by posting such notice of change of control on the
87 exchange facilitator's Internet web site for a period ending not earlier
88 than ninety days after the change in control. Such notification shall set
89 forth the name, address and other contact information of the persons
90 to whom control was transferred. Notwithstanding the provisions of
91 this section, if the exchange facilitator is a publicly traded company
92 and remains a publicly traded company after a change in control, the
93 publicly traded company shall not be required to notify its existing
94 clients of such change in control. For purposes of this section, "change
95 in control" means any transfer or transfers within a twelve-month
96 period of more than fifty per cent of the assets or ownership interests,
97 directly or indirectly, of the exchange facilitator.

98 Sec. 3. (NEW) (*Effective October 1, 2013*) An exchange facilitator at all
99 times shall:

100 (1) Maintain a fidelity bond in an amount of not less than one
101 million dollars executed by an insurer authorized to do business in this
102 state;

103 (2) Deposit all exchange funds in a separately identified account, as
104 defined in 26 CFR 1.468B-6(c)(2)(ii)(A), and provide that any
105 withdrawals from such separately identified account require the
106 written authorizations of both the client and the exchange facilitator.
107 Deliver authorization for withdrawals by any commercially reasonable
108 means, including (A) the client's delivery to the exchange facilitator of
109 the client's authorization to disburse exchange funds and the exchange
110 facilitator's delivery to the depository institution of the exchange

111 facilitator's sole authorization to disburse exchange funds, or (B)
112 delivery to the depository institution of both the client's and the
113 exchange facilitator's authorizations to disburse exchange funds; or

114 (3) Deposit all exchange funds in a qualified escrow or qualified
115 trust, as such terms are defined in 26 CFR 1.1031(k)-1(g)(3), with a
116 financial institution and provide that any withdrawals from such
117 qualified escrow or qualified trust require the taxpayer's and the
118 exchange facilitator's written authorization.

119 Sec. 4. (NEW) (*Effective October 1, 2013*) An exchange facilitator at all
120 times shall: (1) Maintain an errors and omissions policy of insurance in
121 an amount not less than two hundred fifty thousand dollars executed
122 by an insurer authorized to do business in this state; or (2) deposit an
123 amount of cash or securities or provide irrevocable letters of credit in
124 an amount not less than two hundred fifty thousand dollars.

125 Sec. 5. (NEW) (*Effective October 1, 2013*) The Banking Commissioner
126 may adopt regulations, in accordance with the provisions of chapter 54
127 of the general statutes, to implement the provisions of sections 1 to 8,
128 inclusive, of this act. Any person claiming to have suffered damage by
129 reason of the failure of an exchange facilitator to comply with the
130 provisions of sections 2 to 7, inclusive, of this act may file a claim with
131 the commissioner against the exchange facilitator to recover such
132 damage from (1) the fidelity bond maintained in accordance with
133 subdivision (1) of section 3 of this act, (2) cash or securities deposited
134 in accordance with subdivision (2) of section 4 of this act, (3) letters of
135 credit provided in accordance with subdivision (3) of section 4 of this
136 act, or (4) the errors and omissions policy maintained in accordance
137 with subdivision (1) of section 4 of this act.

138 Sec. 6. (NEW) (*Effective October 1, 2013*) (a) An exchange facilitator
139 shall hold all exchange funds, including money, property, other
140 consideration or instruments received by the exchange facilitator from
141 or on behalf of the client, but not including funds received as the
142 exchange facilitator's compensation, in a manner that provides

143 liquidity and preserves principal. An exchange facilitator shall provide
144 the client with written notification of the manner in which the
145 exchange funds will be invested or deposited and shall deposit or
146 invest exchange funds in investments which meet the prudent investor
147 standard and which satisfy investment goals of liquidity and
148 preservation of principal. Exchange funds may be pooled. For
149 purposes of this section, an exchange facilitator violates the prudent
150 investor standard if:

151 (1) Exchange funds are knowingly commingled by the exchange
152 facilitator with the operating accounts of the exchange facilitator; or

153 (2) Exchange funds are loaned or otherwise transferred to any
154 person or entity affiliated with or related to the exchange facilitator
155 except that this subdivision shall not apply to a transfer made
156 pursuant to the exchange contract (A) for payment of an exchange
157 expense or completion of the acquisition of the replacement property,
158 (B) for depositing exchange funds with a financial institution, or (C) to
159 an exchange accommodation titleholder, a trustee of a qualified trust
160 or a qualified escrow agent.

161 (b) Exchange funds are not subject to execution or attachment on
162 any claim against the exchange facilitator. An exchange facilitator shall
163 not knowingly keep or cause to be kept any money in any financial
164 institution under any name designating the money as belonging to a
165 client of the exchange facilitator unless the money equitably belongs to
166 the client and was actually entrusted to the exchange facilitator by the
167 client.

168 Sec. 7. (NEW) (*Effective October 1, 2013*) No exchange facilitator or, in
169 the case of an exchange facilitator that is an entity, no owner, officer,
170 director or employee of such exchange facilitator, shall knowingly:

171 (1) Make any material misrepresentations concerning any exchange
172 facilitator transaction that are intended to mislead;

173 (2) Pursue a continued or flagrant course of misrepresentation or

- 174 making false statements through advertising or by any other means;
- 175 (3) Fail, within a reasonable time, to account for any money or
176 property belonging to another person that may be in the possession or
177 under the control of the exchange facilitator;
- 178 (4) Engage in any conduct constituting fraudulent or dishonest
179 dealings;
- 180 (5) Commit any crime related to the exchange facilitation business
181 involving fraud, misrepresentation, deceit, embezzlement,
182 misappropriation of funds, robbery or other theft of property, except
183 that commission of such crime by an officer, director or employee shall
184 not be considered a violation of this section, provided (A) the
185 employment or appointment of such officer, director or employee has
186 been terminated, and (B) no clients of the exchange facilitator were
187 harmed or full restitution has been made to all harmed clients;
- 188 (6) Materially fail to fulfill the exchange facilitator's contractual
189 duties to the client to deliver property or funds to the client unless
190 such failure is due to circumstances beyond the control of the exchange
191 facilitator; and
- 192 (7) Materially violate any provision of sections 2 to 6, inclusive, of
193 this act or the regulations adopted by the Banking Commissioner in
194 accordance with section 5 of this act.
- 195 Sec. 8. (NEW) (*Effective October 1, 2013*) (a) A person who violates
196 any provision of sections 2 to 7, inclusive, of this act is subject to civil
197 suit in a court of competent jurisdiction.
- 198 (b) Any person who commences a civil action pursuant to
199 subsection (a) of this section shall notify the Department of Banking
200 upon filing such action."

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2013</i>	New section
Sec. 2	<i>October 1, 2013</i>	New section
Sec. 3	<i>October 1, 2013</i>	New section
Sec. 4	<i>October 1, 2013</i>	New section
Sec. 5	<i>October 1, 2013</i>	New section
Sec. 6	<i>October 1, 2013</i>	New section
Sec. 7	<i>October 1, 2013</i>	New section
Sec. 8	<i>October 1, 2013</i>	New section