

# PENN ATTORNEYS

## TITLE ALERT

**DATE: 5/23/07**

**RE: Title Alert 2007-16**

**Good Funds & Exchange Accommodation  
Companies (1031 Exchanges)**

First American Title Insurance Company issued Bulletin (HONA 214), entitled "Good Funds" Mantra Redux—written by Wayne Condict (VP and Senior Underwriter). The text of this bulletin is reproduced on page 2 of this Title Alert. It concerns the recent failures of exchange accommodation companies.

On 5/16/07, Sr. VP and National Counsel Burt Rush issued an alert that the 1031 exchange intermediary called 1031 TAX GROUP LLC, believed to be headquartered in Richmond, VA, filed Chapter 11 in New York on 5/14/07. Online news service [www.mysanantonio.com](http://www.mysanantonio.com) reported more than 300 customers of the company are owed about \$151 million, and that it appears the company loaned more than \$132 million, from trust accounts, to company owner Edward Okun. The following are some of the affiliated companies named in the filing, some of whom have filed their own bankruptcy cases:

1031 Advance 132 LLC	1031 Advance Inc.
1031 TG Oak Harbor LLC	Atlantic Exchange Company Inc
Atlantic Exchange Company LLC	Exchange Management LLC
Investment Exchange Group LLC	National Exchange Accommodators LLC
National Exchange Services QI Ltd.	National Intermediary Ltd.
NRC 1031 LLC	Real Estate Exchange Services Inc
Rutherford Investment LLC	Security 1031 Services LLC
Shamrock Holdings Group LLC	

In light of this information, **DO NOT DISBURSE ANY FUNDS IN ANY 1031 EXCHANGE TRANSACTION UNLESS YOU HAVE "COLLECTED FUNDS" IN YOUR ACCOUNT. IT SHALL BE AN UNDERWRITING REQUIREMENT THAT WHERE FUNDS ARE COMING FROM AN EXCHANGE ACCOMMODATOR, DISBURSEMENT WILL NOT OCCUR UNTIL AFTER CONFIRMATION OF "COLLECTED FUNDS."** "Collected funds" means that you have confirmed with your bank that a wire has been transferred into your account and that the wire cannot be recalled. It does NOT mean that the exchange company told you the money was wired, even with a Federal Reserve reference number.

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Recent failures of **exchange accommodation companies** serve as yet another reminder not to close on uncollected funds. Apparently the Southwest Exchange Company's failure has resulted in shortages of up to \$95 million in funds entrusted to it for the purchase of exchange or replacement property.

There are rumblings of other impending exchange company collapses. The industry is self-policed by the Federation of Exchange Accommodators. If adherence to FEA codes of conduct is compromised, membership is terminated. But many accommodators have not joined the FEA. Others may be members whose ownership has changed hands after entry. The new owners' compliance may not be as scrupulous. So you cannot use FEA membership as a bellwether. Simply stated, there is no way to ensure availability of funds held in the bank account of an exchange accommodator except to **COLLECT THOSE FUNDS BEFORE YOU CLOSE.**

You all know that we have had expensive lessons in the past. As I pointed out in our Good Funds bulletin in 2003 (HONA 154), many states have so-called "good funds" laws. Some states do not. **Under the language of many of these laws, an instrument can represent "good funds" and yet not be collected funds.** Therefore no transaction in any state should be closed in reliance on an uncollected check unless it is certified for payment or issued by a bank on its own account or by some other credible financial institution. The best solution is to have the accommodator's purchase funds deposited electronically by wire.

As always, please contact your servicing Penn Attorneys office with any questions.