



*The Voice of the 1031 Industry*

# CODE OF ETHICS AND CONDUCT





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## PREAMBLE

The relationship between the Exchange Accommodator (including Exchange Accommodation Titleholder ("EAT")) and its client ("Exchanger") requires a high level of confidence because the client entrusts and deposits with the Exchange Accommodator title to real estate and/or cash proceeds and promissory notes from the sale of real estate in furtherance of I.R.C. §1031 exchanges. Therefore, it is the duty of the Exchange Accommodator to uphold and improve the standards of its profession and to share the responsibility for its integrity and honor.

The Federation of Exchange Accommodators ("FEA" or the "Federation") and its members are committed to providing the highest level of professionalism, integrity, and ability available in the §1031 exchange accommodator industry. The fiduciary nature of the 1031 Exchange industry imposes obligations beyond those of ordinary commerce. The FEA and its members, therefore, zealously strive to maintain the standards of their profession and to share with their fellow Exchange Accommodators a common responsibility for its integrity and honor.

It is the intent of the FEA and its members to encourage fair and healthy competition within the industry. At the same time, it is recognized that cooperative industry relationships are critical to the industry's success.

Each member of the FEA pledges to observe the letter and spirit of this Code of Ethics and Conduct and to operate its business in accordance with principles advocated herein.

## ARTICLE I

An Exchange Accommodator shall keep reasonably informed of all laws, including statutes, regulations and the interpretation thereof, legislation, the principles and rules of this Code of Ethics and Conduct and amendments thereto, and other developments that affect I.R.C. §1031 exchanges and the Exchange Accommodator profession ("Body of Knowledge"). The

Exchange Accommodator shall also ensure that all employees whose positions involve direct contact with the general public are similarly updated on the Body of Knowledge as appropriate to the employee's position.

An Exchange Accommodator, and anyone working for such Exchange Accommodator, shall conduct business in a manner displaying the highest degree of professionalism, bringing credit to the industry and the FEA. Exchange Accommodators and their employees shall speak truthfully and act in accordance with accepted principles of honesty, integrity and fair dealing.

## **ARTICLE II**

Protection of the public against fraud, misrepresentation, and other illegal practices in the Exchange Accommodator profession shall be the duty and responsibility of each Exchange Accommodator member of the FEA. An Exchange Accommodator shall not commit acts of fraud, embezzlement, misappropriation of funds, conversion of the property of another, theft, forgery or such similar acts as may be defined by local, state or federal law. An Exchange Accommodator who is convicted of such an act, or enters a plea of "guilty", "no contest", "nolo contendere" or similar shall immediately notify the Board of Directors of the FEA, in writing. An Exchange Accommodator who holds any other professional designation or license, whose designation or license is suspended or revoked, or who voluntarily relinquishes such designation or license, due to activities concerning fraud, embezzlement, misappropriation of funds, conversion of the property of another, theft, forgery or any crime (misdemeanor or felony) shall immediately notify the Board of Directors of the FEA, in writing of such. An Exchange Accommodator shall not voluntarily participate in any act which it knows to be unlawful or against the standard of conduct set forth in this Code of Ethics and Conduct, even if directed to do so by the client, his/her/its agent, or advisor. It shall be the duty of every Exchange Accommodator to protect the reputation of the profession by exposing those engaged in such practices.

## **ARTICLE III**

It is the duty of an Exchange Accommodator to act in such a manner as to preserve the trust and confidence of its clients. Without prior permission from its client, an Exchange Accommodator shall not reveal the contents of any exchange file to any party other than the Exchanger or its agent, except in the case of a subpoena being presented, or when otherwise required by law.

## **ARTICLE IV**

An Exchange Accommodator who is not licensed to practice law, accountancy, or other licensed or regulated profession shall not engage in activities which constitute such practice. The Exchange Accommodator shall recommend in all cases that the parties involved in a 1031 exchange transaction seek tax and legal counsel.

## ARTICLE V

If recommending other products or services for which it will receive a financial benefit as a result of such recommendation, such as a commission or referral fee, the Exchange Accommodator shall disclose such financial benefit to the client in writing. The Exchange Accommodator shall not recommend or suggest to a client the use of services of another organization or business entity in which the Exchange Accommodator has a direct or indirect interest without full written disclosure of such interest at the time of recommendation or suggestion. At no time shall an Exchange Accommodator accept any illegal payment of any kind whatsoever.

It is the duty of an Exchange Accommodator to disclose to its clients in writing those circumstances, relationships, and interests, if any, which might constitute a conflict of interest. This disclosure shall be made when the Exchange Accommodator knows or learns of the conflict of interest.

## ARTICLE VI

An Exchange Accommodator shall act in the best interest of its clients. The Exchange Accommodator shall diligently and honestly pursue the client's legitimate objectives, and shall perform all reasonable, necessary, and appropriate acts in a timely manner. This includes (but is not necessarily limited to) the duty to:

- 1) Provide and follow written exchange documents.
- 2) Provide fee information to the client clearly explaining the fees to be charged. As part of such fee information, the Exchange Accommodator shall provide a general written disclosure that the Exchange Accommodator may be receiving interest, fees, earnings, or another form of monetary benefit from the deposit of or use of the exchange funds, if in fact, such is the case. The waiving of bank service charges and fees shall not be deemed a form of monetary benefit.
- 3) The Exchange Accommodator shall provide a written disclosure to the client describing any interest to be paid to the client.
- 4) Invest the exchange proceeds in a manner which meets the Accounting and Investment Standards of Section A of this Article.
- 5) Ensure that any promissory notes or other property held by the Exchange Accommodator as "exchange credits" are not compromised by the actions of the Exchange Accommodator.
- 6) Provide financial information to the client and his/her/its authorized representatives during the 180-day replacement period as requested.
- 7) Give a full accounting of funds held for the benefit of the client at the end of the exchange.

- 8) Notify the client of a change of ownership of the Exchange Accommodator as contained in Section B of this Article.

#### A. Accounting for Monies and Property

(a) Every Exchange Accommodator shall hold all exchange funds, being money, property, other consideration or instruments received by the Exchange Accommodator from, or on behalf of the client, except funds received as the Exchange Accommodator's compensation, in a manner that provides liquidity and preserves principal. Every Exchange Accommodator that invests exchange funds shall invest exchange funds in investments which meet the "Prudent Investor Standard" and satisfy investment goals of liquidity and preservation of principal. For purposes of this section, the "Prudent Investor Standard" shall be violated if:

(1) Exchange funds are knowingly commingled by the Exchange Accommodator with the operating accounts of the Exchange Accommodator; or

(2) Exchange Funds are loaned or otherwise transferred to any person or entity affiliated with or related to the Exchange Accommodator except that this subsection shall not apply to: i) a transfer made to a financial institution which is the parent of or related to the Exchange Accommodator for the purpose of placing a deposit or as required under the exchange contract; ii) a transfer made as required under the exchange contract; or iii) to a transfer from an Exchange Accommodator to an EAT as required under the exchange contract.

(b) An Exchange Accommodator shall not knowingly keep or cause to be kept any money in any financial institution under any name designating the money as belonging to a client of the exchange facilitator unless the money equitably belongs to the client and was actually entrusted to the exchange facilitator by the client.

#### B. Change in Control

An Exchange Accommodator shall notify all existing exchange clients of any change in control of the Exchange Accommodator. Such notification shall be made to the Exchange Accommodator's clients within ten (10) business days following the effective date of such change in control either by facsimile or e-mail transmission, or by first class mail, and by posting such notice of change of control on the Exchange Accommodator's website for a period ending not sooner than ninety (90) days after the change in control. Such notification shall set forth the name, address and other contact information of the transferees. Notwithstanding the above, if the Exchange Accommodator is a publicly traded company and remains a publicly traded company after a change in control, the publicly traded company shall not be required to notify its existing clients of such change in control. For purposes of this Section, change in control shall mean any transfer within 12 months of more

than 50% of the assets or ownership interests, directly or indirectly, of the Exchange Accommodator.

#### **ARTICLE VII**

An Exchange Accommodator shall cooperate with other Exchange Accommodators in all matters affecting the exchange industry as a whole. This includes, but is not limited to, reporting violations of the Code of Ethics and Conduct to the Ethics Committee of the FEA in writing. Exchange Accommodators are encouraged to share knowledge and experience through active participation in FEA educational programs and to actively participate in the FEA.

#### **ARTICLE VIII**

Except in the case of disclosure of conduct in violation of the Code of Ethics and Conduct, or in the case of potential civil or criminal litigation, the Exchange Accommodator shall hold the exchange industry in the highest esteem, and avoid criticizing, denigrating, or otherwise disparaging a competitor or the Exchange Accommodator industry as a whole.

#### **ARTICLE IX**

An Exchange Accommodator, its owners, officers, and its employees, shall maintain, uphold and conform to this Code of Ethics and Conduct, and the rules, regulations, and By-Laws of the Federation.

#### **ETHICS COMMITTEE ARTICLE X**

Upon approval of the Board of Directors, the Ethics Committee may issue hypothetical Ethics advisory opinion letters. Such hypothetical Ethics advisory opinion letters may be disseminated on the "members only" section of the FEA website and at FEA meetings and conferences.



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## **PROCEDURES FOR CHARGES OF MISCONDUCT AND ENFORCEMENT**

- A. Any person, whether or not a member of the Federation of Exchange Accommodators ("FEA" or the "Federation"), may file a complaint alleging misconduct against a member of the Federation. Grounds upon which a complaint may be made under Code of Ethics are limited to those listed in Appendix A attached and incorporated hereto by reference. Such person shall hereafter be called the "Complainant." The Complainant shall submit to the Chair of the Federation of Exchange Accommodators Ethics Committee a written complaint (using the form attached and incorporated hereto by reference as Appendix B) specifically identifying the Exchange Accommodator and any employees thereof, and describing in as much detail as possible the conduct that allegedly is a violation of the Code of Ethics and Conduct and which is included in the Grounds listed in Appendix A. The complaint must be signed, and must provide the Complainant's contact information, in the event the Ethics Committee requires additional information or otherwise needs to contact the Complainant. The Complainant is urged to maintain confidentiality and privacy to the extent practical. However, the complaint shall be accompanied by all relevant documentation that is readily available to the Complainant. The Complainant should NOT send a copy of the complaint to the Exchange Accommodator who is the subject of the complaint.
- B. The Ethics Committee Chair shall provide the other members of the Committee with a copy of the complaint and any attachments thereto. Within two (2) weeks of receipt of the complaint, the Ethics Committee shall provide the Exchange Accommodator with a copy thereof, which shall be sent by certified mail, electronic mail, or other similar means available for purposes of providing notice of the complaint and its corresponding documentation to the Exchange Accommodator. Said Exchange Accommodator shall thereafter be known as the "Respondent" with respect to the pending complaint. The Ethics Committee shall notify the Respondent by way of a transmittal letter, whether a response is required, or whether the complaint is being summarily dismissed because it is clearly without merit. If the complaint is being dismissed due to lack of merit, the Ethics Committee shall have discretion to redact the Complainant's name from the complaint and/or not provide a copy of the Complaint with the transmittal letter. A copy of said transmittal letter shall be provided to the Complainant unless no address was provided,

by certified mail, electronic mail or other similar means available for purposes of providing notice to Respondent of whether a response to the complaint is required.

- C. No party is required to be represented by counsel at any stage in the proceedings. However, any party may be so represented at their own discretion. At no time will any review or other portion of the process be delayed by more than thirty (30) days so that a party may obtain such representation.
- D. A Respondent shall have thirty (30) days from receipt of the complaint to file a preliminary response to the Ethics Committee Chair. An extension of up to fifteen (15) days may be granted by the Ethics Committee upon written request and showing of good cause, provided such request is received by the Committee Chair within the thirty (30) day period. Failure to make a timely preliminary response shall constitute a failure to cooperate with the Ethics Committee's investigation and be deemed an admittance of all material facts and allegations as set forth in the complaint. Additionally, such failure to cooperate may form the basis of a separate complaint and violation, and any member of the Ethics Committee with first-hand, personal knowledge of this failure to cooperate may file a complaint regarding such actions or inactions.

The preliminary response shall include the following information and documentation: all relevant documentation responsive to the underlying claims and allegations set forth in the complaint; the names, addresses, telephone numbers and other means of contacting any witnesses to the events and a statement of all relevant facts and circumstances that would reasonably be relied upon at the time of the filing of the preliminary response to contradict the allegations as set forth in the complaint. The Ethics Committee shall determine whether the motivation of the Complainant is relevant in the case after reviewing all the evidence germane to the complaint. The Ethics Committee will forward a copy of the preliminary response to the Complainant by certified mail, electronic mail or similar means available for purposes of providing notice to the Complainant, allowing the Complainant fifteen (15) additional days after receipt of the response to further reply. There shall be no further submissions from either party except upon the specific, written request of the Ethics Committee.

- E. Upon receipt of the written submissions of the parties, the Ethics Committee shall determine if any further review is necessary. If the Ethics Committee determines that further review is necessary, it may appoint one of its members to conduct such further review on behalf of the full Committee. The Respondent shall cooperate with such additional review, and shall encourage others with relevant information, including but not limited to its employees, agents, independent contractors, and lending institutions, to do so as well.
- F. Upon receipt of all the written submissions of the parties, and the results of any further review, the Ethics Committee shall have up to thirty (30) calendar days to deliberate and prepare its report to the Board of Directors. The report shall contain a narrative stating: the grounds upon which the Code is alleged to have been violated; a review of the documentation that sets out the facts that were not in dispute; a review of the submissions



and testimony submitted by the parties; and a recommendation of action to be taken by the Board of Directors.

- G. The Board of Directors shall make a decision regarding the matter within thirty (30) calendar days of receipt of the Ethics Committee Report. The Board of Directors shall notify the Complainant and Respondent in writing of its decision by certified mail, electronic mail or similar means available for purposes of providing Complainant notice of the decision. The decision of the Board of Directors shall be the final determination of the matter. Attached and incorporated hereto as Appendix C is a chart outlining the time elapsed for the process described in these procedures. Resolution of the complaint may be accomplished, if feasible, within a shorter time frame.
- H. Upon a finding by the Board of Directors that the Respondent has failed to meet the standards of conduct imposed by the Code of Ethics and Conduct and the grounds listed herein, the Board of Directors shall impose a penalty or penalties from among the following: (i) suspension of the Respondent's membership in the Federation of Exchange Accommodators for such period of time as is reasonably determined in the sole and exclusive discretion of the Board, including any and all rights and privileges associated therewith, said suspension may be listed on a publicly accessible portion of the Federation of Exchange Accommodators website and may be made part of the Respondent's file (such suspension may include conditions imposed by the Board for reinstatement); or (ii) permanent expulsion from the Federation of Exchange Accommodators, said expulsion may be listed on a publicly accessible portion of the Federation of Exchange Accommodators website and to be made part of the Respondent's file.
- I. To the extent that the Ethics Committee determines, after adequate review, that the Respondent may have engaged in criminal activity, the Ethics Committee shall timely report such determination to the Board of Directors.

To the extent that the Board of Directors determines that the Respondent may have engaged in criminal activity, the Board of Directors may choose to report its findings to the appropriate federal, state or local authorities.

- J. In the event Respondent continues to claim an association with the Federation of Exchange Accommodators after suspension or expulsion, the FEA Board of Directors may, at its option, pursue such other legal remedies as may be available to the FEA at law or in equity in any or all of the jurisdictions in which the Respondent maintains offices, or in the home jurisdiction of the FEA.

## Appendix A

### Grounds Upon Which Complaints May be Made

*Any person or entity may submit a complaint to the Ethics Committee against a member of the Federation based on the criteria below. The Committee has discretion to not consider any alleged violation wherein the Complaint Form is not signed, anonymous, illegible, or otherwise provides insufficient information on which the Committee may act.*

*The procedures to be followed by the Ethics Committee are available online along with the Code of Ethics and Conduct.*

*You may obtain a copy of the Code of Ethics and Conduct online at [www.1031.org/ethics](http://www.1031.org/ethics).*

1. An Exchange Accommodator, or its current principal, officer, director, agent, independent contractor or employee has violated or is suspected of violating the FEA Code of Ethics and Conduct.
2. An Exchange Accommodator, or its current principal, officer, director, agent, independent contractor or employee has violated or is suspected of violating any Federal, State or local laws or regulations which it may be subject to, including but not limited to those relating to the regulation of qualified intermediaries.
3. An Exchange Accommodator, or its current principal, officer, director, agent, independent contractor or employee is under investigation for, charged with, or convicted of an act of fraud, embezzlement, misappropriation of funds, conversion of the property of another, theft, forgery or such similar acts as may be defined by local, state or federal law.
4. An Exchange Accommodator, or its current principal, officer, director, agent, independent contractor or employee holding any other professional license or designation, has a license or designation suspended or revoked, or voluntarily relinquishes such designation or license, due to activities concerning fraud, embezzlement, misappropriation of funds, conversion of the property of another, theft, forgery or any crime (misdemeanor or felony) involving moral turpitude.

Appendix B



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Federation of Exchange Accommodators

COMPLAINT OF VIOLATION OF THE  
CODE OF ETHICS AND CONDUCT

This form may be used to submit a complaint to the Ethics Committee to report a potential violation of the Federation's Code of Ethics and Conduct by a member.

**Send completed form to: Ethics Committee**  
**Federation of Exchange Accommodators**  
**1255 SW Prairie Trail Pkwy.**  
**Ankeny, IA 50023-7068**

<b>Information About The Complainant</b>
Name of complainant:
Address:
Daytime phone number:

<b><i>Identify The Company or Person Who Is The Subject Of Your Complaint</i></b>
Name of company or person who is the subject of your complaint:
Address:
Office held:

***Identify The Grounds Upon Which The Code of Ethics and Conduct Believed To Have Been Violated***

Grounds upon which a complaint may be filed are listed in Appendix A of the Federation of Exchange Accommodators Procedures for Charges of Misconduct and Enforcement. You may find the complete text of the Code of Ethics and Conduct on the FEA's website at [www.1031.org/ethics](http://www.1031.org/ethics). You may also obtain a copy of the Code of Ethics and Conduct by calling the Federation at (515) 244-6515.

Grounds for Complaint:

***Nature Of The Complaint***

Provide a statement of the facts known or believed by you to be true that form the basis of the complaint, including the approximate dates of the acts alleged. You may attach your statement on a separate sheet(s) of paper. Any further information that might support your allegations should be submitted with this complaint, including but not limited to, the names and addresses of other persons with personal knowledge of the facts alleged, documents or other evidentiary material.

**Certification**

I affirm that the facts stated in this complaint are true to the best of my knowledge.

\_\_\_\_\_  
Signature of

\_\_\_\_\_  
Date



## Appendix C

Description	Time	Cumulative time elapsed if no extension	Cumulative time elapsed if extension applies
Receipt of Complaint by Ethics Committee	Start		
Ethics Committee disseminates the Complaint to Committee Members and the Respondent	2 weeks	14 calendar days	
Respondent files response	30 calendar days	44 calendar days	
Respondent request an extension to respond	15 calendar days		59 calendar days
Complainant has 15 days to provide any response to Respondent response	15 calendar days	59 calendar days	74 calendar days
Ethics Committee prepares report for Board of Directors	30 calendar days	89 calendar days	104 calendar days
Board of Directors makes decision and communicates to Complainant and Respondents	30 calendar days	119 calendar days	134 calendar days