

LandAmerica 1031 Exchange Services Company Files for Bankruptcy

As you may have heard, the title insurance company LandAmerica Financial Group and its subsidiary, LandAmerica 1031 Exchange Services Company, Inc., recently filed voluntary petitions for Chapter 11 bankruptcy. The parent company has sought court permission to sell its title insurance businesses, including Lawyers Title Insurance Corp. and Commonwealth Land Title Insurance Co., to Fidelity National Title Insurance Co. and Chicago Title Insurance Co., respectively. It appears that LandAmerica 1031 Exchange Services Company, Inc. (the "Exchange Company") will face liquidation. The Exchange Company cited a downturn in the real estate market, as well as illiquid investments in auction rate securities, as reasons for its bankruptcy filing.

So how does LandAmerica's bankruptcy affect you? If the Exchange Company holds your sales proceeds as a qualified intermediary in an open deferred like-kind transaction, you may not be able to use the proceeds for some time, and you may ultimately receive less than the full amount of your proceeds. However, if your proceeds are held in a segregated account, you may be able to obtain the proceeds sooner. If the Exchange Company is acting as an exchange accommodator for a reverse like-kind exchange, you may have other remedies. Some relief may be available upon a timely request to the bankruptcy court.

Under the Internal Revenue Code and other IRS requirements, participants in deferred and reverse like-kind exchanges must complete their transactions within a limited time. We expect the bankruptcy court will attempt to take those time limits into account in expeditiously resolving claims to exchange proceeds. The IRS has not yet issued any guidance on whether it will extend the time limits.

If you are under contract to sell property to a buyer that is intending to use like-kind exchange proceeds held by the Exchange Company, there is a possibility that the buyer will not be able to use those proceeds and close escrow when planned. You may want to review your contract to determine what remedies you may have if the buyer is unable to perform.

As in all hard times, there are lessons to be learned here. We suggest that you require a qualified intermediary to hold your exchange proceeds in a segregated account to prevent your proceeds from being commingled with those of other clients of the intermediary. We also recommend that you specify how the intermediary invests your exchange proceeds, and that you select liquid investment so that you have more control over the investment risks.

Please contact us if you have any questions about this bankruptcy case or any other bankruptcy, real estate, land use, zoning or business transaction issue. A complete list of the attorneys in our Business Transactions and Bankruptcy groups can be found on our website, www.LRLaw.com. We look forward to being of service.

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