



PROTECTING THE INTEGRITY OF IDAHO FINANCIAL MARKETS SINCE 1905

**Idaho Department of Finance  
Guidance Statement  
2020-03-SB  
INTERPRETATIONS OF THE ESCROW ACT  
ISSUE DATE: JULY 1, 2020 (Replaces Policy Statement 2007-4)**

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**I. Background**

The Idaho Escrow Act (Act), Idaho Code § 30-901, et seq., became law in Idaho on July 1, 2005. In an effort to provide direction to Idaho businesses whose activities fall within the requirements of the Act, the Director has adopted the following Guidance.

**II. Section 1031 Qualified Intermediaries Are Subject to the Act**

The Department has considered proposals that the applicability of the Act be waived as to § 1031 Qualified Intermediaries (QIs) until such time as a new law is enacted in Idaho specifically addressing the business practices of QIs. The Department interprets the Act as applicable to QIs and has no authority to waive its applicability to business practices that are subject to the Act's requirements.

**III. Exclusion from the Act**

Industry members have inquired as to the applicability of the Act to a QI in a tax-deferred exchange where the sole contact with Idaho is replacement property located in Idaho. The Department finds it a reasonable interpretation of the Act that its requirements do not apply when the sole contact with Idaho, in a tax-deferred exchange, is that the replacement property is located in Idaho. Therefore, the Department adopts this interpretation to narrowly apply to only the aforementioned circumstance. Any other contact within Idaho by a QI in a tax-deferred exchange may change this determination.

**IV. Alternative Bonding and Insurance Requirements**

Industry members have proposed that the Director, pursuant to the discretion provided in Idaho Code § 30-909(7), waive the surety bond amounts required under the Act in conjunction with corresponding

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increases to required fidelity bond coverage and errors and omissions insurance. The Department finds it reasonable to establish alternate bonding and insurance requirements under the Act. Therefore, entities subject to the Act may meet the financial responsibility requirements of Idaho Code § 30-909 by either complying with the existing requirements of the Act or by meeting the following:

- Maintaining a \$1,000,000 fidelity bond;
- Maintaining \$250,000 in errors and omissions coverage; and,
- Maintaining no surety bond coverage

**Contact** - You may direct comments or requests for additional information regarding this Guidance Statement to:

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