

RCW 19.310.040 Duties of exchange facilitator—Fidelity bonds.

- (1) A person who engages in business as an exchange facilitator must:
- (a) (i) Maintain a fidelity bond or bonds in an amount of not less than one million dollars executed by an insurer authorized to do business in this state for the benefit of a client of the exchange facilitator that suffers a direct financial loss as a result of the exchange facilitator's covered dishonest act. Such fidelity bond must cover the acts of employees of an exchange facilitator and owners of a nonpublicly traded exchange facilitator; or
 - (ii) Deposit all exchange funds in a qualified escrow account or qualified trust, as both terms are defined under treasury regulation section 1.1031(k)-1(g)(3), with a financial institution. If an exchange facilitator deposits exchange funds in a qualified escrow account or qualified trust:
 - (A) A withdrawal of exchange funds requires the exchange facilitator and the client to independently authenticate a record, as defined under RCW 62A.9A-102, of the transaction; and
 - (B) The client of the exchange facilitator must receive independently from the depository financial institution, by any commercially reasonable means, a current statement for verification of the deposited exchange funds; and
 - (b) Disclose on the company website and contractual agreement the following statement in large, bold, or otherwise conspicuous typeface calculated to draw the eye: "Washington state law, RCW 19.310.040, requires an exchange facilitator to either maintain a fidelity bond in an amount of not less than one million dollars that protects clients against losses caused by criminal acts of the exchange facilitator, or to hold all client funds in a qualified escrow account or qualified trust that requires your consent for withdrawals. All exchange funds must be deposited in a separately identified account using your taxpayer identification number. You must receive written notification of how your exchange funds have been deposited. Your exchange facilitator is required to provide you with written directions of how to independently verify the deposit of the exchange funds. Exchange facilitation services are not regulated by any agency of the state of Washington or of the United States government. It is your responsibility to determine that your exchange funds will be held in a safe manner." If recommending other products or services, the exchange facilitator must disclose to the client that the exchange facilitator may receive a financial benefit, such as a commission or referral fee, as a result of such recommendation. The exchange facilitator must not recommend or suggest to a client the use of services of another organization or business entity in which the exchange facilitator has a direct or indirect interest without full disclosure of such interest at the time of recommendation or suggestion.
- (2) An exchange facilitator must provide evidence to each client that the requirements of this section are satisfied before entering into an exchange agreement.
- (3) Upon request of a current or prospective client, or the attorney general under chapter 19.86 RCW, the exchange facilitator must offer evidence proving that the requirements of this section are satisfied at the time of the request. [2013 c 228 § 2; 2012 c 34 § 2; 2009 c 70 § 5.]

Findings—2012 c 34: "The legislature finds that exchange facilitators are a specialized business in Washington state that

involves the transfer of certain assets of citizens for investment purposes. In 2009 legislation was passed that provided enhanced reporting requirements, as well as civil and criminal penalties, to serve as additional protections for citizens involved in these types of transactions. The legislature finds that current law is still inadequate to protect those who trust these companies with assets they may have spent a lifetime accumulating. Additional protections are required to properly regulate the companies engaged in these transactions." [2012 c 34 § 1.]