

# Horse-trading tax payments

Leominster firm growing by offering exotic & mundane exchanges to clients looking to avoid paying taxes

**BY SAM BONACCI**

Worcester Business Journal Digital Editor

**A** multi-family home, a Jackson Pollock painting and a high-speed ferry boat. While at first these disparate items seem to have nothing in common, they are all properties the Exchange Authority has helped change hands, brokering exchanges of property that work to avoid or postpone the tax implications of transferring ownership.

The Leominster company has been assisting with exchanges since 1999 and now with a new president and CEO in Robert Charland, the company is looking to bring the 1031 Code of the Internal Revenue Service to more people.

Charland practiced real estate law in Leominster for a number of years before joining the company last year as the CEO and then transitioning to the president's role as well in August.

While he plans to grow the business and spread the word of its services, the company – at its core – is extremely specialized, which is a boon in the industry of 1031 exchanges, he said.

"It's vital to have someone to talk to," Charland said. "It's a specialty where you need to know all the details."

## From \$50K to multi-million

The Exchange Authority specializes in 1031 exchanges. These exchanges are a tax-deferral method that allows a property owner to trade one business property for another they will keep for a minimum of two years without having to pay federal income taxes on the transaction.

So while usually capital gains must be paid at the time of the sale, they can be deferred until the person sells the new property.

This can provide the ability for people to put those capital gains right back into the next property or business. This can help push the transfer of a property that might otherwise have been held back due to capital gains, said Tim Halligan, the company's co-founder former CEO and co-founder.

It can also allow property owners to get into different forms of income properties, such as transferring out of a self-managed apartment building and into a partial stake in a larger



**Exchange Authority President and CEO Robert Charland**

rental property, a fast-food franchise location or a rental property in Florida. It can even be used to transfer business-use property such as construction equipment.

"We've done exchanges from as little as \$50,000 dollars to multi-million dollar exchanges," Charland said. "It can benefit anybody who wants to reinvest. It gives you that extra cash flow to put towards the next property."

All of this must be done through a qualified intermediary third party that can have no other dealings with the transaction, which is where the Exchange Authority first started. Halligan and John Kimball, who were commercial real estate brokers, worked some deals together in the late 1980's when interest rates were through the roof, prompting more creative ways to move property. The exchanges were being used on the West Coast, but the pair were among the first to do them in the Northeast.

"We had people that literally threatened to throw us out... Their attorneys were saying, 'It's one of those damn things they do in California and it's illegal, immoral and I will never let my clients do it,'" Halligan said.

## A horse, a painting and a Grey Lady

While about 90 percent of these exchanges are of real estate, the company has handled some unique exchanges over the years. They included a race horse, being careful that it was not for a mare as the tax code only allows same gender exchanges, as well as a 10-percent stake in a Jackson Pollock painting in exchange for two other paintings, as under the law it could not be for a statue or other type of artwork.

The Grey Lady II ferry boat, which lived its life shuttling riders between Hyannis and Martha's Vineyard, was another exchange handled by the company.

"You were putting together transactions that benefited people, allowing them to use all the cash out of a transaction and putting it into a new property," Halligan said. "You're doing them a benefit, and all we're doing is telling them these are the rules you have to follow. It's a very friendly business."

While these stories are the interesting side of the business, they also highlight the potential difficulties with exchanges. Some might be simple, but there are nuances to all these exchanges that make it vital to have someone with knowledge not only handle the exchange, but determine whether the deal is a good candidate for an exchange in the first place.

This is an important part of the process because these exchanges aren't always the right move, said Michael Libster, president of the National Council of Exchangers, a group of licensed brokers and real estate agents who have formed a network that specializes in exchanging properties and advising each other on those transactions.

While members of the organization make use of 1031 exchanges, it is only when it makes sense, he said.

"If you have a gain then a 1031 makes sense, but that's not necessarily an absolute," Libster said.

## Pay now vs. pay later

One such factor is whether capital gains taxes will increase in the future. Because clients carry the gains forward, they could potentially end up paying more to the government for the gains.

First and foremost, Libster said, is assessing their tax implications and finding out what the exposure is on the deal. Then exchangers can figure out what tax structure serves clients best in the deal.

While Libster explained this might mean opting not to use a 1031 exchange, having them as an option is a large benefit.

Educating people about the exchanges has thus been a priority for the Exchange Authority, and it is one Charland says he will maintain a focus on. With the company handling exchanges throughout the country, the company will remain focused on this very specific portion of the tax law and helping people make use of it when it makes sense. **W**