

## ***Ask The Right Questions!***

Before entering into any kind of escrow arrangement, take a good look at all available options.

The stringent requirements of the California Department of Corporations and the mandatory membership in Escrow Agents' Fidelity Corporation assure that every licensed escrow company has met the highest standards of the industry. Consumer protection regulations unique to ***licensed*** escrow companies include:

- A Certification Program for all Escrow Officers and staff in the company's employ, including fingerprinting and background checks by the Department of Justice.
- A requirement that an Escrow Officer with at least 5 years experience is on-site.
- State mandated net worth and liquidity requirements, including a minimum of one audit per year.
- Prohibition of employment of convicted felons or anyone who has been barred from the escrow industry by the Department of Corporations.
- Membership with the Escrow Agents Fidelity Corporation indemnifies the member for up to \$5 million of fidelity bond protection, based statutory levels of coverage.

Strange as it may seem given the escrow holder is intended to be a neutral 3<sup>rd</sup> party, state law does not prohibit the control of an escrow company by a party who has another interest in the transaction. Be sure to find out if your escrow company is affiliated with another party to your transaction and determine how that may affect you.

The bottom line is that a licensed ***INDEPENDENT*** escrow company is the best possible neutral third party to complete your real estate transaction. Licensed escrow companies will show you their Department of Corporations License. Ask them how they are indemnified by Escrow Agents Fidelity Corporation for misappropriation or embezzlement of trust obligations.

Give yourself peace of mind in selecting a licensed, ***INDEPENDENT*** escrow company. Don't hesitate to ask the right questions.

## The Bulk Sale Escrow Process:

Buyer: Person who is purchasing

Seller: Person who is selling

Broker/Agent: Represent the Buyer and Seller in negotiating the contract for the sale/purchase

Escrow Holder: Neutral third party who holds all documents and funds and acts to record documents and disburse funds only upon the written mutual instructions of the Buyer and Seller.

A business is defined as personal property. The sale of a business is different from the sale of Real Estate, because of this fact. The "Bulk Sale Code" contained in the Uniform Commercial Code of California governs the escrow process for businesses.

The escrow closing date is determined by the publication of the required Notice to Creditors. The close of escrow must take place ON OR AFTER the date specified on the Notice, which is the end of the minimum mandatory publication period, as defined in the Bulk Sale Code.

The escrow instructions and all necessary documents, including the Notice to Creditors, are all prepared at the beginning of the escrow. These documents must be signed by all parties and delivered into escrow along with a check from the buyer and/or seller for the initial deposit, which must include escrow fees and funds for payment of up front expenses for publication and filing fees, etc., BEFORE the Notice to Creditors is recorded or published.

The Uniform Commercial Code of California requires that all monies in a bulk sale, including sales price and inventory of stock in trade, must pass through escrow and requires that no funds are released to the seller prior to the close of escrow.

## The Bulk Sale Escrow Process:

Provide terms of the sale and other required information to the escrow officer

Escrow Officer prepares escrow instructions and documents for signature

Executed escrow Instructions and documents are returned to escrow

Publish and file Notice to Creditors and other applicable documents

Escrow officer requests releases/clearances from State Agencies

Escrow officer requests State and County Lien Searches

Clearances and/or Claims received and acknowledged

Escrow officer prepares final amendment and requests final deposit of documents and funds

Claims period ends

Escrow closes \*\*NOTE – if a liquor license is involved, escrow cannot close until the license is transferred by A.B.C. before closing.

This represents a general overview of the Bulk Sale escrow process. Each business sale is unique.