



State of California  
Business, Consumer Services, and Housing Agency  
**DEPARTMENT OF BUSINESS OVERSIGHT**  
*Ensuring a Fair and Secure Financial Services Marketplace for all Californians*

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## **Escrow Agents Must Guard Against Cyber Threats and Immediately Report Thefts**

Between January 2016 and June 2018, California-licensed escrow companies reported to the Commissioner of Business Oversight (Commissioner) at least 30 thefts of personal or financial information by means of computers or the internet ("cyber theft"). Of the \$5,980,426 in funds wired to online impersonators, licensees recovered only \$2,783,996. Because Escrow Agents' Fidelity Corporation (EAFC) does not cover trust losses resulting from cyber theft, licensees had to replace the balance, or \$3,196,430.

Under the Escrow Law (Fin. Code, § 17000 *et seq.*), licensees are required to "immediately report" to both the Commissioner and the EAFC knowledge of "abstraction or misappropriation of money, funds, trust obligations, or property deposited with a licensed escrow agent . . ." (Fin. Code, § 17414, subd. (c).) Failure to comply with this reporting requirement may subject a licensee to administrative action, such as issuance of a discontinuance order and/or license suspension or revocation. (Fin. Code, §§ 17602, 17603, 17608.)

Cyber theft is often initiated through online communication with the target. Escrow companies should be especially suspicious of emails containing:

- Wire instructions to transfer personal information;
- Different or unfamiliar email addresses or telephone numbers;
- Addresses containing transposed letters or combinations of letters that look like other letters (e.g., "rn" instead of "m");
- Strings with strange date and time stamps;
- Escrow instructions changing the bank account where the seller wants the proceeds wired, especially if the bank account is not convenient to where the seller resides;
- Escrow instructions with a name on the account that does not match the name of a principal or appears anywhere else in the transaction;

- Escrow instructions containing a digital signature or printed name that does not match the other signed documents in the escrow file; and,
- Requests for wire transfers after the principals have received their checks.

Licensees must diligently monitor transactions to ensure the security of client information and escrow funds. To protect computers from intrusion, licensees should also do the following:

1. Review trust accounts every day for unauthorized wires or charges.
2. Keep a separate computer that is dedicated to banking business.
3. Enforce a company-wide policy about the handling of instructions received by email.
4. Obtain contact information upfront, require notarized amendments for disbursement instructions, create passwords, and insist on the use of encrypted emails.
5. Train employees to spot cyber threats and understand the importance of following office policies and procedures.
6. Scan company computers for viruses on a consistent basis and back-up data to protect against cyber-attacks.
7. Warn clients about the dangers of cyber theft.
8. Know who has access to company webmail, cloud servers, and online trust accounting portals.
9. Require periodic password changes, especially after terminating an employee who had access to trust accounts.

In matters involving cyber theft, the Commissioner has taken enforcement action against licensees for knowingly or recklessly disbursing escrow funds resulting in a debit balance in a trust account and/or failing to immediately report a trust account shortage to the Commissioner. (Fin. Code, § 17414; Cal. Code Regs., tit. 10, §§ 1738, 1738.1, 1738.2.)

If the Commissioner has reason to believe that any escrow agent is violating the Escrow Law, the Commissioner may investigate the escrow agent's business and examine the books, accounts, records, and files, including electronic files. (Fin. Code, § 17601.). Should it appear that any licensee has recklessly permitted an unauthorized disbursement or is conducting business in an unsafe or injurious manner, the Commissioner may issue an order directing the discontinuance of the violations and/or any unsafe or injurious practices. (Fin. Code, §§ 17602, 17603)