

**STATE OF CALIFORNIA
Business, Consumer Services and
Housing Agency
Department of Financial
Protection and Innovation**

GENERAL INFORMATION

ON THE LICENSING AND

REGULATION OF

INDEPENDENT ESCROW AGENTS

Under the California Escrow Law



**Prepared
by the**

**FINANCIAL SERVICES
DIVISION
of the Department of Financial
Protection and Innovation
(213) 576-7690**

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INTRODUCTION

The purpose of this pamphlet is to provide you with general information that the Department of Financial Protection and Innovation believes will assist you in obtaining your license under the Escrow Law. The information contained herein is a compilation and is not intended to be all-inclusive. It is your responsibility to review the law and regulations pertaining to independent escrow agents and understand their requirements.

Persons licensed by the Department of Financial Protection and Innovation as an escrow agent joint control agent or Internet escrow agent are subject to the provisions of the Escrow Law (Division 6 of the California Financial Code (FC)) and the Escrow Regulations (Title 10, Chapter 3, Subchapter 9 of the California Code of Regulations (CCR)).

Copies of the California Financial Code may be purchased from the following vendors:

Bancroft-Whitney Publishing Company
West Publishing company (800) 762-5272
Matthew Bender

The Regulations may be purchased from
Barclays Law Publishers, P.O. Box
95767, Chicago, IL 60694-5767, (800)
888-3600.

INFORMATION YOU WILL NEED TO OBTAIN A LICENSE

1. Only corporations are licensed as Escrow Agents and any stock transfer of the corporation requires the Commissioner of Business Oversight's prior approval.
2. You must have \$50,000 tangible net worth and \$25,000 in liquid assets. A

certified audit will be required to support these requirements.

3. You must obtain a surety bond of at least \$25,000.
4. The manager of the company must have at least five years of responsible escrow experience. The manager of an Internet escrow agent that is engaged in the business of an escrow involving personal property must possess knowledge of accounting and the Escrow Law and regulations.
5. You must be a member of Escrow Agents Fidelity Corporation (EAFC) and pay them an initial membership fee of \$3,000 if you will be engaged in the business of processing the following types of escrow transactions as specified in subdivision (c) of Section 17312 of the Financial Code:

* Real property escrows, including, but not limited to, the sale, lease, exchange, or transfer of title, and loans or other obligations to be secured by a lien upon real property.

* Bulk sale escrows, including, but not limited to, the sale or transfer of title to a business entity and the transfer of liquor licenses or other types of business licenses or permits

* Fund or joint control escrows, including, but not limited to, transactions specified in Section 17005.1 of the Financial Code, and contracts specified in Section 10263 of the Public Contract Code.

* The sale, transfer of title, or refinance escrows for manufactured homes or mobile homes.

* Reservation deposits required under Article 2 (commencing with Section 11010) of Chapter 1 of Part 2 of Division 4 of the Business and Professions Code or by regulation of the Department of Real Estate to be held in an escrow account.

* Escrows for sale, transfer, modification, assignment, or hypothecation of promissory notes secured by deeds of trust.

6. You must file a minimum fidelity bond in the amount of \$125,000 if you process any transactions of the type not listed in subdivision (c) of Section 17312 of the Financial Code. If the fidelity bond contains a deductible the escrow agent is required to file with this Department a surety bond in the amount of the deductible. The amount of surety bond needs to be maintained in the same amount as the deductible at all times.
7. All officers, directors, stockholders, managers and employees will be required to file fingerprints to facilitate criminal and civil background checks. The fee for each clearance is \$10 plus the Department of Justice fee the amount of which is included in the enclosed application.
8. You must pay a filing fee of \$625 and an investigation fee of \$100. These fees are not refundable.
9. The application will not be considered complete until all required information has been submitted and all individual fingerprint clearances have been received from the Department of Justice (DOJ) which normally takes 4

or more weeks. The Department has no control over the time it takes the DOJ to process and clear each set of fingerprints filed with an application.

FORMATION OF COMPANY

Any person who engages in business as an escrow agent in California must be a corporation organized for that purpose. The Articles of Incorporation must include a clause which states that the primary purpose of the corporation is to engage in business as an escrow agent. [FC Section 17200.]

SECURITIES OF APPLICANT

The Department requires that all of the securities issued by an escrow applicant corporation be placed in escrow prior to the issuance of the escrow agent's license. Any transfer or issuance of stock of the escrow company must be approved by the Commissioner. [FC Section 17213.] The securities of the escrow applicant must also be qualified for issuance pursuant to the Corporate Securities Law of 1968 or be exempt therefrom. You must file appropriate documentation to demonstrate compliance with these laws.

FINANCIAL REQUIREMENTS

An escrow agent must maintain tangible net worth of at least \$50,000 and liquid assets in excess of current liabilities of at least \$25,000 at all times. The applicant must demonstrate that it meets these requirements by the filing of audited financial statements showing that these requirements have been met. Any losses projected by the applicant during the first few months of operation as shown in their proposed budget must be taken into consideration when calculating the

tangible net worth and liquid assets. [FC Sections 17210 and 17209.]

ESCROW AGENTS' FIDELITY CORPORATION

The Escrow Agents Fidelity Corporation (EAFC) is organized for the purpose of indemnifying the members against losses sustained as a result of fraud, theft or embezzlement. [Chapter 2.5 of Division 6 of the Financial Code.]

All applicants that are required to be a member of EAFC, prior to the issuance of an Escrow Agents license, must file for membership with EAFC. Concurrent with the filing of an application for an escrow agents license, application for membership in EAFC must be submitted to EAFC. Contact Escrow Agents' Fidelity Corporation at 11150 W. Olympic Blvd., Los Angeles, CA 90064. Telephone-(310) 477-0044.

Fidelity Bond Requirements

Applicants for an escrow agent's license and licensees that are not required to be members of EAFC pursuant to Section 17312 of the Financial Code must file a minimum fidelity bond in the amount of \$125,000. The fidelity bond may be either a primary commercial blanket bond or a blanket position bond which must be written by an insurer who has been licensed by the Department of Insurance of the State of California. The fidelity bond must also contain a rider as set forth in the California Code of Regulations Section 1723(b).

The amount of fidelity bond required will be increased depending on the monthly average escrow liability of the licensee.

SURETY BOND REQUIREMENTS

Each escrow agent must maintain a surety bond of at least \$25,000. The bond is intended to be used to pay to the state or any person any amount that is due to the state or such person under the provisions of the Escrow Law. The amount of the bond required may increase up to a maximum of \$50,000 depending on the escrow liability of the company. The bond must be increased by \$5,000 for each additional licensed office. [FC Sections 17202 and 17203 and CCR Section 1718.]

In lieu of the surety bond a licensee may deposit with the Commissioner a cash bond in the amount required. The cash bond may be represented by cash deposited in a bank, industrial loan company or savings and loan association. Such cash deposits or certificates must be assigned to the Commissioner and may not be included in the assets of the licensee for purposes of the tangible net worth and liquid asset requirements. [FC Section 17202.1.]

Applicants wishing to file a cash bond should request an approved form from the Department.

EXPERIENCE REQUIREMENTS

Each escrow agent must have an individual who possesses a minimum of five (5) years of responsible escrow experience. This person must be stationed on duty during open office hours. [FC Section 17200.8.] Responsible escrow experience has been interpreted to mean experience as an escrow officer on a full-time basis for 5 years as specified in subdivision (a) of FC Section 17200.8. FC Section 17200.8 (a), however, does not apply to an Internet

escrow agent with respect to escrows involving personal property. Within the organization of each Internet escrow agent corporation engaged in the business of an escrow involving personal property, at least one qualified person that possess knowledge of accounting and the Escrow Law and regulations shall be on duty at each business location of an Internet escrow agent licensed by this division when operations are being conducted. An Internet escrow agent shall notify the commissioner of the daily business hours during which those operations are to be conducted.

REPORTING REQUIREMENTS

Each escrow agent must submit to the commissioner an audit report containing audited financial statements covering the calendar year or fiscal year within 105 days after the close of the calendar or fiscal year. Additional relevant information is also required. [FC Section 17406 and CCR Section 1741.5.]

Each licensee must file a Report of Escrow Liability for each licensed location no later than February 15th of each year. [FC Section 17348.]

ANNUAL ASSESSMENT

On or before the 30th day of May every year, the Department will assess each licensee the costs and expenses reasonably incurred in the administration of the Escrow Law. The amount of the assessment will be \$2,000 for each licensed location.

REGULATORY EXAMINATIONS

Escrow agents are subject to unannounced regulatory examinations at any time. Examinations are normally

conducted at least once every other calendar year. These examinations are performed to determine if the licensee is in compliance with all the provisions of the law and rules that apply to escrow agents. Newly licensed companies

will also be subject to more frequent visits in their first year of operation. The cost of these examinations and visits is paid for by the licensee.

GENERAL INFORMATION

All individuals named in the application are required to file fingerprint cards which must be cleared through the California Department of Justice. The fingerprint card must be witnessed by a law enforcement official. Additional information sheets, fingerprint cards and/or request for live scan service may be obtained from the Department of Financial Protection and Innovation upon request. [FC Sections 17209 and 17419 and CCR Section 1726.]

Each person named in the application will be required to file either a Statement of Identity and Questionnaire (Form FS 512 SIQ), or Statement of Identity and Employment Application (Form EL 17419).

The Department of Financial Protection and Innovation is subject to the Permit Reform Act. The Act requires the Department to act upon complete applications within a specified time period. An application is considered complete when the clearance is received from the Department of Justice and all information and exhibits required by the application have been filed with the Department. Accordingly, only applications with all required information and exhibits will be accepted for filing with the Department. Applications, which do

not include all required information and exhibits, will be returned to the applicant.

The applicant will be notified within 45 days that an application has been accepted or of any deficiencies which need to be corrected prior to further processing of the application. A license will be issued or denied within 30 days of a completed application.

WHAT YOU NEED TO KNOW AFTER YOU OBTAIN YOUR LICENSE

1. You must file a certified audit each year at your own expense.
2. You are subject to Department examinations at least once every other calendar year and will be billed for the cost of the exam.
3. You must pay an annual assessment to the Department of \$2,000 per licensed location each year.
4. You will be subject to various assessments from Escrow Agents' Fidelity Corporation each year, if you are a member of EAFC.
5. You must maintain a surety bond at all times.
6. You must maintain a minimum of \$50,000 tangible net worth and \$25,000 net liquid assets at all times.
7. You must maintain your trust and general account books and records current at all times.
8. You must file fingerprint information on all new employees within ten days of their employment.
9. An approved manager experience

must be at the licensed location at all times.

10. You must maintain a fidelity bond at all times if you are not required to be a member of EAFC or if you are engaging in non-EAFC covered escrow transactions pursuant to Section 17312 of the Financial Code.

ENFORCEMENT ACTIVITY

The activities of an Escrow Agent are highly regulated for the protection of the public that trust their funds to these companies. The Escrow Agent's operations are subject to the provisions of the Financial Code and the California Code of Regulations. Failure to comply with provisions of these laws and rules can result in administrative action being taken that can range from a cease and desist order to the Department taking possession of the company. We also will pursue criminal and civil sanctions where we feel it is appropriate. The owners of a company are responsible for the actions of the managers and employees. It is your duty to insure that the operations of the company are proper.

COMMON QUESTIONS

Q: Who is subject to the Escrow Law?

A: Anyone who performs escrow agent services is subject to the Escrow Law unless specifically exempted in FC Section 17006.

Q: Do I have to take an examination to get an escrow agents license?

A: No. There is an application that must be completed along with various exhibits listed in the application. An affidavit that the applicant has read and is familiar with

the Escrow Law and Regulations must be signed.

Q: What is the fee for filing an application for an escrow agents' license?

A: The fee for filing an application for an escrow agents' license is \$625 for the first office or location and \$425 for each additional office or location along with \$100 investigation fee for each location. These fees are not refundable. In addition, there is a Department of Justice filing fee for processing costs of the fingerprint card for each person named in the application and for each manager application filed. Please call the Department's Los Angeles office for the current rates.

Q: Where can I get the application?

A: You may obtain the application by telephoning the Los Angeles office of the Department of Financial Protection and Innovation at (213) 576-7690.

Q: Where do I file my completed application?

A: All completed applications and the applicable fees should be forwarded to the Los Angeles office:

Department of Financial Protection and
Innovation
320 W. 4th Street, Suite 750
Los Angeles, CA 90013

Q: I have heard that the Department has the authority to bar an individual from employment in the industry. Is this true?

A: Yes, The Department may bar an individual from any position of employment or other association with a licensed escrow agent, subject to appropriate administrative procedures.
[FC Section 17423.]

Information on barred persons may be obtained from the Department. Under no circumstances should your company hire a barred person.

Q: Does the Department have a web site with additional information?

A: Yes, please visit our web site at www.dfpi.ca.gov for complaint form and other information.