Advantage One
ESCROW

FOR OWNERS AND INVESTORS · 5 MINUTE READ

Buying or selling a business: bulk sale escrow

When a business changes hands in California, a bulk sale escrow gives the seller's creditors notice and pays valid claims before the seller is paid. If a liquor license is part of the deal, the state gets a say too.

What a bulk sale is

A bulk sale is the sale of a business's inventory and equipment, or most of its assets, outside the normal course of business. A restaurant or a shop sold to a new owner is a common example.

California's bulk sale law protects the seller's creditors. They get public notice that the business is changing hands, plus a chance to be paid from the sale. Done correctly, the process also helps protect the buyer from those claims later.

Who does what

A business sale has more players than a home sale:

- The buyer and seller agree on the price and terms.
- Their attorneys or business broker draft the purchase agreement and give advice.

- Escrow handles the notice and creditor claims. It holds the money and closes the sale under the signed instructions.
- The landlord and any franchisor give their approvals, and the ABC approves any liquor license transfer.

Asset sale or stock sale

Bulk sale rules apply to the sale of a business's assets. If the buyer is buying the company itself, such as its shares, different rules may apply. Your attorney will know which one fits your deal.

The notice

Before the sale can close, a notice of the sale is recorded with the county and published in a newspaper. California law sets a minimum number of business days between the notice and the closing, so the dates matter from day one.

Advantage One Escrow prepares the notice and handles the recording and publication. When the file opens, we plan the closing date around the notice period.

Creditor claims

Creditors of the business can file claims with escrow before the deadline in the notice.

Valid claims are paid from the sale price through escrow. The seller receives what remains after those claims and the other costs of the sale.

If a claim is disputed, the law and the escrow instructions decide what happens next. Escrow can't settle disputes. Talk with your attorney.

Liquor licenses

When a California liquor license is sold, state law requires the transfer to go through an escrow. The Department of Alcoholic Beverage Control, known as the ABC, must approve the transfer before the escrow can close.

That adds time and steps. The buyer applies to the ABC, and the ABC may require its own notices and review.

Advantage One has handled business and liquor license escrows for many years. Bring us in before you sign the purchase agreement, and we'll map out the dates.

Leases, franchises and permits

If the business rents its space, the landlord usually has to approve the lease transfer. Start that conversation early.

A franchise sale usually needs the franchisor's approval too. Many business licenses and permits can't be transferred, so the new owner has to apply for their own.

Escrow tracks these approvals as conditions of the sale. It doesn't negotiate them.

Taxes to ask about

A buyer can become responsible for some of the seller's unpaid taxes, including sales tax. State tax agencies can confirm whether the seller's accounts are paid up. Ask your CPA or attorney which clearances your purchase needs.

If the instructions say so, escrow can hold back part of the price until a clearance arrives.

Inventory and the final price

Some business sales price the inventory by a count taken just before closing. If yours does, the count and the final figure go into a signed amendment, and escrow adjusts the numbers.

Until closing, the seller keeps running the business. If equipment on the sale list needs to be sold or replaced before then, put the agreement in writing.

What to have ready when you open

Having these ready at the start saves days later:

- The signed purchase agreement for the business.
- The seller's business license and seller's permit.
- The liquor license, if the sale includes one.
- For any corporation or LLC in the deal, its filed articles and current statement of information.
- A Statement of Information from each buyer and seller.
- The lease, and a list of the equipment and inventory being sold.

How long it takes

A business sale takes longer than most home sales. The notice and claim periods are set by law, and a liquor license adds the ABC's review. Leave room for the landlord's review as well, since you don't control its timing.

The buyer's deposit goes into escrow's trust account, as in a home sale. Call your escrow officer at a number you found yourself before you wire it. Our wire instructions don't change. Treat any message saying they have changed as fraud.

Your attorney or business broker handles the structure of the deal. Escrow stays neutral and follows the signed instructions.

Call us at (714) 962-0999 before you sign, and we'll lay out the dates with you.

Business sale checklist

- ☐ Attorney or broker involved in the purchase agreement.
- ☐ Landlord contacted about the lease.
- ☐ Franchisor contacted, if there is one.
- ☐ ABC application started, if the sale includes a liquor license.
- ☐ Tax clearance questions raised with a CPA.
- ☐ Opening documents gathered.

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