



Special Advisory to Real Estate Brokers Conducting “Controlled” Escrows –

Enhanced Diligence Should be Used so that Individuals Who Have Been Barred or Suspended from the “Independent” Escrow Industry – or Who Have Been Terminated for the Misappropriation or Embezzlement of Funds by an Independent or Controlled Escrow(s) – are Not Employed as “Funds-Handling” Escrow Officers, Assistants, or Bookkeepers for Broker Escrows

By Wayne S. Bell, California Real Estate Commissioner

I. Introduction.

The California Bureau of Real Estate (CaIBRE) is issuing this special advisory to alert real estate brokers that some individuals who can no longer work in the “independent” escrow industry (or for other “controlled” escrows) because of theft, or the misappropriation or embezzlement of escrow funds, have been hired by real estate brokers to act as “funds-handling” escrow officers, assistants, or bookkeepers for broker controlled escrows.

And after their employment by such real estate brokers, those individuals have misappropriated and/or converted escrow funds for which the brokers are legally responsible.

II. Brief Background on Escrows in California.

The primary California law pertaining to escrows in California is known as the Escrow Law, which is enforced by the California Department of Business Oversight (CDBO). Under that law, the escrow agents are licensed by CDBO, and their officers, stockholders, directors, managers, and employees are vetted through background checks by CDBO to identify any activities that would indicate prior involvement in fraud, conversion, embezzlement, and/or misappropriation of property or funds. Moreover, the activities of the escrow agents are highly regulated under the Escrow Law.

CDBO escrow agents can perform a multitude of escrows, and the agents are referred to as “independent” or “licensed” escrows. The escrow agents licensed by CDBO are required to be members of the Escrow Agents’ Fidelity Corporation (for certain types of escrows and for the purpose of indemnification against losses caused by such things as embezzlement), and/or to file a fidelity bond with CDBO.

A carve-out in the Escrow Law permits certain “controlled” (non-independent) escrows, including an exemption for real estate brokers who conduct real property escrows where the broker is a party or an agent in connection with the property escrow and the broker is performing services requiring a real estate license.

III. Real Estate Brokers are Responsible for the Proper Handling, Maintenance, and Disbursement of the Funds in Their “Controlled” Escrows, Must Understand the Mechanics of Real Property Escrows, and Are Well Advised – and Encouraged -- to Actively and Continuously Oversee the Money Handling Processes (and only Delegate Funds-Handling Duties to Law-Abiding and Experienced Individuals).

In light of all of the foregoing, CalBRE recommends that real estate brokers take the following precautions – and to conduct enhanced diligence -- when hiring an individual (who has previously worked as an escrow officer, assistant, or bookkeeper) to perform “funds-handling” duties in broker controlled escrows:

- a. After obtaining the names of the independent escrow agents the individual has worked for, check the CDBO website (at www.dbo.ca.gov) and conduct a “Search for DBO Enforcement Actions – Actions Against Financial Services Providers (Escrow Agents and Companies)”. Brokers can also go to the CDBO website and type the name of the individual being considered into the “Search” function. That should also pull up any relevant disciplinary action(s) (such as a bar or suspension order) by CDBO.
- b. Even if no discipline is uncovered through a CDBO search, additional diligence and background checks must be done. Because it is possible that a person who has committed fraud or theft in an independent escrow or another “controlled” escrow has been terminated by the escrow entity, and no report of the basis for the termination – or of the termination itself – is reflected in the records of CDBO or elsewhere, the potential hiring broker will need to perform a thorough and extensive background check, including communications with the escrow agent(s) or any other “controlled escrow(s)” with whom the prospective employee previously worked.

If the background review is positive in that no negative information is discovered or disclosed, and the individual is hired to perform funds-handling services for broker controlled escrows, the broker is still encouraged to (and should) actively and continuously oversee all of the money handling processes (including record-keeping) of the escrows.

Brokers might also consider obtaining a fidelity bond that would protect the brokers from unlawful, dishonest and/or fraudulent acts of the individual(s) hired and entrusted to engage in escrow funds-handling.

The misappropriation or embezzlement of controlled escrow monies delivered to a broker (or even unintentional shortages in escrow accounts) can result in legal action against the broker, including administrative discipline.

Related Information: “Surviving the Real Estate ‘Escrow’ Process in California: Important Things and Tips You Should Know, and Mistakes to Avoid” – a CalBRE publication available at http://www.dre.ca.gov/files/pdf/Escrow_Info_Consumers.pdf

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