

SELLER'S CLOSING CHECKLIST

OFFER

Receive from Broker:

- Copy of signed offer/counter-offer
- (if SELLER financing) Buyer's Financial Statement, Credit Report, and Resume

ACCEPTANCE/DUE DILLIGENCE

Complete the following

- Book and record check 2
- Lease transfer application 2
- Beer & Wine License..... 2

ESCROW

- Open escrow 3

DURING ESCROW

- Allocation of purchase price 4
- County Tax Collector 4
- Employee Development Department (EDD) 4
- State Board of Equalization 5
- Fictitious Name Statement 5
- Health department walkthrough 5

Transfer/Assist Buyer with:

- Vendor credit applications 5
- Insurance-Fire, Liability, Workmen's Comp 5
- Telephone 6
- Gas & Electric/Water/Garbage 6

1 day prior to close:

- Sign Escrow closing papers 6
- Equipment check 6
- Inventory count 6

CLOSING PROCEDURE AND CHECKLIST

CONTINGENCIES

All contingencies must be removed before escrow is opened and earnest money is deposited in Escrow. BUYER must sign a separate Contingency Removal form (provided by BROKER) for each contingency. If any one of the contingencies is not completely satisfied, BUYER has the option to either: 1) Accept as is. 2) Cancel the offer and get earnest money deposit back, or: 2) Revise the offer reflecting the new facts

PRIOR TO OPENING ESCROW

BOOK AND RECORD CHECK

SELLER will provide available books and records requested by BUYER. BUYER will review books and records as specified in the offer. Upon verification, BUYER will sign Contingency Removal form. This step should be done as soon as possible in order to proceed with the remaining steps necessary to open Escrow.

LEASE ASSIGNMENT(S) / NEW LEASE(S)

- STEP 1: BROKER will provide BUYER with a copy of SELLER's current lease(s) for reference and review at time of mutual acceptance of the offer. BROKER will provide BUYER with Confidential Financial Statement, Credit Check Authorization, and Resume forms to be completed by BUYER. BROKER will contact leasing agent/landlord to obtain requirements for transfer of lease or new lease to be written.
- STEP 2: BUYER will provide completed Financial, Credit, and Resume forms to BROKER who will then provide them to the leasing agent/landlord for review.
- STEP 3: Upon approval from leasing agent/landlord, BROKER will meet with BUYER to sign assignment/new lease. To protect BUYER, new lease/assignment will be subject to completed Escrow.

LIQUOR/BEER & WINE LICENSE TRANSFER

- TIME: 8-10 weeks
- STEP 1: BROKER will make appointment with ABC to submit application. 2-4 week wait for appt.
- STEP 2: Buyer will pick up ABC forms from ABC.
San Francisco (415) 557-3660 (For businesses in San Mateo County)
San Jose (408) 277-1200 (For businesses in Santa Clara County).
- STEP 3: BUYER meets with BROKER to complete all necessary forms. Forms must be completed correctly or ABC may send you away to re-do forms if they are too incomplete or incorrect. The SELLER needs to sign a form and have it notarized. The BUYER needs to file a form with the County Clerk
Redwood City (for businesses in San Mateo County)
San Jose (For businesses in Santa Clara County)
- STEP 4: Submit forms to ABC. BROKER and All BUYERS and their Spouses (even if not on the business license) must be present for signing at the ABC office. If the spouse is not on the license, that spouse will not be able to work in the business at any time, even in emergency cases. For this reason, it may be best to include the spouse on the license. BUYER will be then given a "Public Notice" poster to post in the front window of the business within 5 days.
- STEP 5: Post "Public Notice" in window of business and mail posting notification letter (given by ABC at appointment) to ABC. It will take about 6-7 weeks for transfer from this date, at which point escrow will close.

OPENING ESCROW

OPENING ESCROW

WHEN After all contingencies have been removed in writing by BUYER
WHO: All BUYERS, SELLERS, BROKERS and an Escrow Agent
WHERE: Escrow Office
WHAT: BUYERS and SELLERS sign Escrow Instructions , authorizing the Escrow company to perform the necessary services (below). The Escrow Agent will read through all of the instructions explaining the procedure and answer any questions. The Escrow agent will give the estimated closing costs and collect and deposit the Earnest Money Deposit from BUYER.
Time: 30-60 minutes.

ESCROW

Escrow is a neutral party who does not represent either the BUYER or the SELLER. Their main function is to handle all of the money involved in the purchase, prorate expenses, draw up all instructions and documents, and search to ensure that the business is free and clear of debt so the BUYER will not assume any of the SELLER's debt and is protected from anyone in the future claiming the business owes money. Escrow generally performs the following procedures and prepares the following documents in connection with the sale of a business:

Clearances:

1. State Board of Equalization
2. Employment Development Department
3. County Tax Collector

Searches:

1. UCC-1 (Secretary of State)
2. Tax and Judgment Liens Notice to Creditors -
3. Bulk Sales Transfer notice- recorded in the County Recorder's Office and published in a local newspaper at least 12 business days before the SELLER is paid.

Settlement Accounting:

1. Proration of prepaid rents and taxes
2. Adjustments for deposits and inventory.
3. Settlement Expenses

Documents:

1. Bill of Sale - list of furniture, fixtures and equipment should be attached.
2. ABC form 227 filing (for beer & wine or liquor licenses)
3. Note and Security Agreement - for SELLER or SBA Financing
4. Financing Statement (UCC-1) - lien on assets of business for SELLER or SBA

DURING ESCROW

2 WEEKS PRIOR TO CHANGE OF POSSESSION

ALLOCATION OF PURCHASE PRICE

BUYERS to allocate purchase price in the following categories and submit to BROKER as soon as possible. BUYERS proposed allocation will be submitted to SELLER for approval, and BROKER will assist in negotiations if necessary. BUYER and SELLER should consult a qualified tax accountant for the latest information on effects of the allocation. BROKER is not qualified to give advice on tax information.

1. Inventory	\$ _____
2. Fixtures, and Equipment	\$ _____
3. Leasehold Improvements	\$ _____
4. Goodwill	\$ _____
5. Covenant not to Compete	\$ _____
6. Value of Lease	\$ _____
7. Liquor/Beer & Wine License	\$ _____
8. Other	\$ _____

COUNTY TAX COLLECTOR

The Uniform Commercial Code makes it mandatory to send a Notice to Creditors to the County Tax Collector. If the escrow is opened between **March 1 and June 1**, the Notice must also be accompanied by the Seller's 571-L, Personal Property Statement which is used for the purpose of generating the following year's tax bill. Because the bill is an unsecured lien as of March 1st, it is against the Seller, but because it covers the period of July to the following July, which is after the Buyer takes over, it is paid by the Buyer.

EMPLOYMENT DEVELOPMENT DEPARTMENT (EDD)

Because the Seller's liability to the Employment Development Department may carry over to the succeeding owner, (successor's liability) procedures for issuing a Certificate releasing the buyer from any successor's liability should be followed.

Sellers Requirements:

1. For the most recent calendar quarters preceding date of sale, file copies of form DE3 with evidence of payment such as canceled checks. If photocopies are submitted, please show reverse side of checks as well as front. This gives the date received in Sacramento and the Batch Number.
2. A closing Form DE3 with payment for current quarter.
3. Form DE43 (Reconciliation of income tax withheld together with State copies of W2's and titled listing.)
4. Payment for all amount due and owing the Employment Development by CASHIER'S CHECK, CERTIFIED CHECK, CURRENCY OR MONEY ORDER, payable to the Employment Development Department.

STATE BOARD OF EQUALIZATION

State Board of Equalization has successor's liability to succeeding owners. State Board may also put a freeze on the transfer of an ABC license and/or close of escrow until delinquent amounts are paid.

Sellers Requirements:

1. Form BT401, copies for the last three months, if paid monthly, or copies for last two quarters, if paid quarterly, plus the canceled checks or money order receipts (front and back of check.)
2. Form BT401 for current period monthly or quarterly as appropriate PLUS CASHIER'S CHECK OR MONEY ORDER for remittance.
3. Line 2 of Final Return must show the value given to fixtures and equipment (same amount as given to escrow holder.) Buyer will reimburse Seller through Escrow as instructed.

(Special Note) Seller will not be able to prepare the final return to State board of Equalization or Employment Development Department until after the Seller's final day of business. If the Buyer takes possession at Close of Escrow, then the Seller will have to leave funds in Escrow to cover any demands submitted to Escrow by these departments after Close of Escrow. The State Board will usually hold 3-4 times the actual amount owed. Once the Seller files the final return, State Board will issue a release in about 10 days to Escrow, who will then send the refund amount.

FICTITIOUS NAME STATEMENT

This statement must be renewed every 5 years. Since no notices are sent, most people forget this. So if the SELLER has filed a Fictitious Name Statement in the last 5 years:

Usually right after signing escrow closing papers, SELLER and BUYER should go together to the County Clerk's office (see appendix for agency and address) and file both Abandonment of Use of Fictitious Business Name form and Fictitious Name Statement application form.

If the SELLER has not filed a Fictitious Name Statement in the last 5 years, only the Buyer needs to file.

HEALTH DEPARTMENT WALKTHROUGH (Food businesses only)

Broker will contact the Health Department to schedule a walk-through inspection. BUYER, BROKER, and SELLER should be present during walkthrough. Any violations will be corrected by SELLER prior to close of escrow. If corrections are not made, escrow will withhold enough money to pay for needed repairs, etc.

VENDOR CREDIT APPLICATIONS

SELLER will notify all vendors with whom he receives supplies on credit to obtain credit applications. Applications should be completed and submitted to Vendors at least 2 weeks before Close of Escrow to approve the transfer of accounts.

INSURANCE

Business liability and **Fire insurance** is required by Lender and/or Landlord. Read Lender's requirements and lease for exact amounts of required coverage.

Workmen's Compensation insurance is required if there are employees. Talk to the SELLER about insurance company options. Using the same company will almost always be faster and may be cheaper. Rates vary widely, ask BROKER about normal rates.

TELEPHONE

If you intend to keep the same phone number, you must notify the phone company for the change of billing name effective date. SELLER and BUYER should get together and call the phone company. Most of the time the transfer can be done by phone. A deposit may be required by the phone company. (See appendix for agencies and addresses)

GAS & ELECTRICITY / WATER / GARBAGE

Transfer can usually be done over the phone. Have the SELLER contact the servicing company to give the date of transfer of the business. SELLER and BUYER should get together and call the companies. The company will usually prorate the charges as of the date of transfer. The BUYER may have to put up a deposit. (See appendix for agencies and addresses)

1 DAY PRIOR TO CHANGE OF POSSESSION

SIGN ESCROW CLOSING PAPERS

BROKER will notify BUYER of exact amount needed to close so that BUYER may submit final payment (CASHIER'S CHECK or MONEY ORDER) to Escrow Agent at close of escrow **or 10 days prior if an ABC license is involved**. All closing documents are signed. Funds are disbursed to SELLER via overnight mail. Escrow files all paperwork to the necessary agencies and sends copies to all parties within a few days.

EQUIPMENT CHECK

All BUYERs, SELLERs, BROKERs, and BUYER's EQUIPMENT SPECIALIST (Talk to BROKER for ideas on where to find a specialist)

BUYER to bring Furniture, Fixtures and Equipment (FF&E) list previously provided by BROKER. All equipment will be accounted for, tested and demonstrated to be in working condition, allowing for normal wear and tear due to age of equipment. Any equipment needing repair will be done so at SELLER's expense, unless otherwise specified in the Offer for Purchase. Funds will be automatically held in Escrow to ensure that any needed repairs and/ or replacement of equipment will be paid for by SELLER. BUYER and SELLER will then sign FF&E list for BROKER to send to Escrow.

INVENTORY COUNT

All BUYERs, SELLERs, and BROKERs.

SELLER should prepare a list of all types of inventory items and prices at cost, along with invoices proving these costs. SELLER and BUYER will count each item together and record and calculate the total cost of inventory. The final dollar amount will be signed by BUYER and SELLER for BROKER to send to Escrow. Purchase price (if all cash) or Note to SELLER (if SELLER financed) will be adjusted.