

(5th Ed)

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REAL ESTATE LICENSE SERVICES, 5059 NEWPORT AVENUE #209, San Diego, California 92107

Selling Business Opportunities in CA-part 2 Quiz

In accordance with those new regulations, the student must do mandatory quizzes prior to taking the final exam(s). Please note that your score on the mandatory quizzes will not determine in any way if you pass or fail your course. Only the final will determine if you pass or fail the course.

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Review for Section #1

Quiz Section #1 is to be taken after reading pages 101-105

- 1. The statute of limitations under the Bulk Sales Law is five years.
a. True b. False P.101
- 2. Under the Bulk Sales Law, a buyer may be liable for damages caused by his or her noncompliance.
a. True b. False P.102
- 3. A neighborhood tavern is subject to the Bulk Sales Law.
a. True b. False P.102
- 4. A business sale is subject to the provisions of the Bulk Sales Law when the transaction involves the sale of any part of the seller's inventory and equipment.
a. True b. False P.103
- 5. Sales of businesses between \$10,000 net and \$5 million gross are subject to the Bulk Sales Law.
a. True b. False P.103

Review for Section #2

Quiz Section #2 is to be taken after reading pages 107-113

- 1. It is the role of the broker to act as custodian and exchanger of documents in strict compliance of written instructions when handling a business opportunities sale.
a. True b. False P.107
- 2. At least 12 business days before a sale, the Notice to Creditors of Bulk Sale be recorded.
a. True b. False P.108
- 3. The Notice to Creditors of Bulk Sale must include the reason for the sale of the business.
a. True b. False P.108

- 4. When a bulk sale takes place by auction, the auctioneer has the responsibility for recording and publishing the Notice to Creditors of Bulk Sale.
a. True b. False P.109
- 5. A fictitious name statement confers the right to conduct business under any given trade name.
a. True b. False P.113

Review for Section #3

Quiz Section #3 is to be taken after reading pages 114-131

- 1. When a business being sold is under a lease agreement, the buyer must try to negotiate a new lease.
a. True b. False P.114
- 2. When a creditor's claim is filed after a sale but prior to disbursement of proceeds, the escrow holder must have the seller's approval before paying any claims.
a. True b. False P.119
- 3. When the total amount of bona fide creditor claims filed in escrow exceeds the buyer's deposit at the close of escrow, the escrow is insolvent.
a. True b. False P.120
- 4. In California, a fictitious business name statement is valid in perpetuity.
a. True b. False P.126
- 5. Good will is typically the most valuable single item of most business owners when selling their businesses.
a. True b. False P.131

Review for Section #4

Quiz Section #4 is to be taken after reading pages 132-149

- 1. The tangible commodity that creates a flow of customers and cash flow is called good will.
a. True b. False P.133

Transfer your answers to your quiz answer form.

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2. For tax purposes, the costs allocated to intangible assets may be amortized over 15 years.
a. True b. False **P.134**

3. When handling corporate stock transactions, brokers should encourage the parties to seek legal counsel.
a. True b. False **P.140**

4. Part of a business opportunities broker's job is to execute and approve an agreement of sale for corporate stock transactions.
a. True b. False **P.143**

5. Alcoholic beverage license transactions are the most common for business opportunities brokers.
a. True b. False **P.149**

Review for Section #5

Quiz Section #5 is to be taken after reading pages 149-157

1. The Department of Professions has the authority to deny, suspend, or revoke an alcoholic beverage license.
a. True b. False **P.149**

2. An on-sale liquor license is a license to sell alcoholic beverages for consumption on the premises.
a. True b. False **P.151**

3. A Type 47 alcoholic beverage license is required to sell beer, wine, and liquor at an eating place.
a. True b. False **P.151**

4. Liquor licenses are based on the population in the county of application.
a. True b. False **P.154**

5. When transferring a premises licensed for alcoholic beverages, a temporary license is good for six months.
a. True b. False **P.157**

Review for Section #6

Quiz Section #6 is to be taken after reading pages 158-173

1. An ABC issued license may not be retained in a closed business for more than 15 days.
a. True b. False **P.158**

2. The ABC does not take crime statistics into consideration when determining whether to issue a new license.
a. True b. False **P.158**

3. On-Sale and Off-Sale General Licenses are the only types of retail liquor licenses issued in California.
a. True b. False **P.171**

4. The holder of an alcoholic beverage license has

60 days to renew his license or it will be revoked.
a. True b. False **P.173**

5. An ABC issued license must be put into use within 30 days of issuance.
a. True b. False **P.173**

Review for Section #7

Quiz Section #7 is to be taken after reading pages 174-183

1. California law requires that ABC licensed premises not be within 600 feet of a church or school.
a. True b. False **P.174**

2. An alcoholic beverage license may be pledged as security.
a. True b. False **P.176**

3. When an ABC licensed business cause a disturbance of the neighborhood, the business is termed a disorderly house.
a. True b. False **P.178**

4. The lawful hours for the retail sale of alcoholic beverages is from 6 am to 12 am.
a. True b. False **P.179**

5. Requirements for the organization of a corporation are found in the California Corporations Code.
a. True b. False **P.183**

Review for Section #8

Quiz Section #8 is to be taken after reading pages 184-203

1. Unincorporated associations and corporations owning land in California are subject to taxation.
a. True b. False **P.187**

2. A W-4 form is used by businesses to determine the amount of income tax to be withheld from employees' checks.
a. True b. False **P.195**

3. Unemployment insurance is financed by employers and employees.
a. True b. False **P.196**

4. Employer contributions for unemployment insurance are paid quarterly.
a. True b. False **P.197**

5. California's disability insurance program is financed by covered workers.
a. True b. False **P.198**

(5th Ed.)

SELLING BUSINESS OPPORTUNITIES IN CALIFORNIA-PART II FINAL EXAMINATION #1

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FINAL EXAM ANSWER FORM INSTRUCTIONS

The Final Exam Answer Form is the blue answer card marked "SCANTRON Score Form No. SC881-E" Before beginning your final exam, fill in the Student Information on the Answer Form COMPLETELY. Make sure that you PRINT your name, student record number, etc. If you are also taking the course SELLING BUSINESS OPPORTUNITIES IN CALIFORNIA PART I, your answers to the PART I final exam should be filled out on the reverse side of the answer form.

Answer the 40 final exam multiple choice questions on the Final Exam Answer Form on the side marked SELLING BUSINESS OPPORTUNITIES IN CALIFORNIA PART II. Completely fill in the square of the appropriate letter (A, B, C or D).

USE A NO. 2 PENCIL ONLY. Using a pencil other than a No. 2 may cause the computer to incorrectly score your final exam. For each answer, choose the best answer and fill in the appropriate box (A, B, C or D) on the Answer Form. Fill in the box completely and dark. For example, if your answer on question 37 was "B" you would do the following:

37. [A] [C] [D]

If you need to change an answer, make sure that you erase the old answer completely.

THIS IS AN "OPEN BOOK" EXAMINATION. THE TEXTBOOK MAY BE USED DURING THE EXAM.

P.101

- 1. What is the statute of limitations under the Bulk Sales Law?
 - a. 1 year
 - b. 2 years
 - c. 5 years
 - d. 10 years

P.102

- 2. Which of the following is a correct statement about the Bulk Sales Law?
 - a. Noncompliance renders the sale void.
 - b. A buyer in noncompliance may be liable for damages.
 - c. A buyer in noncompliance is not liable for damages.
 - d. A buyer who excludes the sale from coverage under the law is liable for noncompliance.

P.102

- 3. Which of the following sales would be subject to the Bulk Sales Law?
 - a. a local computer repair business
 - b. a landscaping business
 - c. a neighborhood tavern
 - d. a financial consulting firm

P.103

- 4. A business sale is subject to the provisions of the Bulk Sales Law when:
 - a. the transaction involves a sale, except in the ordinary course of business
 - b. the transaction encompasses all of the seller's inventory and equipment
 - c. the transaction involves more than half of the value of the seller's inventory and equipment.
 - d. the transaction involves the sale of any part of the seller's inventory and equipment.

P.103

- 5. Which of the following is governed by the Bulk Sales Law?
 - a. sales of at least \$1,000.
 - b. sales of at least \$10,000 net.
 - c. the sale of any business.
 - d. sales of between \$10,000 net and \$5 million gross.

P.107

- 6. Which of the following acts as custodian and exchanger of documents in strict compliance of written instructions?
 - a. a skilled negotiator
 - b. a real estate broker
 - c. a fiduciary
 - d. an escrow holder

P.108

- 7. When must the Notice to Creditors of Bulk Sale be recorded?
 - a. 1 month before the sale
 - b. 12 days before the sale
 - c. 7 business days before the sale
 - d. 12 business days before the sale

P.109

- 8. Which of the following is not a requirement of the Notice to Creditors of Bulk Sale?
 - a. name and address of the intended seller
 - b. name and address of the intended buyer
 - c. reason for the sale
 - d. general character of the merchandise or property to be transferred.

P.109

- 9. When a bulk sale takes place by auction, who has the responsibility for recording and publishing the notice and for bulk sale compliance?
 - a. the real estate licensee
 - b. the auctioneer
 - c. the escrow firm
 - d. the seller

P.113

- 10. Which of the following is a correct statement about using a business's trade name in the Notice to Creditors of Bulk Sale?
 - a. In order to avoid confusion, a trade name should not be mentioned.
 - b. Care should be taken not to mislabel a fictitious name as a trade name.
 - c. If the seller has more than one location and each is using a different fictitious name, only the name of the main office or headquarters should be disclosed.
 - d. A fictitious name statement confers the right to conduct business under any given trade name.

P.114

- 11. When a business being sold is under a lease agreement, which of the following is generally the best way to handle the lease?
 - a. the buyer to have the lease assigned to him
 - b. the buyer to negotiate a new lease
 - c. the seller to remain party to the agreement and collect the rent from the new buyer
 - d. the seller to abandon the lease agreement and the buyer to move to a new location

P.119

- 12. What happens when a creditor's claim is filed after a sale but prior to disbursement of proceeds?
 - a. Escrow cannot close.
 - b. The seller must pay the outstanding debts.
 - c. The creditor cannot collect.
 - d. The escrow holder must have the seller's approval before paying any claims.

- P.120 13. The term describing the total amount of bona fide creditor claims filed in escrow and exceeding the buyer's deposit at the close of escrow is:
 - a. insolvent escrow
 - b. bankrupt escrow
 - c. abstract of escrow
 - d. a lien
- P.126 14. In California, how long is a fictitious business name statement valid?
 - a. 1 year
 - b. 10 years
 - c. 5 years
 - d. in perpetuity
- P.131 15. Which of the following is the most valuable single item of most business owners when selling their businesses?
 - a. the good will
 - b. the accounts receivable
 - c. the trade fixtures
 - d. the commercial lease
- P.133 16. The tangible commodity that creates a flow of customers and cash flow is termed:
 - a. patronage
 - b. good will
 - c. clientele
 - d. sponsorship
- P.134 17. For tax purposes, the costs allocated to intangible assets may be amortized over:
 - a. 5 years
 - b. 15 years
 - c. 10 years
 - d. 30 years
- P.141 18. Which of the following is a correct statement about corporate stock transactions?
 - a. Brokers should encourage parties to the transaction to seek legal counsel.
 - b. These are no different that sales involving other types of ownership.
 - c. There are no serious legal or tax consequences associated with stock transactions.
 - d. These transactions are the most simple of all.
- P.143 19. Is it proper for a broker to execute or approve an agreement of sale for corporate stock transactions?
 - a. Yes, this is the broker's job
 - b. Only if the broker is experienced in corporate stock transactions
 - c. It depends on the complexity of the transaction.
 - d. No, this could be construed as practicing law.
- P.149 20. Which of the following types of business sales are the most common for business opportunities brokers?
 - a. franchises
 - b. alcoholic beverage licenses
 - c. service businesses
 - d. corporations
- P.149 21. Which of the following has the authority to deny, suspend, or revoke an alcoholic beverage license?
 - a. Department of Corporations.
 - b. Department of Alcoholic Beverage Control.
 - c. Bureau of Real Estate.
 - d. Department of Professions.
- P.151 22. An on-sale liquor license is:
 - a. a license to periodically advertise all liquors at sales prices
 - b. a license to sell alcoholic beverages for consumption on the premises
 - c. a license to sell alcoholic beverages to go
 - d. an all-encompassing license for selling alcoholic beverages for consumption on premises or to go
- P.151 23. Which of the following is required to sell beer, wine, and liquor at an eating place?
 - a. Type 47
 - b. Type 41
 - c. Type 42
 - d. Type 40
- P.154 24. Liquor licenses are based on:
 - a. the population in the county
 - b. the amount of business generated by alcoholic sales within the area
 - c. the buyer's willing to pay the highest license fee
 - d. the business' potential for sales
- P.157 25. When transferring a premises licensed for alcoholic beverages, a temporary license is good for:
 - a. 5 days
 - b. 30 days
 - c. 120 days
 - d. 60 days
- P.158 26. An ABC issued license may not be retained in a closed business for more than:
 - a. 24 hours
 - b. 48 hours
 - c. 15 days
 - d. 5 business days
- P.158 27. The ABC is likely to deny issuing a new license in:
 - a. the month of December
 - b. high crime areas
 - c. certain ethnic areas
 - d. areas with a large population of elderly

- P.171 28. All of the following are types of ABC retail licenses except:
 - a. On-Sale General
 - b. Off-Sale General
 - c. On-Sale All Types
 - d. On-Sale Beer and Wine
- P.173 29. How long does an ABC issued license holder have to renew his license before it is revoked?
 - a. 30 days
 - b. 120 days
 - c. 90 days
 - d. 60 days
- P.173 30. An ABC issued license must be put into use within how many days of issuance?
 - a. 7
 - b. 14
 - c. 60
 - d. 30
- P.174 31. California law requires that ABC licensed premises not be within how many feet from a church or school?
 - a. not more than 50
 - b. not more than 100
 - c. not more than 500
 - d. not more than 600
- P.176 32. May an alcoholic beverage license be pledged as security?
 - a. yes because it has value
 - b. only if permission is first received from the Department
 - c. no, the license may not be pledged as security
 - d. only if the sale of the business is not intended in the immediate future
- P.178 33. When an ABC licensed business cause a disturbance of the neighborhood, it is termed a:
 - a. disorderly house
 - b. public nuisance
 - c. menace to society
 - d. public endangerment
- P.179 34. What are the lawful hours for the retail sale of alcoholic beverages?
 - a. 6 am to 12 am
 - b. 6 am to 2 am
 - c. 7 am to 12 am
 - d. 7 am to 2 am
- P.183 35. The requirements for the organization of a corporation are found in the California:
 - a. Business Code
 - b. Government Code
 - c. Professions Code
 - d. Corporations Code
- P.187 36. Which of the following are subject to taxation in California?
 - a. corporations owning land
 - b. unincorporated associations owning land
 - c. unincorporated associations performing services
 - d. all of the above
- P.195 37. In determining the amount of income tax to be withheld by employers, employees complete a:
 - a. W-2
 - b. W-3
 - c. W-4
 - d. 1099
- P.196 38. Unemployment insurance is financed by:
 - a. employees
 - b. employers
 - c. employers and employees
 - d. employer contributions and property taxes
- P.197 39. Employer contributions for unemployment insurance are paid:
 - a. monthly
 - b. semi-annually
 - c. quarterly
 - d. annually
- P.198 40. California's disability insurance program is financed by:
 - a. employers
 - b. health insurance premium tax
 - c. all employees
 - d. covered workers

NOTICE:
 When you complete this exam, these questions must be returned to your monitor with your answer sheet. Both those items must be mailed by your monitor to:

Real Estate License Services
 5059 Newport Avenue, #209
 San Diego, CA 92107

If you have any questions, please call us at (619) 222-2421.

CHAPTER 8

BULK SALES LAW

BACKGROUND

The most recent Bulk Sales Law (known as Division 6, Uniform Commercial Code Bulk Sales) took effect on January 1, 1991. This law was a complete revision of the former Division 6. It is based on the Uniform Commercial Code Article 6, Alternative B, which was approved by the National Conference of Commissioners on Uniform State Laws.

The most recent revisions attempt to address the many inadequacies and unfair burdens of the old law. The benefits to creditors under the strict compliance of the old law simply did not justify the considerable risks and burdens required of buyers in bulk sales transactions. The new law was conceived as a response to some of these problems. It reduces the burdens placed on good faith buyers in bulk sales transactions, and at the same time improves the protection available to creditors of businesses. Some of the major changes are as follows:

The law applies to transactions in which the value of the assets that might otherwise be available to creditors is \$10,000 or more up to a maximum of \$5 million. Outside of this range, the law does not apply.

- The law limits the applicable law to that of a single legal jurisdiction.
- The law extends the statute of limitations to one year.
- A buyer who makes a good faith effort to comply with the law's requirements, or one who effectively excludes the

P-2
F-1

Q

Q-1
#1-6

sale from the coverage of the law, will not be liable for noncompliance.

- A noncomplying buyer may be liable for damages caused by the noncompliance, but no longer does the noncompliance render the sale ineffective or void.

- A bulk sales transaction is defined more narrowly under the new law than under the former law, where it was known as "bulk transfer."

SUMMARY OF LAW PROVISIONS

For the brokers and specialists seeking to guide their clients through business sale transactions, it will be important to understand when the applies and when it does not. At the start, then, we will examine the following qualifications for the law's application:

- the kinds of businesses that are subject to the law;
- the kinds of transactions that are subject to the law; and
- exemptions and exempting processes under the law.

BUSINESSES THAT ARE COVERED

It must first be determined if a given type of business is subject to the law. A bulk sale will be required if the seller is located within the state, and either:

- seller's principal business is the sale of inventory from stock, including those who manufacture what they sell; or
- seller is the owner of an establishment serving alcoholic beverages.

TRANSACTIONS THAT ARE COVERED

P-2
F-4

After having established that the seller's business is covered by the law, the broker must then determine whether or not the transaction is subject to the law. The transaction is subject to its provisions if the transaction contemplated is one involving a sale, auction, or series of sales, except in the ordinary course of seller's business, and is of more than half the value of seller's inventory and equipment.

EXCEPTIONS TO COVERAGE BY THE LAW

P-2
F-5

Even though a sale may fall within the defining boundaries of the law, there may be an exception or exempting process that will allow the sale to pass around the law's application. Some of the major exceptions allowing this are the following. The law does not apply if a sale of assets (inventory, equipment, and certain kinds of personal property) is made involving assets valued less than \$10,000, net of liens and security interests, on the date of the bulk sale, or in excess of \$5 million gross on the date of the bulk sale agreement.

Q-1
#4-b

Q-1
#5-a

Compliance with the provisions of the Bulk Sales Law is also not required where:

- A transfer of personal property, where the personal property is leased back to the seller immediately following the transfer;
- A transfer is made to secure payment or performance of an obligation;
- A transfer of collateral is made to a secured party;
- Certain other kinds of secured property transactions occur;
- A general assignment is made for the benefit of creditors or to subsequent transfers;

CHAPTER 9

BULK SALE ESCROW

AN ESCROW HOLDER ACTS AS EXCHANGER

As indicated above, an escrow holder under a bulk sale escrow acts as a custodian and exchanger of documents, tendering the same to the parties in strict compliance with written escrow instructions prepared in advance by the parties or their agent(s).

In addition to fulfilling this vital role, the escrow accommodates the buyer for the filing and publishing of his "Notice to Creditors of Bulk Sale," serves as a recipient for creditor claims, and prepares and secures proper recording and filing of requisite documents to protect the interests of the parties.

The duties of a bulk sale escrow holder can become very complex and should never be entrusted to an escrow, unless duly licensed, duly bonded, and otherwise specially qualified by knowledge, training and experience to perform as such.

BROKER AS PROCURER OF INFORMATION

In order to open a bulk sale escrow, certain information is required. The primary, and generally the most credible and efficient, source of this information are the brokers whose efforts have brought the buyer and seller together into contract. When offering a transaction to the parties' designated escrow, the business broker produce a legible copy of the buy/sell contract and should take care to identify the parties, any relevant corporations or relevant legal entities involved, provide telephone and fax numbers for the various participants, as well as

P-2
F-6

Q-2
#1-b

disclosing email and residence addresses for the escrow holder's future reference.

PRELIMINARY MATTERS

Quite independently of the escrow process the broker should procure certain other relevant information from the parties (most typically, the seller), obtain express written approval for its dissemination, and share the same on a confidential basis with the other party (usually, the buyer).

Examples of the information to be procured are each of the following:

- Copies of the seller's financial records from business operations;
- Copy of the premises lease together with any/all exhibits, attachments, and amendments thereto;
- Copies of any/all executory contracts, such as equipment lease(s), maintenance or advertising agreements, and the like; and
- Copies of any/all license(s) or permit(s) to be transferred.

RECORDING

In order to comply with the Bulk Sales Law, escrow must record at least 12 business days before the consummation of the bulk sale, in the office of the County Recorder in the county or counties in which the stock in trade, fixtures and/or equipment are situated, a "Notice To Creditors Of Bulk Sale," which states the name and address of the intended seller, and the name and address of the intended buyer. The notice must contain a general statement of the character of the merchandise or property intended to be transferred and show the date and place where the purchase price or consideration is to be paid.

P-2
F-7

Q-2
#2-a

Q-2
#3-b

PUBLICATION

Escrow will publish, at least once, a copy of the Notice to Creditors of Bulk Sale in a newspaper of general circulation in the judicial district where the property is located and in the judicial district where the business principal office is located. The publication must occur not less than 12 business days before the date of the intended bulk sale. Where the intended sale is to be at public auction, the notice required to be recorded and published must state that fact, the time and place of auction, and the names and addresses of the vendor and auctioneer. Failure to comply may render the auctioneer liable for damages.

NOTICE OF BULK SALE COMPLIANCE

The purpose of recording and publishing a "Notice to Creditors of Bulk Sale" is to put the creditors of the seller on constructive notice of a prospective transfer of the seller's assets. The creditors are thereby directed to file such claims as they might have against the seller directly with the escrow holder and to do so not later than one day prior to the disclosed scheduled escrow closing date.

AUCTION

In general, the auctioneer or liquidator in a bulk sale takes on the role of buyer in meeting the compliance requirements of the law. This means an auctioneer in a bulk sale by auction has the responsibility for recording and publishing the notice, and in the event of noncompliance, it is the auctioneer who may become liable for damages.

NAMES AND ADDRESSES

It is very important that the disclosure of the seller's and the buyer's identities and addresses be complete and accurate. Where one or more corporations or other business entities are involved, special care should be taken to properly identify these,

TRADE NAME

The trade name, or trade names, under which the business has operated should be disclosed in the notice. As indicated elsewhere in this volume, a fictitious name statement does not confer the right to conduct business under any given trade name, so the preparer of any legal document should take care not to mislabel a fictitious name as a trade name. If the transferor has more than one location and each location is using a different fictitious name, all names under which the business is operating and their locations should appear in the notice.

DESCRIPTION OF PERSONAL PROPERTY

The notice should show the description of the personal property as it appears in the escrow instructions and should include the trade name if it is being sold.

STOCK IN TRADE

Stock in trade is the inventory of merchandise that is offered for sale to the public and is taxable only when sold. If seller is a manufacturing company, the inventory will be sold to a retailer with a tax permit, and the retailer will pay the tax when it is sold.

NAMES USED PAST THREE YEARS

The seller should identify to both the buyer and the escrow holder the names and addresses used by the seller within the last three years for the bulk sale Notice to Creditors. The buyer should be aware that the escrow does not verify this information and that he signs the Notice to Creditors upon his own investigation of the information therein. If the creditors should file a claim for another name, all parties in the escrow should be notified, as the Notice to Creditors may be inadequate.

DATE OF SALE

Date of sale (close of escrow) should not be set until consideration has been given regarding how long it will be before all instructions and the Notice to Creditors are signed. Enough mailing time should be allowed to give the full time required for the recording and publication of the bulk sale Notice to Creditors as required.

IF TRANSFEROR DOES NOT REVEAL ALL INFORMATION

There are times when the seller does not want to reveal all the information concerning his business until he is convinced that the buyer is serious, and buyer has made a substantial deposit for the purchase in escrow. Under these conditions, the buyer will protect his investment by contingencies in the escrow for his investigation of the business profits, approvals of leases, books, etc. If the bulk sale Notice to Creditors is recorded and becomes public knowledge, sometimes the seller will lose key employees if they think the business is sold. Also suppliers may look for distribution of products elsewhere, and this can be a deterrent to the seller's business if the escrow is cancelled.

Under these conditions the seller and the buyer may request that the Notice to Creditors not be recorded, nor published, unless until and all contingencies are waived.

PREMISES LEASE

The buyer will usually request that the lease for the business premises be assigned to him in writing and that the same bear the countersignature of the landlord signifying his approval of the assignment.

Experience has shown that this leasehold assignment proceeding can become a delicate one, often involving the friendly persuasion of lawyers in order to accomplish.

P-2
F-11

Q-3
#1-b

If the contracts cannot be cancelled and the buyer does not assume the contracts, the vendors will probably deposit a claim into the escrow for the amount of any termination fee contained in its contract, often in an amount equal to the expected income over the unexpired term of the contract.

COMMISSION

The broker's commission is to be paid at close of escrow. No commissions may be released from the escrow prior to the actual closing.

CLAIMS FILED IN ESCROW

All invoices, bills, or evidence of indebtedness and claims filed in escrow should be presented to the seller for his approval. When a claim is filed after the time of sale, but prior to disbursement of all proceeds, it should be submitted to the seller for his approval.

However, escrow holder does so as an accommodation only, and the creditor should be so advised.

BILLS SENT TO ESCROW

As bills or claims are received, an escrow holder must obtain from the seller an "approved for payment" authorization. This will avoid problems with billing errors or bills that may have been previously paid, and it will expedite the timely distribution of funds to creditors.

DISPUTED BILLS NOT APPROVED FOR PAYMENT

The time will arise when certain bills may be presented to escrow that will be disputed by the seller and not approved for payment. The escrow officer should cover this possibility by stating in the escrow instructions that the escrow holder is authorized to withhold the amount of unapproved bills for later adjustment.

P-2
F-12

Q-3
#2-a

BILLS AND CLAIMS RECEIVED IN AN UNTIMELY MANNER

Where claims are received by escrow after the published date for presentation of these, but prior to the actual disbursement of proceeds, the escrow holder is required to advise the creditor that his claim will be presented to the seller as an accommodation only. If seller elects to approve, the obligation may be satisfied from his proceeds. If not approved, the claim(s) should be returned to the sender(s) advising of their untimeliness and the seller's decision to disallow payment.


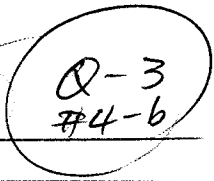
INSUFFICIENT FUNDS TO CLOSE

P-2
F-13 In the event that, at the close of escrow, the total amount of bona fide creditor claims filed in the escrow exceeds the amount of cash on deposit by the buyer, this constitutes an insolvent escrow requiring the seller to deposit additional funds sufficient to cover the deficiency. Q-3
#3-a If the seller is unable or unwilling to deposit the amount of the deficiency, the escrow holder must delay the closing and provide notice of the deficiency to the creditors within the specified time limit.

In most instances where the aggregate amount of the creditor claims closely approximates the sale proceeds (within 75 percent or so), the creditors invariably elect to authorize escrow to close, thereby receiving prorata distributions on their claims through escrow while reserving the right to pursue legal remedies against the seller outside of the escrow process. Where the aggregate of creditor claims greatly exceed the amount of sale proceeds available, this fact might result in termination of the escrow and/or a insolvency or liquidation proceeding in the courts. For this reason, it behooves the biz-ops broker to carefully review the economics of any potential distress sale in order to ascertain the relative likelihood of an eventual escrow closing and thus capably advise the buyer.

located once a week for four successive weeks. Where a new statement is required because the prior statement has expired, the new statement does not need to be published, unless there has been a change in the information required in the expired statement.

An affidavit showing the publication of the statement shall be filed with the county clerk within 30 days after the completion of the publication.

 A fictitious business name statement expires at the end of five years from December 31 of the year in which it was filed in the office of the county clerk, unless prior to its expiration, a statement of abandonment of the fictitious business name described in the statement had been filed. 

The withdrawal of a general partner does not cause a fictitious business name to expire, providing the retiring partner files a statement of withdrawal with the county clerk of the county where the partnership filed its fictitious business name statement.

Unless a notice of the dissolution of the partnership has been published pursuant to §15035.5 of the Corporations Code, the statement of withdrawal must be published in the same manner as the fictitious business name statement is published. In addition, an affidavit showing the publication of the statement must be filed with the county clerk after the completion of the publication.

Any person transacting business under a fictitious business name in the state may file a statement of abandonment of use of fictitious business name statement.

The purpose of the fictitious name filing law is to protect the consumer by enabling him to identify the person or persons with

structural improvements, and the like. Amounts allocated to these tangible items are taxable, although the buyer can generally depreciate the amount over the term of the lease.

FURNITURE, FIXTURES, AND EQUIPMENT

Virtually every business assets transaction includes a bill of sale on furniture, fixtures, and equipment. The parties generally find it convenient to allocate these items at fire sale, or liquidation value, since this portion of the transaction will be fully subject to sales tax, with little practical depreciation value to the buyer. This manner of allocation is legal, and almost never challenged by tax authorities so long as a State Board of Equalization report is submitted in a timely manner.

LEASEHOLD INTEREST

For most businesses, the most valuable single asset their proprietors own is the commercial lease for the premises at which operations are conducted. Where the unexpired term of a transferred lease is substantial on either neutral terms or terms favorable to the assigning tenant, a major portion of the purchase price should be assigned to this category. This item is generally nontaxable.

EXECUTORY CONTRACTS OR FRANCHISES

The proprietors of many businesses enjoy certain valuable contractual rights that have allocatable value. Among these might be an exclusive distributorship, a personal services agreement with a particularly skilled individual or group, a collective bargaining agreement with a labor union on reasonable terms, a promotional tie-in with a major retailer, or a franchise of a nationally known goods or services. Any such contractual entitlement that exists, and which would remain enforceable after assignment to the purchase of the relevant business warrants a major allocation figure. Being an intangible

GOODWILL

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Goodwill is an intangible commodity that, all things being equal, creates a flow of customers and in turn, a cash flow for one business as opposed to another similar business. It is one area where any allocation assigned may result in an immediate conflict between buyer and seller. Generally treated as a capital asset, the transfer of goodwill is regarded by the IRS as a taxable event and may result in favorable tax treatment for the seller.

Most businesses are sold with goodwill. The greatest difficulty may arise when and if the Internal Revenue Service should question the existence of goodwill and the amount allocated to it. The broker should be prepared with an adequate defense. Because goodwill is an intangible asset and difficult to quantify, many feel that it cannot be measured. This is not always the case. There are a variety of formulas used to assess and value goodwill that have been favorably tested in court. None of the formulae is definitive, but any one of them, and preferably more than one, can be presented to the IRS as grounds for goodwill.

One formula that has been generally accepted is the excess profit method. To determine excess profits, the owner should compute the average net earnings of his business over the last five years prior to sale. If this average is at least 10 percent of his tangible assets for the same period of time, any excess over ten percent may be used to represent good will. This figure may be capitalized at a rate of from 2 to 5, subject to negotiation between buyer and seller.

For example, suppose Ms. L sells her business to Mr. M. The average value of tangible assets for the past five years is determined to be \$200,000. The average net earnings for the same period of time is \$50,000 or 25 percent of the tangible assets. The excess over 10 percent is 15 percent of tangible assets, which comes to \$30,000. This may be capitalized at a

rate of from 2 to 5 percent to arrive at the value of good will. The broker would thus be able to justify an allocation of \$60,000 to \$150,000 to the IRS.

The good news for biz-ops brokers is that the goodwill issue rarely arises at all, and almost never in the context of an ongoing buy/sell transaction.

AMORTIZATION OF GOOD WILL AND OTHER ACQUIRED INTANGIBLES

For tax purposes, the costs allocated to intangible assets are amortized over a 15-year period beginning in the month of acquisition. Under the Tax Act of 1993, the 15-year amortization period applies regardless of the actual useful life of the intangible asset.

PRACTICE PROBLEM

The Ultimate Clip

Or, How Could I be Leaving — I Just Got Here?

Alvarez is a young recent cosmetology school graduate whose father elected to cash in a lifetime of 401 (k) benefits to finance his daughter's acquisition of a hair salon on the west side of town. Neither she nor her father found it necessary to procure the services of a business broker. "Why spend the money just to have someone do paperwork? After all, I took a business law course in junior college where I learned all about buying and selling businesses," blustered Alvarez the younger.

Baker is an experienced business broker whose office had several salons listed in the area.

Caputo owns a strip mall whose tenants include an auto parts store, a pet shop, and a hair salon known as The Hair Fair, owned and operated by DeAngelo. Unbeknownst to any of his

- written disclosure as to long term debt, including bonds, debentures, mortgages, equipment financing, and any off balance sheet financing such as equipment leases.

EXECUTION OF AGREEMENT AND ADDITIONAL DOCUMENTS

The agreement of sale (or escrow agreement) prepared by counsel should be reviewed by the broker, primarily to ensure that adequate provision is made for payment of commissions resulting from the transaction. The broker should never execute or approve of the agreement, or offer to interpret provisions of any such agreement to his buyer as doing so effectively constitutes the unlicensed practice of law and may well subject the broker to exposure for negligence in the event his client later takes exception to the results of the transaction.

PRACTICE PROBLEM

“When In Doubt, Just Form A Corporation”

Or, What could Possibly go Wrong?

Acosta had been the proprietor of a small liquor store in a rented free standing building at a busy intersection just on the outskirts of town for the past 35 years. When his wife inherited a small townhouse in Lake Tahoe, he called a long-time customer Bruce Brewster who he knew to be a real estate broker and indicated he was ready to sell his store and move on. Brewster, while indicating truthfully that he had been active as a broker for more than ten years, proved less than forthcoming in disclosing the extent of his business opportunities experience.

Upon being informed that Brewster had “lots of clients actively seeking to acquire liquor stores”, Acosta signed a Business Listing Agreement authorizing Brewster to promote the sale of his business.

CHAPTER 12

ALCOHOLIC BEVERAGE CONTROL LICENSES

INTRODUCTION

Since the majority of transactions with which business opportunities brokers become engaged involve the transfer of licenses issued by the state Alcoholic Beverage Control, at least a working knowledge of ABC regulations is required. Biz-ops agents should be familiar with the legal controls imposed upon the sale and distribution of alcoholic beverages and with the methods governing the issuance of licenses or permits to engage in the sale of alcoholic beverages.

THE DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

The Department of Alcoholic Beverage Control (commonly referred to simply as the ABC) is charged with the administration of the Alcoholic Beverage Control Act (found in Division 9 of the Business and Professions Code) and issues licenses under this statutory authority. This agency has the power to deny, suspend, or revoke any specific alcoholic beverage license. Local officials and the Department are charged with the duty of enforcing the law.

PERSONS TO WHOM LICENSES ARE ISSUED

Alcoholic beverage licenses may be issued to qualified adult persons, partnerships, fiduciaries, and corporations for use at particular premises that have been approved by the Department. The Department may refuse to issue a license to any person

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ON-SALE RETAIL LICENSES

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An on-sale beer license (Type 40 license) can be held by a premises maintained and operated for sale of beer to the public for consumption on the premises, and in which at least a minimal amount of food is sold. In such an establishment persons under the age of 21 may use the premises for the purchase of soft drinks, amusements and so forth.

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An on-sale beer and wine license for an eating place (Type 41 license) is required in order to sell beer and wine on the premises of a bona fide restaurant whose primary business is the sale of food, with alcohol sales being peripheral. An on-sale general license (Type 47 license) for an eating place is for the sale of beer, wine and liquor on the premises of the same type of establishment. Minors may use the premises of such an establishment.

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Q-5
#3-a

An on-sale beer and wine license for public premises (Type 42 license) is for an establishment whose primary business is the sale of beer and wine. An on-sale general license for public premises (Type 48 license) is for the sale of beer, wine and liquor for such a business. No one under the age of 21 may frequent the premises of such an establishment.

OFF-SALE RETAIL LICENSES

There are two basic types of retail off sale liquor licenses. The first is a Type 20, off-sale beer and wine license. This is for the sale of packaged beer and wine "to go" only. This type of license would normally be found in a convenience store. Type 21 is an off sale general license for the sale of packaged beer, wine and liquor "to go" only. This is the type of license one would normally find in a supermarket or liquor store.

straight line depreciation or from a current appraisal by an equipment dealer.

In actual practice, however, it is extremely rare for the agency, or the State Board of Equalization, to take issue with the parties' agreed allocation figures, so long as these appear reasonable, or at least not fraudulent.

VALUE OF LEASEHOLD IMPROVEMENTS

The depreciated value of leasehold improvements may be included in the price of a business with a license. If a lease on the premises is deemed financially advantageous, the value of the lease itself may also be included.

TRANSFER OF A CORPORATION'S LICENSE

When 50 percent or more of the ownership of a corporation changes, a transfer of the license to the corporation under the new ownership is required.

NEW LICENSES BASED ON POPULATION

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Liquor licenses are issued once a year by the ~~Alcoholic Beverage Control Board~~ and are based on the population in the county. One new on-sale license is allowed for each 2,000 person increase in population. One new off-sale license is allowed for each 2,500 person increase in population. State law prohibits the ABC from issuing more than 25 on-sale and 25 off-sale liquor licenses per county per year even if population increase would warrant more.

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New licenses are typically issued by lottery, held each October in each of the 58 counties in which the number of applicants exceeds the number of new licenses to be issued. Sometimes as few as 10 percent of the applicants achieve success.

escrow and obtaining the landlord's consent to the lease assignment, the license transfer stands as a critical component of any buy/sell transaction involving the assets of a licensed establishment.

DISCLOSURE OF IDENTITY OF ALL PARTIES HAVING AN INTEREST

All parties having an interest in the license or all parties whose names are on a license must sign off on the license. And each of the parties who will have an interest in the transferred license must execute the transfer application. If the names of a husband and wife appear on the license, both parties must execute the transfer application. Likewise, all parties who have an interest in the license or premises and who intend to be employed there must be disclosed and are subject to fingerprinting requirements. There is both a California fee and an FBI fee for fingerprinting.

TEMPORARY LICENSE

The buyer of a licensed premises may take over the premises on a temporary license where a transfer is involved. A temporary license requires at least five days to obtain and is good for 120 days. If the business has been closed for more than 30 days or if there is disciplinary action pending from ABC, no temporary license will be issued. Temporary licenses are issued at the discretion of the ABC.

ESCROW CANNOT CLOSE

A bulk sale escrow involving the assets of a licensed establishment cannot close until the permanent license is issued. All funds must be deposited into escrow where the transfer of a license is involved. ABC will not allow any funds to be paid outside of escrow for inventory or any other items and no funds may be disbursed by escrow until the permanent license has been issued.

WHEN PREMISES CLOSE

When an ABC licensed premises closes for any reason, the license must be surrendered to the ABC or the license will be revoked. A license may not be retained in a closed premises for over 15 days. Licenses can be put under ABC surrender for up to one year, subject to reactivation at any time during that year.

MAY NOT HAVE TWO LICENSES

A licensed premises may not have two licenses at the same time. When transferring a license from another county to a local premises via an intercounty transfer, the premises will be posted for the intercounty transfer. This will necessitate the transferring out of the existing license in the event one exists. If the new license becomes available prior to the transfer of the existing one, the existing one may be surrendered to the ABC pending its transfer to a new owner or location.

LICENSES IN A CENSUS TRACT

Since 1977, the ABC has been given the right to deny a license if there are more licenses in the census tract than the average of the total licenses in the county. Where a given census tract has a population that would warrant a specific number of Type 47 or 48 licenses, and where this geographical area is already burdened by more than this number, the ABC is likely to deny placement of any new notices in this locality.

CRIME RATE AS A SPECIAL FACTOR

In areas where crime statistics are available, if the crime rate in a given census tract is twenty percent higher than the average for the municipality at large, the ABC is likely to deny the issuance of a new license for placement in the relevant census tract. Regardless of crime statistics, it is customary for law enforcement agencies to oppose all new license applications, effectively putting the burden on the applicant to demonstrate the

A license issued under the Act is a mere permit to do that would otherwise be unlawful. Such a license is not a matter of right, but is a privilege that can be suspended or revoked by administrative action because of violation of the Act or Department Rule.

What are the Types of Retail Licenses?

On-Sale General authorizes the sale of all types of alcoholic beverages: namely, beer, wine and distilled spirits, for consumption on the premises.

Off-Sale General authorizes the sale of all types of alcoholic beverages for consumption off the premises in original, sealed containers.

On-Sale Beer & Wine authorizes the sale on the licensed premises of all types of beer, wine and malt liquor.

Off-Sale Beer & Wine authorizes the sale of all types of beer, wine and malt liquor for consumption off the premises in the original, sealed containers.

What is Meant by a “Bona Fide Eating Place”?

Licensed premises that are maintained in good faith and used for the regular service of meals to patrons. The premises must have suitable kitchen facilities and supply an assortment of foods commonly ordered at various hours of the day. It is not mandatory that any food be sold with any beverage.

What is Meant by “Public Premises”?

No minor patrons are allowed on Public Premises. There are now two classes of Public Premises:

As to On-Sale General and Beer & Wine licenses, this means premises maintained and operated for sale and service of

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served to the public, must apply for a duplicate license and pay a full annual fee for each room.

A duplicate license is not transferable by itself.

May the Department Deny the Renewal of an Existing License?

Yes, if the licensee has not paid an annual fee. Otherwise, every license now in effect (other than a temporary retail permit), is renewable unless such license has been revoked after hearing on an accusation.

When Must Licenses be Renewed?

An On-Sale license should be renewed before its expiration date, which may fall on any calendar date (in a previous era all licenses were set to expire December 31).

The penalty fee if renewed after the expiration but within 30 days is 50%, and if renewed after 30 days but within 60 days, it is 100%. After 60 days the license is automatically revoked.

How Soon Does the License Have to be Put into Use?

Any license must be in use within 30 days of the date of issuance, unless approval is received from the Department for premises under construction.

Where May Alcoholic Beverages be Stored When There is no Room for Them on the Licensed Premises?

Tax paid beer and wine may be stored anywhere. Distilled spirits may be stored in a licensed public warehouse, or petition may be made to the Department for approval of the use of a private warehouse. This private warehouse must be located in the same county as the licensed premises. The Department's approval is

necessary before placing the distilled spirits in storage in a private warehouse.

How Many Feet Must Licensed Premises be from a Church or School?

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~~The law gives the Department authority to refuse the issuance of On-Sale retail licenses for premises within 600 feet of churches and hospitals and within 600 feet of schools and public playgrounds. Generally speaking, the Department refuses to issue either On-Sale retail licenses for premises within the immediate vicinity of schools and churches when it is shown that the issuance of the licenses would be contrary to public welfare and morals. Mere proximity by itself is not sufficient.~~

May Certain Conditions be Placed Upon the Exercise of a License?

Yes. The Department, at the request of the applicant or licensee, may restrict the hours of sale, advertising, entertainment, or any condition that appears to alleviate objections to the premises' operation. Such conditions have been imposed restricting licensed operations in the vicinity of churches and schools. Additionally, conditions relating to the personal qualifications of the applicant or licensee may be endorsed upon the license.

Is There Any Type of Limitation on the Insurance of On-Sale General Licenses for Seasonal Businesses?

Such licenses may be issued on new applications for premises to be operated as bona fide eating places, which have sleeping accommodations for 30 or more persons, and are located in seasonal resort areas, where the Department finds that the issuance of the licenses is warranted because of public convenience.

going to be necessary, you should seek prior approval under §24044 before beginning actual work.

Pending Transfer of the Licenses, May the Intended Transferee Operate the Licensed Business?

The transferee may operate the licensed premises during the transfer period if a 120 day retail permit has been obtained. To qualify for this temporary permit, the premises must be currently licensed and have been operating within the past 30 days prior to application.

When the Lease on the Licensed Premises is Terminated and the Premises Must be Vacated, What is Required of the Licensee?

The licensee may apply to the nearest office of the Department for a premises to premises transfer. Such application should be made in ample time to allow for processing of application. The transfer fee is \$100 for most licenses. A licensee may surrender his/her license to the Department for one year. During this period, the licensee may transfer the license to other locations or sell the license to other persons. All renewal fees must be kept up to date during the surrender period.

Does the Law Prohibit Pledging the Transfer of a License as Security for the Fulfillment of any Agreement?

Yes. Legislation prohibits a licensee from pledging the license as security for a loan or as security for the fulfillment of any agreement. In their transfer application, both transferor and the transferee must now state under oath, that the transfer is not being made (1) to satisfy the payment of a loan or to fulfill an agreement entered into more than 90 days before the transfer application is filed, (2) to gain or establish a preference to or for any creditors of the transferor, except as permitted by Section 24074, (3) to defraud or injure any creditor of the transferor.

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misdemeanor. In addition, it is a misdemeanor for a licensee to falsify or to fail to keep books and records required to be kept under the provisions of the Act or the regulations of the Department.

Do Department Investigators and Local Peace Officers Have the Right to Visit and Inspect Licensed Premises Without a Search Warrant?

Yes. Peace officers and persons employed by the Department for the administration and enforcement may visit and inspect the premises of any licensee located on state property at any time during which the licensee is exercising the privileges authorized by his or her license on the premises.

What is a Disorderly House?

It is a premises that is maintained and causes a disturbance of the neighborhood, or is maintained for purposes that are injurious to the public morals, health, convenience or safety. Common examples of this genre are houses of prostitution, gambling dens, or "crack houses."

An alcoholic beverage licensee (or the employees of any licensee) who keeps or permits such a disorderly house is guilty of a misdemeanor, and the license is subject to disciplinary action.

If a Licensee Violates the Pure Food and Drug Laws (Health and Safety Code), May His License be Suspended or revoked?

Yes. A violation of any penal provisions of law of California prohibiting or regulating the sale, exposing for sale, use, possession, giving away, adulteration, dilution, misbranding or mislabeling of alcoholic beverages is ground for suspension or revocation of licenses.

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May Minors be Employed in the "On-Sale" Premises?

In a bona fide eating place, minors between the ages of 18 and 21, may serve alcoholic beverages in an area primarily designed and used for the sale and service of food for consumption on the premises as an incidental part of their overall duties. These minors cannot act as bartenders. No minor can be employed during business hours on the portion of any premises that is primarily designed and used for the sale and service of alcoholic beverages for consumption on the premises. There are exceptions, under limited circumstances, with respect to musicians.

May Off-Sale Licensees Hire Minors as Employees?

Yes. The law does not prohibit the employment of minors at least 18 years of age in off-sale premises. A minor under the age of 18 may be employed for the sale of alcoholic beverages in such a business only if that person is under the continuous supervision of a person 21 years or older.

May Habitual Drunkards or an Obviously Intoxicated Person be Sold Alcoholic Beverages?

No. Every person who sells, gives, furnishes or causes to be sold, furnished or given away, any alcoholic beverages to any habitual drunkard or to any obviously intoxicated person is guilty of a misdemeanor.

What are the Lawful Hours for a Retail Sale of Alcoholic Beverages?

From 6:00 a.m. to 2:00 a.m. of the following day, (unless otherwise restricted by conditions of the license). In other words, it is unlawful to sell alcoholic beverages, either by the drink or by the package, between the hours of 2 am and 6 am of the same day.

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CHAPTER 13

DOING BUSINESS IN CALIFORNIA

INTRODUCTION

Business brokers should have a basic knowledge of the various requirements, regulations, forms, fees, and offices with which the business person must deal when establishing or maintaining a business in California.

Of course, these requirements change over the course of time, so what may be true today will not necessarily be so next month. For this reason, those who would traffick in the acquisition and sale of business assets should take advantage of the opportunity to participate in seminars offered periodically by trade associations, local chambers of commerce, and such other organizations as the federal government's Service Corps of Retired Executives (SCORE).

The Employment Development Department and other state agencies disseminate at nominal cost a wide array of helpful publications with which business brokers should be familiar and should share with their clients.

As indicated above, the practicing biz-ops broker should avoid giving specific advice on day-to-day legal requirements, deferring instead to his principal's attorney, accountant or business consultant, each of whom is undoubtedly in a better position to offer counsel on which the client can safely rely.

SECRETARY OF STATE

The requirements for the organization of a corporation are found in the California Corporations Code. While it is certainly true than

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allows a direct tax credit instead of the personal exemption. Information regarding tax rates and credits may be obtained from any office of the Franchise Tax Board.

California has a comprehensive system for withholding personal income taxes that is patterned after the federal system. A companion program requires quarterly payment of estimated taxes from taxpayers not subject to withholding or who expect to have a tax liability exceeding the amount withheld. Tax returns are due on April 15 for most taxpayers, and any tax owed must be paid in full at that time.

PERSONAL INCOME TAX WITHHOLDING

Under the general delegation of authority granted by the Franchise Tax Board, the Employment Development Department administers the reporting, collection, refunding, and enforcement of state personal income taxes required to be withheld by employers. Most employers who withhold California personal income taxes already report to this Department under the law relating to unemployment and disability compensation. Therefore, consolidation of these similar employer tax functions simplifies reporting and paying and provides the most economical means of administering these programs.

In determining the tax to be withheld, employers must allow the number of exemptions claimed by the employee on federal Form W-4. If the employer is unable to determine the employee's marital status from the federal exemption certificate, the employee must be considered as single for state withholding purposes.

An employer's tax guide contains wage bracket tables for computing income tax withholding. Based on progressive tax rates, these tables automatically allow the standard deduction, credits for personal exemption, and exemption for dependents.

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The tax withheld should approximate the tax computed on the individual income tax return at the end of the year.

There are provisions for alternative methods of computing the amounts of income tax to be withheld. As in the wage bracket" method, these formulas provide for progressive tax rates and automatically allow the standard deduction, credits for personal exemption, and exemption for dependents. As indicated before, the tax withheld should approximate the tax computed on the individual income tax return at the end of the year. In special situations, an employer may apply to the Department for permission to use another method.

Employers must file and pay income tax withheld and workers contributions for state disability insurance based on federal deposit requirements. Quarterly returns are due on the first day of the month following the end of the calendar quarter and delinquent if not filed by the last day of the month.

Failure to report workers' withheld taxes may result in the application of penalty against the employer.

UNEMPLOYMENT INSURANCE

In general, employers paying more than \$100 in wages in any calendar quarter and employing one or more workers are subject to the California Unemployment Insurance Code. There are a number of exceptions, most of which are of minor significance.

Unemployment insurance is financed entirely by employer contributions. The contribution rate is determined on the basis of an employer's experience rating, the historically established relationship between the employer's reserve account (contributions made less benefits charged) and his average taxable payroll, and on the basis of the general condition of the unemployment insurance fund.

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There are two contribution schedules — high and low. The schedule in effect during a given year is determined by the relationship between the fund balance on December 31 and total subject wages paid during the year ending on the preceding June 30. The maximum and minimum employer contribution rate depends on whether the high or low schedule is in effect.

Employer contributions are payable quarterly. Generally, in order to obtain an experience rating, it is necessary to have been a participant in the system for a minimum of two years plus one day. It should be noted that the purchaser of a previously rated business may, if he or she so desires, obtain his or her predecessor's rating.

BENEFITS AND CLAIMS

The total amount of benefits a claimant may draw is determined by his or her earnings during the base period that consists of the year ending September 30, December 31, March 31 or June 30, depending upon when the claim is filed. Total benefits paid during a benefit year (the 52 weeks following the filing of a new claim) cannot exceed one-half total base period earnings or 26 times the weekly benefit amount, whichever is the lesser.

Under some circumstances, when unemployment is high, claimants can receive up to 13 additional weekly benefit payments. Such additional benefits are not charged to individual employer accounts and do not affect experience ratings.

The weekly benefit amount is determined according to a schedule on the basis of the wages paid the claimant during the base period quarter in which his total subject wages are the greatest.

When a claim is filed, notification is sent to the claimant's most recent employer and to all of his base period employers after the first benefit payment. In the event that the claimant quit

voluntarily or was discharged for misconduct, the employer, by notifying the Employment Development Department, can be relieved of any charges against his account arising from benefits that may be paid to the claimant. As was indicated above, a favorable relationship between contribution charges and payrolls reduces the contribution rate of an individual employer.

DISABILITY INSURANCE

California's disability insurance program is financed entirely by the contributions of covered workers. Employers are, however, responsible for withholding the contributions from wages and salary payments and paying the contributions to the Employment Development Department. Quarterly reports are required of all employers.

In addition, employers are required to take certain steps to insure that their employees are aware of their rights and of procedures for filing claims. Employers must also furnish information to the Employment Development Department when claims are filed.

Disability insurance coverage is the same as for unemployment insurance except for minor exceptions not applicable to business.

Employers, with the consent of the majority of their employees, have the option of providing disability insurance through a private company or by self-insuring, under a voluntary plan, provided that the terms of coverage meet standards established by the state plan that is administered by the Employment Development Department.

Disability Insurance should not be confused with workers' compensation insurance, which employers are required to carry. The latter relates to work connected injury or illness, while the former covers nonoccupational disabilities. However, if the weekly benefit rate for a workers' compensation claim is less

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