

## **PART II TRANSFER OF A BUSINESS OPPORTUNITY**

*Unless an exemption applies, a real estate license is required to engage in the listing, sale, transfer or lease of business opportunities on behalf of another or others for compensation or expectation of compensation regardless of form or time of payment.*

*The listing, sale, and lease of business opportunities is a very complex and highly specialized field. This part of the booklet provides only a brief overview of some general requirements and disclosures required of the seller and the seller's broker(s)/agent(s) in the transfer of a business opportunity. A buyer's broker(s)/agent(s) may also be required to make certain disclosures.*

**NOTE:** *Securities dealers (brokers-dealers) may engage in certain mergers and acquisitions of business opportunities without possessing a real estate broker's license.*

### **A. Definition of Business Opportunity**

The term "business opportunity" is defined in the Real Estate Law as the sale or lease of the business and goodwill of an existing business enterprise or opportunity. The sale or lease of a business usually involves the transfer of business personal property, although sometimes real property is involved. The sale or lease of a business opportunity usually includes the sale or transfer of the stock-in-trade, fixtures, and goodwill. Typical business opportunities include grocery stores, drug stores, gasoline service stations, beverage shops, bars, bakeries, among others.

*(CAL. BUS. & PROF. § 10030)*

### **B. Bulk Transfer Law**

The bulk transfer law is designed to prevent a merchant from defrauding his or her creditors by selling the assets of a business and neglecting to pay any amounts owed the creditors. The law requires notice so that creditors may take whatever legal steps are necessary to protect their interests. For a description of the required notices to creditors and the manner of giving them, consult Sections 6104 – 6107 of the Uniform Commercial Code.

Businesses subject to this law include those whose principal activity is the sale of merchandise, as well as those that manufacture what they sell. Also included are the businesses described above, among others.

Unless otherwise limited by law, bulk transfers of goods within California are subject to this law.

*(U.C.C. § 6101 et. seq.)*

### **C. Sales Tax Clearance**

Under the sales and use tax law, the State Board of Equalization must be notified before the sale of all or part of a business or the stock of goods of an enterprise engaged in selling tangible business personal property. The purpose of the notification is to obtain a certificate of tax clearance and a seller's permit.

Any unpaid sales tax could become the liability of the buyer, whose identity must be made known to the State Board of Equalization. An escrow holder will generally not close a bulk sale escrow without notice to, and clearance from, the State Board of Equalization.

*(CAL. REV. & TAX. § 6811)*

### **D. Transfer of Liquor License**

Before completing the transfer of a business involved in the sale of alcoholic beverages, the Department of Alcoholic Beverage Control (ABC) must be contacted. ABC will require that certain notices be given and that the applicant (the buyer) submit certain information before the liquor license will be transferred.

*(CAL. BUS. & PROF. § 24073)*

### **E. Franchise Investment Law**

The Franchise Investment Law requires that a prospective buyer receive detailed information about a franchise opportunity. Unless specifically exempt, every franchisor who offers a franchise for sale in California must register the sale with the Department of Corporations, and a permit from the Department of Corporations may be required in advance of such offering.

A person authorized to sell certain defined non-exempt franchises is a person who is:

- Identified in an application registered with the Corporations Commissioner for an offering of a franchise in California;
- Licensed as a real estate broker; or
- Licensed by the Corporations Commissioner as a broker-dealer or agent thereof under the Corporate Securities Law of 1968.

*(CAL. CORP. § 31210)*

## **F. Fictitious Business Name (DBA)**

Every individual or entity that regularly transacts business for profit in California under a fictitious business name must file a fictitious business name statement no later than 40 days after commencing business.

The statement, in a form prescribed by law, must be filed with the county clerk of the county of the principal place of business in the state, or if there is no place in the state, then in Sacramento.

The statement must be published in a newspaper of general circulation in the county where publication of the notice is intended and an affidavit of publication is to be filed with the appropriate county clerk within 30 days after publication.

A “fictitious business name” is:

- A name that does not include the surname of the individual owner, or a name that suggests there are any additional owners;
- A partnership name that does not include the surnames of all general partners, or a name that suggests additional owners;
- A corporate name other than that stated in the Articles of Incorporation for the corporation.

*(CAL. BUS. & PROF. § 17900 et. seq.)*

## **G. Notice of Other Government Agencies**

The buyer should be informed of other government agencies which should be contacted for permits and clearances. These include, but are not limited to:

- Internal Revenue Service for employer identification number for federal withholding taxes;
- State Department of Benefit Payments regarding state payroll tax withholding;
- State Department of Industrial Relations regarding worker’s compensation insurance; and
- Other county and municipal agencies for local licenses, permits, and information about various local requirements for operating a business.

