

## **Who Can Hold an Escrow in California?**

All escrow companies in California can be classified into two basic categories: Licensed or Controlled. “Licensed” escrow companies are independent businesses licensed by the California Department of Business Oversight. This license regulates the procedures and practices of the companies and subjects them to stringent requirements designed to protect consumers.

“Controlled” escrow companies are non-licensed businesses that can be owned by a variety of entities, including real estate brokers, mortgage brokers, banks, savings and loans, and title insurance companies. Such companies fall under the jurisdiction of a variety of supervising agencies, with regulations and requirements that vary widely. One fact remains constant, however. None of the agencies have regulations as strict as those imposed on the escrow companies licensed by the Department of Business Oversight.

## **Who is Exempt from Licensing Requirements of the Escrow Law?**

Any person doing business under any law of this state or the United States relating to banks, trust companies, building and loan or savings and loan associations, or insurance companies.

Any person licensed to practice law in California who has a bona fide client attorney relationship with a principal in a real estate or personal property transaction and who is not actively engaged in the business of an escrow agent.

Any person whose principal business is that of preparing abstracts or making searches of title that are used as a basis for the issuance of a policy of title insurance by a company doing business under any law of this state relating to insurance companies.

Any real estate broker licensed by the Real Estate Commissioner while performing acts in the course of or incidental to a real estate transaction in which the broker is an agent or a party to the transaction and in which the broker is performing an act for which a real estate license is required.

The exemptions provided for in paragraphs 2 and 4 are personal to the persons listed, and those persons may not delegate any duties other than duties performed under the direct supervision of those persons.

The exemptions provided for in paragraphs 2 and 4 are not available for any arrangement entered into for the purpose of performing escrow for more than one business.

The Escrow Law provides that the burden of proving an exemption is upon the person claiming it.