

Part 4 Protection of Creditors

32B-8a-401 Notification of creditors -- Escrow -- Priority of payments.

- (1) Before the filing of a transfer application with the department, if the intended transfer of a retail license involves consideration:
 - (a) the transferor shall provide the transferee a list of creditors who have a claim against the transferor;
 - (b) the transferee shall notify each creditor on the list provided under Subsection (1)(a) of the intended transfer;
 - (c) the transferor and the transferee shall establish an escrow with a person who is not a party to the transfer to act as escrow holder;
 - (d) the transferee shall deposit with the escrow holder the full amount of the consideration; and
 - (e) the transferor and transferee shall enter into an agreement that:
 - (i) the consideration is deposited with the escrow holder;
 - (ii) requires the escrow holder to distribute the consideration within a reasonable time after the completion of the transfer of the retail license; and
 - (iii) directs the escrow holder to distribute the consideration in accordance with Subsection (2).
- (2) Subject to the other requirements of this section, if a creditor with a claim against the transferor files the claim with the escrow holder before the escrow holder is notified by the department that the transfer is approved, the escrow holder shall distribute the consideration in the following order:
 - (a) to the payment of:
 - (i) the United States for a claim based on income or withholding taxes; and
 - (ii) a claim based on a tax other than specified in Subsection 32B-8a-201(3);
 - (b) to the payment of a claim for wages, salaries, or fringe benefits earned or accrued by an employee of the transferor before the transfer or opening of the escrow for the transfer of the retail license;
 - (c) to the payment of a claim of a secured creditor to the extent of the proceeds that arise from the sale of the security;
 - (d) to the payment of a claim on a mechanics lien;
 - (e) to the payment of:
 - (i) escrow fees;
 - (ii) a claim for prevailing brokerage fees for services rendered; and
 - (iii) a claim for reasonable attorney fees for services rendered;
 - (f) to the payment of claims:
 - (i) of a landlord, to the extent of proceeds on past due rent or lease requirements;
 - (ii) for goods sold and delivered to the retail licensee for resale at the transferor's licensed premises; and
 - (iii) for services rendered, performed, or supplied in connection with the operation of the transferor's licensed business;
 - (g) to the payment of other types of claims that are reduced to court-ordered judgments, including a claim for court-ordered support of a minor child; and
 - (h) to the payment of all other claims.

Amended by Chapter 82, 2016 General Session

32B-8a-402 Duties of escrow holder.

- (1) To act as an escrow holder under Section 32B-8a-401, a person shall comply with Title 7, Chapter 22, Regulation of Independent Escrow Agents.
- (2) Not more than 10 days after receiving a claim from a creditor, an escrow holder shall acknowledge receipt of the claim.
- (3)
 - (a) Not more than 10 days after a retail license is transferred and before the distribution of the consideration held by an escrow holder, the escrow holder shall advise each creditor who files a claim against the escrow whether there is sufficient consideration in the escrow to pay all creditors in full.
 - (b) If the consideration in an escrow is sufficient to pay all creditors in full, the escrow holder shall advise each creditor of the date on or before which payment will be made.
 - (c) If there are not sufficient assets to pay all creditors in full, the escrow holder shall advise each creditor who filed a claim of the following:
 - (i) the total assets placed in escrow with the escrow holder;
 - (ii) the nature of each asset;
 - (iii) the name of each creditor who filed a claim against the escrow and the amount of the claim;
 - (iv) the amount the escrow holder proposes to pay each creditor; and
 - (v) the date on or before which the escrow holder will pay each creditor.
- (4) An escrow holder may not release money in the escrow in exchange for:
 - (a) a promissory note; or
 - (b) any other consideration of less value to the creditors than the money exchanged.
- (5) If sufficient assets are not available in the escrow for the payment of the claims in full, the escrow holder shall pay the claims pro rata.
- (6) If the retail licensee who transfers the retail license disputes a claim, the escrow holder shall:
 - (a) notify the creditor making the claim;
 - (b) retain the amount to be paid to the creditor under this section for a period of 25 days; and
 - (c) to the extent that creditors do not successfully recover the amount described in Subsection (6)
 - (b) in accordance with this part, pay the amount to the retail licensee.
- (7) An escrow holder shall distribute the money in the escrow account after the payments made under Subsections 32B-8a-401(2) and this section within a reasonable time after the completion of the transfer of the retail license.

Revisor instructions Chapter 349, 2013 General Session
Enacted by Chapter 334, 2011 General Session

32B-8a-404 When escrow not required.

- (1) Notwithstanding the other provisions of this part, an escrow is not required to be established in connection with the transfer of a retail license if:
 - (a) a business entity files with the department a guaranty of full, prompt, and faithful payment of all claims of a creditor of the retail licensee; and
 - (b) the guaranty described in Subsection (1)(a) is accepted in writing by the creditors listed in Subsection 32B-8a-401(2).
- (2) A transfer of a retail license described in Subsection (1) is not considered complete until:
 - (a) the guarantor pays all creditors' claims in full; and
 - (b) the guarantor files with the department a statement executed under penalty of perjury that all conditions of the transfer have been satisfied.

- (3) Payment of a claim by a guarantor shall be made in United States currency or by certified check in a manner acceptable to the creditors.
- (4) This section applies only in the case of a transfer in which the guarantor business entity has a net worth on a consolidated basis, according to its most recent audited financial statement, of not less than \$5,000,000.

Revisor instructions Chapter 349, 2013 General Session
Enacted by Chapter 334, 2011 General Session