



August 2013

Chairman's Message

George Lanza, CBI, M&AMI, CSBA, MEA

How Do You Protect Your Commission?

Several years ago, a few Brokers from the California Association of Business Brokers (CABB) got together with their association attorneys after losing sizeable commissions from some crafty sellers. They discovered the use of a UCC-1 (Uniform Commercial Code-1) to help them protect their commission, a tool that could be used by any California broker. A UCC-1 financing statement is a legal form that a creditor files to give notice that it has or may have an interest in the personal property of a debtor. They developed language to include in the engagement agreement that would authorize the filing. My firm and I have greatly benefited from the work they did.

About eight years ago, I was getting ready to close a good-sized transaction with several hundred thousands of dollars in commission. But the seller decided to play games and tried to get out of paying the full commission. Fortunately, as a result of that one statement within our engagement agreement, I was able to file a UCC-1. And literally the night before closing, I was able to stop that crafty seller in his tracks!

Since escrow performed a UCC search prior to closing (guess who informed escrow to do that?), I collected the commission due to our firm. Many of you old-timers may remember that CABB actually created a life-sized poster of me holding the check which was used as an exhibit at one of the IBBA Conference Trade Shows.

Obviously since then, that one well-crafted statement has remained in our engagement agreement and we have not lost a commission. The UCC-1 is filed, commission is collected, and the UCC-1 is released. It's a simple process, but not often well received.

We have been called many things by business owners and of course their attorneys. Just three days ago we received a message from a buyer's attorney that the UCC-1 statement "represents a fly in the ointment." But guess what? We will get our commission! We will not be persuaded to stop filing a UCC-1, regardless of how well the transaction is going or the good standing we have with the seller. It protects the commission.

While attending the Anaheim conference back in June, I received several requests to disclose the verbiage included in our agreement and how the filing of UCC-1 process works. I have included the statement below:

"To the extent of the Broker's Fee, Seller hereby irrevocably assigns to Broker any sales proceeds, makes Broker a party to any escrow and grants Broker a perfectible security interest in the business, all of its assets and any proceeds in the disposition thereof."

The process works like a mechanics lien —the transaction cannot be conveyed without paying you! Please be sure to check your state regulations and laws regarding filing a UCC-1 and how to include it in your agreement.

If you would like any more particulars on the process, see me at the IBBA Conference in Savannah, Georgia, November 18-23, 2013. I will be there! Will you?

George Lanza, CBI, M&AMI, CSBA, MEA
2013 IBBA Chairman of the Board and Chief Governance Officer