

ESCROW LAW ADVISORY COMMITTEE MEETING

June 28, 2017 Minutes

Department of Business Oversight Represented by:

Edgar Gill, Senior Deputy Commissioner
Charles Lilly, Deputy Commissioner
Kathleen Partin, Supervising Examiner
Colleen Monahan, Attorney, Legal Division
Victor Wells, Deputy Commissioner, Mortgage Lending
William Mejia, Corporation Examiner IV (Supervisor) Mortgage Lending

Committee Members Present:

Nancy Silberberg, Atlas Escrow, Inc., Chairperson EIC**
Dee Ann Pope, Hallmark Escrow, Vice Chairperson, EAFC*
Dave Brooks, Seright Escrow Inc., Past Chairperson, EIC**
Julianna Tu, Viva Escrow!, Business Specialization
Alma Rushing, Orange Coast Title/Other Business Ownership
Joanna Belanger, The Escrow Source/Small Business
Jennifer Felten, Attorney, RELAW APC
Jeff Behm, CPA, Behm and Company
Dan Bovill, President EAFC
Laura Ghson, Pickford Escrow Company, Medium Size Company

Board Guests:

Ray Snytsheuvel, Paramount Rep. CMBA***
Susan Milazzo, Paramount Rep. CMBA***

*Escrow Agents Fidelity Corporation

** Escrow Institute of California

*** California Mortgage Bankers Association

1. Welcome, Introductions, and Opening Remarks

Kathleen Partin opened the meeting by thanking everyone for coming. She thanked Laura Ghson, Juliana Tu, and Jennifer Felten for their service to the Escrow Advisory Committee. Kathleen also announced their vacancies and told the group that an announcement will be sent out with a July 21 filing deadline.

2. Review and approval of minutes from December 13, 2016 meeting

Kathleen Partin asked for a motion to approve the minutes from March 14, 2016. Nancy Silberberg brought to the committee's attention that Susan Milazzo's name was incorrectly spelled. She also stated that her notes indicated that Richard Malme would be reaching out to the Bureau of Real Estate (BRE) regarding the incorporation of the escrow operations under the

BRE and wanted to know whether DBO will follow up on this matter. Kathleen said she would follow up with BRE. Nancy made the motion to approve the minutes, which was seconded.

3. Rulemaking update:

a. Proposed revisions to section 1741.5

Colleen stated that the draft proposed regulations are proceeding. It is anticipated that they could be released as an invitation for comment before the end of the year. She stated that the latest draft includes the input received previously, including agreed upon procedures and definitions that were requested by parties weighing in on the earlier draft. She concluded by saying the draft now complies with the CPA's standards and the DBO is looking forward to the comments.

b. Proposed revisions to sections 1740.2 & 1740.3

Though the revisions to sections 1740.2 and 1740.3 are assigned to a different attorney in her office, Colleen said she doesn't believe they have an update on this matter. Colleen stated that she would report back to the group with the status of these revisions.

Jeff Behm expressed his concern that these revisions are the most critical to the industry and asked what they can do to help move this forward. Colleen said that it would be helpful to inform the Department how important this is to them.

Nancy Silberberg stated that EIC is working on a letter to the Department. She expressed concern that, although these changes were initiated a few years ago, there is now only a short time to put these revisions into place because companies are making decisions now about leases that will still be in place when the new accounting rules take effect. This will affect a company's ability to meet liquidity requirements in the near future. She expressed her concern that there have not been more updates about the status of these revisions during the Advisory Committee meetings. Jeff added that when this new pronouncement takes effect it will affect not just new leases, but all leases will have to be included in the liabilities.

Ed Gill suggested that a conference call be scheduled within the next 30 days to discuss this matter. He clarified with Nancy that the initiation to set the meeting will come from her in the form of the letter she previously mentioned.

c. Posting of Escrow licensees' phone numbers and email addresses on the DBO website

Kathleen told the group that the DBO has been collecting licensee contact information with the escrow liability reports on a voluntary basis. The purpose was to put this information on the DBO website for customers who have personal property transactions with entities claiming to be licensed by the DBO. This contact information allows the customer to verify information given to them to confirm they are dealing with the licensed company.

Kathleen explained that the DBO's transfer to DocQNet changed what information could be shown on our website, but we are working on it. She explained that the system is being upgraded and this is one of the issues we are working on.

Kathleen also reminded the committee that the designated email address is something that must be updated if changed. The DBO uses these designated email addresses to send important information and updates.

4. Topics for Discussion:

a. Newly released 58-FS Bulletin

Nancy opened this topic by thanking the guests from CBMA and representatives from DBOs Mortgage Lending section for their participation in keeping open communication regarding the per diem issue. Nancy went on to explain a current big issue for escrow is providing documentation to the lender. Escrow companies provide lenders with closing statements as they have always done. However, some lenders are requiring a copy of the escrow ledger. The escrow industry feels their ledgers are proprietary and lenders do not need to have that information. So when the release came out, her intention was to have a discussion on what documentation lenders need so that everyone can agree and move forward.

Victor Wells responded by stating that the new release does clarify and make it easier to understand what is needed. Victor stated that they do not require lenders to go to escrow companies and ask for that information. They only require them to ask for the documentation that is needed to be in compliance with the code. He stated that training sessions will be offered to the industry to clarify it again. However, when the source document does not provide the information needed, examiners have to ask lenders to obtain ledgers to verify the disbursement date. He agreed that a closing statement that meets the criteria noted in the release prepared by the escrow company would be sufficient.

William Mejia stated they are looking for the actual date of when the majority of the funds were disbursed. If examiners ask for ledgers it is because they cannot determine from the information available the date funds were disbursed.

Ray Snytsheuvel stated that as a compliance officer he knows you can't always get everything right and that there should be flexibility in that matter. It was asked why the recording date isn't used as the closing date for per diem purposes. Kathleen told the group that the recording date is not the same in every state and mortgage lenders are national companies.

b. Restarting Monthly or Quarterly Escrow Bulletins

Kathleen told the group that in the past the Department prepared bulletins with just escrow topics. Now BDO's Monthly Bulletin is issued once a month. The DBO also issues Escrow Law specific bulletins and notices when there is a topic of interest. She invited the group to recommend topics they would like to see addressed or that the industry might be interested in.

c. Banking Wires and Commercial Code 11202

Nancy introduced this topic which concerns cyber theft and the fact that banks are not required under current law to compare the name of the beneficiary on a wire with the name on the bank account before crediting the account. It appears that it doesn't

matter to banks whose name is on the wire request as long as the account numbers match. This topic was put on the agenda to bring this issue to the DBO's attention in the hope that the DBO would support a change in the code to require receiving banks to confirm beneficiaries with account holders before crediting wires to the accounts.

Ed told the group that it would be difficult for the department to get behind it, but added that the escrow industry could initiate the change legislatively. Ed suggested that this subject be discussed at the next Roundtable meeting. He also stated that the Commissioner is willing to LA for that meeting.

5. New Business:

Regulatory Examination - Why so many exams in April?

Kathleen told the group that there has not been an increase in the number of examinations for the month of April. The same number of exams has been conducted each month for the last six to eight months. She explained that the DBO is working towards statutory compliance and said that goal will be achieved by the next meeting.

6. Enforcement actions and Licensing update

Kathleen provided a chart of enforcement actions to the members. She noted that there had not been much enforcement activity with escrow companies since the last meeting. Some of the actions taken included a suspension and a surrender agreement on 17420 kickback issues, one bar, and a desist and refrain order for unlicensed activity. The statistics shown on the report indicated there are less pending applications than last year. This was attributed to processing applications and issuing the licenses faster. The number of licensed locations has increased from a year ago, while 18 companies are pending surrender.

7. Public Comments

Kathleen opened the meeting to public comments.

Nancy requested that a copy of the escrow budget information be provided in response to the proposed increase in examination fees that the Commissioner mentioned during the Roundtable Meeting in Sacramento. Kathleen told Nancy that the department is currently looking at that issue. Ed informed the group that the Commissioner will be meeting with the Accounting Office on June 29th to evaluate the new numbers based on the increased number of examinations that are being performed. The annual assessment is being looked at to mitigate the actual out-of-pocket cost to each company. He assured the group that the new rate would be provided by the next Roundtable or EAC meeting, whichever came first.

8. Closing Remarks

Kathleen thanked everyone for coming and once again thanked Laura Ghosn, Juliana Tu, and Jennifer Felten for their service. Kathleen also reminded the group they are welcome to apply for the open positions. The next meeting is being set for September 12th, 2017.