

ESCROW ADVISORY COMMITTEE MEETING
March 12, 2013

Department of Corporations Represented By:

Jan Lynn Owen, Commissioner of Corporations
Kathleen Partin, Special Administrator
David Duong, Senior Examiner
Ann Davila, Escrow Licensing Specialist
Peggy Fairman, Counsel (Via Telephone Sacramento)

Committee Members Present:

P J Garcia
Scott Akerley
Juliana Tu
Paula Franks
Jeff Behm
Bill Nelson

Committee Members Absent:

Steven Garcia
Leslie Sapone
Diane Boudreau
Jennifer Woodard

1. Opening Remarks

Kathleen Partin opened the meeting and introduced Commissioner Jan Lyn Owen. The Commissioner said she was aware that the group wanted information on the reorganization of the Department, so she provided a brief summary of the progress and the expectations. She stated that the Department is “right-sizing” and mentioned that Department of Financial Institutions (DFI) is responsible for banking , money transmitters and credit unions. DFI Information Technology and Human Resources will be moving into the DOC Sacramento office. She stated that the Governor’s Office is providing help on the transition and has provided project managers. Once the process is complete, the Department will have 670+ people and will still be considered a smaller department. She then opened the meeting up for questions. A concern brought up was whether the Escrow Program would change. The Commissioner stated that the Program would not change.

**2. Follow-up items from the previous meeting were discussed as follows:
Preferred Vender Lists (J. Behm, P. Franks and J Tu)**

Paula Franks mentioned that escrow companies continue to receive notices stating that failure to comply with the lender's conditions bars the closing agent from doing business with the lender. She stated that bigger lenders are going this route and that this is going nationwide. Some escrow companies have initiated lawsuits against lenders due to loss of business.

PJ gave a history on these lender practices of requiring more from escrow agents, stating that it is getting worse. The Commissioner asked if Dodd-Frank allowed these practices. PJ stated that she did not see this under Dodd-Frank. She also produced another letter requesting vender sign-up, which also included the charging of a fee. Paula stated that it makes the escrow companies look bad when they have to stop escrow toward the end because of these requests. She stated that there are two independents in litigation with Flagstar Bank because they are not receiving business, but no reasons were given for refusing to do business with the escrow companies.

Status of Revisions to California Code of Regulations Sections 1740.2 and 1740.3 (J. Behm and P. Franks)

Commissioner stated that this item was no longer in OLP, but was now on her desk for consideration. She also stated that she may contact FASB regarding the pending accounting changes. Jeff Behm offered his help.

DRE Licensed Escrow Corporations (P. Franks)

Kathy stated that in 2011 the Department met with representatives from DRE. At the time, those in the meeting were unaware that their Department was issuing licenses to corporations with "escrow" in their name. In preparation for this agenda item, Kathy stated that she reached out to DRE to see whether this is still a practice. She received a response that it is being looked into.

3. CFPB – Formal Request for Exemption from State Regulator (P. Franks)

On this matter Kathy informed the group that the Department had not requested an exemption from CFPB for escrow agents. She stated that the industry has to take the lead on this. Paula stated that they had taken the lead and sent a letter. Beulah felt that they should not be audited under Dodd Frank and wanted exemption. PJ felt that the provision for an exemption was already in place if regulated by a State regulator. The Commissioner informed the group that as far as she knew, exemptions were not happening for anybody under Dodd-Frank.

4. Financial Crimes Enforcement Network (FinCen) Report Concerns (J. Tu)

Juliana stated that FinCen is under the Department of Treasury and coordinates anti-money laundering. She stated that their report showed 11,000 filings during 9 years but that there are well over 500+ million transactions nationwide. Juliana stated that the typology* used for the Suspicious Activity Report (SAR) is not scientific. Juliana felt that the report erroneously coded the types as assisted in ID fraud, assisted in predatory lender schemes and assisted in mortgage loan fraud without any real evidence. She felt that the report undermines the escrow companies' creditability and professionalism and will result in more of the mentality of "this is why we have to vet escrow companies." Juliana is drafting a letter on behalf of Escrow Institute that it plans to send to FinCen requesting that they have to do better disclosures since this report makes the escrow companies and the Department look bad. This is the first time that this report has been done.

*Typology is defined as the study or organized classifying of types that have qualities or characteristics that are similar.

5. Northern California Examinations – Travel Costs (J. Behm and P. Franks)

A question was posed as to whether an examiner can be assigned to San Francisco or Sacramento to cut down on traveling costs. Kathy stated that there are 31 licensed locations north of Bakersfield, which means that there are not enough licensees to justify a sole examiner, considering the 4 year cycle. She did state that the Department has an examiner in San Francisco that might be willing to cross train.

David stated that the Department uses 3 or 4 experienced examiners to do Northern California examinations; new examiners are not sent. Average exam cost is \$4,000 to \$4,500 for a 40 hour exam. Some of the issues associated with Northern California are that companies use a different system which makes the exam more difficult and time consuming. Also some companies don't do monthly reconciliations and keep electronic files instead of paper files. There are some companies that are doing a good job, though. Also, sometimes examiners request documents in advance to review in the office to save on travel expenses.

(Around this time the Commissioner excused herself as she needed to leave early.)

6. Retention of Check Copies that Include Both Sides of the Checks (J. Behm)

Kathy told the committee that the ability to review the backs of the checks is important in determining whether the checks were properly issued. Jeff stated that some banks do not want to provide such copies any longer and that maybe a bulletin should be sent out advising escrow companies to check with the bank on this before they move to a new bank.

7. Lender Instructions that Create Agency Agreements (P. Franks)

This issue was covered under Follow-up, but Paula suggested that perhaps DiAun Burns could be more helpful on this. Kathy stated that, per DiAun, it is not illegal for the lender to include items in its instructions, but that the escrow company should push back on the items they don't think they can comply with. It was stated that this situation keeps getting worse and that is why the group keeps bringing the matter to the Department.

8. Enforcement Action Update

Kathy distributed the handout showing the latest administrative actions and licensing statistics. She stated that the Department had issued two bars and one suspension against escrow officers and revoked two escrow agent licenses. She also mentioned that more companies have been paying the assessment; therefore, the number of revocations is down. The current number of licensees and locations is almost identical to that of last year.

The next meeting is tentatively scheduled for Tuesday, June 4, 2013.

The meeting adjourned at 12:40.