

**ESCROW ADVISORY COMMITTEE MEETING**  
**June 5, 2012**

**Department of Corporations Represented By:**

Louisa Broudy, Deputy Commissioner  
Kathleen Partin, Special Administrator  
David Duong, Senior Examiner  
Ann Davila, Escrow Specialist  
Peggy Fairman, Counsel (Via Telephone Sacramento)

**Committee Members Present:**

P J Garcia  
Joe Lins  
Beulah Stidham  
Steven Garcia  
Diane Boudreau  
Scott Akerley  
Jenifer Siou  
Bill Nelson  
Jennifer Woodard

**Committee Members Absent:**

Leslie Sapone

**1. Opening Remarks**

Deputy Commissioner Louisa Broudy welcomed everyone and thanked outgoing members Joe Lins, Jenifer Siou and Diane Boudreau for all the help they provided to the Department. She stated that everyone's help was appreciated. The outgoing members were encouraged to reapply if they so desired. The meeting was then turned over to Kathleen Partin.

**2. Follow-up items from the previous meeting were discussed as follows:**

**Follow-up Report on Meeting with CMBA (PJ Garcia)**

Kathy requested that PJ provide the update regarding the meeting with CMBA. PJ stated that she had drafted two forms: Authorization for Additional Per Diem Interest and Escrow Holder Confirmation of Disbursement. She gave the sample forms to Kathy. She also stated that the forms had been sent to CMBA. PJ also talked about issues with banks that state they cannot disburse funds until the bank approves the Final HUD I. This is an issue because the bank could demand its funds back, even though the transaction has recorded and loans paid off. These banks are creating a situation of an unclosable transaction. The thought was that maybe through the CMBA the bank can be approached. The mortgage company

in question is licensed by the Department of Corporations and the special administrator is aware of the situation.

**3. Status of EIC Request for Exemption from CFPB and Proposed Forms Revisions (PJ Garcia)**

Beulah stated that they are still hoping for the exemption from CFPB. Based on her meeting with members of the CFPB, she felt that those in Washington still don't understand how California processes real estate transactions. Also, it is not clear what is in the Dodd-Frank Bill that applies to settlement agents. Beulah stated that the best approach is to ask for a meeting with Mr. Cordray once the forms come out. PJ stated that if the HUD I is to be considered a disclosure form, then it is not part of escrow's duties to prepare it.

**4. Placement of Escrow Fees on HUD I Forms (PJ Garcia)**

PJ stated that auditors are saying that notary fees are to go on line 1300 of the HUD I rather than line 1100. PJ did not agree with this and gave Kathy a sheet of FAQ's detailing where fees should go. The Department's position is that a separate breakdown of fees is needed and the escrow company can comply by providing either a schedule to attach to the HUD I or prepare their own closing statement that is in compliance. David stated that he would go over the requirements with examiners.

**4. Referrals – Payment or Waving of Fees by Affiliates of Escrow Agents (B. Stidham)**

The issue of concern was regarding a new licensee that has an affiliate that provides (and charges for) HOA transfer documents. The complaint is that the company advertises that these fees are waived when the new licensee is used. Kathy went on to say that when such issues come up, the Department tries to deal with them, but some sort of written proof is needed, not just a verbal report. Kathy also informed the group that when verified unlicensed escrow activity is brought to the Department's attention, the Enforcement division issues Desist and Refrain orders. The DRE is also issuing D & R's against its licensees when it sees violation of the exemption for brokers. Jennifer Woodard inquired if having the HOA inside the escrow company office is okay. Kathy stated that they need to be separate offices so that escrow files/records cannot be accessible to anyone other than the escrow company employees. Separate entrances to the offices are not necessarily required.

**5. Stop Payment Fees on Checks to Third Parties (PJ Garcia)**

PJ inquired as to whether a fee (stop payment) may be deducted from a check when a check is reissued. Louisa stated that one of the main concerns is whether an obligation/account is considered fully paid if a fee is deducted from the original payment. Kathy went on to explain that if the general provisions warn that stop

payment fees will be paid, the Department won't take exception when charged to those who signed the escrow instructions (which does not include third parties). One thought was that a possible solution for third party checks was to request a check from the party to cover the stop payment fee and then to issue a new check. A discussion ensued regarding lost checks, checks never received, and thoughts on when fees may or may not be charged. Louisa stated that the issue will be discussed with department counsel.

**6. Accommodation Recordings – Covered by EAFC? (PJ Garcia)**

PJ brought up the topic of "Accommodations," both personal property and real estate. She wanted to know if these transactions could fall under the definition of escrows and be covered by EAFC. Dan Bovill stated that these transactions are not covered by the EAFC. The exception would be if they meet the definition of escrow and fall under Section 17312(c). That would be the only way that funds could go into the escrow trust account. It was acknowledged by the group that escrow companies are assuming some liability by handling "accommodations." Examples were given of some problems encountered in the past while doing "accommodations." The need for companies to obtain individual fidelity bonds for transactions meeting the definition of an escrow that are not covered by EAFC was also discussed.

**7. Statistics Regarding Trust Shortages of DOI and DRE licensed Settlement Agents (PJ Garcia)**

Louisa stated that the Department does not have this information and that it would have to be requested from the Departments of Insurance and Real Estate.

**8. Referral by the Department to the local District Attorney of escrow trust account embezzlement cases where EAFC has made a Proof of Loss claim payment (J. Woodard)**

Jennifer Woodard, who stated that she has served on the EAFC Board on and off, wanted to know how the group could help the Department get cases to the D.A. quicker. Bill Nelson voiced his opinion that it would be nice to recover funds if possible, but also to send a message to others as a deterrent. Kathy informed the group that the Department refers cases whenever it can. Different counties have different thresholds and some won't take the case if insurance covered the shortage. The Department also provides assistance when requested. Steven Garcia cited his unfavorable experiences with the D.A. He felt that the D.A. just didn't understand financial issues and they didn't want to deal with these types of cases. Louisa stated that usually the dollar value was too low to interest the D.A. Dan Bovill suggested that the Department send out a newsletter explaining what the Department is doing; for example, who the Department is referring to the D.A. Bill Nelson offered assistance to the D.A. to make it easier for them to understand the

case since escrow companies have first-hand knowledge. Louisa stated she would find out what the Department is able to do.

**9. Enforcement Action Update**

Kathy distributed the handout showing the latest administrative actions and licensing statistics. She stated that the numbers went down slightly since last meeting and that surrender numbers tend to go up in June due to the assessment. The Department continues to receive applications for licenses and changes of ownership. In May, six (four main and two branch) new license applications were received.

Louisa thanked everyone for coming.

The next meeting is tentatively scheduled for Thursday, September 13, 2012.

The meeting adjourned at 11:23 a.m.