

ESCROW ADVISORY COMMITTEE MEETING
December 6, 2011

Department of Corporations Represented By:

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

Committee Members Present:

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

Committee Members Absent:

Scott Akerley

1. Opening Remarks

Deputy Commissioner Louisa Broudy welcomed all the members and the meeting was then turned over to Kathleen Partin.

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

Examination Subcommittee Training and Glossary Update (K. Partin)

David stated that he had provided the Glossary to examiners and that examiners were making good use of it. He has asked examiners to provide recommendations for additional terms. He will report on this at the next meeting. The training of examiners by industry members is still being planned, but specific dates for the training have not been determined.

Short Sale Processing, Facilitating, and Negotiating (PJ Garcia)

Kathy stated that additional information is being reviewed before a final determination is made as to the extent that escrow companies can participate in short sale negotiations. Per Louisa, unlicensed activity should be reported to the DRE. The Department had a meeting with DRE representatives and

they clarified that if the negotiator has a salesperson license, that person can only negotiate transactions of the employing broker. Steven stated that commission couldn't be paid to someone that is not licensed. If working under a broker, the fee must be paid to the broker. Kathy stated that the DRE issues Desist and Refrain orders when they find a broker who does not qualify for the escrow exemption.

DRE also confirmed that per B & P Code Section 10138, it is okay to split commission checks to non-DRE licensees as long as the person receiving funds did not perform a service for which a real estate license was required. DRE also stated that any tax issues are a matter for the IRS and FTB. Corporations may look at whether paying bills from commission fees is a violation of Section 17420 if the broker would have to pay someone else to do it, such as online bill payer.

A discussion was held on how disbursements are shown on the HUD-1 for seller disbursements vs. commission disbursements. Steven Garcia stated that it was not the duty of the escrow holder to disclose breakdowns.

Status of Joint Meeting with Members from the Lending Industries (PJ Garcia)

DOC participated in a telephone meeting with a representative from CMBA. CMBA's concern is that settlement agents are not communicating with the lender when there are alternate disbursement dates, but didn't know if this was a problem with DOC licensed escrow agents. The representative stated that she would recommend internal audits to their members regarding whether funding is occurring pursuant to escrow's instructions or instructions from another source. The CMBA representative was invited to today's meeting, but could not make it today because of other commitments. Louisa stated that she is trying to schedule a meeting with the Advisory Committee and CMBA in January.

A discussion ensued on disbursement and recording dates and the problems created because of the two dates. Steven mentioned that there is also a filing date to be considered.

3. Freddie Mac Short Sale Disclosure Affidavit—Overview (B. Stidham)

Beulah gave an overview of the new affidavit that Freddie Mac is requiring regarding "arms length" transactions. Beulah voiced her feelings that this was not helpful to the escrow companies. PJ stated that escrow companies are looked upon as more than a settlement agent. She gave the example of title insurance companies. She stated that escrow companies are not insurance companies and should not be treated as such.

4. Consumer Financial Protection Bureau—Proposal to Replace HUD-1 Forms—Request for DOC Comments (PJ Garcia)

PJ wanted commentary from DOC regarding this. PJ stated that the HUD-1 should not be treated as a closing statement since it is becoming more of a disclosure statement. She expressed that it was bad to combine those functions, making the escrow company more like an agent for the lender. Her feeling was that the settlement agent should not be preparing this form as it contains loan disclosure information that is out of their hands. She stated that the settlement function should be separated from the lending function. Beulah stated that this was not a Final Statement as stated on the form. The new forms are being tested in Iowa, which is not a good example of how escrows are processed in California. The American Escrow Association, which has members in multiple states, is aware of the concerns of California settlement agents.

5. Enforcement Action Update

Kathy distributed a handout showing the latest administrative actions and licensing statistics. She stated that while there are 54 less licensees than last year at this time, part of the decrease was due to 34 revocations for failing to file the closing audit and non-payment of the escrow assessment. Such actions had not been taken at this time last year. Four new main office license applications were received during November.

6. Open Discussion

Leslie Sapone asked if DOC had any issues or problems regarding digital records during examinations. She was concerned as to whether it added to the number of hours to conduct an examination. David stated that it should not be a problem. PJ stated that it could be more time consuming.

The next meeting is tentatively scheduled for either March 6 or March 13, 2012. Kathy will confirm the date, as there were conflicts.

The meeting adjourned at 11:15 a.m.