

ESCROW ADVISORY COMMITTEE MEETING
December 7, 2010

Department of Corporations Represented By:

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

Committee Members Present:

Genia Engelstad
Joe Lins
Jenifer Siou
Beulah Stidham
Diane Boudreau
Jennifer Woodard

Committee Members Absent:

Bill Nelson
Matthew Davis
Mark Emmons
Judy Gooler

1. Opening Remarks

Deputy Commissioner Louisa Broudy opened the meeting by thanking everyone for coming. She then introduced DiAun Burns who is the Special Administrator for the CRMLA program. Louisa stated that DiAun was in attendance so that she could provide comments regarding some of the lender issues. The meeting was then turned over to Kathleen Partin.

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

Examination Subcommittee Meeting update (K. Partin)

Kathy stated that she did not receive a response as to whether the Subcommittee wanted to meet. It was decided that if this meeting was not too long, the Subcommittee would meet afterward.

Update on IFRS-U.S. GAAP Convergence Project (J. Siou)

CPA Jenifer Siou gave a short presentation summarizing some of the proposed changes that might take place in the future due to International

Financial Reporting Standards (IFRS) and the convergence projects. Jenifer stated that a lot of things are happening, but at this stage everything is “proposed.” For now, the most likely adoption date for IFRS changes is 2015. Initially a 230-page IFRS for Small and Medium sized Entities (SME’s) was drafted for Private Company Financial Reporting and the AICPA approved the use of IFRS in the U.S. However, an 18 member Blue Ribbon Panel excluded the use of IFRS for SME’s for further consideration. Seven different models were being considered initially, but it was trimmed down to three models. The panel expects to issue their final recommendations some time in December 2010. . The FASB website has the exposure draft on the pending Financial Statement reformatting. Examples of other projects in the works include Leases, Financial Statement presentation, Statement of Comprehensive Income, Fair Value, Goodwill, Revenue Recognition and Loss Contingencies. The Balance Sheet will be known by a different name and will be broken down into five parts. Jenifer passed out a sample financial statement showing proposed changes that she briefly discussed. There will be a lot of changes in the next few years in the accounting world, and the Department needs to examine if statutes have to be changed in order to handle the coming changes.

Short Sale Processing, Facilitating, and Negotiating (G. Engelstad)

This is an issue that OLP was previously reviewing. It has been determined that an employee of an escrow agent may negotiate a short sale on behalf of a principal to the escrow transaction as long as the employee is licensed to perform short sale negotiations, or exempt from licensing, under California Real Estate Law and the employee is not acting for his or her employer-escrow company in negotiating the short sale. Another business would have to be formed for the purpose of negotiating short sales as an escrow company licensed under the escrow law may not engage in any other business other than escrow services. The escrow company may handle the escrow as long as it fully discloses the conflict of interest to all parties before accepting employment.

Based on the questions asked by the committee members, further review will be needed in order to determine whether there are kickback issues with an employee of an escrow company also being employed by a real estate broker in order to qualify as a short sale negotiator.

3. Disbursement Dates – Lender Required Reimbursement for Interest Overcharges (G. Engelstad)

A discussion was held on Disbursement Dates and on how some lenders are asking escrow companies to refund 1 day or more of interest if disbursement is not made within a certain amount of time. DiAun stated that Escrow is in

the best position to know when funds are disbursed for benefit of the borrower. The lender must instruct escrow on how to determine when per diem interest begins. The escrow must determine when the loan proceeds are disbursed and begin charging per diem interest in accordance with the lender's instructions. There is nothing in the CRMLA that addresses reimbursement of per diem interest overcharges by escrow to the lender. Ultimately it is the lender's responsibility to comply with the per diem interest requirements. Beulah and Genia stated that lenders are asking for too much from escrow companies and that they are putting more responsibility on escrow companies, which will ultimately hurt consumers.

4. Demands for Future Action Placed on Escrow Agents (G. Engelstad)

A discussion was held on how lenders are asking escrow companies to take responsibility for procedures that should be considered underwriting such as investigating deposits into escrow to see that the check is from the same bank as disclosed on buyers' loan application. Escrow officers are also being asked whether the property will change hands within 180 days of the close of escrow. Escrow companies are concerned that they may be drawn into future litigation depending on how these requirements are written. In addition, lenders want to hold escrow companies responsible for acts of outside notaries. They are concerned that, with all the requirements that lenders want to put on escrow companies, it is becoming difficult for escrow companies to act as neutral agents.

5. Enforcement Action Update

Kathy briefly discussed the recent takeover of First Southwestern Escrow, Inc. which was operating 3 unlicensed locations. The Department knows there is a trust shortage, but does not know what caused it. The company's records are in Northern California. The Department is asking for help/suggestions on who can help with the records or receivership. There are about 200 boxes of records.

The Department continues to receive reports of fraudulent use of DOC licensees' names and file numbers on the Internet. The e-mail addresses and contact information for those companies that provided it with their liability reports has been added to the Department website so that internet customers can contact the actual company to confirm who they are dealing with. Licensees should check the Department's website to make sure the information is correct. Any errors should be reported to Kathleen Partin, preferably by e-mail.

Kathy distributed a handout showing the latest administrative actions and showing the licensing statistics. The number of surrenders in 2010 is almost as

many as 2009. Licensees are down from last year, but not drastically. The Department continues to receive license applications.

6. Open Discussion

A brief discussion ensued about brokers that have a separate escrow division that is a separate corporation and is doing escrow business and is not appearing on the DRE website as licensed. Kathy stated that not all DBA's are posted right away. She also asked that any unlicensed activity be reported to her.

The next meeting is scheduled for Tuesday, March 8, 2011.

The meeting adjourned at 11:50 a.m.