

**ESCROW ADVISORY COMMITTEE MEETING**  
**December 10, 2014**

**Department of Business Oversight Represented By:**

Richard Malme, Special Administrator  
Kristie Jaynes, Senior Examiner  
Ann Davila, Escrow Licensing Specialist  
Colleen Monahan, Counsel (Via Phone)

**Committee Members Present:**

Jennifer Woodard, Oak Escrow Inc., Chairperson EAFC\*  
Ginger Frankel, Mara Escrow Inc., Vice Chairperson EAFC\*  
Nancy Silberberg, Altus Escrow Inc., Chairperson EIC\*\*  
Paula Franks, Advantage One Escrow, Inc. – Past Chairperson EIC\*\*  
P J Garcia, Beach Pacific Escrow, Inc. – Past Chairperson EIC\*\*  
Jeff Behm, Behm and Company, An Accountancy Corp. - CPA  
Steven Garcia, Garcia Legal - Attorney  
Leslie Sapone, Traditional Escrow, Inc. – Medium Sized Company (Via Phone)  
Dave Brooks, – Seright Escrow- Small Business  
Heidi Birenbaum Cassel, – FNF Escrow Holdings - Other Business Ownership

**Committee Members Absent:**

Michael Culver, Elance Escrow Corporation – Business Specialization

\*EAFC – Escrow Agents' Fidelity Corporation

\*\*EIC – Escrow Institute of California

**1. Opening Remarks**

Richard Malme opened the meeting by thanking everyone for coming and introduced Nancy Silberberg and Paula Franks from Escrow Institute of California. He also informed the group that PJ Garcia was retiring.

**2. Review and Approval of the Minutes of Last Meeting**

Richard asked if he could have a motion to approve the minutes of the last meeting of September 16, 2014. A member made a motion to have the minutes approved and it was seconded; the minutes were approved.

**3. Rulemaking Update: Proposed Revisions to Section 1741.5 – Status of public comment process and committee input (Colleen Monahan)**

Colleen stated that she had received a few of comments from CPA's. One concern was that the compliance audit proposal is complex and requires much additional work to move forward. Colleen stated that the proposal is subject to

changes as we work out this process. Not too many responses have been received from the members. We are also looking at the economic impact from changes that this process will have on annual audits. Jeff Behm stated it would be helpful to see what CalCPA is proposing. Colleen stated that CalCPA only provided broad comments, but they indicated that there is a need to focus on, with the assistance of their CPA's, the "Agreed Upon Procedures" engagement as a solution. DBO is considering using agreed upon procedures to see if examining requirements can be structured to provide the high level of assurance the DBO is seeking. A discussion ensued on what is going to be required and how to best put this together. Richard stated that he would like to get this input from the committee as soon as possible. The committee agreed to consult with their CPA's and respond with proposed language for the procedures necessary to examine a trust account reconciliation for the next meeting.

#### **4. Topics for Discussion**

##### **a. Discuss the new California Association of Realtors (C.A.R) contract cancellation provisions**

Richard mentioned the memorandum that Steve Garcia had forwarded to the group regarding his concerns with the new C.A.R. contract. Heidi Cassel shared that the Department of Insurance also handles cancellations the same way and requires mutual instructions.

##### **b. DBO newsletter contents and purpose**

A comment was made that the Monthly Bulletin does not contain escrow information. Currently the bulletin basically contains information pertaining to the old Department of Financial Institutions (DFI) which is now a part of the DBO. Richard stated that possibly the C.A.R. agreement information would be appearing in a future bulletin. Richard stated that the Escrow Program did not need to produce monthly articles as changes are infrequent. He reminded the group that all previous bulletins that addressed the most popular questions were available on the DBO website.

#### **5. New Business**

##### **a. Lease Accounting Update**

Jeff Behm stated that the AICPA is not in agreement with International Standards and will produce their own lease disclosure proposal. A final draft is not out yet. Richard asked Behm to keep the Department apprised of any announcements.

##### **b. Latest vetting demands with Secured Settlements Inc.**

Nancy Silberberg stated that some lenders that are DBO licensed are ignoring the Commissioner's Bulletin that discussed the vetting issue and how it is considered "Pay to Play" if fees are required. Richard asked that specific examples of which lenders are still charging escrow companies a fee to be approved should be submitted for review.

**6. Enforcement Actions and licensing update (R. Malme)**

Richard distributed the handout showing the latest administrative actions and licensing statistics. There were 29 Orders issued since the last meeting, included in those were 4 revocations and 4 Bar Orders, all were posted to the DBO website. Currently, there are 671 main offices and 278 branch locations. Last year at this same time, there were 672 main offices. There are about 10 more branch locations since last year at this time. Currently, there are 27 pending applications for new main offices, 14 new branch applications, and 27 changes of ownership applications.

**7. Public Comments**

Patrick Felde (CPA) commented regarding the Section 1741.5 revision proposal. He commented that the committee did not include specific recommendations because the latest revision contained too many variables. He feels the DBO needs to commit as to the type of report – agreed upon procedures or compliance engagement. Once the committee knows the direction of DBO, they can help with procedures. He recommended that CPA's who are well versed in the regulations be included in the process. Felde also stated that the same type of issues involve the closing audit procedures and that maybe after Section 1741.5 was completed, the closing audit procedures could be examined. Then a discussion was held on the importance of audits and good internal control.

Michael Haas (CPA) inquired as to how CPA submissions of poorly prepared reports were going to change. Richard Malme stated that he is trying to get uniformity of process through all CPA's to ensure that DBO gets a reliable report. He stated that the DBO could consider language in the proposal allowing DBO access to CPA's workpapers for verification their work, as some federal agencies currently require. The Department also rejects CPA reports that fail to comply with current regulation. Depending on the circumstances, Special Examinations are also conducted to verify information contained in the annual reports.

**8. Closing Remarks**

Richard thanked everyone for coming.

The meeting adjourned at 11:40 a.m. The next meeting is tentatively scheduled for March 10, 2015.