

**ESCROW ADVISORY COMMITTEE MEETING
MINUTES
June 21, 2016**

Department of Business Oversight Represented By:

Edgar Gill, Senior Deputy Commissioner
Chuck Lilly, Deputy Commissioner
Richard Malme, Special Administrator
Kathleen Partin, Supervising Examiner
Ann Davila, Escrow Licensing Specialist
Martha Martin, Executive Secretary

Committee Members Present:

Nancy Silberberg, Altus Escrow Inc., Chairperson EIC**
Jeff Behm, Behm and Company, Accountancy Corp. - CPA
Heidi Birenbaum Cassel, FNF Escrow Holdings - Other Business Ownership
Dee Anna Pope, Hallmark Escrow, Vice Chairperson EAFC*
Dave Brooks, Seright Escrow - Small Business
Jennifer Felten, Attorney - RELAW APC (via phone)
Juliana Tu, Business Specialization - Viva Escrow!
Laura Ghosn, Medium Sized Company - Pickford Escrow Company, Inc. (via phone)
Beulah Stidham, Immediate Past Chairperson, EIC**

Committee Members Absent:

Bill Nelson, Chairperson, EAFC*

*EAFC – Escrow Agents’ Fidelity Corporation

**EIC – Escrow Institute of California

1. Opening Remarks

Richard Malme opened the meeting by thanking everyone for coming and asked that phone participants introduce themselves. Richard introduced all of the DBO participants.

2. Review and Approval of the Minutes of Last Meeting

Richard Malme asked if he could have a motion to approve the minutes of March 15, 2016. Nancy Silberberg made a motion to have the minutes approved with the correction of including Beulah Stidham as being present at the last meeting, and also the correction of the prior minutes (December 8, 2015) to add to items 5 (a) the platform RealEC and Closing Insight. The motion was seconded by Dave Brooks and the minutes were approved.

3. **Rulemaking Update: Proposed Revisions to Section 1741.5**

Richard stated that he did not have the 1741.5 handout at this time. Colleen Monahan has been working on it, as well as Richard and Kathy Partin.

The re-write of the CPA instructions is to accommodate the CPA's own rules using the "Agreed Upon Procedures" engagement. The second part has to do with modifying the definitions of liquid assets and current liabilities to accommodate the change in lease accounting rules by the AICPA. Nancy Silberberg asked if committee could get a copy of what was proposed. Richard stated he would check and get back on this request. He further stated that any changes will be put out for public comment again.

4. **Topics for Discussion**

a. Task force of escrow and DBO lenders roundtable

Richard turned the meeting over to Ed Gill. Ed informed the group that a roundtable meeting with mortgage licensees is scheduled for June 29, 2016. Ed is asking Richard Malme to attend to be a voice for the escrow companies. Richard will voice the concerns of the escrow industry committee members.

b. Cyber Security and proper internal controls

Richard stated that in the situation of cyber attacks, the Department expects companies to proactively protect themselves. The Department reviews cyber activity on a case-by-case basis. The company is required to notify the Department immediately of a cyber-attack. It is up to the licensee to replace the missing funds. Richard shared that on one occasion the E & O insurance covered the loss. Last minute escrow instructions should be verified with the principal. Section 1738.2 requires that escrow companies follow only the instructions of the principals.

Matthew Davis (attorney) expressed his concerns and how some cases conflict with the regulations. He stated that sometimes when working with the FBI it may take 48 -72 hours to get back funds, but the Department requires 24 hours. Richard stated the Department always works with licensees if there is a reasonable plan to recover the funds.

Rose Pothier (attorney) commented (via phone) that she was concerned about the Commissioner's April 29 Brief in which such language as "you must proactively train your staff" and words like "never" were used. She is concerned that this wording can be considered as underground regulations. Licensees should be able to go to the Financial Code and Regulation to refer to this. She stated that we should be thinking about proposing regulations to set a standard. Jennifer Felten agreed with Rose and wants everybody to be on the same page. Richard said that the Commissioner's Brief was not underground regulation, but a notice of concern and guidance by the DBO to its licensees to counter the increasing trend of cyber theft in this industry.

Rose went on further to state that new licensee applicants would not be aware of this information. How will they know? Richard stated companies can obtain and adopt internal control policies through their attorneys, IT experts, CPA's, trade associations, and the Management Class for new managers. The DBO website has all of the DBO published bulletins and notices. Rose requested written regulations to establish the standard. Richard stated that section 1738. 2 CCR is the regulation on disbursements for the Department. DBO enforcement actions are based on existing laws prohibiting unauthorized disbursements, trust shortages, and reckless disbursement. Proper internal controls can minimize these risks.

5. New Business

a. EAC Positions Opening in September 2016

Richard stated that committee openings in September 2016 are for small size business, other business ownership, and for CPA. A notice for these openings will go out on July 1. The Commissioner will review the applications and make the selections. The close date for submitting applications is July 31. The new members will attend the next meeting, along with the outgoing members.

b. Adding Additional Licensee Contact Information on DBO Website

Nancy Silberberg asked if the phone numbers and email addresses of escrow companies could be added to the Department's website that shows the Department's licensees. She thought this would be good for the public and for lenders to verify information. Richard will contact IT to see if possible. Ed Gill stated that the request can be put in as an enhancement, but that currently the Department has six laws that IT is working with on a queue of requests.

c. DBO Budget Update for 2016-17

Per Richard indications are that the Department will not have to issue a special assessment. Nancy stated that she would like a budget breakdown of the numbers to compare. She stated that she will send an email request for this.

6. Enforcement actions and licensing update

Richard distributed the handout showing the latest administrative actions (total of 12) and licensing statistics. He mentioned that there were two revocations in the group. Surrenders are at about one per month. Currently there are 83 pending applications of various types. As of May 31, 2016 there are 963 licensed locations, with 649 main locations. In 2015 there were 919 locations with 637 main locations.

7. Public Comments

Jacqueline Cheou of Champion Escrow shared that she was blacklisted by lender bank Flagstar. She is having difficulty finding out why, but feels that it is because she did not release the seller's wire instructions. She stated that she cannot release this information without breaking other laws. Flagstar (a federally regulated national bank) again told principals they cannot use the company and she is trying to find out why. She considers this extortion and bullying. She stated that lenders are making unreasonable demands and if escrow companies don't comply, they are being blacklisted. Her feeling was that companies are being required to violate privacy laws by providing confidential personal information on parties not related to the loan in order not to be blacklisted. It was noted that mortgage brokers have access to ineligible lists.

Richard stated that he can express their concerns at the roundtable forum coming up on June 29 with mortgage lenders.

Juliana Tu wanted clarification on a "thing of value" as this referral fee exception was brought up during her examination that concluded in May. In the past, she has provided training to some brokers and did not realize the training was considered a thing of value. Richard and Kathy asked her to look at the Bulletin that covered this and told her that there are many things that fall under this category, such as training, lunch, the sponsoring of events, etc. If someone is providing training to the general realty board it is okay, but providing training to a specific broker is considered a violation.

Someone asked if they could find out who was attending the mortgage lenders forum on June 29. However, this is still a work in progress and will consist of a roundtable meeting with the Commissioner in Sacramento. After the meeting takes place, the Department can publish the list.

8. Closing Remarks

Richard thanked everyone for coming and stated that the Department appreciates their input and feedback. The group also thanked the Department for being at the recent EIC conference.

The meeting adjourned at 12:00 p.m. The next meeting is tentatively scheduled for Tuesday, September 13, 2016.