

Escrow Advisory Meeting

June 5, 2018
10:00 A.M. – 10:45 A.M.
320 W. 4th St., 7th Floor Conference Room
Los Angeles, CA 90013

Department of Business Oversight Represented by:

Edgar Gill, Senior Deputy Commissioner
Mona Elsheikh, Deputy Commissioner
Sherri Kaufman, Senior Counsel ***
Kathleen Partin, Special Administrator - Regulatory
Paul Liang, Special Administrator – Licensing
Sultanna Wan, Senior Examiner (Specialist)

Committee Member Present:

Bill Nelson, Express Escrow, Inc./EAFC Chairperson ***
Claire Bartos, Las Brisas Escrow, Inc./Chairperson EIC *
Nancy Silberberg, Altus Escrow, Inc./ Past Chairperson EIC *
Jeff Behm, Behm and Company/Certified Public Accountant
Elisa Guerrero, Four Seasons Escrow, Inc./Medium Sized Escrow Company
Alma Rushing, Orange Coast Title Company/Other Business Ownership ***
Benjamin Griffin, Prenovost, Normandin, Bergh & Dawe/Attorney
Joanna Belanger, The Escrow Source, Inc./Small Business
Jennifer Woodard, Oak Escrow Inc./EAFC Vice Chairperson ***

* Escrow Institute of California
** Escrow Agents' Fidelity Corporation
*** Attended meeting via call-in to the conference line

I. Welcome, introductions, and opening remarks

Ed Gill welcomed everybody to the meeting. Partin asked the call-in participants to introduce themselves and introduced Paul Liang as the new Special Administrator for the Escrow Licensing Unit.

II. Review and approval of March 13, 2018 meeting minutes

Kathleen Partin asked for approval of the last minutes. Jeff Behm stated that page 2, 3B, last sentence needed to be amended to read, "The upcoming changes may cause the current liabilities to increase many times over." Jennifer Woodard asked that she be added to the list of attendees.

Nancy Silberberg moved approval of the minutes, and the motion was seconded by Claire Bartos. The minutes were approved.

III. Rulemaking update:

A. Status of proposed revisions to section 1741.5

Partin explained 1741.5 contains the instructions for CPAs regarding the preparation of annual audited reports. Behm asked whether the CalCPA has responded back to the DBO's inquiry, and Sherri Kaufman said no. The Department has not determined whether the procedures for the closing audit report will be separated from the annual report. Behm asked if Kaufman had the procedures that were written in 2015, and she said yes.

B. Status of proposed revisions to section 1740.2 & 1740.3

Partin stated that these sections concern the treatment of leases. Gill indicated the DBO understands the escrow industry's position on the issues. After discussions with the Commissioner and considering legal issues, he said the DBO is not accepting the industry's petition for change, but added the DBO is not opposing any other options or remedies the industry may pursue.

Jennifer Felton thanked the DBO for not opposing the industry's effort to obtain a legislative solution. She said the DBO's position provided the industry the clarity needed to move forward.

IV. Escrow Advisory Committee openings

Partin thanked three members whose term of service on the Committee will expire in September: Jeff Behm, Joanna Belanger and Alma Rushing. Partin said she will soon send out an email to the industry seeking new members to fill these positions. Interested parties should send their resumes or letters of qualification to Partin, who will forward them to the Commissioner for consideration. The deadline for submitting applications is July 17, 2018.

V. Enforcement actions and licensing update

Partin presented a chart of administrative actions taken since the last meeting. Partin reported there were 20 enforcement actions, including one suspension order issued for failure to maintain a surety bond. The enforcement actions included: One suspension order for failure to meet financial requirements; two orders and one accusation to revoke licenses for failure to file reports, including closing audits; one cease and desist order for unlicensed activity; two orders to discontinue violations – one for trust shortages and one for failure to meet financial requirements; and two accusations to bar individuals for trust account shortages.

As of 5/31/18, there were 666 licensed escrow companies with 990 licensed locations. This is a decrease of one licensed company and an increase of one location since the last meeting.

VI. Public comments

Silberberg stated the escrow industry is slowing down, and she sees an increase in RESPA violations, including payments of TC (transaction coordinator) fees for up to \$300, open houses, etc. She said she had written a letter to the DBO previously regarding free casino nights and poker games offered to real

estate agents. Silberberg expressed frustration over the situation and asked how could the DBO stop these violations and take action against violators.

PJ Garcia added that independent escrow companies receive a lot of pressure from agents and companies with BRE co-ownership, making it hard for them to compete. She mentioned some escrow agents have access to multiple listing information that gives them an advantage in directly contacting listing agents and their customers that most escrow agents don't have due to membership requirements. She said the escrow industry wants fair competition and asked about the possibility of joint actions between the DBO and BRE.

Matthew Davis, who called-in as a member of the public, indicated that while the DBO does not regulate charges, he believes it is a violation of section 17420 when a free escrow or discount is offered to one side, the seller, and not to the other side. He said the listing agents use free escrow fees to the seller as a means of obtaining business, and the agent is actually receiving something of value. Partin requested some examples, and Davis said he would look for them and provide what he finds.

Griffin stated DBO and BRE joint actions can be difficult due to their different departmental set-ups. He asked when documents, flyers or marketing materials are received from the BRE relating to escrow agents, is there a preferred method by the DBO for addressing the complaints. Partin responded that when reports are received from BRE, the DBO always treat them as priority. Gill added the DBO has been sharing information regarding violations with other agencies.

Silberberg suggested BRE be invited to an Advisory Committee meeting. Felton said she can make the connection with BRE and will forward the BRE ombudsman's contact information to Partin.

VII. Closing remarks

Partin adjourned the meeting and said the next meeting is tentatively scheduled September 11, 2018.