

ESCROW ADVISORY COMMITTEE MEETING

June 20, 2019

2:00 PM – 4:00 PM

300 S. Spring Street, 15th Floor Video Conference Room, Los Angeles, CA 90013

Department of Business Oversight Represented by:

Edgar Gill, Senior Deputy Commissioner
Mona Elsheikh, Deputy Commissioner
Paul Liang, Special Administrator – Licensing
Gary Suzuki, Special Administrator - Regulatory
Erica Nguyen, Licensing Examiner

Committee Members Present:

Claire Bartos, Las Brisas Escrow, Inc./Chairperson EIC *, ***
Nancy Silberberg, Altus Escrow, Inc./ Past Chairperson EIC *
Elisa Guerrero, Four Seasons Escrow, Inc./Medium Sized Escrow Company
Elizabeth LeQuire, Citrus Escrow, Inc./Other Business Ownership
Alma Rushing, Orange Coast Title Company/Small Business
Benjamin Griffin, The August Law Group, P.C. / Attorney
Bill Nelson, Express Escrow, Inc./Chairperson **,***
Jennifer Woodard, Oak Escrow, Inc./Vice Chairperson **,***

* Escrow Institute of California

** Escrow Agents' Fidelity Corporation

*** Attended meeting via call-in to the conference line

1. Welcome, introductions, and opening remarks

Mona Elsheikh commenced the meeting. Members of the public were requested to hold questions until public comments section. She introduced Gary Suzuki as the Special Administrator of the Escrow Regulatory section to replace Kathleen Partin after she retired.

Edgar Gill announced former Commissioner Jan Lynn Owen retired in May. As of May 13, 2019, Manuel P. Alvarez, is the new Commissioner. Gill mentioned Commissioner Alvarez is currently in San Diego for a Meet and Greet with the Department staff. He provided some brief thoughts on the change in Commissioner and collaborative relationship.

Elsheikh asked everyone to introduce themselves. Suzuki introduced himself and provided a brief history of his 22-year background with the State of California.

2. Review and approval of minutes for 3/18/19 meeting

Liang asked if the committee members had any edits or comments for the meeting minutes from the March meeting. Silberberg commented it was difficult to navigate on the DBO's website to find the minutes and agenda. She suggested the agenda and minutes be emailed to the committee members when they were posted online. Liang said DBO launched a new dbo.ca.gov website. Some of the contents were rearranged. The may cause users difficulty to navigate because they were unfamiliar with the new layout. He said he would email the agenda items and meeting minutes to the committee members before the next meeting.

Elizabeth LeQuire commented that the search function of the new DBO website was working and the agenda was found by typing in "Agenda" in the search box. Elisa Guerrero stated that Google search

did not return the correct page for agenda. Liang stated he was aware different browsers displayed contents differently and the DBO's IT department was notified. If users had difficulty viewing the new page, they may switch to use a different browser.

Silberberg made a motion to approve minutes. The motion was seconded by Guerrero and the minutes were approved.

3. Examination progress

Suzuki stated that the exam aging project has been completed. New exams were assigned at the end of May, the cut-offs were completed in early June, and the exams were in progress. Suzuki mentioned that the Department would continue to schedule and monitor the exams until completion. An exam status report is reviewed weekly. The ongoing exam plan is to diligently review licensee data and statutory requirements while taking into consideration complaints and referrals. Silberberg asked for clarity on the industry's 4-year exam cycle. Suzuki and Liang mentioned the statute of the year exam period, but previous exam findings are taken into consideration to monitor corrections and other items.

Guerrero asked in general how many exams were assigned per month. Suzuki says it varies and provided numbers for June (29 assigned) and July (21 assigned). Silberberg asked whether the examiners have to go to all locations throughout the exam if there are multiple branches for one main office. Liang said it depends. The examiners are visiting all branch locations to perform cut-off procedures and request documents. If a licensee has a centralized location for its books and records, the Examiner-in-Charge may discuss with licensee to conduct main and branch exams at the centralized location. Each company maintains its books and records slightly different. That determination will have to be made by the Examiner-in-Charge after s/he does an initial assessment of a company's records based on findings from various cut-off visits at different branches by branch examiners.

Elsheikh mentioned the Department assigns exams based on various factors. One of such is the distance between examiner and a licensee's office location. This is taken into consideration to help to reduce traveling cost to perform exams efficiently.

4. Escrow Management Training Class

Liang discussed the upcoming Management training and coordination with PJ Garcia at the EIC. Garcia mentioned training had been scheduled for August 20th. Liang and Garcia were working on updating the Management Training Manual. The training attendees are given the option to purchase the manual from EIC in electronic PDF format and view the manual on a laptop or tablet instead of using a hard copy. This class is for escrow managers and above such as owners, directors, stockholders, and those who would like a refresher. EIC would send an announcement for sign up. Currently there is about a dozen people on the waitlist. The training will provide an opportunity to learn the process of regulatory and licensing of Escrow Agents, strengthen internal controls, processing escrows, and add value overall.

Alma Rushing asked if there was a limited number of attendees to sign up and who sponsored the training. Garcia stated that EIC, for the last 15 years, had been facilitating the management training class with DBO. EIC coordinated the sign up and DBO approved the attendees. Garcia asked Liang for a reminder of the approval types. Liang confirmed the class is for managers, owners, directors, stockholders and above positions at a DBO licensed escrow company.

Guerrero asked for details of the cost, location, size of class. Liang indicated the training would be in DBO's office in Los Angeles. DBO does not charge a fee for this class. The Management Training

Manual is available for purchase from EIC for \$50. Elsheikh asked committee members if they wanted a smaller class size. Garcia stated that the last class size was approximately 50-70 participants and that the participants were able to engage and discuss. Liang mentioned that the class size affects participants' engagement and that a larger group will limit the amount of time available for questions.

Question also came up about the cut-off date for sign up. Liang stated EIC handles registration and production of manuals and him and Garcia may have further discussions about a cut-off date after the meeting.

5. Loss Due to Cyber Theft

Silberberg asked for breakdown of the \$3,196,430 loss to independent escrow companies as provided in the commissioner's cyber bulletin. Liang provided the breakdown of the amount as follows: \$1,230,503 in 2016, \$1,422,304 in 2017, and \$543,623 in the first half of 2018. There were five cyber-attack incidents reported to the Department in the second half of 2018. Silberberg asked to clarify if all the losses were escrow losses. Liang responded that the amounts reflect strictly trust account losses. LeQuire and Silberberg asked if the losses were unrecoverable. Elsheikh responded that all were replaced via bank, owner, or insurance. Silberberg asked if there were any consumer losses. Elsheikh confirmed that there were no consumer losses because all funds were recovered.

Liang shared a case where a cybercriminal used a principal's personally identifiable information to open a new bank account then provided the bank information to an escrow officer in an amended wire instruction. The officer confirmed the beneficiary information with the real seller but did not confirm the bank account information. As a result, the seller's proceeds were wired into a bank account opened by the cybercriminal using actual seller's identity. Liang stated that cyber-attack will not go away. The industry should continuously monitor its escrow processing to prevent loss.

LeQuire asked Gill regarding the monetary losses and what is DBO executives' view on how the licensees are handling the process. Gill responded that DBO executives are concerned and the amount of loss is high, and that cybercrime is up. Overall, what is troubling is that there was no hacking or system penetration, it was user error. There needs to be more attention to details. LeQuire provided a broker perspective in regard to the 118 Department of Real Estate (DRE) audits conducted and showed \$7 million in losses. Gill acknowledged the good point regarding perspective, but the DBO cannot ignore the fact that there still is a large number of loss.

Guerrero asked how the loss compared with losses by controlled-escrow companies licensed under the DRE and Department of Insurance (DOI). Gill responded that there was no data to draw a comparison. Guerrero asked if the public could ask for the number of loss from DOI or DRE on this matter. Attorney Jennifer Felton commented that the DOI and DRE escrow companies are not required to report this information.

LeQuire suggested DBO to offer an annual webinar about cyber-theft to the industry. Silberberg commented that she understood how escrow employee who did not follow internal procedures may cause unauthorized disbursements to cybercriminals. Garcia agreed that internal procedures should be in place and trainings should be provided by companies to their employees. Rushing commented cyber-attacks occurred all across the US and it's all about education. It may be beneficial to bring in people who were affected by this to learn from them and through their stories.

Elsheikh commented that Cyber-Attacks discussed in the management training can include types of threats. Silberberg asked for reported cyber-attacks/theft to be included in the commissioner's monthly bulletin. Gill stated he needed to circle back regarding when the commissioner bulletin is

out. Silberberg asked about the bulletin. Elsheikh stated that the bulletin was sent using GovDelivery to escrow licensees.

Liang reminded the committee that companies need to make sure that their updated designated email is provided to DBO. The email account should be a generic account and be checked by companies' executive staffs. The email can be updated on licensee's online portal account. Liang stated he would continue to work with Garcia regarding the manual and training. The manual will include the 2018 cyber bulletin as an exhibit and cyber issue will be a topic for the upcoming training class.

6. Fee waiver and Discount

Liang stated the fee waiver and discount issues were previously brought up during the December 2018 advisory committee meeting. If a discount is supported by any prior issued opinion or escrow bulletin, licensee can rely on the prior issued opinion or bulletin for guidance. The Department's legal division will address the fee discount or waiver issues through rule making. The public will have an opportunity to weigh in during the process. In the interim, any licensee may submit a request for an interpretive opinion to the Department's legal division if the licensee needs an official response regarding a specific fee discount and/or waiver issue.

Rushing asked if there is a timeline for the DBO legal division to complete rule making. Liang responded that the DBO legal is currently working on the rule making and he was not given any timeline when the rule making will be completed. He stated examiners would document observation about fee discounts and waivers as a concern. Silberberg asked to clarify if all fee discounts are prohibited by the escrow law. Felton stated that there were escrow bulletins provided that certain fee discounts were authorized. Liang suggested Felten to provide these bulletins to DBO Legal and submit a request for interpretive opinion.

Silberberg noted that the escrow industry is competitive and fee discounts are inevitable to stay competitive. Liang stated fee discount and waiver is a complex issue which needs DBO legal's guidance. Garcia asked how would the DBO handle discount and waiver issues. Liang responded examiners would document their observations and noted such as a concern. Elsheikh reminded that Broker discounts are still prohibited, and action will be taken.

Silberberg and Guerrero expressed concerns about independent escrow companies' competitiveness against controlled escrow companies given independent escrow companies are not allowed to give discount. LeQuire mentioned veteran/first respondent discounts. Liang stated that the public can bring this up during the public comment period of the regulation process and that they would have the opportunity to express those concerns and ask questions. Griffin appreciated that there would be an open forum to discuss the regulations.

7. Enforcement Actions and Licensing Update

Liang referred to a spreadsheet that was provided to the committee members prior to meeting. He went over the Enforcement Actions and licensing update information for the second quarter. The number of licenses and locations remain consistent approximately about 650 main licenses and almost 1,000 main and branch locations.

8. Escrow advisory committee openings

Liang announced that there would be three advisory committee positions openings in September 2019 for: an attorney, a representative from a medium sized escrow company, and a representative from a company with a business specialization. Liang thanked Benjamin Griffin, Elisa Guerrero, and Juliana Tu for their services since September 2017. In July, an announcement will be sent regarding the

openings. All eligible persons are encouraged to apply. Applications should be sent to Liang's attention. These positions require commissioner's appointment.

9. Public Comments

Silberberg asked if there were any updates on the budget. Liang answered that the budget was sent to all committee members prior to the meeting. Silberberg stated that she had more questions and would re-send the questions to Liang after the meeting. Gill mentioned a new fiscal period. A corrected budget was sent in which it showed a deficit. No anticipated changes or assessments.

Jeff Behm commented that private companies are pushing the date to implement the new lease standard after January 1, 2020 because many of them are not ready to make the transition.

Rose Pothier asked if an escrow company promoted no fees to seller online, would it be considered a fee if the standard is to charge no fee to the sellers. Liang and Elsheikh responded that the DBO is documenting the discounts and note that being a concern for the Department. The fee discount and waiver issues would be addressed through regulation.

LeQuire asked the date of next advisory meeting and if it could be earlier. Liang responded that the next meeting would be scheduled in September. Guerrero asked if this would be her last meeting since her term ends in September. Liang responded yes if a new member has been appointed by the commissioner. LeQuire asks if Gill would still be attending advisory committee meetings in person. Gill responded that he would continue to attend as long as he is needed. Silberberg requested roundtable with the Commissioner. Gill responded that there may be something in the works.

10. Closing Remarks

September 12th is the tentative date for the next Escrow Advisory Committee Meeting. The Thursday date likely conflicts with the Thursday when EIC has it Meetings. Liang stated confirmation for the date, time and location of the next meeting would be shared. Meeting adjourned at 3:45 p.m.