

# ***ESCROW ADVISORY COMMITTEE MEETING***

**September 10, 2019**

**10:00 AM – 12:00 PM**

**320 West 4th Street, 7th Floor Conference Room, Los Angeles, CA 90013**

## **Department of Business Oversight Represented by:**

Mona Elsheikh, Deputy Commissioner  
Paul Liang, Special Administrator – Licensing  
Erica Nguyen, Corporation Examiner – Licensing

## **Committee Members Present:**

Alma Rushing, Orange Coast Title Company / Small Business  
Benjamin Griffin, The August Law Group, P.C. / Attorney  
Claire Bartos, Las Brisas Escrow, Inc. / Chairperson EIC \*, \*\*\*  
Elizabeth LeQuire, Citrus Escrow, Inc. / Other Business Ownership  
Heidi Cassel, Solaris Escrow, Inc. / Medium Sized Escrow Company  
Juliana Tu, Viva Escrow! Inc. / Business Specialization  
Nancy Silberberg, Altus Escrow, Inc. / Past Chairperson EIC \*  
Patrick Felde, Patrick D. Felde, Certified Public Accountant / CPA

\* Escrow Institute of California

\*\* Escrow Agents' Fidelity Corporation

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

## **1. Welcome, new members, and opening remarks**

Mona Elsheikh welcomed everyone to the quarterly meeting. She asked everyone to introduce themselves, starting with the DBO attendees, in-person attendees, and call-in attendees. She announced the Commissioner's appointments of the three new advisory committee members.

- 1) Julianna Tu from Viva Escrow! Inc, representing companies with Business Specialization
- 2) Benjamin Griffin, Attorney
- 3) Heidi Cassel from Solaris Escrow, Inc., representing medium sized escrow companies.

Elsheikh thanked all who applied for the three openings and thanked the outgoing member for their services.

## **2. Review and approval of minutes for June 20, 2019 meeting**

Paul Liang stated that the minutes and agenda from the last meeting were posted online and asked everyone if they were able to find and download the files. The committee members stated that it was much easier to find the files than last time. Liang asked if the members had reviewed the minutes and had any edits. A member of the public pointed out a typo of her name in the minute. Liang stated he would correct the typo and repost the minutes. Nancy Silberberg made a motion to approve the minutes. Alma Rushing seconded the motion. The minutes was approved.

## **3. Management Training**

Liang thanked PJ Garcia and Claire Bartos for their assistance with the Escrow Management Training that took place on August 20, 2019. He stated that there were about 70 people signed up and approximately 20 did not show up due to various reasons. There were people from broker-controlled escrow companies expressed desire to attend the training. However, the training was focused on DBO

rules and regulations and was not developed to address any DRE rules and regulations. Therefore, those from the broker-controlled escrow companies were not given the opportunity to attend this training.

Liang reported that the feedback on the training was mostly positive. Some attendees suggested to improve the PA System. People in the back of the training room found it hard to hear the presenters and some questions from the audience could not be heard. Liang stated that the DBO learned from the feedbacks and will find ways to improve the training. He appreciated all constructive feedbacks.

Garcia agreed that it went well and requested additional training sessions be scheduled for upcoming years. Bartos agreed and requested DBO to schedule another one since the last one was a long time ago in 2014. Rushing stated that one of her managers attended the training and learned a lot and was enthusiastic about the training. Tu mentioned that it would be good for people from broker-controlled escrow companies if they were moving to the independent side.

Liang reiterated that the training was focused on DBO rules and regulations and not developed to address any rules and regulations for other controlled escrow companies. He stated he received an inquiry from a broker who expressed strong desire to have his escrow management team to attend the training because he recently had an embezzlement of trust funds for more than half a million dollars. He wanted to learn how escrow companies on the DBO side strengthen their internal controls.

A member of the public asked if a proposed manager may sign up for the training. Tu and Rushing both noted they wanted to include proposed managers – perhaps reserve 5 spots. Bartos agreed that there would be no downside. Liang stated he would review the training material and consider whether that would be beneficial for proposed managers. Griffin suggested a fee for those who are not licensed by DBO. Elsheikh asked if the committee members feel the industry would prefer to have proposed managers attend the training. Tu and Bartos stated yes. Felde asked if DRE offers a similar course. Committee members said no.

Liang stated further discussions are needed to explore training options such as the size of class. Bartos mentioned that both (smaller or larger size) are give and take. A smaller class would provide less perspective but would have more opportunity for discussion. Garcia said that the class size was good, but the sound issue would need to be fixed – maybe include a Q&A microphone. Liang agreed the course was done right on time, but there was not enough time for Q&A. He also agreed that smaller class would be beneficial for questions and detailed answers. If larger classes, perhaps allocate 30 minutes for questions.

Silberberg asked if the training may be given once or twice a year. Liang responded that it is ideally once a year, but it really depends on the availability of rooms, resources, and staff. He understood the last management training was held five years ago in 2014. And he also understood training is important for escrow staff to stay in compliance.

Liang stated EIC and the DBO updated the management training manual from 2014. The manual can be used for future training with some current updates. The manual was provided by EIC to attendees in a PDF file prior to the training. He asked feedbacks on the format of manual. Bartos stated that some people like hard copies to write notes on. Garcia stated that in the future, EIC should communicate with training attendees to print out the manual on their own if they want to use a hard copy. LeQuire stated that she liked following along, but there were a lot of references to certain pages and it was hard to keep up using a PDF manual. It would be easier if the reference be posted on screen/the handout.

#### **4. Cannabis related escrow transactions**

Liang thanked LeQuire for suggesting this topic for discussion. LeQuire described her understanding on how a bank handles this type of transaction. LeQuire explained her understanding that banks are able to handle cannabis transactions as long as the incoming funds are not related to cannabis. For example, if Person A with clean, non-cannabis money wants to purchase a dispensary/property from Person B, banks may not object to the incoming funds.

Liang asked for title's perspective on this matter. Rushing mentioned that title companies may handle cannabis-related real property acquisition. She had one instance in which a bank noted that due to the validity of an entity, they had to turn a transaction down and indicated concerning federal issues. If the money is clean and not tainted, the title companies can close in some instances, but they would not take the liability. Cassel noted, in regard to the Department of Insurance, this would be taken case by case. The underwriters look at the land use and where the money is coming from.

LeQuire asked if DBO would be ok with this type of transactions since the DBO is a State agency and the cannabis legality is a federal issue. Liang responded that it would be case by case since there are so many variables involved. The biggest concern for DBO is the banking aspect. Per escrow law, funds must be deposited one business day upon received. If the bank rejects it, then the escrow company would be holding onto funds without receipt to the bank which would be a violation.

Garcia mentioned that she would check with the bank first prior to certain transactions. Tu mentioned CA SB51 may be pulled. She asked if it is not pulled, would an escrow company be able to use a state-chartered bank to deposit funds relating to escrow cannabis transactions. Silberberg mentioned that CA SB51 may be reintroduced next year. An attorney member of the public stated her understanding that Escrow Law requires the bank holding trust funds be federally insured.

Griffin brought up an example of a transaction that can occur in municipalities regarding fines on properties with cannabis activities. Say an escrow company, finds that the transaction has liens on the property, they would have to pay on behalf of the property. He agreed that the DBO is correct that there is no blanket way to say it is ok. There cannot be a conspiracy to break federal law. Liang stated it would be beneficial to have someone from the banking industry for the next meeting to discuss how bank addresses this issue. There needs to be a better understanding of the cash flow of cannabis money into the banking system.

Garcia mentioned a stock sale can be done to purchase a real property where the money is clean, but clearly the intent of the business is to grow cannabis. LeQuire stated she asked the bank, and the bank can accept the money if the money is clean.

Liang stated there are a lot of unknown for cannabis related escrow transactions. Whether to engage in this type of transaction is really depending on a company's risk tolerance. Escrow law currently has no specific provision addressing cannabis related escrow transactions but as long as it fits the definition of an escrow, all escrow laws and regulations will apply.

#### **5. Escrow transactions using cryptocurrency**

Liang stated that DBO received multiple reports last year about a company who claimed to have processed an escrow transaction using cryptocurrency. The department has reviewed the transaction, and it does not appear that cryptocurrency was used during the transaction. The cryptocurrency conversion occurred outside of the escrow. The department also received reports that companies claimed to be able to process escrow transactions using cryptocurrency. The DBO cautions companies who asserts such claim because it may be misleading consumers.

LeQuire stated that companies may process real property transactions involving cryptocurrency. She stated that cryptocurrency conversion does not occur in escrow. The conversion in a way is similar to PayPal, but for cryptocurrency it is called BitPay. If a client wants to buy a real property using bitcoin, they would have to send their bitcoin to Bitpay, and BitPay sends the converted USD to escrow. Silberberg noted that it is like any currency transfer such as exchanging Euros for USD. LeQuire noted that the BitPay exchange is like PayPal and it is not FDIC Insured, and the federal is looking into it.

An attorney member of the public stated that he is familiar with these transactions. Pursuant to written agreement, it is similar like a modern currency exchange. He stated escrow can never directly accept bitcoin in the trust account. Committee members had differences of opinion whether the source of buyer's funds should be traceable and how secure cryptocurrency is. Committee members feel how cryptocurrency can be connected to the banking system is an issue banks and bank regulators need to address and it shouldn't be an escrow issue. A committee member suggested to have someone from the DBO banking division to join the next meeting to share thoughts about cryptocurrency and banking. Liang stated he would reach out to the banking division.

## **6. Enforcement Actions and Licensing Update**

Liang referred to a spreadsheet handout that was provided to the committee members prior to the meeting. He mentioned that there were 15 orders issued between June 18, 2019 and September 9, 2019 for various violations.

Liang shared the licensing stats for the escrow program. There are currently 662 licensed independent escrow companies in 988 licensed locations as of August 31, 2019. The number of licensed companies has decreased by four from one year ago. The number of licensed locations has decreased by two from a year ago. There are twenty-five companies surrendered their license as of August 31, 2019. The surrenders of these companies have not been accepted by DBO due to pending closing audits and escheatment.

LeQuire asked if this number of surrenders was high. Liang stated no. Some of the twenty-five surrender requests were received while back ago. So, the total number of pending surrenders does not reflect surrender requests received within a specific period of time. Silberberg asked about the number of pending license applications and whether the number of applications and the number of surrender evens out. Liang stated the total number of licensed companies and licensed locations remain consistent over the years historically speaking.

Silberberg asked timeline for approving a license application and whether a new branch application would trigger an audit. Silberberg stated that she knows some licensees that submitted new branch applications and those companies are getting an audit. Liang stated the time to complete an application varies mainly depending on when the DBO receives requested information. The licensing staff typically review submissions of documents in less than 30 days upon the receipt of documents. Liang stated that the application in and of itself is not a trigger for any examination. Examinations are on a separate schedule based on statutes, prior examination findings, and other factors. Elsheikh added that an examination could be triggered by a branch that started operations without a license.

An attorney member of the public commented that clients of his are concerned since the DBO asked for their trust account information/trust account reconciliation. He asked Liang to explain why the trust account is being reviewed for the consideration of issuing a branch license. Liang stated that if a company cannot reconcile its current trust accounts, the Department will have concerns to issue a new license. Failure to maintain trust account creates consumer harm and the DBO will not issue any

branch license if it a company cannot demonstrate its compliance with escrow laws and regulations and that it adequately maintains consumer funds in the trust account. The attorney member of the public asked if a branch application triggers a mini audit, an audit between a statutory audit. Liang responded that the review of the bank reconciliation is not an audit or an examination.

## **7. Public Comments**

Silberberg posed a few questions:

- 1) Since it is the new fiscal year, can the committee get the breakdown of the budget for Escrow Law?
- 2) Is there potential rule making coming down in regard to CPA audits and Closing Audits?
- 3) Can DBO share the status on updating the escrow law?

Liang stated he did not have any updates on the rule making for CPA audits and closing audits. He will check with DBO legal for an update for the committee members. He will also check with DBO budget for a copy of the escrow budget.

Silberberg asked if DBO will have a roundtable for the industry to meet with the commissioner. Elsheikh stated that she would report this to Ed Gill. Whether a roundtable could be held is really depending on the commissioner's availability.

## **8. Closing Remarks**

Liang thanked everyone for coming and calling in. He suggested to calendar the next meeting tentatively on Tuesday December 10<sup>th</sup>. The meetings going forward will be located in the 7<sup>th</sup> Floor Conference room of the 320 W 4<sup>th</sup> Street building instead of the Ronald Regan building. Liang thanked the committee and adjourns the meeting at 11:45am.