

# ***ESCROW ADVISORY COMMITTEE MEETING***

**December 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:**

Catherine Nahnsen-Robison, Banking Regional Deputy Commissioner  
Gary Suzuki, Special Administrator – Regulatory  
Marlou de Luna, Enforcement Counsel  
Mona Elsheikh, Deputy Commissioner  
Paul Liang, Special Administrator – Licensing  
Sherri Kaufman, Legal Counsel

## **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**

Paul Liang welcomed everyone to the quarterly meeting. Since there is a guest speaker from DBO Banking, Liang asked all committee members and DBO representatives to introduce themselves.

### **2. Review and approval of minutes for December 10, 2019 meeting**

Liang stated that the minutes and agenda from the last meeting were posted online and asked if anyone has any edits to the minutes. No suggested edits were provided. Nancy Silberberg made a motion to approve the minutes. Alma Rushing seconded the motion. The minutes was approved.

### **3. Cannabis, cryptocurrency by DBO banking**

Catherine Nahnsen-Robison (CNR) stated there is a published DBO guidance on the Department's website listing over 20 frequently asked questions about cannabis banking. Interested parties are encouraged to read this guidance. CNR also referenced similar guidance on this topic published by Conference of State Bank Supervisors (CSBS) Financial Crimes Enforcement Network (FinCEN).

CNR stated the concerns in regard to virtual currencies are a financial institution's compliance with Bank Secrecy Act and Anti Money Laundry Act (BSA/AML). DBO is not aware any state-chartered bank accepts deposit of virtual currencies. It is the Department's understanding virtual currencies are to be converted into USD before a bank can accept the deposit.

Currently there's no guidance to escrow licensees on how to handle cannabis related escrow transactions whether the funds, properties deposited into escrow are directly or indirectly relating to

cannabis. Banks may reject deposit for escrow company if they don't feel comfortable with such transaction. Escrow licensees should talk to their bank to understand their sensitivity on cannabis related transactions before accepting an escrow deposit. Liang stated escrow law requires funds to be deposited to the trust account within the following business day. If licensee's bank rejects such deposit, this may be a violation of the escrow law.

The committee members briefly discussed escrow consideration and treatment for HEMP vs. Marijuana related transactions. It is unclear where the boundaries are, and every bank has different sensitivity level. It is agreed more should be researched and discussed on this topic.

#### **4. Update on escrow regulations by DBO legal**

Sherri Kaufman provided a brief update on the pending escrow regulations. The DBO is revising escrow regulations. At this point, the rulemaking is not finalized. The rulemaking mostly focuses on record keeping rules with electronic age, annual audit report requirements, revising the definition of escrow to include gametic material because California Family Code section 7961 specifically requires surrogacy transactions be handled by a licensed independent escrow company. The rulemaking will also clarify the referral fee provision about prohibited activities similar to the provisions in the insurance code. Committee members asked whether the rulemaking will address any escrow fee discount, zero seller fees, escrow agent providing tangible items such as staging for the brokers and offering security cameras, Kaufman stated yes. Once the rulemaking is finalized internally, there will be public notice for comments and the industry will have the opportunity to submit comments and feedbacks.

#### **5. Escrow budget**

Liang shared a copy of the 2018/2019 escrow budget with committee members. The budget shows improvement from the previous year. However, the expected increase in staffing salary in this upcoming year, as negotiated through the union contract will have an impact on the escrow budget. Committee members questioned the definition for various budget items. Liang stated he will look to arrange someone from DBO's fiscal management office to explain those budget items in the next meeting if feasible.

#### **6. Online notarization**

Lisa LeQuire raised concerns about online notarization and asked if DBO has any guidance for online notarizations. Certain states will allow notarization to be done electronically online. But in California, notary is required to be done in-person. Can an escrow agent accept those notarizations done electronically online by an out-of-state notary? Liang stated there is limited information on California Secretary of State (SOS) website about online notary. He is aware of AB 199 which seeks to establish online notary be administered by SOS. Online notarization is still developing in California and more to come.

#### **7. Right to Delete under CCPA**

Benjamin Griffin shared an update about California Consumer Privacy Act (CCPA). This act became effective on January 1, 2020. There are concerns by escrow agents on how to handle CCPA request to remove documents from escrow transactions, and whether removing escrow records would be a violation of the record retention requirement under the escrow law. Griffin shared the history of CCPA and clarified there are exemptions under CCPA which will provide basis to reject requests from consumers to remove escrow records.

Committee members discussed various requests to delete escrow records. In addition to requests from consumers, escrow agents may also receive requests from lenders to delete nonessential documents in the escrow record. Escrow agents may be asked to differentiate what essential and nonessential

documents are. If a lender provides specific instructions to delete certain documents, escrow agent may be at risk of either fail to follow lender instructions or fail to retain records as required under the escrow law. Liang stated it is important to make the lenders aware of an escrow agent's requirement to retain records pursuant to the escrow law. He reiterated the escrow law requires all escrow records be retained for a minimum of five years.

**8. Enforcement actions and licensing update**

Liang shared a list of enforcement actions taken since the last advisory meeting, and the licensing stats as of November 30, 2019. The number of licensed escrow agents increased by 4 comparing to the same period from a year ago. The number of licensed locations remains the same from a year ago.

**9. Public Comments**

There were no comments due to time constrain.

**10. Closing remarks**

Liang thanked everyone for coming and calling in. He suggested to calendar the next meeting tentatively on Tuesday March 10, 2020. Liang thanked the committee members and adjourned the meeting at 12:15 p.m.