

ESCROW ADVISORY COMMITTEE MEETING

June 9, 2020

10:00 AM – 12:00 PM

Meeting was held telephonically

Department of Business Oversight Represented by:

Mona Elsheikh, Deputy Commissioner
Paul Liang, Special Administrator – Licensing
Gary Suzuki, Special Administrator – Regulatory
Queen Padilla, Auditor – Licensing
Theresa Leets, Assistant Counsel-Legal, as Guest Speaker

Committee Members Via Call-In to the Conference Line:

Benjamin Griffin, The August Law Group, P.C. / Attorney
Bill Nelson, Express Escrow, Inc./Chairperson EAFC**
Claire Bartos, Las Brisas Escrow, Inc. / Immediate Past Chairperson EIC *
Elizabeth LeQuire, Citrus Escrow, Inc. / Other Business Ownership
Heidi Cassel, Solaris Escrow, Inc. / Medium Sized Escrow Company
Jennifer Woodard, Vice Chairperson-EAFC**
Juliana Tu, Viva Escrow! Inc. / Business Specialization
Patricia J. (P.J.) Garcia, Beach Pacific Escrow, Inc./Chairperson EIC
Patrick Felde, Patrick D. Felde, Certified Public Accountant

* Escrow Institute of California

** Escrow Agents' Fidelity Corporation

1. Welcome, new members, and opening remarks

Paul Liang welcomed everyone to the second quarterly advisory meeting. The meeting was held telephonically due to COVID and protests in downtown Los Angeles areas. Liang did a roll call on the committee members and thanked everyone who made the efforts to call in.

2. Review and approval of minutes for March 10, 2020 meeting

- a. Liang stated that the minutes and agenda for the last advisory meeting were posted online and asked if anyone has any edits to the minutes. Juliana Tu clarified that in the 2nd paragraph on page 2, item #6, that she was referring to a file requested during an audit and not the annual audit report. PJ Garcia made the motion to approve the minutes. Alma Rushing seconded the motion. The minutes was approved.
- b. Liang referred to a prior meeting's action item regarding the Commissioner's availability to attend EIC conference this year. Garcia stated annual conference has been cancelled.

3. Co-op escrow transactions

Liang welcomed guest speaker Theresa Leets. Ms. Leets is the Assistant Chief Counsel for the DBO's legal division overseeing security regulation and franchise laws. Liang briefly described what co-operative transactions are, and how Ms. Leet's division and the escrow law program cross path when reviewing co-operative transactions processed by DBO escrow licensees. Liang further clarified that the DBO's legal counsel agrees with EAFC that co-op transactions are a type of real property transactions which is specified under the Financial Code section 17312. Therefore, it is important to

bring this item up in the advisory meeting and have both DBO legal and escrow program to provide information, clarification about this type of sophisticated escrow transactions. Leets provided a brief introduction for the DBO security regulation division and went over the following frequently asked questions relating to escrow transactions involving security transfers.

- (1) What are some examples of securities that are restricted from transfer in real property transactions?
Examples are transactions involving condos, mutual water company, and mobile home park. The transfers of securities are not always restricted but escrow agents should ask the seller if there is any restriction on the security transfer.
- (2) How does a security get restricted from transfer by the DBO?
An issuer (e.g. mutual water company or mobile home park) files an application with the DBO to request authority to sell securities in California. If the Department grants the issuer to sell security subject to legend conditions, it is the legend condition which restricts the transfer.
- (3) How does an escrow practitioner know if a security has a restriction on transfer from the DBO?
The DBO's Order to approve security issuance will include language on restrictions if any restrictions exist.
- (4) Are there other kinds of restrictions not imposed by DBO?
Yes, there are. Escrow practitioners will find those in the organizational documents, articles of incorporation, bylaws, partnership agreement, operating agreement for LLC, escrow practitioners can also find out from contract like a pledge agreement, stock purchase agreement. So, in any transaction involves transfer of security, escrow practitioner should always ask seller if there are transfer restrictions because it can be imposed by DBO or by company's organizational documents or contract.
- (5) When does the DBO restrict the transfer a security?
When application to sell securities comes in, DBO conducts a merit review into the terms of offering make sure they are just and equitable. Sometimes DBO will do limit offering, limiting who the issuer can sell to. If DBO determines there a potential danger in the transfer to subsequent investors, we will limit the transfer. The restriction may also be requested by the applicant.
- (6) If there is a restriction on transfer of shares, what should the seller do?
The first thing to look for is always an exemption. There is a list of exemptions on the DBO's website gives some examples where shares are restricted. One sample exemption would be transfer due to a court order. It will be the issuer to seek exemption not the seller of the property.
- (7) What is the purpose of the Consent to Transfer application?
The same purpose as the Corporate Security Law which is to protect investors.
- (8) How do security transfers in real property transactions impact escrow instructions?
The critical thing for an escrow practitioner to consider when structuring an escrow transaction is to first request a seller to identify all the security has to be transferred to the buyer while transferring the ownership of interest of the property; second, to make sure the seller identify if there is any transfer restrictions. Make sure to ask these questions to the sellers. Before escrow can close, make sure there's authority to transfer those securities. Escrow practitioners may have to work with mutual water company, mobile home park on these matters.

(9) When can an escrow that includes a security with a legend condition imposed by the DBO close?

Ideally after the DBO issues an Order to Consent to the transfer.

(10) What if an escrow practitioner needs guidance about the Corporation Security Law?

Call DBO's toll free number 866-275-2677 and ask for the attorney on phone duty.

Heidi Cassell asked Leets whether DBO has any jurisdiction to work with the Bureau of Indian Affairs in real property transactions involving security transfers. Leets responded it depends. More discussion is needed to answer that question.

4. DBO March 21, 2020 COVID-19 Guidance remain effective

Liang stated various committee members asked DBO to confirm if there is any subsequent guidance for escrow licensees since the initial guidance regarding remote work which was issued on March 21, 2020. Liang confirmed there is no subsequent guidance and that escrow licensees may still refer to the March guidance. If there is a subsequent guidance, it will be communicated to escrow licensees via designated emails and be announced on DBO's website.

5. Escrow examinations during COVID-19

Suzuki stated that due to the pandemic and civil unrest, escrow examinations are being done remotely and electronically until safety is restored. He addressed questions about mileage and/or travel per diem reimbursement, and the length of time for remote examinations comparing to in-person examinations. There will be minimal to no mileage/travel per diem costs due to remote examinations, and that the length of electronic examinations will depend on various factors such as how licensee's records are maintained electronically. Cassel and Rushing shared their positive experience with DBO's examinations conducted remotely and electronically.

6. Electronic submission of annual reports

Suzuki urged every licensee to work with their CPA to have their CPA's audited annual reports submitted by email to ESCAnnualReportFiling@dbo.ca.gov. Suzuki stated this email is being monitored on a daily basis. Electronic filing of annual reports provides better tracking and minimizes the possibility for loss in delivery. Felde inquired if these submissions are available for public view. Suzuki stated yes, and that if a member of the public wants to view a licensee's annual report, the person has to file a request under the Public Records Act (PRA). The PRA request is a separate process.

7. Openings for the advisory committee

Liang announced that there will be three advisory committee openings in this September. The two-year term for CPA, Small Business Representative and Representative for Business with Other Type of Ownership are ending on August 31, 2020. Liang urged anyone who is interested to apply to one of these positions to submit a resume to him by the end of July. These positions require Commissioner's appointment. The appointments are expected in August and names of appointed persons will be shared during the next meeting.

8. Enforcement actions and licensing update

Liang went over enforcement actions and licensing updates during the second quarter. There are 666 licensed companies at 1,003 licensed locations as of the end of May 2020. The licensing statistics at the end of May for this year is similar to that of May last year.

All enforcement actions are posted on DBO website. A member of the public commented that the website does not reflect the actual enforcement action or the final orders and that it only posted accusations. Liang stated if there are any final orders, settlements not posted, anyone can contact the assigned DBO counsel to inquire about posting for these final orders, settlements, etc. The assigned DBO counsel's name and phone number are on the accusation. Liang also stated that anyone can send him an email about concerns on web posting, and that he can forward the concerns to the assigned DBO counsel.

9. Public Comments

Dan Bovill of EAFC brought up an issue relating to a DBO enforcement matter. Liang stated he could not discuss any pending enforcement matters.

LeQuire inquired about the experience requirement for escrow managers, specifically whether the experience can be considered based on the amount of escrow transactions processed by a person rather than based on the number of years. Liang stated the experience requirement is based on number of years of responsible escrow experience.

10. Closing remarks

Liang asked if any member is not available on September 8 to attend the next advisory meeting. With no objection, the next meeting is scheduled for Tuesday, September 8, 2020 from 10:00 a.m. to 12:00 noon. Liang thanked everyone for calling-in and their participation. At 11:50, the meeting is adjourned.