

ESCROW ADVISORY COMMITTEE MEETING

**September 8, 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

Committee Members Via Call-In to the Conference Line:

Benjamin Griffin, The August Law Group, P.C. / Attorney
Bill Nelson, Chairperson – EAFC**
Claire Bartos, Las Brisas Escrow, Inc. / Immediate Past Chairperson EIC *
Heather Siracusa, Orchard Hills Escrow, Inc. / Small Business
Heidi Cassel, Solaris Escrow, Inc. / Medium Sized Escrow Company
Jeff Behm, Behm & Company, Certified Public Accountant
Jennifer Woodard, Vice Chairperson-EAFC**
Juliana Tu, Viva Escrow! Inc. / Business Specialization
Patricia J. (P.J.) Garcia, Beach Pacific Escrow, Inc./Chairperson EIC
Timothy Brigham, Resorts West Escrow, Inc. / Other Business Ownership

* Escrow Institute of California

** Escrow Agents' Fidelity Corporation

1. Welcome and Introduction of New Committee Members.

Paul Liang welcome everyone to the third quarterly advisory meeting. Liang reminded everyone that meeting agenda and minutes from the last meeting have been posted on the Department's website. The DBO typically post agenda and minutes at least 10 days before the meeting. Liang also stated that advisory meeting is open to the public but public participation is only allowed during the public comment section. If any member of the public has any questions, concerns, or suggestion for agenda items, the member of public should contact an advisory member to bring those items to committee discussion. The committee meets once a quarter for two hours and it needs to focus on agenda items. Liang also stated a list for current advisory committee members is available upon request.

Liang briefly described the advisory committee. It was first established in 1990 pursuant to Financial Code section 17214 to assist the commissioner in the implementation of the commissioner's duties under the escrow law. This section of the Financial Code specifies the number of committee members, the industry they represent, and the terms they serve. Except for the members from EAFC and EIC, members appointed by the commissioner shall serve for a term of two years. A two-year term for a new member starts on September 1 and ends on August 31 after a two-year term.

There are three members whose term ended on August 31, 2020. They are Alma Rushing representing small business, Elizabeth LeQuire representing Other Business Ownership, and Patrick Felde representing CPA with escrow clients. Liang thanked them for their services and introduced two new members and one returning member appointed by the Commissioner Alvarez.

Liang introduced Heather Siracusa who replaces Alma Rushing to represent Small Businesses. Heather has been doing Escrow for 24 years, 18 of those 24 years has been in a management role. Heather has owned Orchard Hill Escrow, Inc. since 2017.

Liang introduced Timothy Brigham who replaces Elizabeth LeQuire to represent escrow companies with Other Business Ownership. Tim grew up in the San Francisco Bay Area, and attended the University of California, Riverside and Loyola Law School in Los Angeles. After graduating law school, he worked for two years as a Judicial Law Clerk for Honorable Meredith A. Jury, United States Bankruptcy Judge. He then worked as an associate attorney for a large regional law firm in Irvine California in the Real Estate, Finance and Bankruptcy Department. In 2003 Tim started Big Bear Real Estate. In 2004, he started a DRE Broker-controlled escrow company and immediately started the process to establish an independent escrow company, Resorts West Escrow, Inc. Tim was on the board of directors for the California Association of Realtors for 12 years holding various leadership positions and was on the board of directors for the National Association of Realtors for three years. He also previously served as the chairman of the City of Big Bear Lake Planning Commission. Having been on both sides of a controlled and an independent escrow, Tim will bring a broker's perspective to committee discussion.

Liang introduced Jeff Behm to replace Patrick Felde as the CPA on the committee. Jeff is the founder and managing partner of Behm & Company in Newport Beach. The firm has a large concentration of clients in the escrow, title, mortgage and realty. Jeff assisted the escrow industry on various real estate related matters and has served in litigation support and expert witness capacities for attorneys on variety of matters. Prior founding Behm & Company, Jeff was a partner and Director of Auditing & Accounting Services for the largest CPA firm based in Orange County at the time. Jeff has spoken at numerous real estate industry meetings, and has authored articles for various publications concerning auditing, taxation, embezzlement prevention, and SOC I and SOC II audits. Jeff is a member of various professional societies such as American Institute of Certified Public Accountants, California Society of Certified Public Accountants. Jeff has also served multiple terms on the DBO's escrow advisory committee.

2. Review and approval of minutes for June 9, 2020 meeting

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. No comments or edits were made. PJ Garcia made the motion to approve the minutes. Clair Bartos seconded the motion. The minutes was approved.

3. Effect of the proposed DFPI "California CFPB" on escrow licensees

Liang thanked the committee member who submitted this agenda item. He stated the passing of AB 1864 will expanded DBO's regulatory responsibilities and authorities, and also changed the DBO's name to Department of Financial Protection and Innovation (DFPI). The name change will become effective immediately after it is signed into law by the governor. The expansion of DBO's responsibilities and authorities begs the question what impact this bill will have on existing escrow licensees and whether there will be additional cost to escrow licensees to fund this expansion.

Liang stated there is no immediate operational change due to the passing of this bill. This bill did not change escrow company's exam cycle. The department will still perform a statutorily required examination at least once every 48 months for escrow licensees. This bill did not change the billing rate for escrow examinations. This bill also did not change the escrow annual assessment process and amounts. The long term impact of this bill on escrow licensees remain to be seen. But there is no

short term significant impact to the escrow industry being identified except when the name change to DFPI becomes effective, escrow licensees are expected to revise their forms, disclosures, and instructions to remove references to the old name. This process is not new given this department has already gone through a name change from Department of Corporations to Department of Business Oversight not that long ago.

4. Update about DBO Escrow Program's Revenue and Expenditure

Liang stated a copy of escrow law program's revenue and expenditure report for fiscal year 2019/2020 has been provided to advisory members prior to the meeting. Liang highlighted several items from this report.

Comparing to the previous budget year 2018/2019, the escrow program's revenue has gone down a little over a \$1 million in the 2019/2020 fiscal year. This was largely due to the change in a billing practice in the previous year. Prior to the change, the escrow program billed examinations after it concluded field examinations but before a regulatory examination report was issued to licensee. When a licensee responded to the regulatory report timely, and that their written response was adequate, the escrow program would close the examination and send out a closing letter. But when a licensee is disputing to our exam findings, or failed to adequately respond to any examination items, or failed to submit requested proof of correction, our examiner will incur additional billable time to resolve these matters with licensees. The additional billable time will be invoiced to licensees separately from their exam invoice. This old billing method created multiple billings which was confusing to licensees and not efficient in terms of making payments and collections. The escrow program now bills an exam after the field examination is completed, an examination report to licensee is issued, licensee adequately responded to the report, and a closing letter is issued. The billing after a closing letter is issued will ensure no subsequent billing or invoicing to licensees for the same examination.

This change in billing practice delayed some exam billings because the escrow program is holding onto invoicing some exams until all examination items are adequately addressed and all dispute over exam findings are resolved.

This exam revenue line item is the biggest variance from the previous year. For 2019/2020 fiscal year, the escrow program continued to operate in a deficit. Majority of the escrow program's revenue are from examination billing and escrow assessments. The statute authorizes the Commissioner to levy a special assessment for up to \$1,000 per licensed location in order to pay for the actual costs and expenses associated with the enforcement of escrow law. The department has not levied a special assessment since 2014 despite the fact that the escrow program has been operating in deficit. Currently, the department has determined not to levy a special escrow assessment this year due to circumstances. However, it is expected to revisit the needs for special assessment in upcoming years.

A committee member made a suggestion to combined two years of revenue and expenditure reports for comparison purposes.

5. Escrow Management Class

DBO and EIC are working on the next escrow management class. The date has been tentatively set for November 17, 2020. This one-day class is going to be a little different from previous classes because it will be conducted virtually online.

6. Remote Online Notarization

Garcia would like to make the Department aware that a number of states have allowed remote notarization by enacting executive orders. This hasn't happened in California. Garcia stated examiners may select files containing documents which were legally and remotely notarized by notary public in a state that allows remote notarization. These notarized documents were accepted by title companies and county recorder offices.

7. Lease Accounting – Current Status and Update

Garcia updated the committee members on the lease accounting issue. Garcia provided background information about the lease accounting standard and how it affects the escrow industry. This matter is still being discussed between EIC and DBO.

8. PPP Loans and the Impact on Escrow Licensee's Net Worth

Behm provided an update from IRS relating to PPP loans. The IRS announced a taxpayer that received a PPP loan may not deduct expenses if, at the end of the tax year, the tax payer reasonably expects the PPP loan to be forgiven, whether or not the taxpayer has actually requested that the loan be forgiven. There is a tax implication for Corporations and S Corporations. As results, a lot of companies are showing false negative and that they are short on net worth, but the reality is a month or two down the road, these deficiencies would not exist. Behm would like the Department to be aware of the impact and timing issue when reviewing licensee's net worth compliance.

Behm stated it is unclear the turnaround time for SBA to process PPP loan forgiveness. The banks don't want these loans on their books. These are 1% loans drive down their control ratios and cause problems. It appears most PPP loans will be forgiven by SBA.

9. Enforcement Actions and Licensing Update

Liang went over enforcement actions taken in the past quarter and the licensing stats for the same period. Liang stated the number of licensed companies and licensed locations remain similar for the past 10 years.

10. Public Comments

Committee members provided positive feedbacks about department's remote examination. Liang stated remote examination process is temporary and examiners are expected to conduct in-person examination at some point in the future when COVID is behind us.

A committee member questioned if the department will take enforcement action against companies fail to meet financial requirements due to treatment of PPP loans. Liang stated enforcement actions are taken on a case by case basis.

A committee member shared how wildfire impacted her business as the company may be under emergency evacuation. Liang reminded that licensees are required to notify the department in advance when they move office, unless there is an extenuating circumstance which warrants a shorter timeframe.

11. Closing remarks

Liang thanked everyone for calling-in and their participation. The next meeting will be on December 8, 2020 from 10:00 a.m. to noon. Meeting announcement will be posted on the department's website. At 11:50, the meeting is adjourned.