

ESCROW ADVISORY COMMITTEE MEETING

March 9, 2021

10:00 AM – 12:00 PM

Meeting was held telephonically

Department of Financial Protection and Innovation Represented by:

Ed Gill, Sr. Deputy Commissioner
Paul Liang, Special Administrator – Licensing
Sherri Kaufman, Senior Counsel

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
Jennifer Woodard, Vice Chairperson-EAFC**
Jeff Behm, Behm & Company, Certified Public Accountant
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 opening remarks.

Paul Liang welcome everyone to the first quarterly advisory meeting. Liang reminded everyone that both current meeting agenda and minutes for the previous meeting have been posted on the Department's website for public review prior to the current meeting. Both items were also emailed to all advisory members prior to the meeting. Liang did a roll call for advisory members. The above-listed members responded to the roll call. There were two action items from the December 2020 advisory meeting:

- 1) correct an error in the June 2020 minutes
- 2) invite a DFPI legal counsel to provide updates on proposed escrow regulations

DFPI corrected the error and reposted the June 2020 meeting minutes to its website. Sheri Kaufman from DFPI legal was present to provide an update for proposed escrow regulations.

2. Review and approval of minutes for 12/8/20 meeting

Liang asked if committee members had reviewed the minutes. Members pointed out four typographic errors. Liang stated the errors will be corrected and a revised minutes will be posted to DFPI's website. Jeff Behm made a motion to approve the minutes. PJ Garcia seconded the motion. The minutes was approved.

3. Escrow Law Program realignment under Mortgage Lending Division

Liang stated that the escrow law program was moved from the Financial Services division to Mortgage Lending Division effective February 1, 2021. This move was a DFPI internal reporting structural change to functionally align escrow program with mortgage lending program. This reporting change does not affect escrow examination cycle, examination rate, the amount of annual assessment, the frequency for filing annual liability report or annual audit reports. And it does not change any existing escrow forms and disclosures.

Ed Gill stated this change was consistent with other organizational changes. The number of law programs under Financial Services division has increased. From a workflow and resources standpoint, it makes sense to realign the escrow program under the ML program. DFPI is searching for a new lead for the Mortgage Lending Division and it makes more sense now to make this change.

A member of the public expressed concerns this change may create the impression for consumers that independent licensed escrow companies are under the supervision and control of mortgage lenders. Another concern was to continue develop of working relationship with the new lead. Gill acknowledged the concerns. He stated this change will allow the new lead to give much more attention to the escrow law program because it is moving from a unit which manages six laws to a unit manages 3 laws.

Another member of the public raised the question whether it is possible to change this division's name to Mortgage Lending and Escrow Division. Gill stated that it is a possibility which needs to be researched by DFPI legal. Currently, the independent escrow industry is regulated under the Financial Services division. The name for Financial Services Division is very broad. When people think of financial services, it could be anything regulated by DFPI. So moving the escrow law program from Financial Services to Mortgage Lending does not appear be a cause for the industry to lose its individuality due to the name change for the division under which the escrow law program reports.

Various members of the public expressed similar concerns. Liang acknowledged those concerns and reiterated there is no change to escrow law program's business processes, and that there may be opportunities to work with the industry to educate consumers.

4. Update regarding proposed regulations (PRO 13/13)

Sherri Kaufman provided an update on escrow rule making PRO 13/13. Kaufman stated this rulemaking is about defining the meaning of personal property and prohibited compensation as well as updating the requirements on maintaining books and preserving records, and lastly the annual report. Kaufman stated the proposed regulations were submitted to the Office of Administrative Law. DFPI held a public hearing on March 1, 2021 and heard about 12 people's comments about variety of issues. A court reporter attended and recorded all the speakers' testimony and will make it into transcript. DFPI will post the transcript to its website. The department appreciates everyone's testimony and comments during the hearing. Once the transcripts are completed, Kaufman will review them along with other comments that were submitted during the comment period and determine whether or not any changes requested will be accepted or not. If the current text changed based on any comments or otherwise, there will be another public comment.

A member of the public suggested future hearings be more interactive. Heidi Cassel asked if the DFPI has a deadline for implementing the new rules and if it will give the industry time to modify its policies and procedures to adapt to the new rules. Kaufman responded generally the process can vary and a lot of it depends on how many times proposed text is modified because each time the proposed

text is modified, there is another 15-day comment period allowed for public comments. It is difficult to predict. Liang added that the escrow program always works with the industry during implementation of new rules and regulations. Program considers impact on the public and industry and looks for ways to ensure a smooth transition in adopting the new rules and regulations. Cassel commented this rule making process does not appear keeping up with the drastic changes in the industry in 2020. Cassel expressed desires to work with DFPI to find a middle ground between protecting consumers and allowing industry to meet its changing business environment.

5. Observations on the escrow industry during COVID

A committee member requested the escrow program to share observations on the independent escrow industry during the pandemic. More specifically whether companies were doing better or worse at maintaining their financial requirements, whether more companies were behind in filing required annual reports, whether companies were responsive to DFPI examinations, and whether there had been an uptick in license surrendered.

Liang stated the independent escrow industry appear resilient during the pandemic. A large number of escrow licensees have a CD or money market account for funds set aside to meet their financial requirements. It appears the companies that have a rainy-day funds sheltered the storm better than those do not. During year 2020, the escrow program has not made many enforcement referrals for failure to meet financial requirements. The cases referred to enforcement were for those repeat offenders. The escrow program is waiting for the submission of annual audit reports for those companies with a fiscal year ended on December 31, 2020. There are over 400 licensees have a fiscal year end on December 31. That is about two-third of all escrow licensee population. These companies' annual reports are due by April 15. Once the escrow program staffs review those 400 plus annual audit reports, the program will be able to look at licensees' financial compliance and draw a comparison with previous year's reports before the pandemic.

During 2020, the escrow program did notice an increase in the number of requests for extension to file annual reports. This was reported partially due to the stay-at-home order which limited licensees' ability to provide records to CPA to perform their audits. Licensees who digitized their records were less likely to be affected by the lock down when they needed to provide records to CPA for annual audit.

Escrow program's examination team also reported licensees' delay in providing documents. Some common reasons causing the delay include hard copy files were difficult to scan, and to email to examiners due to file size limitation in email attachments; licensee staffs were out sick due to COVID. Program instructed examiners to use best judgment to get a sense if licensee's non-responsiveness was due to a valid reason or due to using COVID as a delay tactic to provide documents for examination. In 2020, a company made numerous promises to provide its books and records for an examination, but it ended up providing information in piecemeal or simply disregarded examiner's request. The department recently took over the company and placed it under conservatorship because the company failed to reconcile its trust accounts, failed to meet financial requirements, disbursed trust funds without written instructions, failed to correct debit balances, and made unauthorized disbursements of trust funds.

During the pandemic, the program received several surrender requests from small companies. However, the program did not see an uptick in license surrender. The program did see an increase in applications for a new escrow agent's license, or branch licenses. The program also saw an increase in the number of escrow employment applications filed with the DFPI. On average, the program receives about 150 to 200 employment applications submitted by licensees for their new hired.

6. Enforcement actions and licensing updates

Liang stated a handout was emailed to all advisory members for enforcement actions and licensing updates prior to the meeting. Liang reviewed the enforcement statistics since the previous advisory meeting and stated the enforcement actions were posted on the department website as public information.

Liang reviewed the licensing statistics since the previous advisory meeting. As of February 28, 2021, there were 679 licensed escrow companies at 1,016 licensed locations. The number of licensed companies increased by 9 comparing to the same time in previous year, and the number of licensed locations increased by 18 from a year ago. Since the previous advisory meeting in December 2020, the program received 5 requests to surrender escrow license.

7. Public Comments

Juliana Tu asked if the DFPI will allow escrow staff to continue work remotely after the pandemic ends. Liang stated licensees should refer to DFPI's March 2020 guidance memo regarding working remotely. There is no further formal guidance issued on this topic since then.

A member of the public asked if DFPI knows how many individuals are currently working for escrow licensees. Liang stated the escrow program does not track this number. Dan Bovill from EAFC stated that according to EAFC's records, there are about 6,800 people that are actively working for escrow licensees. Bovill stated the number of employment applications received from EAFC's members was similar to the number of employment applications received by DFPI. EAFC did see an influx of employment applications towards the end of 2020.

8. Closing remarks

Liang thanked everyone for calling-in and their participation. The next meeting will be on June 9, 2021 from 10:00 a.m. to noon. Meeting announcement will be posted on the department's website. At about 11:30 a.m., the meeting is adjourned.