

# ***ESCROW ADVISORY COMMITTEE MEETING***

**June 8, 2021**

**10:00 AM – 12:00 PM**

**Meeting was held telephonically**

## **Department of Financial Protection and Innovation Represented by:**

Ed Gill, Sr. Deputy Commissioner  
Sheila Oliver, Deputy Commissioner  
Paul Liang, Special Administrator – Licensing  
Gary Suzuki, Special Administrator - Regulatory

## **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 second quarterly advisory meeting. Liang did a roll call for advisory members. All advisory members present. Ed Gill introduced Sheila Oliver, the new deputy commissioner leading Mortgage Lending Division under which the Escrow Law program reports. Advisory members also introduced themselves to Oliver and briefly talked about their roles on the advisory committee.

### **2. Review and approval of minutes for 3/9/21 meeting**

Liang asked if any committee members had any comments or corrections for the previous meeting minutes. There was none. Jeff Behm made a motion to approve the minutes. PJ Garcia seconded the motion. The minutes was approved.

### **3. Update regarding proposed regulations (PRO 13/13)**

Liang provided an update on proposed regulations PRO 13/13. The DFPI is considering the comments and testimonies from the public hearing. DFPI counsel took notes from the last escrow advisory meeting and she understood the industry's concerns. The recording and transcript for the public hearings regarding this proposed rulemaking are available on the DFPI's website.

#### **4. Openings on the Escrow Law Advisory Committee**

Liang announced three upcoming openings on the escrow law advisory committee. Two-year terms for current advisory members in these three positions are ending in September 2021. These openings are for a representative from a medium-size escrow company, an escrow company that has a business specialization, and an attorney who has escrow agent clients. Liang encourage all qualified persons, including current advisory members, to apply. These positions do not have term limit, and they require DFPI commissioner's appointment. Qualified persons may submit their resume with a cover letter to Liang at 320 West 4<sup>th</sup> Street, Suite 750, Los Angeles, CA 90013. Cover letter and resume may also be emailed to Liang at Paul.Liang@dfpi.ca.gov The application deadline is July 21, 2021.

#### **5. Form submissions (Employment Forms, Summary of Personnel)**

Liang stated electronic submissions of DFPI forms, such as employment reporting forms, Summary of Personnel forms, are accepted with the exception when a form is signed before a notary public. The escrow program is developing a process to accept electronic submission of documents from licensees.

Garcia asked if a Summary of Personnel form has been submitted with a licensee's annual escrow liability report, does the licensee need to resubmit the form with its annual audit report. Liang stated these two submissions may seem duplicate for licensees who have a fiscal year end on December 31. But they are not. These are two separate submissions for separate specific purposes.

If a licensee has a fiscal year end on December 31, and there is no staffing change after the fiscal year end but before the date the annual audit report is issued, licensee may submit the same information on a Summary of Personnel form along with its annual audit report.

A member of the public suggested DFPI to make all forms available online and fillable. Liang stated he would review escrow form inventory and work with DFPI IT to identify forms that haven't been made electronic and fillable and convert those to user friendly format.

#### **6. Insured Cash Sweep Accounts**

Suzuki shared with advisory members that a recent examination disclosed a licensee used Insured Cash Sweep service provided by its bank to move trust funds without principal's authorization. In addition, some trust funds were moved into a bank account that was not designated as trust account. Furthermore, certain ICS accounts were opened at banks for which licensee did not provide written authorization to disclose account closure or shortage to DFPI and EAFC when such event occurs. This written authorization is required under the escrow law. Last, some of these accounts were open with financial institutions outside of California. These observations are concerning to the DFPI. Suzuki asked if committee members are familiar with ICS accounts.

Oliver stated there is a provision under FDIC rule that excess funds over \$250,000 sweep out from a bank account are not insured, especially those automatically sweep out overnight to an account in a different state. Oliver believed the provision has been updated few years ago. She will research and provide an update to the committee in next meeting.

Behm stated this practice is bank putting cash in off balance sheet position. It helps bank with managing their liquidity ratio and compliance with regulators. It also provides extra analysis money. Members of the public exchanged thoughts about FDIC insurance over \$250,000.

Cassel stated sweeping practice was very different in the 90s. She recalled participating in a meeting with FDIC which clarified that escrow agents are only depository on behalf of each of the clients, and each person within the escrow was, at that time, insured up to \$200,000. As long as escrow agents were able to provide proof and documentation of the receipt, FDIC released money immediately.

Suzuki stated based on advisory member's feedback, and feedbacks from members of the public, it doesn't appear using ICS is prevalent in the industry. More exploration on this topic may be needed.

#### **7. Enforcement actions and licensing update**

Liang briefly summarized enforcement actions taken since the last advisory meeting. Liang stated these actions were posted by DFPI Enforcement staff to DFPI website for public viewing. Liang also reviewed licensing statistics. Comparing to a year ago, the number of licensed companies and the number of licensed locations both increased.

Liang further shared that based on the information collected from industry's filing of annual escrow liability reports, it appears the independent escrow industry prospered in 2020. The total escrow liability was increased from approximately \$23 billions in 2019 to approximately \$26.4 billions in 2020. This is about 15% increase in licensee's business activities. Bartos shared her same observation that business activities appeared increased during pandemic.

#### **8. Public Comments**

A member of the public commented clients of his law firm reported difficulty in recruiting escrow staffs during pandemic. Tu agreed it was hard to recruit escrow officers and managers. Garcia further commented that the difficulty to recruit is due to the lack of permanent remote work option for job applicants. Cassel agreed and stated the industry has to recognize the desire for remote work from job applicants and perhaps explore options to allow processing part be done through remote work but still keeping the banking function under brick and mortar.

Liang stated the industry may refer to DFPI's March 2020 guidance memo regarding remote work. If there is further guidance provided by DFPI, he will share with the industry.

#### **9. Closing remarks**

Liang thanked everyone for calling-in and their participation. The next meeting is tentatively scheduled for September 15, 2021 from 10:00 a.m. to noon. Meeting announcement will be posted on the department's website. At about 12 noon, the meeting adjourned.