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September 13, 2021

Department of Financial Protection and Innovation
Attention: Sherri Kaufman, Senior Counsel and Regulations Coordinator
300 S. Spring Street, Suite 15513
Los Angeles, California 90013

Re: Proposed Escrow Regulations (PRO 13/13)

Dear Ms. Kaufman

The California Escrow Association is pleased to provide comments on revised proposed regulations relating to escrow licensees, dealing with accounting and auditing, and prohibited compensation. These comments are intended to update comments we submitted on February 19, 2021 relating to an earlier draft of the proposed regulations.

At the outset we would note that the latest opportunity to comment provided by the Department was exceedingly short. Issued on August 27, the comment deadline is today, September 13, a 17-day period which includes the Labor Day holiday and coincides with the last weeks of the legislative year. It is difficult for stakeholders to obtain consensus on regulatory proposals that quickly, particularly given the detailed nature of the proposals relating to accounting and auditing. *For this reason we believe that it is important for the Department to provide the opportunity for public comment at a noticed hearing, to the extent consistent with the requirements of the Administrative Procedures Act, and we ask that this correspondence be treated as a formal request for such a public hearing.*

Proposed Accounting and Auditing Regulations

In February, we noted that our members are not accountants or auditors, but that we had consulted with a number of CPAs who are experts in audits of escrow companies. Those professionals quite uniformly concluded that the provisions of the February language was likely to substantially increase audit costs for DFPI-licensed escrow companies. While there have been changes to the February draft based upon earlier input, it continues to appear that the proposed language would result in substantial additional costs. Auditors note, for example, that the requirements relating to dormant escrow funds proposed in Section 1741.5 (c)(3) are broad and subjective, and will result in varying interpretations by different auditors. We are advised also that the sampling of escrow files required by subdivision (c)(4) is statistically excessive.

Because we are not experts in this field, we would respectfully reiterate our earlier request that the Department carefully consider the input from CPAs trained in auditing escrow companies. The more the requirements are clear and objective, the more the Department will be able to count on uniform reporting at reasonable cost to licensees.

Prohibited Compensation

Our February comments articulated our view that proposed new Section 1741.7 exceeded the Department's authority to enforce prohibitions on rebates or kickbacks for the referral of escrow services, and instead amounted to unauthorized regulation of fees themselves. While we note that some changes were made in the August 27 draft, we would respectfully suggest that the revised draft continues to micromanage fees and business practices which do not amount to violations of Financial Code Section 17420, and that this section should therefore be deleted.

For example, proposed Section 1741.7 (a)(2) appears to define as a prohibited inducement for the referral of escrow services, *any* advertising, whether in traditional media or online, regardless of who places the advertising. We presume that the Department did not intend by the proposal to ban legitimate commercial speech by escrow licensees.

More troubling is language in proposed subdivision (a)(5) which makes the offering of "free escrow services to one or more parties to the escrow" a *per se* violation. We are aware of escrow licensees whose business model is based upon no fees to sellers, and we do not believe that this business model violates the letter or spirit of Section 17420. Parties should be free to contract with escrow providers where no fee is charged to sellers, as long as that fee provision applies to all sellers equally, is properly disclosed, and agree to by the parties.

Finally, proposed subdivision (a)(6) on discounts prohibits offering services at rates below the escrow agent's fee schedule, unless certain conditions are met. We are aware of no requirement to create, publish, post or submit fee schedules, so we believe that this language exceeds any authority granted by the Financial Code.

As noted in our February correspondence, we appreciate the opportunity to comment on the revised proposal, and would be happy to answer any questions you might have.

Sincerely,

DocuSigned by:



Tricia Vagt

President, California Escrow Association