

ESCROW ADVISORY COMMITTEE MEETING

December 7, 2021

10:00 AM – 12:00 PM

Meeting was held telephonically

Department of Financial Protection and Innovation Represented by:

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, Griffin, P.C. / Attorney
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, Baldwin Moffitt Behm LLP, 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 fourth quarterly advisory meeting. Liang did a roll call for advisory members.

2. Review and approval of minutes for 9/23/21 meeting

Liang asked if any committee members had any comments or corrections for the previous meeting minutes. Liang noted the name of Benjamin Griffin's firm has been changed from August Law Group to Griffin, P.C., and that the name of Jeff Behm's firm has been changed from Behm & Company to Baldwin Moffitt Behm, LLP. Liang will revise the minutes to reflect the correct names.

Behm suggested to clarify the rulemaking in the last minute by adding PRO 13-13. Cassel stated the last meeting minutes did not capture her sharing of remote work arrangements during the pandemic. Liang requested Cassel to send those comments to him after the meeting and he will update the minutes accordingly.

Liang also stated remote work is an ongoing topic. There were discussions internally and the escrow program is looking for guidance from the new commissioner. This topic will be kept on the agenda for the next meeting since there are always ongoing developments.

P.J. Garcia made a motion to approve the minutes with the changes discussed. Jeff Behm seconded the motion. The minutes was approved.

3. DFPI Updates

Liang announced that DFPI has a new commissioner. The leadership change does not affect how the escrow law program provides regulatory supervision and support to the industry, and to provide services the public. The escrow law program looks forward to work with the new leadership team.

Liang reminded escrow licensees that DFPI's self service portal will be opened for licensees to file 2021 annual escrow liability reports. These reports are due by February 15, 2022. The report will include all month-end adjusted trust liabilities and a Summary of Personnel as of December 31, 2021. DFPI will send email bulletin via GovDelivery to licensees' designated email accounts to remind about the annual filing. Licensees may proactively gather liability information and update their designated email address to avoid late filing. Liang reminded failure to file the report may subject licensees to administrative actions.

Liang stated that the topic about special assessment was discussed during the last meeting. DFPI's Budget Office calculated the revenue and expenditures for the escrow program and recommended to levy a special assessment for \$1,000 per licensed location to reduce the deficit. Licensees may expect to receive a special assessment invoice sometime in January 2022. The invoices are due in 60 days.

After levying a special assessment, the escrow program still has a deficit for about \$270,000. The escrow program learned that the deficit was partially caused by the increased cost of doing business and a statutory cap for assessment amount. Timothy Brigham asked it would take a new legislation to increase the department's ability to do regular assessments that meet the needs of the department. Garcia responded yes and stated historically that was the design because there was a time when the department used a pro-rata method to assess escrow licensees, the department had excess funds from the assessments. Escrow Institute of California introduced a bill to change the assessment method to current method and include a special assessment in the event that it is needed.

Liang stated any change to the current assessment method would require the statute be amended. The escrow law program has been operating in deficit for the past several years. The assessment cap limited the escrow law program's ability to grow and ensure sufficient staffing level to provide regulatory supervision and supports to licensees and the public. Liang stated the last time DFPI levied a special assessment was in around 2014. The current assessment cap was put in the statute since early 2000. In the past 20 years, the department only levied special assessments for a few times. Liang stated the escrow program will engage the advisory committee to find a workable solution to address the limitation in current assessment method.

Other advisory members expressed concerns that excess funds from escrow assessments under a different assessment method such as a pro rata basis may be swept by legislature and that the industry had to get those funds back. Similar to what happened to the Department of Real Estate when it became a Bureau. Liang acknowledged those concerns.

Liang also shared an update about recent reporting of check frauds to remind licensees be vigilant since check frauds appear to increase during the holidays. It is licensee's responsibility to immediately replace trust shortage, report trust shortage to DFPI, and ensure the company continues to meet its financial requirements. Heidi Cassel asked if the department requires escrow licensees to use positive pay. Liang stated no. It is a business decision of each licensee. Advisory members, and

members of the public concurred and commented that it is on licensees to take the necessary precautions to make sure trust funds are protected, and to adopt best practices.

Advisory members and members of the public suggested to establish a subcommittee to discuss future rulemaking and statutory amendments.

4. Remote work

Liang stated that since last advisory meeting, several advisory members provided additional information about licensee's remote work arrangements during the pandemic. Remote work appears to be a topic that should be discussed on the ongoing basis since there are constant changes to technology, business processes, and innovative ways of doing business. Liang stated if the department receives enough information, comments and feedback from advisory members, a subcommittee may be established to study those information and identify solutions for different types of remote work arrangements and how they affect escrow licensees.

Liang stated remote work is not an issue specific to the escrow industry. If there are further guidance in addition to the March 22, 2020 DFPI guidance memo regarding remote work, the additional guidance will probably have to address the issue with all industries. Sheila Oliver stated she will have a meeting with the new commissioner and that she will bring up this topic to the commissioner. Committee members commented that it would be important to first identify and define the activities that let people perform at a licensed location versus the activities that may be performed at a remote work location presumably a home address.

A member of the public expressed his opinion about remote work and stated that the barrier for remote work appears to be one statute which requires books and records are to be maintained at the licensed business location. This statute may be interpreted in a different way to allow remote work. Liang stated anyone can submit a request to DFPI legal department for an interpretative opinion and the process to submit such request can be provided upon request. This member of the public expressed concerns that a submission for a request for interpretative opinion may have unintended consequences if the opinion is not in the requestor's favor. And the industry will get a standing interpretation. The member of the public volunteered to write up a white paper to submit to the department with some of his analysis about remote work and reading of specific statutes.

Another member of the public commented that remote work is a gray area subject to interpretation. She felt technology allows many records be kept electronically. For example, banking industry does not return original cancelled checks, and remote deposit slips are generated and kept electronically.

Griffin commented the committee may look closely at what the guiding principles for remote work are and how other state agencies address remote work to their licensees.

5. 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.

6. Public comments

A member of the public suggested the department to streamline its licensing process. Liang requested the person to mail or email those suggestions with details to him after the meeting.

7. Closing remarks

Liang thanked everyone for calling-in and their participation. The next meeting is scheduled for March 8, 2022 from 10:00 a.m. to noon. Meeting announcement will be posted on the department's website. At about 12 noon, the meeting adjourned.