

ESCROW ADVISORY COMMITTEE MEETING

June 7, 2022

10:00 AM – 12:00 PM

**300 S. Spring Street, 15th Floor Conference Room, Los Angeles, CA 90013
(866) 709-4440; participant code 7675-977**

Department of Financial Protection and Innovation Represented by:

Sheila Oliver, Deputy Commissioner
Paul Liang, Special Administrator – Licensing
Gary Suzuki, Special Administrator – Regulatory
Adam Wright, Senior Counsel
Sherri Kaufman, Senior Counsel
Summer Volkmer, Senior Counsel

Committee Members Via Call-In to the Conference Line:

Benjamin Griffin, Griffin, P.C. / Attorney
Bill Nelson, Express Escrow, Inc. / Chairperson – E AFC**
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 second quarterly advisory meeting. Liang did a roll call for advisory members.

2. Review and approval of minutes for 3/8/22 meeting

Advisory members were provided the last meeting minutes prior to the current meeting. Advisory members do not have any corrections or comments for the minutes. P.J. Garcia made a motion to approve the minutes. Jeff Behm seconded the motion. The minutes was approved.

3. Advisory Committee Updates and Upcoming Openings

Liang stated the advisory committee would have three openings for a representative for small business, a CPA who has escrow agent clients, and a representative for companies with other ownership. Other ownership may include escrow companies owned by title companies or real estate brokers. Manager or corporate officer of independent escrow companies are eligible to serve on the committee. Opening announcement will be posted on the website. Anyone who qualifies is welcome to apply. Liang thanked the three members whose terms are ending on August 30, 2022. He briefly went over the purpose of the committee, the role of committee members, the appointment process and clarified there is no term limit to serve in the committee. The committee meetings are subject to

California Public Meetings Act. A quorum is needed to hold the meeting. If advisory members are able to attend the next meeting in DFPI Sacramento office, the program may invite the commissioner to the next meeting. Liang will survey the advisory members after the meeting. Sheila Oliver added that the Commissioner looked forward to her first meeting with the advisory committee. She encouraged advisory members to attend the next meeting in Sacramento with the Commissioner.

Liang stated in the next several months, the escrow program will assess its resources and staffing level to internally re-organize and dedicate resources to work on several big projects. Some of these projects include to modernize the escrow law, provide compliance training and education, revisit the assessment method after years of operating deficit, and also to explore the option to move the program on NMLS. The program will reach out to the advisory committee for guidance at the appropriate time.

Benjamin Griffin stated the advisory committee may have subcommittees to assist with these projects. There may be exemptions from the public meeting act if a subcommittee consists of less than three members. Alternatively, committee members can do information gathering exercise outside of the committee and bring those findings back to the committee discussion for public to see.

The advisory members discussed issues about different terminologies used by DFPI examiners and licensees during examinations, and that different examiner came to different findings. Liang stated when licensees encountered issues communicating with their examiner, licensees should contact the examiner's supervisor. Liang also stated each examination is different. If a violation was not addressed during a prior examination, it does not mean it will not be addressed in the current or future examinations. Each examination has its scope and focuses. It is not uncommon a violation was outside of the scope during the last examination but within the scope of current examination.

Gary Suzuki stated examinations are subject to quality control. All examiners use the same examination procedures consistently. Any procedures beyond the scope of an examination requires a supervisor's approval. DFPI does change examiner's assignments so licensees may not be examined by the same examiner over and over. However, the examiners apply same procedures and follow same audit standards.

4. Cryptocurrencies

Adam Wright from the DFPI's Financial Technology and Innovation Office shared an update with advisory members that the governor's office recently issued an executive order on blockchain, and it called for a number of projects to be done by various agencies and called on DFPI to begin regulating the crypto industry. The DFPI is looking to provide guidance to companies who are interested in offering crypto related financial products and services. These companies may currently be licensed under various laws include security, banking, escrow to lending.

DFPI is aware licensees have many questions relating to crypto products and services. Wright stated the DFPI issued an invitation for comments on crypto regulations. Wright encouraged advisory members, escrow licensees, and members of the public to contact Financial Technology and Innovation Office for questions, comments and feedbacks about crypto regulation.

A member of the public asked if DFPI would survey licensed escrow companies about crypto regulations, Wright stated the DFPI is collecting voluntary comments from different groups of licensees and whether a survey will be given to a specific group of licensees will be a project to discuss with the program.

Another member of the public shared that out-of-state escrow and title companies are reaching out to DFPI licensed escrow companies to assist in the conversion of cryptocurrency to usable funds in real estate transactions. These out-of-state vendors contracted California escrow companies to serve as the intermediary for their own transactions out-of-state, so this is becoming interstate commerce. This became a backdoor solution waiting for the law to catch up with the technology.

5. Update for Rulemaking (PRO 13/13) and Remote Work Guidance

Summer Volkmer stated the DFPI's guidance memorandum issued in March 2020 regarding remote work remains effective until the department officially withdraws it. Licensees can continue to rely on that guidance memo. When the department does move forward to withdraw the guidance, it will make sure the withdrawal is clearly communicated to licensees. This guidance is still intact.

Volkmer shared that the DFPI's notice of proposed action for rulemaking package PRO 13/13 under the escrow law in February of 2020 expired after one year window so that initial text that was noticed is no longer active. The DFPI plans to bifurcate the package. The first part will involve the record keeping reporting and annual audit requirements, and the second part will involve the anti-kickback provision regarding compensations. For the first portion, the department is in the process of finalizing draft text. For the second portion, the anti-kickback and compensation part, the department is planning to hold workgroups for discussion prior to releasing the text. The department's goal for both parts is to make sure all the issues involved are fully considered. The industry and public will have engagement going forward.

Sherri Kaufman stated an informal interactive meeting prior to a formal rulemaking will be a good opportunity to have more back and forth discussion. Once the formal rulemaking is officially noticed with the office of administrative law, it will begin the formal process and the opportunity to have informal type of proceedings won't be allowed.

6. Escrow Accounting Software

Suzuki shared with advisory members that multiple CPAs and examiner reported that an accounting software used by various licensees allowed users to change escrow ledger options so a debit balance may not be reflected in the running balance. The system also allows users to backdating transactions. This created a concern that licensees are not properly maintaining audit trails and manipulated ledgers to conceal trust shortages. Licensees should consider these issues when choosing or installing an escrow accounting system because licensees may run into costly compliance issues and examinations.

Suzuki stated examiners will take exceptions when these issues were discovered during the examination. Licensees should contact their trust accounting software provider to obtain proper training and support, and proper understanding of the reporting options and to build an appropriate system control. Garcia asked if Suzuki has spoken to the software company about these concerns. Suzuki responded that DFPI does not regulate trust accounting software providers. It is the responsibility of a software developer to understand its clients' business needs. And it is a licensees' responsibility to communicate their needs to the software provider before purchasing or subscribing the software.

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 on DFPI's 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. A separate handout for these statistics was provided to the advisory members.

8. Public comments

A member of the public asked if the escrow program moves on NMLS system will result in a qualification system of individuals in the escrow industry similar to real estate salesperson. So once an individual obtains qualification for employment and pays DFPI fees, this individual will be in the registry and does not need to produce documents when transferring to another escrow company.

Liang responded the goal for getting the escrow program on NMLS is to improve operational efficiencies in both licensing and examination. Any ideas, comments, suggestions on how the efficiencies may be achieved are welcome.

Another member of the public questioned whether a licensee needs to maintain an electronic consent form in the file in order to accept electronic signatures for an escrow transaction. Liang stated this question was previously clarified in a 2009 Escrow Bulletin. A copy of the bulletin is posted on the department's website.

9. Closing remarks

Liang thanked everyone for their attendance and participation. The next meeting is scheduled for September 7, 2022, from 10:00 a.m. to noon. Meeting announcement will be posted on the department's website. At about 12:15 p.m., the meeting adjourned.