

ESCROW ADVISORY COMMITTEE MEETING

March 12, 2024

10:00 AM – 12:00 PM

300 S. Spring St., 15th floor conference room, Los Angeles, CA 90013

Or via. Microsoft Teams

Department of Financial Protection and Innovation Represented by:

Greg Young, Senior Deputy Commissioner
Sheila Oliver, Deputy Commissioner
Paul Liang, Assistant Deputy Commissioner
Sultanna Wan, Special Administrator - Licensing
Gary Suzuki, Special Administrator – Regulatory
Milad Farag, Special Administrator – Regulatory

Committee Members:

Barry Sender, Granite Escrow & Settlement Services / Other Business Ownership
Heidi Cassel, Solaris Escrow, Inc. / Medium Sized Escrow Company
Jason Watrous, Freedom Escrow / Chairperson EAFC **
Juliana Tu, Viva Escrow! Inc. / Business Specialization
Larry Black via phone, Diamond Country Escrow, Inc. / Small Business
Nancy Silberberg, Altus Escrow, Inc./Past Chairperson EIC*
Patricia J. (P.J.) Garcia, Beach Pacific Escrow, Inc./Chairperson EIC *
Patrick Felde, Certified Public Accountant

* Escrow Institute of California

** Escrow Agents' Fidelity Corporation

1. Welcome new advisory members, Opening Remarks

Paul Liang welcomed advisory committee members attending the meeting either in person or virtually. Liang did a roll call. Most advisory members were present, and there was a quorum to continue the meeting. Liang stated there were four advisory member appointments made by the Commissioner since the last meeting. These appointments are as follows:

- Barry Sender of Granite Escrow & Settlement Services was appointed to represent escrow companies with other business ownership.
- Heidi Cassel of Command Escrow, Inc. was appointed to represent medium-sized escrow companies.
- Juliana Tu of Viva Escrow! Inc. was appointed to represent escrow companies with a business specialization.
- Matthew Davis of Davis & Davis Law Group, APC was appointed to serve as the attorney member on the advisory committee.

In addition to the above members, Nancy Silberberg of Altus Escrow, Inc. is replacing Claire Bartos to serve on the advisory committee as past chairperson of Escrow Institute of California. Appointed members hoped to serve on the committee to assist the DFPI to modernize the rules and regulations and to foster a collaborative relationship between the industry and its regulator.

Liang thanked these advisory members for their willingness to serve and thanked Benjamin Griffin for serving as the past attorney member of multiple terms.

2. Review and Approval of Minutes for 12/5/23 meeting

Advisory members were provided with the last meeting minutes prior to the current meeting. Nancy Silberberg asked Liang to clarify the statutory authority for DFPI to bill its escrow licensees mentioned in the last meeting minutes. Liang referred Silberberg to Financial Code section 17405.1.

Other advisory members did not have any corrections or comments for the minutes. Silberberg made a motion to approve the minutes. Barry Sender seconded the motion. The minutes were approved.

3. DFPI Updates

DFPI office hours

An advisory member requested the DFPI to clarify its post pandemic business hour. Liang stated that the DFPI's Los Angeles office on the 4th Street opens to the public from Monday to Friday, 8 a.m. to 5 p.m. The state building does not allow visitors to access any floor until it opens at 8 a.m. If any visitor arrives at the DFPI's 4th street office, the building security guard will ask the visitor to wait in the lobby until 8 o'clock. The DFPI does have staff working in the office before 8 a.m. and after 5 p.m. public hours. For security reasons, visitors are directed to ring a doorbell behind the 7th floor elevator lobby for assistance. DFPI's office staff can accept package deliveries and connect the visitor to the appropriate person who may provide further assistance.

Budgetary issues

Liang reminded advisory members to share with the industry that the DFPI will separate billing of annual report reviewing and examination from the regular examination conducted by field examiners. Escrow licensees can expect a small invoice for about two hours or more annually at the rate of \$95 per hour. Licensees should budget accordingly for this recurring invoice from the DFPI.

Liang stated that the escrow program is expecting the DFPI Budget office to provide a program revenue and expenditure report. Once Liang receives the report, he will share it with all advisory members. This report from the past 10 years shows that the escrow program has been operating in deficit. In recent years, the escrow program levied a special assessment at the maximum amount allowed by statute and the escrow program still operated in deficit. This is largely due to a variety of factors such as that the cost of doing business went up in the past 10 years, and that fees allowed in the escrow statute have not changed since the 1990s.

Greg Young shared the current state budget status with advisory members. It is unclear whether the state will implement a hiring freeze or other measures to manage the state deficit. The DFPI has engaged an outside consultant to conduct a department-wide fee study as many of DFPI programs' fees and assessments have not increased for many years. Once the fee study is done, licensees can expect there will be some changes. The DFPI is not funded by the state's general fund. DFPI programs are funded by industry assessments.

Silberberg stated that the state budget is difficult to understand. There will be a lot of assumptions without a good understanding of the budget. Patrick Felde questioned how the escrow program balanced its budget if the assessments and fees were not sufficient to cover program expenses. Liang responded that program managed deficit by delaying the procurement for IT equipment upgrades, holding off recruitment to bring staffing level up to meet service needs and demands, and levying

special assessments. Liang stated by the next advisory meeting, the DFPI budget office will be able to provide an escrow program-specific revenue and expenditures report. Liang will share the report with advisory members.

4. Cyber incident survey results

Liang stated the DFPI had taken an escrow company under conservatorship because the company was unable to replace trust shortages after a cyber incident occurred last year. Before the DFPI could complete the conservatorship, the department learned of several other cyber incidents in the mortgage and settlement industries. The DFPI was particularly concerned about the impact of cyber incidents on First American Financial and its affiliates. Many of DFPI licensed escrow companies use an accounting software provider affiliated with First American. A number of DFPI escrow licensees reported they were unable to access their escrow records due to the cyber incident. To assess the impact of First American's cyber incident on the independent escrow industry, the DFPI sent a cyber impact survey to all escrow licensees. Liang shared the survey results as follows:

- The survey was sent to 715 escrow licensees.
- 47%, or 332 licensees responded to the survey.
- 113 licensees reported their escrow operation was affected by First American's cyber incident.
- 115 licensees reported they use SMS system by First American.
- 75 licensees reported the cyber incident affected their escrow closing and they had anywhere between 1 and 75 escrow transactions being affected.
- 2 licensees reported the cyber incident caused a shortage in their trust account and that the shortage had been cured prior to the date of the survey
- 199 licensees reported they had a cyber insurance policy.

Licensees who installing accounting system in their local server were not affected by the cyber incident. Licensees who used the cloud version of the system experienced service interruptions in their business. Some licensees' transactions were cancelled by their customers because the customers' transactions could not be delayed. Those licensees suffered a loss in revenue. Other licensees reported delayed payoffs for transactions which First American was used as the title company. As a result of the delay, customers asked for interest on funds due to them. One licensee reported their cyber insurance provider had notified them after the cyber incident that their cyber insurance policy would not be renewed due to recent cyber incidents in the mortgage, title and settlement industries.

Liang reminded licensees to be vigilant. Licensees may refer to Commissioner's November 30, 2018 release number 66-FS for guidance on how to guard against cyber threats. During the survey week, several licensees discouraged other licensees from participating in the DFPI's cyber survey. A number of licensees informed the DFPI they would not participate in the survey because they were asked not to participate by a small number of licensees. The DFPI did not agree with those actions. The acts of those licensees hindered the DFPI's ability to collaborate effectively with the industry on matters related to the safety of trust funds and consumer protection.

5. Ad Hoc Committee Reports (Annual Report)

Garcia gave a brief update for the status on Ad Hoc committee's review of CPA auditing procedures. The Ad Hoc committee has finished its work, and it is currently with Felde and Silberberg. Felde stated the Ad Hoc committee focused on defining various terms and reports.

6. Vetting of settlement agents

Juliana Tu provided a brief summary of lender vetting issue to the advisory committee. In recent months, some licensed escrow companies have been required to be vetted by certain lenders through a third-party risk management company. These lenders would place an escrow agent on a do-not-use list if the escrow agent refused to comply with this lender's requirement. The vetting process initially started around 2012 following a CFPB bulletin. Tu felt that California independent escrow agents are licensed, bonded, and regularly audited. Tu believed the additional vetting by lenders through third-party risk management companies is intrusive and unnecessary, and raised the concern that these third-party risk management companies are private and unregulated companies which may not be able to securely handle their data. Tu believed these vetting requirements do not enhance the security of transactions but rather create unnecessary barriers. Tu stated larger lenders do not impose such demands and only smaller lenders are adopting to this practice. Tu requested the DFPI to consider a directive to DFPI licensed lenders exempting California-licensed escrow companies from these additional vetting requirements. Liang stated the DFPI's position regarding this issue remains the same as the position in commissioner's 2012 bulletin regarding third party risk management companies. However, the DFPI recognized circumstances may change from 12 years ago and this issue will be revisited before the DFPI can provide any guidance to escrow licensees or comment further.

7. Business continuity and succession planning

Liang shared an observation of the escrow licensing team that a number of escrow licensees' ownership was in a state of uncertainty when the owner passed away without any will, trust, or power of attorney for their business interests. It was difficult and time consuming for licensing examiners to assist the owner's surviving spouse and/or children to process their stock transfer applications. Most cases the surviving spouse and/or children does not have any desire to take over the business and they rather sell the company to interested buyers, but they cannot sell the shares until the shares have been transferred to them. Any dispute during probate can add more difficulties to complete the transfer. A pending probate can hold up a stock transfer for over two years.

Though a business continuity and succession plan is not required, the department observed that companies with a good business continuity and succession plan tend to be better poised for impacts from unforeseen circumstances. Advisory members commented that it is difficult to pass business interests to children and spouses because there is a lack of interests, and that it is also difficult to recruit new escrow practitioners. There is a lack of awareness of the escrow profession to people entering the workforce after high school or college. Liang encouraged industry members to think about ways of recruiting talents and to provide the training they need to ensure the industry offers the same level of services to the consumers. Lack of training or failure to recruit incompetent practitioners will cause harm to consumer funds.

Silberberg stated the training in the escrow profession has always been hands on. In order to really mandate a specific level of knowledge and education, the industry needs to be elevated. Tu shared her experience teaching real estate in a community college that a lot of students were interested in becoming a real estate broker because there is a lack of awareness in the value of escrow services and how this could be a great career choice. Patrick Felde commented that attorneys are licensed, CPAs are licensed, to elevate the industry, perhaps escrow practitioners can also be licensed similar to other states such as state of Washington. Matthew Davis commented escrow license in California is similar to a food service license and many factors devaluated the escrow license over the years. To elevate the escrow license, both the industry and DFPI need to work together.

8. Enforcement Actions and Licensing Update

Liang briefly went over enforcement cases in the current quarter and licensing statistics. The number of licensed companies and licensed locations decreased compared to the same period in the prior year.

9. Public comments

None

10. Closing remarks

Liang thanked everyone for their attendance and participation. The next meeting is tentatively scheduled for June 11, 2024, from 10:00 a.m. to noon at DFPI Los Angeles office. Meeting announcement will be posted on the department's website. At about 12:14 p.m., the meeting adjourned.