

ESCROW ADVISORY COMMITTEE MEETING
September 16, 2014

Department of Business Oversight Represented By:

Richard Malme, Special Administrator
Mona Elsheikh, Special Administrator
Ann Davila, Escrow Licensing Specialist
Colleen Monahan, DBO Counsel (Via Phone)

Committee Members Present:

Diane Boudreau-Tschetter, California Business Escrow, Inc. – Other Business Ownership (outgoing)
P J Garcia, Beach Pacific Escrow, Inc. – Past Chair Escrow Institute (Via Phone)
Juliana Tu, Viva Escrow! Inc. – Small Business (outgoing)
Jeff Behm, Behm and Company, Accountancy Corp. - CPA
Steven Garcia, Law Office of Steven Ray Garcia - Attorney
Paula Franks, Advantage One Escrow, Inc. – Chairperson Escrow Institute
Jennifer Woodard, Oak Escrow, Inc. – Vice Chair EAFC *
Leslie Sapone, Traditional Escrow, Inc. – Medium Sized Company (Via Phone)
Michael Culver, Elance Escrow Corporation – Business Specialization
Dave Brooks, – Small Business
Heidi Birenbaum Cassel, – Other Business Ownership

Committee Members Absent:

Bill Nelson, Express Escrow Company – Chairperson EAFC *

*EAFC – Escrow Agents’ Fidelity Corporation

1. Opening Remarks

Richard Malme opened the meeting by welcoming everyone and introduced Special Administrator Mona Elsheikh and Licensing Specialist Ann Davila, and also introduced new members Heidi Birenbaum Cassel and Dave Brooks. He congratulated Jeff Behm on being re-elected to the Committee again. Richard also thanked Juliana Tu and Diane Boudreau-Tschetter for their participation the last two years.

2. Review and Approval of the Minutes of Last Meeting

Richard asked if he could have a motion to approve the minutes of the last meeting of June 17, 2014. Diane Boudreau-Tschetter made a motion to have the minutes approved and it was second; the minutes were approved.

3. Regulatory Update: Proposed Revisions to Section 1741.5 – Audit Instructions (Colleen Monahan)

Richard briefly discussed the issue and explained that the language needs to be modified so that CPA's are within their ethical reporting standards. He then turned it over to Colleen Monahan for further discussion. Colleen referred to the amended language and walked through the new structure of how language is changing to comply with AICPA reporting standards. She also gave a brief history of how in 2002 the CPA's began to audit the trust account, and in exchange, the Department changed their examination of companies from two years to four years. Colleen gave a brief summary of the various subsections and explained what they pertained to and what the new wording was trying to accomplish.

Colleen also stated that she looked forward to comments from the committee and the public. A question was posed to CPA Jeff Behm as far as what the changes would mean to CPA's and the amount of work required and what increased costs might result. Jeff stated that two opinions would have to be issued and that there would be three engagements. He stated that the cost would go up and that initial administrative work would be significantly more.

Richard stated that the changes had come about because of CalCPA's opinion on our current audit requirements. The Department was trying to determine some methodology for the CPA to apply auditing procedures to the trust reconciliation. One alternative would be for the Department to audit companies every year. The Department will consider feedback on cost and any suggested alternatives.

A question came up as to what the timeframe was for comments and changes to take place. Colleen explained that the process for adopting a rule is a statutory procedure which is to be transparent, and have one year to adopt any regulation for which notice has been given. The process of adopting a rule allows for a comment period of 45 days and if language changes, then there will be another comment period of a 15 day minimum. The process would continue again – amend and send out to public for comments. When there are no further changes a discussion of all comments received takes place. Then for the final rule making there is one year to file with the Secretary of State.

Colleen stated that the present status of the process was that of working with interested parties, and that cost and benefit analysis is also part of the formal rule making process.

Paula Franks asked if could have until January for pre-comments because they need to consult with CPA's in the industry. Richard stated that sooner is better because CPA's will be very busy after December. PJ Garcia requested for at least 60 days. Colleen stated that she will consult with management to see if 60 days is possible. Colleen provided her email (colleen.monahan@dbo.ca.gov) for

comments and stated that a copy should be sent to Richard as well. Michael Culver requested copy of letter from CalCPA in which their concerns were voiced. Colleen stated that she did have the letter and would send to Richard for distribution.

4. Topics for Discussion (Committee Members)

a. Lease accounting update

Jeff stated that any leases greater than one year will go on the balance sheet. If needed, the change of liquidity requirements to accommodate this is still on Jan's (Commissioner) desk. The change won't affect tangible net worth requirement, but will affect liquidity requirement. USA accounting and international accounting are still not in agreement on the lease matter. Richard asked Jeff to keep the Department apprised of the situation and any potential implementation dates.

b. New Regulation Process and how it works

This had already been explained by Colleen in her earlier conversation.

5. New Business

a. Escrow licensees that offer free "Transaction Coordination"

The Department prohibits escrow companies paying for administrative costs for agents. If an assistant is for the escrow officer, then it is acceptable. A customer service manager for an escrow company is acceptable. The person would have to be located at escrow company, not at real estate agent's office. Transaction Coordinator is designed and focused to help real estate agents and is prohibited.

b. Types of Escrow Licenses and their comparison

There are three types of escrow licenses issued – Escrow Agent license (which can include an Internet Escrow Agent), Joint Control license, and a license for both Escrow Agent and Joint Control (the combination of both).

c. DBO policy regarding audit timing during annual CPA audits

The Department makes a conscious effort not to do this, but sometimes it cannot be avoided. When this does occur, the Department will cooperate with the company to work around the CPA's schedule.

6. Enforcement Actions and licensing update (R. Malme)

Richard distributed the handout showing the latest administrative actions and licensing statistics. There were 4 revoked licenses and 5 bar actions since the last meeting. As of August 31, 2014, there were 677 licensees and a total of 952 locations. Paula Franks asked what a settlement agreement was and Richard explained and discussed scenarios in which settlement agreements may be used.

7. Comments

Richard asked if there were any Public comments, but none were made. He then thanked everyone for coming and reminded the group to review Section 1741.5 changes and to provide comments. The next meeting will be scheduled for early December, 2014.

The meeting adjourned at 2:30 p.m.