

Escrow Advisory Meeting

September 11, 2018
10:00 A.M. – 11:05 A.M.
320 W. 4th St., 7th Floor Conference Room
Los Angeles, CA 90013

Department of Business Oversight Represented by:

Edgar Gill, Senior Deputy Commissioner
Mona Elsheikh, Deputy Commissioner
Sherri Kaufman, Senior Counsel ***
Kathleen Partin, Special Administrator - Regulatory
Paul Liang, Special Administrator – Licensing
William Mejia – Corporation Examiner IV – Supervisor – Mortgage Banking Unit
Milad Farag, Senior Examiner (Specialist)

Committee Member Present:

Bill Nelson, Express Escrow, Inc./EAFC Chairperson ***
Claire Bartos, Las Brisas Escrow, Inc./Chairperson EIC *
Nancy Silberberg, Altus Escrow, Inc./ Past Chairperson EIC *
Jeff Behm, Behm and Company/Certified Public Accountant ***
Elisa Guerrero, Four Seasons Escrow, Inc./Medium Sized Escrow Company
Alma Rushing, Orange Coast Title Company/Other Business Ownership
Benjamin Griffin, Attorney
Joanna Belanger, The Escrow Source, Inc./Small Business ***
Jennifer Woodard, Oak Escrow Inc./EAFC Vice Chairperson ***
Susan Melazzo / California Mortgage Bankers Association

* Escrow Institute of California
** Escrow Agents' Fidelity Corporation
*** Attended meeting via call-in to the conference line

1. Welcome, introductions, and opening remarks

Partin welcomed everybody to the meeting. Partin asked the call-in participants to introduce themselves.

Partin said that she has submitted recommendations to the commissioner for the new committee; however, the Commissioner is still reviewing. We should know by the next meeting who the new members will be.

Partin said that escrow roundtable meeting has not been scheduled yet, we are hopeful one will be scheduled. Gill said that he discussed with the commissioner the possibility of combining the escrow roundtable meeting with the escrow advisory meeting. Gill mentioned if the committee agreed to that recommendation, consideration would be given to schedule the next combined meeting sometime in December 2018. There were no objections to doing this.

2. Review and approval of June 05, 2018 meeting minutes

Partin asked for approval of the last minutes. Elisa Guerrero asked to be added to the list of attendees.

Silberberg motioned to approve the minutes, and the motion was seconded by Bartos. The minutes were approved.

3. Rulemaking update:

Status of proposed revisions to section 1741.5

Partin asked Kaufman to update the committee about the status of the changes to section 1741.5. Kaufman stated that it is currently under review by the executive staff. The next step is to go to the Governor's office then to the Office of Administrative Law.

Behm asked if the amendments to the regulation will be put in place before the change in the DBO administration. Kaufman stated that it is a long process She said it will take around a year, unless it is an emergency which it is not. The goal is it to submit it before the departure of the current administration.

Silberberg had a question about the process. Kaufman said that once it pass executive staff review, then it will go to the Governor's Office. After that, to the Office of Administrative Law with final comments. There are a few steps left for this process.

Silberberg asks about the current licensees who want to close and had an issue with the closing audit. Kathy said that the current law has specific elements and as long as the CPA agrees to do the agreed upon procedures, as long as they provide us with the specific elements needed, we will accept the closing audit.

Bartos asked, if there is any other chance for public review. Kaufman said that they will have an opportunity to comment in the future, but she does not know exactly when.

4. California disclosure of per diem interest

Silberberg said that they have been working with CNBA on the form that allows consumers to authorize the funding of their escrow on a Friday or before a holiday that could result in higher per diem interest charges. The updated Release # 58 has been helpful when preparing the closing statements. She said that we are trying to come together to submit something that the Department can look at. Milazzo said that the consumers are very confused by the form and CNBA is trying to help the public.

Milazzo also mentioned that in June 2016 Richard Malme was present during a Mortgage Lending roundtable meeting. As part of the agenda, Malme shared la concerns about interactions between escrow companies and lenders regarding the per diem interest issue. Milazzo said that they have been working for the past 2 years on these issues. She said the DBO asked us as industry leaders to meet to resolve these issues and come up with a better form. Milazzo also said that they have been talking all this time about California requirements for per diem interest disclosures., A few CMBA members of her subcommittee are working on what would be a solution and they are trying to draft a new sample disclosure form. It would be used as a start to come together as lenders and attorneys to work on these issues to come up with a better form. Milazzo said that she welcomed the DBO feedback on the form. Gill asked Milazzo to email the form to Partin and Mejia.

Silberberg aske Mejia if he had seen their closing statements, whether they met the requirements, and if there had been any issue with them. Mejia said that the forms they have seen have all the updates

required and have been helpful. Overall, it has been good, however, they have encountered some issues with disclosure. Silberberg said that they had issues being asked for their disbursement ledgers.

5. Questionable marketing practices

Bartos said that Genia had sent Partin a bulletin regarding questionable business practices and never heard back from the Department. She also said that members send them questions regarding this topic and sometimes they do not report their names on it. Bartos asked about the Department's position on the questionable advertising. Partin said that two companies are currently in Enforcement and when something is sent to Enforcement, it does not become public, until administrative action is taken, such as issuing an order against the company. Partin also said that the Department is taking some proactive steps. We currently working on a bulletin to remind the industry regarding this issue. We also looking at amending the law, The DBO is taking this issue seriously and it is a concern. She said the emails are helpful, but we have new players every month. We need solid evidence, take an action and we are looking for the connection between the marketing practice and benefit to the licensees and the agents.

Le Quire asked whether the industry ever hears anything about Enforcement actions against these licensees. Partin said, it does not become public until the Enforcement section issues an order. An example of an action we took is Citadel Escrow, which is posted on the DBO website.

Bartos said that she is concerned that some escrow companies are publicizing the listing for the agents on social media. She said that real estate agents argued that it does not say anywhere that escrow agents cannot advertise for them on social media and so a they will continue to do it. Partin said that advertising on behalf of real estate agents is considered something of value, however, it has to be shown that there is a benefit and each case is looked at individually.

Guerrero had a question regarding what form of benefit does real estate broker get by the offering of a flat escrow fee. Partin stated that flat fee helps the brokers get their listing and can give them an advantage over other real estate brokers competing for listings.

Le Quire said that there was a case regarding Wells Fargo, where the loan officer of Wells Fargo was giving escrow business to a specific escrow company and in exchange the Wells Fargo loan officer was able to negotiate the escrow fees based on how much his clients could afford. Silberberg said that CFPB ruled against Wells Fargo in that case.

6. Escrow Management Class Schedule

Partin said that we are planning to schedule the Management Training class in January or possibly February 2019 depending on the availability of a conference room at the Department. We do hope to schedule it in the first quarter of 2019. Garcia said that she has a growing list of dozens of people who are interested in attending. Garcia also said that she has been working on trying to update the training manual and could issue it electronically to save on costs.

7. Update regarding potential DBO/DRE interaction

Partin said that right now we do not have enough staff to go out and do joint escrow examinations with the DRE. Gill said that this is something that would need to be considered by the Commissioner. Elsheikh will be meeting with the Commissioner on Monday and this is one of the discussion items for the meeting.

8. Request for detailed budget

The Escrow Law budget was not available in time for this meeting. Partin said that they have been working on this request. There is still a deficit, but there are uncompleted assignments that will be billed, which will help to cover some of the deficit. In addition, the new rate of \$95.00 per hour took effect for examinations that started on or after August 1, 2017. We are taking steps to reduce that deficit. Gill said that Gill said that we are not sure if this rate alone will cover the deficit, The DBO is going through an internal transition to a new fiscal accounting system. This process has been performed through multiple phases and our budgeting unit is trying to separate the escrow unit costs from the costs of the Financial Services Office as a whole. Gill said he just spoke to the Deputy Commissioner of the Administration units yesterday and they told him they are trying to get it done by the next Advisory meeting.

9. Impact of new privacy policy on escrow agents

Garcia said that she had reviewed the privacy policy issued by the CFPB and she did not see any impact on the escrow agents, but it will have an impact on the mortgage industry.

10. Examination delays

In answer to the question regarding the delays in completing examinations, Partin said that we had started many exams that have not been completed yet, but we have a plan to complete these exams by the end of December 2018, or possibly January 2019. She asked for the licensee's cooperation with the examiners to complete their exams. Silberberg stated that one of the concerns she heard is whether the licensees will be asked to provide new cut-off information when the examiners return to continue the exam. Partin said that the examiners will not ask for a new cut-off and so far, only one company had had to order a new cut-off.

Silberberg asked about the number of the current examiners. Partin stated that a year ago we had 12 examiners and currently we have seven. Licensees are being asked to cooperate in order to complete these exams. Partin also said that the examiner completing the exam may not be the examiner who started the exam, since we are working as a team to complete all open assignments.

11. Enforcement actions and licensing updates

Partin presented a chart of administrative actions taken since the last meeting. Partin reported that there were 23 enforcement actions, which include two license revocations, four bar orders from employment, one suspension of an individual, 10 desist and refrain orders for unlicensed escrow activity (most of which were related to internet escrow activities), four settlement agreements regarding financial deficiencies, one accusation to revoke a license, and one order appointing a receiver

Partin said that since this time last year the number of licensed companies increased by 12 and locations increased by 15.

Silberberg asked how long it takes to complete a branch license application. Partin said, it depends on the completeness of the application. If all the pieces are submitted upfront, branches can be licensed in

two months. If the application is received piecemeal, it takes much longer. Silberberg asked if the change of ownership application takes less time. Liang mentioned that it is a similar process to a main office application and it is taking around the same amount of time.

Garcia asked about the manager application process. Partin said that the process is moving very well, but sometimes there is a delay in receiving employment verifications, especially if the former employer is a title company. It is easier to get employment verifications from Department licensees. Liang said that they have been approving around three to four manager applications per week.

12. Public comments

No public comments noted.

13. Closing remarks

Partin asked everyone for a moment of silence for the victims of September 11, 2001.

In closing, Partin thanked everybody for attending the meeting. She adjourned the meeting stating that the next meeting is tentatively scheduled December 11, 2018.