

ESCROW BULLETIN

March 2009 • Issue No. 33

Electronic Signatures

The following information does not constitute an opinion from the Department. It only indicates what an escrow company should be aware of and what examiners are looking for when electronic signatures are used to close an escrow transaction.

California's Uniform Electronic Transactions Act authorized electronic signatures and records. The escrow regulations impose due care requirements on escrow agents in conducting escrow transactions. Unlike paper transactions, electronic transactions present the problem of authenticating the document and identifying the sender and recipient, particularly when they don't have a pre-existing business arrangement and do not meet face to face. As you would expect, some technologies are not as secure as others, such as those where an electronic signature is merely stamped on a document. A digital signature, on the other hand, has extremely different security properties. These different security properties appear to make this type of technology more secure than other types. While we can't suggest one technology over another, we can offer the following guidance. It does not appear that these laws alter existing business practices, standards of care, or legal requirements such as those involving business contract information or fraud. In addition to fraud, there are also concerns regarding reliability and forgery when accepting signatures by fax copy or electronically.

Just as when accepting signatures on paper documents, some verification of the signers and authentication of the documents is required to ensure validity and enforceability. As an example, escrow agents should use other means to attempt to ensure that an electronic signature is authentic



such as by talking with the signing person directly over the phone before documents are signed electronically. In addition, escrow agents should take the necessary steps to ensure that the parties had agreed to conduct the transaction electronically, to verify the identity of the parties and to ensure that the document received was actually sent by the party claiming to be the sender and has not been altered, changed or modified during transmission.

A copy of the electronic consent form should be maintained in the escrow file. When e-signatures are used in an escrow transaction, examiners will be looking for authorization from the principals and the lender indicating that they agree to allow escrow to act on electronic signatures.

Relying on Faxed Signatures

Examiners are no longer taking exception to the use of faxed signatures as long as the escrow instructions authorize the escrow company to accept them as the originals. It is recommended that documents with the original signatures be obtained and maintained in the escrow files, but exception will not be taken if the parties have authorized the company to accept the faxes as if they were the originals.

Storing Records Electronically

The electronic storing of records is becoming more popular. Section 1737.3 of the California Code of Regulations allows for electronic storage of records as long as certain criteria are met:

1. Must be in a format that allows the examiner complete access to all books, records and accounts.
2. The electronic records must be provided to the examiner in a software format that is acceptable to the Department and that the examiner has in his or her possession. Currently, that would be either Excel or Word formats. If the format is not one used by the Department, then any or all of the records maintained in an electronic format must be provided to the examiner in printed form.
3. The escrow agent must ensure that the examiner has the ability to download and print any and all of the records that are stored and maintained electronically.
4. The electronic records must be maintained in a media that is:
 - a. Non-erasable "write once, read many" that does not allow changes to the stored document.
 - b. Consistent with the minimum standards of quality approved by either the National Institute of Standards and Technology or the Association for Information and Image Management, and
 - c. Contain written authentication identifying the electronic record as an exact unaltered copy of the document.

If all of the criteria are met the paper documents do not need to be maintained, but legal counsel should be consulted to determine if any original documents should be maintained for legal reasons.

The electronic records must be maintained for five

years from the close of escrow or last transaction. If they are on a disk, make sure that all the records are due for destruction before destroying the disk. This includes reviewing the outstanding checklists of the current and any dormant trust accounts to make sure there aren't any old checks that are due for escheatment where the file would be needed to either complete the escheatment forms or for compliance with record retention requirements of the State Controller's Office.

Examiners were asked about their experiences with licensees who already store their books and records electronically. Their comments included that some files were not completely scanned and contain comments such as "skipped page." Someone at the escrow company should be comparing the actual file to the scanned one before the original is destroyed. If an authorization for a disbursement is not available, the company may be required to replace it; therefore, it is in your best interest to make sure you have a complete file. The examiners also suggested that tabs identifying the documents reduce the time necessary to locate the specific documents they need to review.

How to Surrender an Escrow License

With the down turn in the real estate market many companies are having a hard time keeping their doors open. If this applies to you, the following may be of interest in order to



prevent the license from being revoked for not surrendering it properly.

The process starts with the submission of the license and any amendments such as changes of addresses. Along with the license, a Board of Directors resolution authorizing the surrender, a cover letter stating where the books and records will be stored and a contact name and phone number must also be submitted. Once these items are received, a letter is sent to the company explaining that the license will be surrendered if a closing audit is submitted and accepted within 105 days of when the request for surrender is received and the company is not in violation of any escrow laws. The closing audit does not involve as many procedures as the annual audit. It consists of a trust account bank reconciliation and statements by the CPA about whether or not the trust funds were disbursed without authorization. The CPA is not required to review or include the financial statements.

When the license is submitted for surrender, no new escrows may be opened. Escrows that were opened before the license was submitted for surrender can be completed or transferred to another escrow company. If files are transferred, the principals to the escrows must be notified of where the files are being transferred, including the new escrow numbers assigned by the receiving company.

Once the CPA has submitted the closing audit and it is accepted and it is determined that the company is not in violation of any escrow laws, a final letter is sent stating the license is surrendered. If the closing audit is not received or the company is in violation of one or more escrow laws, the license cannot be surrendered. Whether the license is surrendered or revoked, the closing audit is still required.

Due to the “no violation of the escrow law” requirement, it is important for a company going through the surrender process to pay attention to key dates, which could affect its ability to surrender without extra expense. For example, if the company wants to surrender in order to avoid

paying the escrow assessment that is due no later than June 30th, the surrender process, including receipt and acceptance of the closing audit, must be complete before June 30th. Otherwise the assessment would have to be paid in order to not be in violation of the escrow law. Other issues that affect surrenders are completing the process before the surety bond cancels or the annual audit report is due. If the surety bond is canceling, a surrendering company should talk to its bond company about extending the coverage until the CPA can submit the closing audit and it can be reviewed and accepted by the Department.

Once the process is complete, the State Controller’s Office is notified of the status of the license.

Escrow Management Class

The Department’s Education and Outreach Section has been working with the Escrow Institute of California to restart the Escrow Management class that at one time was a requirement for all new escrow company owners and managers. The class is offered to any interested escrow company owner or manager. The format of the class is similar to what was offered in the past. It provides an overview of the Department and escrow program including issues that affect the escrow industry such as reporting, bonding and financial requirements. It also covers regulatory issues such as examinations, internal control and bank reconciliations as well as cost saving tips.

The classes are held periodically at the Department’s Los Angeles office. To register for the next class, any interested owner or manager should contact Escrow Institute of California at (800) 337-2769 or send e-mail to admin@escrowinstitute.org. The class size is limited.

Disbursement Dates

As your mortgage banker customers have made many of you aware, they are required to obtain the actual disbursement dates of loan funds in order to accurately calculate interest charges. Lenders are allowed to charge interest on mortgages secured by improved property with one to four residential dwelling units starting one day prior to the date the loan proceeds are disbursed from escrow. Lenders are subject to penalties if the correct dates for calculating interest are not used: therefore, escrow officers may see an increase in the number of lenders asking for certification of disbursement dates.

Corporations Commissioner Preston DuFauchard issued release number 58-FS to address this issue. The Commissioner has determined that the following are acceptable as evidence to show compliance with the certification requirement:

- Disbursement date reflected on the settlement statement issued by the settlement agent pursuant to Section 2603 of Title 12 of the United States Code;
- Written or electronic records reflecting communications between the mortgage banker licensee and the settlement agent verifying the disbursement date of the loan proceeds and identifying the name of the settlement agent providing the information and the electronic or business address used to contact the settlement agent; or
- Contemporaneous written or electronic records memorializing oral communications between the mortgage banker licensee and the settlement agent verifying the disbursement date of loan proceeds and identifying the name and telephone number of the settlement agent providing the information.

The release defines the “disbursement date” as the date on which the majority of loan proceeds are disbursed to the borrower, to a third party on behalf of the borrower, or to the mortgage

banker licensee to satisfy an existing obligation of the borrower. The release also defines “settlement agent” as the person who distributes funds from an escrow including an escrow agent, a controlled escrow company, a title insurance company, or an underwritten title company.

A copy of the release be accessed on the Department’s website at www.corp.ca.gov/commiss/58-fs.pdf

Notary Fees

Examiners are taking exception when they find that notary and sign-up services are not properly accounted for. A detailed invoice should accompany these charges. Specifically, in-house notary charges should to be supported by an invoice signed by the party or parties (buyer, seller, borrower) receiving the notary/ sign-up services. In addition, the notary charges should be itemized as to the amount charged for notarizing the signatures, the traveling fee, if any, the signing fee and any other charges on the invoice. If it is not possible to obtain a signed notary invoice for services performed by someone not associated with the escrow company, the Department will accept a signed estimated closing statement that shows the specific breakdown of the notary charges. The closing statement must properly designate the charges. The Department has implemented this procedure because examinations have revealed what appear to be excessive notary charges. Escrow customers deserve to be fully aware of the cost of services that they receive. Therefore, be prepared for examiners to request this information.

Moving?

With the downturn in the real estate market, many escrow companies are moving to smaller or less expensive offices.

Section 17213.1 of the Financial Code requires that any notice of intended change of address be transmitted to the Commissioner not less than 30 days prior to the date of the intended change of location. A penalty of up to \$100 per day for the first 10 days and \$10 per day for each day thereafter the changed location is maintained without authority could be charged. Even more important than the penalties is the fact that correspondence, including administrative orders, is considered effective if sent to the licensed location. Correspondence that has been returned includes assessment notices, annual report reminder letters and cease new business orders. It is also a concern when customers call saying they can't find their company.

The easiest way to determine whether your company is in compliance is to compare the address on the license on your wall to the street address. If they are different, send a written request to the Department to amend the license for the new address. Penalties may be assessed for failing to provide 30 days notice for a change of location. Please take immediate steps if you are not in compliance.

Another issue regarding locations is escrow processing that is taking place outside the licensed location. Although technology makes it possible, this is a reminder that escrow officers cannot work from home. All escrow processing must be performed in a licensed escrow location.



Internet companies are an exception to this, and are allowed to have contact centers with certain restrictions. Requests have been received from escrow companies that wish to be present at auctions. In order to do this, the company must request permission 30 days in advance from the Department stating the dates and locations of the auctions. They must also provide their assurance that the only escrow processing that will take place is the issuance of receipts and the acceptance of the contracts. A confirming letter is sent to the company if approval is granted.

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Enforcement Actions

The following is a sample of the Enforcement actions taken between January 2007 and September 30, 2008:

COMPANY	FILE #	TYPE	REASON	ISSUED
Shiraz Escrow, Inc	9632122	Revoke	Books/Records, False Information	3/16/2007
Jamshid Saraj (Shiraz Escrow, Inc.)	9632122	Bar	Books/Records, False Information	3/16/2007
Rayna Hill (Asset Escrow Services, Inc.)	9631934	Bar	Commingling Trust Funds,Shortages	4/13/2007
Newport Beach Escrow Corp.	9632077	Revoke	Debit Balances,Unauth Disbursements	5/3/2007
Damian Kutzner (Newport Beach Escrow)	9632077	Bar	Debit Balaces,Failure To Report Shortage	5/3/2007
Tracyoursales.Net Escrow, Inc.	9632186	Revoke	Unauthorized Person,Books/ Records	5/10/2007
Linda Dancy (Tracyoursalesescrow.Net)	9632186	Bar	Unauthorized Person,Books/ Records	5/10/2007
Tessa Sims (Asset Escrow Services, Inc.)	9631934	Bar	Commingling Trust Funds,Shortages	8/16/2007
Platinum Coast Escrow, Inc.	9631982	Intent	To Revoke-Unauthorized Disbursements	10/1/2007
Nazih Daniel Sadek (Platinum Coast Escrow)	9631982	Intent	To Bar-Unauthorized Disbursements	10/1/2007
Asset Escrow Services, Inc.	9631934	Conservator	Commingling Trust Funds,Shortages	10/15/2007
Gloria Luna (Western Escrow Services)	9632096	Bar	Unauthorized Disbursements	10/24/2007
Valerie Dominguez (Western Escrow Serv)	9632096	Bar	Unauthorized Disbursements	10/24/2007
Miguel Vazquez (Platinum Coast)	9631982	Bar	Unauthorized Disbursements	10/26/2007
Western Escrow Services	9632096	Receiver	Failure To Replace Trust Shortages	11/5/2007
International Escrow Company	9632089	Revoke	Commingling Trust Funds,Shortages	12/18/2007
Anthony Haworth (International Escrow)	9632089	Bar	Commingling Trust Funds,Shortages	12/18/2007
Top Escrow, Inc.	9632177	Revoke	Books And Records	2/4/2008
Alexis C. Kim (Top Escrow, Inc.)	9632177	Bar	Books And Records	2/4/2008
Escrow Diversified, Inc.	9632090	Revoke	Once Conservatorship Is Complete	2/25/2008
Tina Coats (Escrow Diversified)	9632090	Bar	Trust Account Shortage	2/25/2008
Graceland Escrow Services Corporation	9631989	Revoke	Books And Records, Debit Balances	3/25/2008
Arthur Wang (Graceland Escrow Ser)	9631989	Bar	Books And Records, Debit Balances	3/25/2008

American Home Escrow, Co.	9632072	Revoke	Non Payment Of Assessment	4/8/2008
At Your Service Escrow, Inc.	9632309	Revoke	Non Payment Of Assessment	4/8/2008
Beverly West Escrow	9632266	Revoke	Non Payment Of Assessment	4/8/2008
Channel Escrow, Inc.	9632250	Revoke	Non Payment Of Assessment	4/8/2008
Everything Escrow	9632204	Revoke	Non Payment Of Assessment	4/8/2008
Gold Value Escrow, Inc.	9632238	Revoke	Non Payment Of Assessment	4/8/2008
Matrix Escrow, Inc.	9632389	Revoke	Non Payment Of Assessment	4/8/2008
Oceanwest Escrow Corp	9632294	Revoke	Non Payment Of Assessment	4/8/2008
Sandcastle Escrow Services, Inc.	9632076	Revoke	Non Payment Of Assessment	4/8/2008
Santa Susana Escrow	9632345	Revoke	Non Payment Of Assessment	4/8/2008
The Escrow Edge, Inc.	9632300	Revoke	Non Payment Of Assessment	4/8/2008
Xpedia Escrow, Inc.	9632217	Revoke	Non Payment Of Assessment	4/8/2008
Preferred Metropolitan Escrow, Inc.	9632194	Revoke	Fraud	4/22/2008
Preferred Met-Whitaker, Andrew	9632194	Bar	Fraud	4/22/2008
Preferred Met-Whitaker, Heather	9632194	Bar	Fraud	4/22/2008
Preferred Met-Whitaker, Katrina	9632194	Bar	Fraud	4/22/2008
Orange County Escrow, Inc.	9632115	Intent	To Rev -Trust Shortages	5/16/2008
Platinum Coast Escrow, Inc.	9631982	Freeze	Trust Acct Frozen	6/27/2008
Lopez, Rginald (A 2 Z Escrow, Inc.)	9632146	Bar	Unauthorized Disbursements	6/30/2008
Estrada, Naomi (C Gull Escrow)	9632025	Suspended	12 Month Suspension	7/11/2008
Cheetah Escrow Services, Inc.	9632349	Revoke	Failure To File Annual Report	8/14/2008
Premiere Transactions Escrow, Inc.	9632298	Freeze	Discontinue Bus/Take Order	8/25/2008
Sorrento Escrow, Inc.	9632163	Revoke	Failure To File Annual Report	8/27/2008
Elender Escrow, Inc.	9632269	Revoke	Failure To File Annual Report	9/5/2008
Sandoval, Claudia (Paramount Esc Ser)	9632103	Intent	Notice To Bar For Unauth Disbursements	9/15/2008
Topline Escrow Service, Inc.	9632287	Suspended	Failure To File Annual Report	10/8/2008
Platinum Coast Escrow, Inc.	9631982	Possession	Commingling Trust Funds, Shortages	10/9/2008
Premiere Capital Escrow, Inc.	9632367	Suspended	Failure To File Annual Report	10/21/2008
Rock & Roll Escrow, Inc.	9632395	Suspended	Failure To File Annual Report	10/29/2008
Unlimited Escrow, Inc.	9632255	Revoke	Failure To File Annual Report	11/15/2008
Resorts West Escrow, Inc.	9632346	Suspended	Failure To File Annual Report	11/12/2008
West Escrow, Inc.	9631944	Freeze	Books and Records	11/19/2008
California Investors Escrow Co.	9630453	Suspended	Failure To File Annual Report	12/12/2008
Sadek, Daniel	9631982	Suspended	Commingling Trust Funds, Shortages	12/12/2008
Platinum Coast Escrow, Inc.	9631982	Revoke	Commingling Trust Funds, Shortages	12/12/2008
First American Eagle Escrow, Inc.	9632132	Revoke	Failure To File Annual Report	12/17/2008
Sandoval, Claudia (Paramount Esc Ser)	9632103	Bar	Unauthorized Disbursements	12/23/2008
Simply Escrow, Inc.	9632267	Revoke	Failure To File Annual Report	1/12/2008

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Excellence Team Escrow, Inc.	9632227	Suspended	Failure To File Annual Report	1/8/2009
Infinity Escrow, Inc.	9632281	Revoke	Failure To File Annual Report	1/8/2009
Platinum Coast Escrow, Inc.	9631982	Revoke	Effective At Termination Of Receivership	1/12/2009
Madden, Theresa (Premiere Transactions)	9632298	Bar	Trust Shortages	1/19/2009
Platinum Coast Escrow, Inc.	9631982	Receiver	Commingling Trust Funds, Shortages	1/22/2009
Davy, Tina (Escrow Diversified)	9632090	Intent	To Bar For Failure To Maintain Records	1/27/2009
Abbie Escrow, Inc.	9632119	Revoke	Failure To File Annual Report	2/4/2009
Premiere Transactions Escrow, Inc.	9632298	Revoke	Effective At Termination Of Receivership	2/19/2009

Failure to File Annual Reports

In addition to the actions noted in "Enforcement Actions," the Department has taken a number of actions against escrow agents who failed to file their CPA prepared annual reports timely. These actions have resulted in penalties being assessed and/or escrow licenses being suspended or revoked. It is important that the annual reports be filed on time. When the law changed reducing the frequency of the regulatory examinations, additional procedures were added to the annual report requirements. The penalties for failure to file the annual report on time include suspension or revocation of the escrow agent's license and/or penalties of up to \$100 per day for the first five days the report is overdue and up to \$ 500 per day thereafter until the report is received. In addition, an immediate examination of the books and records may be made without regard to how recently the last regulatory examination was performed.

Things a company can do to minimize the risk of having the report filed late include clearing bank reconciliation adjustments monthly so they don't accumulate, making sure the CPA knows the due date for the report and giving them your full cooperation.

Escrow Law Advisory Committee

Escrow Law Advisory Committee

The purpose of the Escrow Law Advisory Committee is to assist the Commissioner in the implementation of his duties under the Escrow Law. The Committee is comprised of 11 members, including the Commissioner or his designee. Its members, who are appointed by the Commissioner, serve for a period of two years without compensation or reimbursement for expenses. All positions for the Committee are designated in Section 17214 of the California Financial Code.

The current Escrow Law Advisory Committee is comprised of the following members:

Judy Gooler
 Chairperson – EIC
 Monrovia Escrows, Inc.
 346 W. Foothill Boulevard
 Monrovia, CA 91016-2149
 Phone: (626) 359-5333
 Fax: (626) 303-2183
 Term: One Year
 (December 2007 – December 2008) *

Patricia J. (P.J.) Garcia
 Immediate Past Chairperson – EIC
 Beach Pacific Escrow, Inc.
 71301 Beach Boulevard, Suite 2A
 Huntington Beach, CA 92647
 Phone: (714) 842-4594
 Fax: (714) 842-9934
 Term: One Year
 (December 2007 – December 2008)*

Bill Nelson
 Chairperson-EAFC
 Express Escrow
 7812 Edinger Avenue, Suite 300
 Huntington Beach, CA 92647
 Phone: (714) 847-4747
 Fax: (714)848-9174
 Term: One Year
 (September 2007 – September 2009)**

Nancy Closson
 Vice Chairperson – EAFC
 West Coast Escrow Company
 11900 W. Olympic Boulevard, Suite 401
 Los Angeles, CA 90064
 Phone: (310) 442-6226
 Fax: (310) 826-3895
 Term: One Year
 (September 2008- September 2009)**

Jeff Behm, CPA
 Certified Public Accountant
 Behm & Company
 1600 Dove Street, Suite 340
 Newport, CA 92660
 Phone: (949) 222-9040
 Fax: (949) 222-9055
 Term: June 1, 2006 - June 1, 2008

Matthew Davis
 Attorney
 Davis & Davis, LLP
 1875 Century Park East, Suite 850
 Los Angeles, CA 90067
 Phone: (310) 277-2323
 Fax: (310) 556-2308
 Term: June 2, 2007- June 2, 2009

Genia Engelstad
 Medium Sized Escrow Company
 Elite Escrow Services
 4725 Mercury Street #100
 San Diego, CA 92111
 Phone: (858) 560-4781
 Fax: (858) 560-9287
 Term: June 2, 2007 – June 2, 2009

Erik Okland, Manager
 Small Business
 Old Town Escrow.
 87 North Raymond Avenue, #700
 Pasadena, CA 91103
 Phone: (626) 486-1130
 Fax: (626) 486-1136
 Term: June 1, 2006 – June 1, 2008

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Escrow Law Advisory Committee (cont.)

Mark Emmons
Business Specialization
Hasz Fund Control, Inc.
6016 Fallbrook Avenue, Ste. 204
Woodland Hills, CA 91367
Phone: (818) 999-0906
Fax: (818) 999-6321
Term: June 2, 2007 – June 2, 2009

Malia Monroe, President
Other Business
Four Seasons Escrow, Inc.
47350 Washington Avenue
La Quinta, CA 92253
Phone: (760) 564-4044
Fax: (760) 771-2999
Term: June 1, 2006 – June 1, 2008.6

* Escrow Institute of California holds its elections for board members in December of each year.

** Escrow Agents' Fidelity Corporation holds its elections for board members in September of each year.

There are currently three openings on the committee. If you are interested and your company qualifies as either a small company or a company with an other ownership or you are a CPA who performs audits of escrow companies, please send your resumes to Kathleen Partin at the Department's Los Angeles office. The deadline for submissions is May 15, 2009.

In addition, openings for representatives of a medium size company, a company with a different type of business specialization and an attorney at law experienced in escrow matters will be available in September. Those interested in these positions should submit their resumes by July 31, 2009.

The next Escrow Advisory Committee meeting is scheduled for Tuesday, June 9, 2009 at 10:00 A.M. in the Department's Los Angeles office. Any issues that you would like to have placed on the agenda should be forwarded to any of the above members. The agenda for the meeting will be posted on the Department's website 10 days prior to the meeting. You can access the website at www.corp.ca.gov

Staff Assignments

Questions regarding regulatory examinations, annual reports and manager approvals should be directed to the following staff members:

David Duong, Senior Examiner
dduong@corp.ca.gov (213) 576-7621

Sepah Sanaee, Senior Specialist
ssanaee@corp.ca.gov (213) 576-7647

Warren C. Adams, Supervising Examiner
wadams@corp.ca.gov (213) 576-7619

Questions regarding applications, fingerprints, reporting of new officers and directors, consent to transfer of company stock, and change of address should be directed to either Licensing Specialists Luhmen Tesoro at (213) 576-7651 or Ann Davila at (213) 576-7674.

Questions regarding bonds should be directed to Specialist Carol Paredes at (213) 576-7686.

Inquiries regarding the administration of the Escrow Law on such matters as licensing, surrender of licenses and departmental policy should be addressed to Special Administrator Kathleen Partin at (213) 576-7595, or kpartin@corp.ca.gov

Escrow Licenses

As of October 31, 2008, there were 852 main and 284 branch offices for a total of 1136 escrow locations licensed by the Department of Corporations.

Acknowledgments

This Escrow Monthly Bulletin was published under the direction of Special Administrator Kathleen Partin. Articles for the Bulletin are requested both from the staff and the escrow industry. The material submitted should be timely, topical, and of interest to the industry and the Department staff as a whole. All submissions will be acknowledged, and credits will be given. The Department does, however, reserve the right to determine and edit the articles and materials used for publication. We would like to acknowledge the contributions of Escrow Specialists Sepah Sanaee and Ann Davila.