

**ESCROW ADVISORY COMMITTEE MEETING**  
**March 10, 2009**

**Department of Corporations Represented By:**

Louisa Broudy, Deputy Commissioner  
Kathleen Partin, Special Administrator  
David Duong, Senior Examiner  
Ann Davila, Escrow Specialist  
Sherri Kaufman, Counsel (Via telephone)  
Valinda Roberts, Chief, Financial Management Office (Via telephone)

**Committee Members Present:**

PJ Garcia  
Judy Gooler  
Matthew Davis  
Nancy Closson  
Genia Engelstad

**Committee Members Absent:**

Bill Nelson  
Malia Monroe  
Mark Emmons  
Jeff Behm  
Erik Okland

**1. Opening Remarks**

Deputy Commissioner Louisa Broudy opened the meeting by welcoming everyone and then turned the meeting over to Kathleen Partin.

**2. Follow-up items from the previous meeting were discussed as follows:**

- A discussion was held regarding the responsibility of escrow companies if an escrow company's or sub-escrow company's federally insured bank is closed down. The Department's position is that the escrow company is responsible for monitoring the bank to see if there is a safety issue. The escrow company can also disclose what bank they are using for their trust account in order to avoid a principal/depositor being underinsured due to limitations placed by the FDIC. Per PJ Garcia, if an escrow company is doing their due diligence, the industry did not want to see an escrow company shut down because of a bank failure. Louisa stated that based on past interpretation of the Escrow Law, the Department did not allow for such an exception. It is the Department's position that an escrow company cannot continue operating if there is a bank failure of a bank

handling the trust funds. Judy Gooler stated that an escrow company does not have control of where a title company puts the money. Attorney Matthew Davis stated that the way the law is written, the title company owes no duties to the escrow company. Even if the title company loses money, the escrow company is responsible for this. Louisa stated the Department would look into this issue.

- Kathy informed the group that the Department's website had been updated to include that the Escrow Institute offers education programs.

**3. State Budget/Assessment Surplus Carryover**

(This item was moved up in order from the agenda to accommodate Valinda Roberts as she had another meeting to attend.)

The industry wanted clarification as to any assessment surplus carryover. Valinda stated that there was no assessment surplus. The carryover would be generated from all funding sources. The carryover is available for the Department to administer the escrow program. Valinda went on to further explain that the General Fund can sweep penalties and fines without repayment. However, if funds are transferred to the General Fund from fees, then it is considered a loan and requires repayment. Valinda also stated that the carryover amount was getting smaller and smaller. Further information regarding any transfers from the State Corporations Fund (includes the escrow program) to the General Fund, can be found in the Governor's Budget.

**4. CAR /Contracts & What constitutes an Open Escrow**

The committee members wanted to know what constituted an "open escrow" when a CAR contract is in effect. Kathy stated that the Department was going to consult with Department counsel on this issue. Matthew stated that he had done a lot of research on this matter, but that the law was not clear. However, he did state that if there was a properly executed CAR contract, then the parties had to abide by item 14E of the contract, which states that both parties have to agree to cancel escrow.

**5. Examiners Discussing Violations with Licensees**

Louisa informed the group that it is part of the examiners' job to discuss violations noted during an examination. Discussion with a company about examination findings and escrow law violations would not be considered acting as an attorney. If an escrow company does not agree with the examiner's position or has a question, they should call the Department (Kathy or David) for further discussion.

**6. REO Lenders Requiring Specific Service Providers**

The Committee had a question as to whether the Department had a position on lenders it regulates requiring the use of specific service providers in REO sales. Kathy stated that the Department did not have a position on this. PJ stated that this was impacting the escrow companies because they are not able to compete with the big companies.

**7. Rising trend of “Short Sale” Double Escrows**

Matthew discussed the rising trend of “short sale” double escrows where the properties are sold at a higher amount after the original lender approves a short sale. He stated that a lot of brokers are structuring these types of double escrows. He stated that on these short pay-offs, the lenders are depending on the escrow company for a fair market value of the property and including instructions that require the escrow company to notify the lender if there is a subsequent sale. His concern was that these double escrows could put escrow companies at risk, especially if a branch of the company unknowingly handles an escrow for the same property.

**8. Controlled Escrow Companies**

Genia Engelstad wanted to know which companies are considered Controlled Escrow Companies. She gave an example of a person that states she works at a licensed escrow company, but then goes to the public and states she works for a different entity. There was a question as to whether the second entity is owned by a title company. Matthew Davis cited the laws that define Controlled Escrow. However, the definition is not contained within the Department’s Escrow Law.

**9. Escrow Employees Working at Two Independent Escrow Companies with Common Corporate Ownership**

Genia had a questioned as to whether this practice was allowed. The Department’s position is that this is acceptable as long as this fact is reported to the Department. In addition, there has to be a manager at each location during the time the businesses are open.

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**10. Sharing/Subletting Office Space in an Escrow Office**

PJ wanted to confirm the Department's policy on the above matter. The Department's position is that this is allowed only if it is possible for the escrow portion to be maintained separate and can be locked and made inaccessible.

**11. Date of Escrow Instructions vs. Date the File Number is Assigned**

PJ wanted to know if these two dates had to match. There is nothing in the escrow law stating that these dates have to match. However, before an escrow number can be assigned, the transaction must meet the definition of an escrow. The parties and the property must be known.

**12. Procedure for Requesting the Department's Position/Opinion on Issues**

Kathy passed out a hand-out detailing the procedure on how to obtain an Opinion. Shari Kaufman stated that this is permissive, not mandatory.

**13. Public vs. Non-Public Documents in the Department's Files**

Matthew wanted to know how the Department determines which documents are filed in Public or Non-Public files. Louisa informed him that the Department refers to Section 6254 of the Government Code to make a determination. Matthew's concern was about not being able to determine if a company is in and out of compliance. He wanted deficiency letters to be accessible to the public. Louisa stated that if the problem was not corrected, a Public Order would be issued. Matthew wanted to know if he obtained consent from the licensee authorizing the turning over of records, if this was okay. Per Louisa and Shari, records can be requested pursuant to a Public Access Records request. This is a formal process, which includes deadlines for the Department to respond.

**14. Escrow Bulletin – Article Regarding Electronic Signatures**

Kathy distributed an article that will be included in the next Escrow Bulletin regarding electronic signatures. Matthew stated that there is a legal distinction between electronic signatures and digital signatures

**15. Enforcement Action Update**

Kathy passed out a summary of the disciplinary actions taken since the last Advisory Committee Meeting.

The next meeting is tentatively scheduled for Tuesday, June 9, 2009 at 10:00 a.m.

The meeting adjourned at 12:00 noon.