

ESCROW ADVISORY COMMITTEE MEETING
June 4, 2013

Department of Corporations Represented By:

John Hanna, General Counsel
Kathleen Partin, Special Administrator
Richard Malme, Supervising Corporation Examiner
David Duong, Senior Examiner
Ann Davila, Escrow Licensing Specialist
Peggy Fairman, Counsel (Via Telephone Sacramento)

Committee Members Present:

P J Garcia
Scott Akerley
Juliana Tu
Paula Franks
Jeff Behm
Leslie Sapone

Committee Members Absent:

Steven Garcia
Diane Boudreau
Jennifer Woodard
Bill Nelson

1. Opening Remarks

Kathleen Partin opened the meeting and introduced Richard (Dick) Malme as a new Supervising Corporation Examiner. Kathy stated that she and Dick will share duties over the Escrow Program and will probably divide staff. This is part of staff realignment in order to improve efficiencies at the Department. Dick stated he was excited about the change and that the change should be a plus for the Department. Dick also stated he previously worked (many years ago) for the Department as an examiner for five years, then worked in the banking industry for 20 years, retired, and rejoined the Department about five years ago and is looking forward to his new position and working with the industry.

Kathy thanked Leslie, Steven, and Scott for their time on the committee as their terms are ending. She stated they were welcome to re-apply. The openings are for medium-size company, attorney, and other business.

Kathy informed the group that the re-organization takes effect July 1, 2013. The Department will be known as the Department of Business Oversight and there

will be a Division of Corporations. At this time, Kathy was not sure if new licenses would be issued.

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

Lease Accounting Update (J. Behm)

Jeff gave a brief history on the leasing standard and how it was released, then retracted (due to complaints/concerns), and now reissued. This should be the final draft. In the current version, leases less than one year would not go on the balance sheet. Peggy asked Jeff if any of the new changes would affect the proposed changes to the Department's regulations, but he said no. There is a six month comment period currently open. The final version should be released early to mid-2014.

Lender Instructions that Create Agency Agreements (PJ Garcia)

PJ discussed several examples of documents they are being asked to sign and/or provide information, such as Profit & Loss Statements, to lenders that are trying to create agency agreements. One lender in Utah went as far as stating the escrow agent would be put on a blacklist if they did not cooperate. PJ also mentioned examples of buyers and sellers told shortly before closing that they could not use the escrow company. The lenders want to impose penalties for late closings and penalties related to per diem interest. PJ requested that the Department issue a newsletter clarifying that an escrow company is a neutral third party and cannot create an agency relationship. She stated that some escrow companies are signing these documents without realizing what they are doing. She also stated that they are losing business because of this and that the public is also being affected. Kathy stated that she would check on the Bulletin to see what could be done. Peggy stated that she did not know how helpful the writing would be as the Department could not go beyond writing what the definition of an escrow is.

3. Examination Procedures Manual (P. Franks)

Kathy stated that the question had been asked whether the examination manual could be shared. The answer is no. The manual is kept confidential. She went on to say that each examiner does have a list of items requested, but the manual is not a public document. Kathy distributed a sample list of items requested during an audit. PJ stated that this had come up because some agencies do have their manuals online.

4. Check Endorsements (P. Franks)

Paula brought up the question of whether the Department's auditing procedures need to be brought up to the twenty-first century. For example, unendorsed checks are being accepted by the bank. She stated that it is getting more and more difficult to get copies of the backs of checks. Kathy stated that licensees should check with their bank regarding their policy for accepting checks without endorsements and any actions taken when not endorsed. If a problem/shortage should occur pertaining to unendorsed checks, the Department would look to the escrow company to make trust funds whole. While the Department understands that the licensee has no control over the acceptance of unendorsed checks, the licensee is responsible for making sure that their bank provides both sides of the checks.

5. The Use of Out of State Venders (P. Franks)

The question was brought up as to whether out-of-state document scanning and reconciliation companies could be used, or if such companies needed to be in California. Kathy stated that all escrow books, records and accounts need to be maintained in California. However, out of state venders can be used as long as the venders are working off of copies or electronic versions of the documents.

6. Escrow Bulletins (P. Franks)

Paula expressed that the group felt that bulletins were helpful and that it was good to refresh or remind licensees about kickbacks not being allowed. There are a lot of new people in the industry. Kathy stated that a bulletin on this subject was issued in January 2009 and is still available on the Department's website.

7. Enforcement Action Update (K. Partin)

Kathy distributed the handout showing the latest administrative actions and licensing statistics. She stated that three people were barred and three licenses were revoked since the last meeting. The number of licensees is staying steady and surrenders are down.

Kathy introduced the Department's General Counsel John Hanna. John stated that he had liked what he saw and heard from the group. He suggested to the group that they copy Kathy on any communications to CFPB. He also informed the group that there is now an Ombudsman for CFPB which might be helpful. In addition, he asked that they submit in writing specific examples to the Department regarding exams and/or issues. He stated that there is a fine balance in regulating.

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The next meeting is tentatively scheduled for Tuesday, September 10, 2013.

The meeting adjourned at 11:00 a.m.