

ESCROW ADVISORY COMMITTEE MEETING
September 13, 2012

Department of Corporations Represented By:

Warren Adams, Supervising Examiner
Kathleen Partin, Special Administrator
David Duong, Senior Examiner
Ann Davila, Escrow Specialist
DiAun Burns, Special Administrator
Frankie Hornick, Special Administrator

Committee Members Present:

P J Garcia
Beulah Stidham
Steven Garcia
Diane Boudreau
Scott Akerley
Bill Nelson
Jennifer Woodard
Leslie Sapone
Juliana Tu
Jeff Behm

Committee Members Absent:

None

Guest

Susan DeMars of CMBA

1. Opening Remarks

In the absence of Deputy Commissioner Louisa Broudy, Warren Adams welcomed everyone and thanked outgoing member Joe Lins, who represented small companies and Jenifer Siou who was the CPA representative. He then welcomed Juliana Tu of Viva Escrow! as the small company representative and CPA Jeff Behm. The meeting was then turned over to Kathleen Partin.

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

Final HUD 1 Review Before Close of Escrow

Kathy stated that there was a missing agenda item and asked if anyone objected to putting the item in Follow-up. No one objected.

The item of concern was the fact that at least one lender is requiring the final HUD 1 before the close of escrow. This puts the escrow and title companies in a very difficult situation as they are expected to record without use of the lender's funds.

DiAun Burns stated that she had done some research on this issue but that both RESPA and Regulation X stated that the final HUD 1 is to be provided at or before close of escrow. If parties were not present at closing, then the HUD 1 was to be sent as soon as possible. RESPA and Regulation X also stated that at the borrower's request, the HUD 1 could be provided one day before closing. DiAun stated that she had also talked to Department Counsel regarding whether this practice was unsafe and injurious. She said that Counsel is still considering this.

DiAun suggested that perhaps the question of how to provide the final HUD 1 before the transaction has been completed be posed to the CFPB to get their input on it.

Steven Garcia stated that there could be a State and Federal Law conflict, but that lenders will say that they follow Federal Law, and Federal Law trumps State Law. According to RESPA, closing is when documents are signed; closing in California is when documents are recorded. A suggestion was made that wording regarding this could be added to the general provisions to inform clients that there could be a delay in disbursing their proceeds due to the lender's review of the final HUD 1.

DiAun was asked how she felt about lenders requesting changes be made on the HUD 1 several months after escrow had closed. DiAun stated that Regulation X limits changes to the HUD 1 to 30 days.

Stop Payment Fees (PJ Garcia)

Kathy stated that if a check is issued to a creditor, an escrow company should not charge fees to that creditor for reissuing the check. It is okay to charge stop payment fees on checks issued to the buyer and seller if it is in the escrow instructions or general provisions. However, if the instruction is in the general provisions, an additional signed authorization is required at the time the fee is to be charged. Kathy stated that counsel Peggy Fairman agreed that the cost of stop paying checks to those who did not agree in the escrow instructions to pay such fees was a cost of doing business.

3. Escrow Instructions in Addition to C.A.R. Contract (PJ Garcia)

The issue is whether an escrow agent should use the listing agreement as seller's authorization to pay real estate commissions as opposed to preparing a separate instruction for the seller to sign. Kathy stated that she had discussed this issue with Peggy, but that Peggy was not able to find a reference in the law that was specific to this issue. PJ wanted to know what the minimum the Department would look for in an audit regarding C.A.R. and supplemental instructions. In most cases, the C.A.R. listing agreement doesn't list dollar amounts for commissions, only percentages. Steven stated that the Listing Agreement was not sufficient authorization to disburse commissions. The agreement would only be good if a buyer was a cash paying customer that met all of the criteria noted in the listing agreement. Kathy stated that the Department is reviewing the matter.

4. Preferred Vendor Lists – Secure Settlements (B. Stidham and PJ Garcia)

PJ stated that lenders are signing up with vetting companies. (The vendor issue involves a New Jersey company that is creating a list of settlement agents that they claim to have met their criteria for strength and safety to provide settlement services to lenders.) The cost for vetting each escrow officer is \$300 per person and they are required to provide personal information such as social security, driver's license and cell phone numbers as well as other financial information. PJ referred to this as forced "pay to play." The CFPB does not say that lenders have to vet their settlement agents. Diane Boudreau mentioned that Lexi, the escrow industry legislation advocate, is extremely concerned about this.

Susan DeMars from CMBA spoke briefly on the subject. She stated that for any vendor that has consumer contact there is the 3rd party management rule per Dodd-Frank Act, but it is not clear yet. She said lenders are in a quandary on how they can comply with this. No one from CFPB has given clear guidance on this.

5. Enforcement Action Update

Kathy distributed the handout showing the latest administrative actions and licensing statistics. She stated that since the last meeting one person had been barred. In addition, the Department had revoked two companies and suspended two others, one of which has been set aside. Also, five Notices of Intent to Bar were issued. In the last two months the number of overall licensed locations has increased over the previous month. Locations are still down about 45 from this time one year ago.

6. Per Diem Interest

Susan DeMars, CMBA representative, was asked to join the meeting because of the Per Diem Interest issue. The issue is how can settlement agents and lenders work together to prevent per diem interest overcharges. The group hopes to come to an agreement that is helpful to both settlement agents and lenders.

It was agreed that there are times when a borrower would agree to having a loan fund on a Friday even if it meant paying additional interest in order to close an escrow at the earliest time available so as not to lose an interest rate lock or to be in compliance with the agreed upon closing date with the seller. Susan and members of the advisory committee have worked on two forms that can be provided to borrowers informing them that if the loan funds before a weekend or holiday, additional interest charges may apply. The two forms are Authorization for Additional Per Diem Interest and Escrow Holder Confirmation of Disbursement. Kathy distributed the forms that PJ and Susan created as well as the prior forms that had been created for lender use. The group wanted the “blessing” from the Department to use the forms.

Frankie Hornick stated that she needs to review the forms, but also stated that she would like to see the escrow agent’s signature on the Authorization for Additional Per Diem Interest form. DiAun stated that the Department cannot dictate the form, but can say that a form meets all the requirements. It was commented that the forms were very similar to the prior forms being used, but Susan stated that the old forms were not getting the job done and suggested that wording be included stating that this form supersedes the other form.

DiAun stated that the Civil Code doesn’t allow additional interest to be charged to the borrower just because there is a delay.

It was noted that the form began as an audit trail to help lenders determine the disbursement date in order to properly charge per diem interest to the borrower. Frankie noted that Commissioner’s Release Letter #58 regarding Disbursement Dates is on the Department’s website.

Diane stated that the CEA, as well as EIC, will follow what this panel decides.

Susan was open to coming back regarding the review/update of the forms.

Kathy and Warren thanked everyone for coming and Kathy welcomed Diane back as a returning member (as this thank you was omitted at the beginning of the meeting).

The next meeting is tentatively scheduled for Tuesday, December 11, 2012.

The meeting adjourned at 12:30.