

Escrow Advisory Meeting

December 5, 2017
10 a.m. – 12 p.m.
320 W. 4th St., 7th Floor Conference Room
Los Angeles, CA 90013

Department of Business Oversight Represented by:

Edgar Gill, Senior Deputy Commissioner
Kathleen Partin, Supervising Examiner
Kristie Jaynes, Senior Examiner (Supervisor)
William Mejia, Senior Examiner (Supervisor)
Paul Liang, Senior Examiner (Specialist)

Committee Members Present:

Nancy Silberberg, Altus Escrow, Inc./Chairperson EIC *

Bill Nelson, Express Escrow, Inc./Chairperson EAFC **, ***

Jeff Behm, Behm and Company/Certified Public Accountant

Elisa Guerrero, Four Seasons Escrow, Inc./Medium Sized Escrow Company

Dave Brooks, Seright Escrow, Inc./Immediate Past Chairperson EIC *

Jennifer Woodard, Oak Escrow, Inc./Vice Chairperson EAFC **, ***

Benjamin Griffin, Prenovost, Normandin, Bergh & Dawe/Attorney

Joanna Belanger, The Escrow Source, Inc./Small Business

Alma Rushing, Orange Coast Title Company/Other Business Ownership

Juliana Tu, Viva Escrow/Other Types of Business Specialization ***

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

I. Welcome, introductions, and opening remarks

Kathleen Partin welcomed everybody and introduced three new members of the committee -- Benjamin Griffin, attorney; Elisa Guerrero, representing a mid-size company; and Juliana Tu, representing other types of business specialization. Partin expressed appreciation for the advisory committee members who attended the escrow roundtable meeting. Partin asked for feedback about the roundtable meeting. Nancy Silberberg stated that she was disappointed that the Commissioner was not able to attend the meeting. A guest speaker, David Martin from an internet escrow company, Escrow.com, was introduced. Mr. Martin spoke later in the meeting about ways to protect escrow companies from cyber theft.

II. Review and approval of September 12, 2017 minutes

Partin asked for a motion to approve the minutes of the September 12, 2017 advisory meeting. Silberberg made a motion to approve the minutes. The motion was seconded by Alma Rushing. The minutes were approved.

III. Rulemaking update:

A. Status of proposed revisions to section 1741.5

Partin stated the Department had received comments about the proposed revision to section 1741.5, and that the comment period had closed. The Department's legal and the escrow program are reviewing the comments.

Silberberg questioned whether there would be a timeframe for the Department to respond to the comments from the industry. She also questioned when the industry can expect to hear from the Department.

Partin responded that Colleen Monahan, representing the Department's legal division, was not available for the meeting, but would be the best person to answer those questions.

B. Status of proposed revisions to section 1740.2 & 1740.3

Partin stated the Commissioner responded to EIC's petition request, stating in a letter that the DBO will not be amending the definition of current liabilities to delete leases from the net liquid asset calculation. The DBO believes that companies with more cash on hand are more financially sound. Companies that are more financially sound will be better able to avoid negative consequences to the public, such as losses of consumer funds. Silberberg expressed disappointment about the news.

Matthew Davis stated that the industry would consider drafting a written request for reconsideration. Davis stated the DBO's determination would cause unfair competition because the title escrow and BRE escrow companies do not have the same financial requirements. He stated that this determination would invite future litigation by the industry against the DBO.

Jeff Behm commented that the average title escrow company is several times larger than the average independent escrow company. However, title escrow companies are required to maintain only \$10,000 in liquid assets. The DBO's liquid asset requirement is disproportionate to company size when comparing independent escrow companies to the title escrow operations. Partin questioned how title escrow companies handled the lease issue. Behm responded it's unknown.

Gill stated that there had been numerous discussions with the Commissioner about this topic. Further discussion may be appropriate. The next step in the conversation would be for the industry to send the Commissioner a letter with its concerns and suggestions. Gill stated the end goal is to find common sense solutions, and that the Commissioner is willing to hear more communication from the industry if that is the route they choose to take.

Davis commented that the industry is asking to keep the status quo and not make new rules or regulations.

IV. Topics of discussion:

A. How DBO and BRE interact regarding RESPA violations

Partin stated that the DBO has reached out to BRE to suggest joint exams, but that will have to wait until DBO has examiners available to work on the project.

Silberberg questioned if DBO will share with BRE any evidence of RESPA violation issues found during joint exams. Partin responded the project had not started so the answer was no. Davis said the DBO has the power to control escrow companies owned by BRE licensees without reaching out to BRE. Partin said the Department would look into it.

B. Examination cycle

Partin stated that the statute states escrow licensees are to be examined no less than once every 48 months. Normally, this means between 36 and 48 months. Examinations can be performed more often on companies that have a history of violations or when something comes to the Department's attention to warrant more frequent exams.

Davis questioned the time it normally takes for an examiner to complete an exam. Partin said it normally takes two to three months.

C. 17420 issues – joint fundraisers with real estate agents

Partin reminded the industry that escrow companies cannot participate with real estate agents in open houses, casino nights, poker tournaments or any other event geared toward those who can refer business to the company.

P.J. Garcia asked if it would be acceptable to purchase a space at a board of realtor event. Partin said it would be acceptable as long as the purchase does not benefit individual realtors and realtors don't benefit more from the contribution than other participants.

Behm asked if it would be acceptable for escrow companies to do joint fundraising with an affiliated broker. Partin responded no. Escrow companies cannot have a presence in such events.

V. New Business

A. Impact of processing cannabis related properties

Griffin stated this matter involves an escrow company's responsibility to process escrows, including the receipt of funds, for transactions that are legal in California, but not recognized as legal by the federal government. Until a solution is reached, escrow companies need to weigh the risks of accepting transactions that could be considered illegal. The concern is if funds are seized after an escrow has closed, it could create a trust shortage that an escrow company may have to cover.

Griffin stated that a transaction involving cannabis is normally an all-cash deal. If the escrow company deposits over \$10,000 in cash to its bank, a bank insured by FDIC or NCUA is required to file a Suspicious Activity Report (SAR). The SAR may require the escrow company to explain the source of funds that are illegal under federal law and may potentially trigger a freeze of the funds. Griffin said State Treasurer, John Chiang had issued a pamphlet about banking access for cannabis-related businesses. He said the pamphlet offered more questions than solutions. Griffin expected a lot of cannabis-related business activities and customers in California after January 1, 2018. He stated that he advised his clients to take a wait-and-see approach.

Partin stated it would be up to escrow companies to protect public funds. The companies need to make sure banks will accept deposits. Trust funds received need to be deposited within the next business day.

Diane Boudreau, who called in to the meeting, said her company received 15 requests for cannabis-related escrow transactions.

Davis stated the transaction may be processed if an escrow company has a good working relationship with its bank. He said taking funds for cannabis-related transactions and depositing those funds in a bank would be like “don’t ask don’t tell” between the escrow company and its bank. If no one at the bank knows the funds are cannabis-related, the funds could be deposited in the bank. Davis stated title escrow companies would not handle cannabis-related transactions because such transactions are not insured. Therefore, cannabis business is looking to the independent escrow companies.

B. SB-2 – How will surcharge affect audits

Partin stated that SB 2 authorized additional recording fees effective January 1, 2018 and that Silberberg would discuss the issue and had invited representatives from CMBA to the meeting. The DBO also had Mejia from CRMLA to answer questions relating to the disclosure of these surcharges.

Silberberg stated that SB 2 requires county recorders to collect the new recording fees of \$75 per document recorded, not to exceed \$225 per escrow transaction. This new fee is on top of regular recording fees. Because each county handles recording differently, and some notify escrow companies about additional recording fees after the recording, the new fee creates a challenge to balance the escrow file and properly disclose the fees to customers. Silberberg asked the Department for guidance on how escrow companies should disclose these fees, and how do lenders stay in compliance.

Silberberg introduced her two guest speakers: Raymond Snytsheuvell from Paramount Mortgage, and Susan Milazzo from CMBA. Silberberg would like the Department to hear different perspectives from the lenders and work with all parties to find a solution that will allow companies to be in compliance in disclosing the fees under SB 2.

Snytsheuvell presented the lender’s perspective about fees under SB 2. Snytsheuvell felt SB 2 is a Loan Estimate (LE) issue. The lenders would either underestimate or overestimate the recording fees because they don’t know how different county recorders count their documents. Therefore, they will not know the exact recording fees prior to the recordation. The confusion

among lenders affects how lenders work with closing agents. Mejia said the Department is looking for three things to determine if any violations are made by the lenders. First, lenders need to provide a best estimate of recording fees on the LE. Lenders cannot put the maximum allowable \$225 as their best estimate for every loan they make. The estimate must be based on past similar transactions and county recorder fee schedules. Second, lenders need to promptly reconcile the recording fee charged to the customers based on the estimate with the actual recording fees from the invoice received from the county recorder's office. Last, lenders need to promptly refund customers after a recording fee reconciliation discloses overcharges. The attempt to disclose best estimates on the LE and the timeliness to reconcile recording fees and refund customers will determine whether a DBO examiner takes exception.

Rushing stated she was on the CLTA and CEA settlement committees and this topic was also discussed in those committee meetings. She stated the county recorders may come back to a title company and add post-closing fees to the charges. They discussed having hold-back funds as a solution. Rushing gave an example of post-closing fees as a lien on personal property tax.

Milazzo echoed the Snytsheuvel's sentiments and thanked Mejia for the clarification.

VI. Enforcement actions and licensing update

Partin presented a chart of actions. There have been five orders issued since the last Advisory Committee meeting. One was a Discontinue Violations for failure to meet financial requirements, two were accusations, one to bar two people at the same company and one to revoke for failure to pay the escrow assessment. Two of the five actions had to do with the same reinstatement request, with the outcome to deny the request.

Partin presented the licensing stats. There were 661 licensed companies as of November 30, 2017. The number increased from 646 a year ago. There were 987 licensed locations, including main and branch offices as of November 30, 2017. The number increased from 957 a year ago. There were 23 pending main office applications as of November 30, 2017, compared to 24 a year ago.

VII. Public comments

Partin introduced David Martin from Internet Escrow Services, Inc., aka Escrow.com, who volunteered to make a presentation about cybersecurity and fraud prevention.

Martin stated the trend in cyberattacks against escrow companies was diverted deposits and proceeds. He shared a website named "Have I been Pwned". The website was developed by a friend of the CEO of his company. A user can type in his/her email address or personal information to see if any of his/her emails or information have been compromised and sold on the internet black market. Martin typed in his personal email in the search field on the website and pulled up a list of his emails that were hacked. He identified Adobe documents as the biggest breach for him.

Martin said the best way for escrow companies to prevent cyberattacks was to have the buyer called to verify the escrow company's wire instructions before wiring deposits. Training the escrow company's clients is also an important measure to prevent attacks. Martin suggested frequently change bank or any other passwords. Different passwords should be used for different accounts or access. If a person is affected by the Equifax breach, the person should place a credit freeze to prevent identify fraud.

Davis asked what the recommendation would be if a person saw his/her information had been stolen. Martin said there would be no corrective measure. The best way to prevent future breaches is to change passwords regularly and to use different passwords for different accounts.

Partin agreed that calling customers to confirm wire transfers would be a good protective measure against cyber-fraud. The escrow company should not call the customer using a phone number found in an email to confirm a wire transfer.

Davis said he worked with the FBI on cyberattack cases in which his clients were the victims. He said the hackers acted as the middleman to intercept the communication between the customers, brokers and escrow agents. There were cases where hackers even picked up the phone and called the customer to impersonate the owner of the escrow company.

Elisa Guerrero said she worked in law enforcement for about five years. Law enforcement only allows a victim to file a police report. The victim of a cyberattack is the customer because the funds belong to them. If an escrow company files a police report, the police department will not take it. However, if the hacker impersonates an escrow officer during the attempt to divert funds, the escrow company may file a report for stolen identify and may obtain law enforcement's help to freeze a bank account to which the funds were wired.

Davis said cyber insurance policies do not provide coverage for good wires sent based on bad information or instructions. So, there's no insurability for most types of cyberattacks that have happened in the escrow industry.

VIII. Closing remarks

Partin thanked everyone for their participation in the meeting. The next Advisory Meeting is scheduled on March 13, 2018.