

Escrow Advisory Meeting

December 17, 2018

2:00 P.M. – 4:00 P.M.

1515 K Street 2nd Floor Video Conference Room, Sacramento, CA 95814
300 S. Spring Street, 15th Floor Video Conference Room, Los Angeles, CA 90013

Department of Business Oversight Represented by:

Jan Lynn Owen, Commissioner
Edgar Gill, Senior Deputy Commissioner
Mona Elsheikh, Deputy Commissioner
Miranda LeKander, Deputy Commissioner
Lila Mirrashidi, Deputy Commissioner
Sherri Kaufman, Senior Counsel
Colleen Monahan, Senior Counsel
Kathleen Partin, Special Administrator - Regulatory
Paul Liang, Special Administrator – Licensing

Committee Members Present:

Bill Nelson, Express Escrow, Inc./EAFC Chairperson **,***
Claire Bartos, Las Brisas Escrow, Inc./Chairperson EIC *
Nancy Silberberg, Altus Escrow, Inc./ Past Chairperson EIC *
Patrick Felde, Patrick D. Felde, Certified Public Accountant/Certified Public Accountant
Elisa Guerrero, Four Seasons Escrow, Inc./Medium Sized Escrow Company
Elizabeth LeQuire, Citrus Escrow, Inc./Other Business Ownership
Alma Rushing, Orange Coast Title Company/Small Business
Benjamin Griffin, Attorney
Juliana Tu, Viva Escrow! Inc./Business Specialization
Jennifer Woodard, Oak Escrow Inc./EAFC Vice Chairperson **,***

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

1. Welcome, introductions, and opening remarks

Commissioner Owen welcomed everybody to the meeting. She stated effective January 2, 2019, California will have a new Governor. The commissioner is working hard with her team during this transition to make needed changes. Commissioner Owen also announced that she will retire after May 31, 2019. After a round of self-introductions, Commissioner Owen welcomed the two newly appointed Escrow Advisory Committee members and said the next Escrow Advisory Committee meeting is tentatively scheduled for Thursday, March 14, 2019.

2. Disaster preparedness

Commissioner Owen discussed the recent wildfires in California. The Camp Fire in Paradise is the worst in the state's history both in loss of life and property damage. On November 15, 2018, the DBO along

with the FDIC, the OCC, the Federal Reserve, the NCUA, and the Conference of State Bank Supervisors, issued a statement on supervisory practices regarding financial institutions and their customer affect by the wildfires. The statement provided guidance to financial institutions serving the affected area. In Paradise, none of the state-chartered banks or credit unions burned down. The banks and credit unions were trying to help their community.

The joint statement and subsequent guidance also encouraged DBO licensees and all financial institutions to provide relief to customers impacted by the fires in any way they can. After the Santa Rosa fire last year, banks were very helpful, assisting with recovery and loans to contractors and consumers. Commissioner Owen shared that there has not been any report of escrow licensees affected by wildfires and asked whether any committee members know escrow licensees that have been affected by wildfires. Silberberg responded she did not believe any escrow licensee was affected. She stated Mountain High Escrow was evacuated but not closed. Commissioner Owen stated the DBO is closely monitoring the progress of recovery and continuing effects on DBO licensees.

3. Escrow Release regarding cyber threats, reporting shortage

Commissioner Owen stated the DBO issued a release on guidance to guard against cyber threats and to report shortages due to cyber thefts on November 30, 2018. Over the past three years, California-licensed escrow companies lost more than \$3 million that could not be recovered from more than 30 cyber thefts. EAFC does not cover trust losses from cyber theft, and the licensees involved had to cover the losses. Escrow licensees are asked to immediately report such incidents to the DBO and EAFC. The release is posted on the DBO's website to provide guidance to licensees to protect themselves from cyber theft.

A member of the public commented that escrow agents rely on information provided from outside of the escrow company. They cannot control what buyers do. If a buyer's computer was hacked and the buyer wired funds to an imposter's account outside of the escrow, the escrow agent had no control over it.

LeGuire commented that escrow agents should educate customers and real estate agents about cyber-attacks. Going to local board meetings and sharing information are also ways to learn how to prevent cyber-attacks.

Another member of the public commented that the issues of cyber-attack are different whether funds were in control of the escrow agent. If the escrow agent receives funds and disburses them according to fraudulent instructions, it will be looked at very differently by a court versus when the buyer wired funds based on fraudulent instructions to an imposter's account.

Commissioner Owen stated she is concerned about this industry because most escrow companies are small businesses. Most small businesses are not able to absorb a big loss due to cyber-attack. Some of the reported cyber-attacks were due to insufficient training of escrow staff. The Department can't stress enough the need for the industry to protect itself and its customers.

Tu said she didn't know how much money was recovered because some escrow companies may not even report the shortage from cyber-attacks to the DBO. She shared her experience from about a month ago when one of her buyer's email was hacked. Her buyer acted upon a fraudulent wire instruction and

wired about \$72,000 to an imposter's bank account. Since the attack occurred outside of escrow, Tu said there was no reportable shortage.

Rushing stated title companies were also experiencing cyber-attacks. It would be beneficial to know the amount of shortages recovered and reported by the title companies.

A member of the public said a lot of escrow companies were not reporting cyber-attacks to DBO because they did not suffer a loss. Also, if they report the incidents to DBO, their competitors will use it against them. Title companies have lot more cyber-attacks and suffer loss more than independent escrow companies. This is something that affects every industry.

A member of the public said independent escrow companies did a much better job of recovering funds. In November 2017, Los Angeles County suffered \$11 million to \$12 million in losses due to cyber-attacks.

Commissioner Owen reiterated that small businesses are vulnerable to cyber-attacks. They may have to absorb a loss if they cannot recover the funds. Some people can't replace it. The time and energy to resolve the cyber-attack are costly. A member of the public inquired whether the DBO has the amount of losses by broker-controlled escrow companies. Commission Owen said the Department does not have that data.

4. Examination Delays and progress

Commissioner Owen stated the escrow team is working on aging exams. No new examination will be assigned until all aging exams are completed. There's a delay in timely reviewing annual reports and in processing employment applications. Elsheikh is working hard with the escrow team to complete these tasks and also to look into ways to prevent this from happening in the future. If additional staff is needed, the escrow program can submit a request for additional staff. In 2013, another DBO program was brought on board. They justified their needs for about 3 – 4 additional staff, and the Department of Finance approved it. The escrow program can use good data to support a request for more staff. However, the program has to complete the pending annual report, employment applications and aging exams before it can hire additional staff. Elsheikh has a big challenge. The Department acknowledges the aging exam issue. If a licensee has not seen our examiner for a while since the exam started, it may see our examiner returning soon. Commissioner Owen apologized for the aging exams and stated the issue will be resolved by the first quarter of 2019.

LeQuire asked if an exam had a cut-off date about 18 months ago, would the original cut-off date stands or would there be a new cut-off date.

Elsheikh stated the original cut-off date stands. But if a new annual report was received within the past 18 months, and it disclosed additional information, the examiner may request further information or documents. It would be helpful to expedite an examination when a licensee timely reconciles its bank accounts and provide proof of correction for reconciling items to the examiner.

5. Review and approval of September 11, 2018 meeting minutes

Elsheikh asked if anyone had any correction to the last meeting minutes and if anyone would move to approve the minutes. Silberberg made a motion to approve. The motion was seconded by Rushing. The minutes were approved by the committee members.

6. Rulemaking update: Status of proposed revisions to 1741.5

Lekander stated that Kaufman is working on escrow regulations. A release notice of regulation is expected to be issued in 2019. Licensees who subscribe to GovDelivery for rulemaking updates will receive notification via email.

7. Request for detailed budget

Gill stated committee members were provided a copy of the escrow budget. Currently the escrow program is operating in the red. As examinations are completed and billed, it is expected the budget will revert to black by June 2019.

A member of the public asked what was included in "Departmental Services" listed in the budget. Gill explained this item includes the escrow program's share of HR, administration costs, etc. These costs were split and allocated to each DBO program in the same category.

8. Update regarding potential DBO/DRE joint efforts

Elsheikh stated a DBO examiner may visit a broker with a DRE investigator to gather information about an escrow licensee who allegedly offered a points system to brokers to refer escrow business.

LeQuire applauded the DBO's efforts to work with DRE to investigate RESPA and escrow law violations. She stated the DRE issued a bulletin in 2017 which reported that in 37 audits, the non-compliance rate was 24 percent and the DRE identified about \$965,000 in shortages in broker-controlled escrow companies' trust accounts. She may forward the bulletin to the Commissioner for reference.

9. Zero seller fees, escrow discounts, advertising incentives

Monahan stated that the DBO received complaints about companies offering zero seller fees. The DBO has reviewed the complaint and it appears companies offering zero seller fees are in violation of 1741.1 (CCR) and 17420 (FC). Escrow agents are strangers to the transactions. Offering zero seller fees appears to be an interference of contract between the principals.

A member of the public asserted that DBO approved lowering escrow fees such as veteran discount in the past. This member stated zero seller fees and reduction of fees are the same and questioned why the DBO changed its position.

Another member of the public said that in addition to zero seller fees, some companies are also offering a flat fee, e.g. \$500 escrow fees for all sellers.

Another member of the public stated that zero seller fees were offered to all sellers regardless of which broker represents them. This offer does not affect a company's neutrality and the company is not a stranger to the transactions. DBO's position is not clear on 17420 (FC) violations. The DBO has a longstanding position on not regulating fees. Also, the amounts of escrow fees being charged are different for so many reasons such as in different geographic areas. The DBO should take more consideration on zero seller fees, flat fees, and fee discounts.

Commissioner Owen stated this item will remain on the agenda for the next meeting.

10. Enforcement actions and licensing update

Elsheikh shared a chart about enforcement actions and licensing stats since the previous meeting. There were no questions or comments about the chart.

11. Public comments

No public comments.

12. Closing remarks

Commissioner Owen asked if video conferencing works better. Members responded yes. Commissioner Owen stated future meetings will be held in the same manner. The next meeting was tentatively scheduled for March 12, 2019. Commissioner Owen again apologized for the aging examination and delay in annual report reviews.

No further questions or comments from committee members. Elsheikh adjourned the meeting.