

ESCROW ADVISORY COMMITTEE MEETING

December 8, 2020

10:00 AM – 12:00 PM

Meeting was held telephonically

Department of Financial Protection and Innovation Represented by:

Mona Elsheikh, Deputy Commissioner
Paul Liang, Special Administrator – Licensing
Gary Suzuki, Special Administrator - Regulatory

Committee Members Via Call-In to the Conference Line:

Benjamin Griffin, The August Law Group, P.C. / Attorney
Bill Nelson, Chairperson – EAFC**
Claire Bartos, Las Brisas Escrow, Inc. / Immediate Past Chairperson EIC *
Heather Siracusa, Orchard Hills Escrow, Inc. / Small Business
Heidi Cassel, Solaris Escrow, Inc. / Medium Sized Escrow Company
Jeff Behm, Behm & Company, Certified Public Accountant
Jennifer Woodard, Vice Chairperson-EAFC**
Juliana Tu, Viva Escrow! Inc. / Business Specialization
Patricia J. (P.J.) Garcia, Beach Pacific Escrow, Inc./Chairperson EIC
Timothy Brigham, Resorts West Escrow, Inc. / Other Business Ownership

* Escrow Institute of California

** Escrow Agents' Fidelity Corporation

1. Welcome and opening remarks.

Paul Liang welcome everyone to the fourth quarterly advisory meeting. Liang reminded everyone that meeting agenda and minutes from the previous meeting have been posted on the Department's website for public review.

2. Review and approval of minutes for September 8, 2020 meeting

Liang asked if the committee members had reviewed the minutes. A committee member pointed out that the second item description on the September 8, 2020 minutes should say "approval of minutes for June 9, 2020 meeting" since the September meeting will approve the minutes from the June meeting. Liang stated he would revise the minutes and post the revised copy on DFPI website. PJ Garcia made the motion to approve the minutes. Claire Bartos seconded the motion. The minutes was approved.

3. Department's Name Change to DFPI – dos and don'ts

Liang reminded that the Department's name has been changed from Business Oversight to Financial Protection and Innovation. He reminded that the industry should make necessary change to ensure their escrow instruction and disclosure templates reflect the department's new name.

Liang briefly reviewed the background about this name change. On September 29, 2020, Governor Newsome signed AB 1864 into law, and it changed the Department's name from Department of Business Oversight(DBO) to Department of Financial Protection and Innovation(DFPI) effective immediately. On the following day September 30, DFPI notified the escrow industry by sending an email bulletin to all escrow licensees' designated email addresses on file.

The email bulletin requested licensees to take steps to change the Department's name as soon as possible in any legally required disclosures, documents, and other references in printed materials and web-based information provided to consumers, other regulators, or to the general public. The email bulletin also stated that DFPI recognizes it may take some time for the name change be reflected on all materials, and that DFPI will not criticize the use of existing materials with the "Department of Business Oversight" instead of "Department of Financial Protection and Innovation" while the DFPI and industry work through this transition together.

Prior to this name change, this Department has been through another name change from Department of Corporations to Department of Business Oversight in 2013. During the last name change, this department has learned a great deal working with the industry through name change transition. Therefore, it may be helpful to put together a list of dos and don'ts for this transition.

Liang gave the following dos:

Do educate escrow officers, agents, vendors, and customers about the name change. Education is the key to bring awareness for the name change. It helps to avoid confusions or potential consumer complaints. For example, if licensee's stationeries reflect the name DBO and it has a recurring automatic order from a particular vendor, let the vendor know about the name change before they print more stationeries reflecting the old name. If a licensee contracted a webmaster to maintain company's website, let them know about the name change and make appropriate updates to company's website.

Do notify company's surety bond policy provider about the department's name change, and work with them to submit a rider which will reflect the obligee's name change from Department of Business Oversight to Department of Financial Protection and Innovation, unless the company's surety bond policy period is ending soon and it is about to obtain a new surety bond from a different carrier.

Do use the most current version of escrow forms from the department's website. Liang stated some licensees downloaded a copy of the Department's form and used it as a template to make copies each time when they needed to file a form with the department. He reminded that the department's forms do get revised from time to time. When the department changed its name from DOC to DBO, the department had to remove all references to DOC on the forms. The department currently has a team of staffs who are responsible to update website contents and forms. As of the date of the meeting, majority of escrow forms have been updated to reflect the new name.

Liang gave the following don'ts:

Don't expect an amended license be issued just to reflect the new name. If a company has a license which reflects the name of DOC or DBO, it is a valid license. Department's examiner will not take exception if a license is not reflecting the Department's most current name. When an amended license is issued due to a name change or address change, the amended license will reflect DFPI.

Don't wait to be told to change references, disclosures to reflect DFPI. Be proactive.

And don't hesitate to call DFPI if a licensee has questions or concerns regarding this name change.

A member from the public voiced his concerns regarding not issuing amended licenses to reflect the name change may not provide adequate notices to the consumers. Liang stated the name change

announcement was made to the public. In addition, members of the public can always verify a company's license status on the department's website.

4. Update Regarding Pending Escrow Laws and Regulations

Liang stated the department's legal division is still working on updates to escrow regulations. The next step in the process is open comment for public to weigh in on the proposed regulations. It's unknown when the proposed regulations will be open for public comments. Liang stated the committee's purpose as described in the statute is to assist the commissioner in the implementation of the commissioner's duties under the escrow law. Before drafting proposed regulations, the department listened and gather feedbacks from committee members and the industry. Certain committee members assisted during the early development for these proposed regulations by sharing their knowledge and expertise. A member of the public expressed frustration that the update about pending regulations lacks specificity and requested a DFPI counsel to attend the next meeting to provide detailed updates. Liang stated the proposed regulations will be posted for public comments. All members of the public will have an opportunity to review the proposal and provide comments.

5. Common non-compliance issues do and do not rise to a formal action

Gary Suzuki identified areas of focus for examination reviews in the integrity of the trust account, books and records, compliance with financial requirements, and bond compliance. Currently there is no observation for a particular hot category or particular uptick in certain violations. Some of the common violations include trust bank reconciliation issues such as not reconciling the trust account or not clearing reconciling items. Not reporting employments is another common violation. Suzuki reminded that common employment reporting issues are due to licensees reported new hires to EAFC but not DFPI. DFPI does not automatically receive a copy of EAFC's employment status form. The employment reporting to EAFC and to DFPI are separate processes. Another common violation is that licensee fails to remove a former employee's name from company's trust account list of check signers. Suzuki also reminded licensees should properly escheat funds to the State Controller's office.

Suzuki stated whether or not violation rises to a formal action will be like a situation DFPI cannot just look at the violation itself without considering various factors. In every case DFPI looks at the various factors that need to be considered such as the past history of the company, the time frame involved with the violation. A determination for formal action is made on case by case basis.

Timothy Brigham asked how examiners treat PPP loans when they review licensee's financial statements. Suzuki stated the matter regarding PPP loans is also handled on case by case basis. Typically examiner will report the matter to an escrow specialist who then proceed with addressing the matter with licensee.

Jeff Behm stated when a company receives the PPP loan their liquidity goes up tremendously so liquidity is not the issue and the issue is net worth because until the loan is forgiven, the net worth lags considerably behind liquidity. Because of the income tax effect of loan forgiveness, salaries are not being deductible, so the issue is that companies are paying tremendous taxes at year end. Their liquidity will be fine but their net worth will be short until the extinguishment of debt.

Suzuki stated each PPP loan and each company's financial conditions are different. That's the very reason treatments for PPP loans are being looked at on a case by case basis. Examiners will try to get an understanding for licensee's financial conditions and more about their PPP loan before they determine whether a financial deficiency exists.

6. Real-time Payment and Trust Accounting Issues

Guest speakers from Nano Bank gave a presentation about real time payment to committee members. The speakers discussed history for payment types and real time payment adoption around the world. Also discussed are the benefits and limitations for real time payment, and real time payment's ecosystem.

7. Enforcement actions and licensing updates

Liang reviewed the enforcement actions summary during the past quarter. The department has taken 4 enforcement actions and two of those were for unlicensed activities by an online escrow company. The third action was taken against an individual who made unauthorized disbursements from the trust account. And the last action was taken against a licensee failed to file required reports and maintain financial compliance.

Liang also reviewed the licensing stats during the past quarter. The number of licensed escrow companies increased by 11 from a year ago. And the number of licensed locations increased by 12 from a year ago. Since the last advisory meeting, the department received 5 requests for license surrender. As of November 30, the department has 23 pending license applications and 13 pending branch applications.

8. Public Comments

A member of the public requested further clarification regarding the department position on escrow fee discounts and commented final orders for enforcement actions were not always posted on the department website. Liang stated escrow fee discount issues will be addressed in proposed regulations and he cannot comment on pending regulations. He asked the member of public to forward him a list of companies for which final orders were not posted on DFPI website. He can forward the list to appropriate enforcement counsels to review and respond.

9. Closing remarks

Liang reminded the committee that Governor Newsom issued a stay at home order effective December 7, 2020. Under that order and directive from governor's office, state offices will close to the public but remained operational to perform critical tasks. There will be no public access in any DFPI office for public record inspections until the order has been lifted. Mail delivery to DFPI office will not be affected.

Liang thanked everyone for calling-in and their participation. The next meeting will be on March 9, 2021 from 10:00 a.m. to noon. Meeting announcement will be posted on the department's website. At 12 noon, the meeting is adjourned.