

ESCROW ADVISORY COMMITTEE MEETING
September 8, 2011

Department of Corporations Represented By:

Louisa Broudy, Deputy Commissioner
Kathleen Partin, Special Administrator
David Duong, Senior Examiner
Ann Davila, Escrow Specialist
Gillian Small, Acting General Counsel (Via Telephone San Francisco)
Peggy Fairman, Counsel (Via Telephone Sacramento)
Colleen Monahan, Deputy Commissioner (Via Telephone Sacramento)

Committee Members Present:

P J Garcia
Joe Lins
Beulah Stidham
Bill Nelson
Leslie Sapone
Jennifer Woodard
Scott Akerley
Steven Garcia
Diane Boudreau
Jenifer Siou

Committee Members Absent:

None

1. Opening Remarks

Deputy Commissioner Louisa Broudy opened the meeting and introduced new members Leslie Sapone and Scott Akerley. Then all existing members introduced themselves. The meeting was then turned over to Kathleen Partin.

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

Examination Subcommittee Training and Glossary Update (K. Partin)

For the benefit of the new members, Kathy talked about and briefly explained the function of the Subcommittee. The subcommittee has been unable to meet on a regular basis. The group agreed to meet after the next Advisory meeting scheduled for Tuesday, December 6th. Topics for upcoming training sessions included bulk transfers, holding escrows and mobile home transactions.

Senior Examiner David Duong stated that he had received very positive feedback from examiners regarding the Glossary. David hopes to add more items relating to bank reconciliation items to the Glossary. Copies of the Glossary were distributed.

Louisa expressed her appreciation for the training and information that has been provided to the Department by the group.

Short Sale Processing, Facilitating, and Negotiating (PJ Garcia)

Kathy stated that any other business activity, other than escrow business, must be approved by the DOC. Also, all DRE requirements must be met. She further stated that it appears there is a conflict of interest for an escrow officer to negotiate and be the escrow officer. PJ stated she hoped to get something in writing from the Department regarding this issue. Colleen stated a decision will be made whether anything further will be provided by the Department.

Outreach to Other Regulators (PJ Garcia)

Louisa went over the DRE agenda items that were suggested. The items are:

- Corporate escrow entities not licensed by DOC
- DBA with Escrow in the name and not referenced to brokerage
- Per Diem Interest issues (for lenders DRE regulates)
- Regulation of short sale negotiators – discussion of ongoing issues
- Interpretation and regulation of B & P Code regarding Commissions

A discussion took place regarding requests by brokers to disburse commissions. Louisa stated that the escrow law did not address commission disbursement requests. Attorney Steven Garcia referred to Section 10138 of the B & P Code, which makes it a misdemeanor for an escrowholder, among others, to pay a commission to anyone for acts covered by the law pertaining to real estate licensees if the person receiving the funds either is not known to hold a real estate broker's license or does not present evidence of being a licensed real estate broker. PJ questioned who had the authority/jurisdiction to enforce this section, and Steven asked if the section was considered part of the escrow law.

Steven then discussed the *Kangarlou v. Progressive Title* case in which B&P Code § 10138 was used as a basis to uphold an award of punitive damages against an escrowholder.

DOC Feedback on EIC's Lender Issues Paper Regarding Per Diem Interest, Red Flag

Kathy stated that since the last meeting, CMBA, which represents mortgage bankers, contacted the Department stating that they also have issues with the

per diem interest requirements. The DOC is looking into setting up a meeting with representatives from both groups.

Compliance and Creation of Agency Duties (PJ Garcia)

PJ stated that lenders view Escrow as an agent of the lender, making it impossible to act as a neutral party for consumers. Kathy stated that unless there is a violation of the escrow or loan laws, the DOC cannot provide guidance on how to deal with this issue. Escrow companies should consult their own attorneys. Beulah stated she is working on getting lenders to back off using a Civil Code interpretation.

Convergence Project Update-Leases (J. Siou)

Jenifer Siou updated the committee with some of the convergence projects. Regarding the "Private Company Financial Reporting", previously 7 models were considered, reduced to 3 models and finally the Blue Ribbon Panel recommended the model "U.S.GAAP with exceptions for Private Companies". A new standard board is set up to continue working on this project. The project for leases was also discussed. Currently, lease standards deal with 4 types of leases with 2 types being more common- Capitalized and Operating. With the new proposed standard, the operating lease will be gone. There will now be an asset and a liability for recording leases. This won't affect cash flow, but will affect liquidity calculations. The next 12 lease payments will be considered a current liability. When the new standard becomes effective, the rumor is that it will be retroactive. Various other convergence projects are still ongoing including the previously discussed "Financial Statement Presentation".

Kathy asked if the industry had talked about legislation to change the law. Beulah and PJ said yes.

3. Enforcement Action Update

Kathy distributed a handout showing the latest administrative actions and licensing statistics. The Department has taken possession of two companies. Surrenders are about even from last year. Eleven companies are on the revocation list for non-payment of the Escrow Assessment. Orders will go out shortly.

The next meeting is tentatively scheduled for Tuesday, December 6, 2011.

The meeting adjourned at 11:30 a.m.