

Escrow Commission Meeting Minutes

April 15, 2010

Attendees:

Commissioners:

Philip Dryden, Chair
Patricia Maddux
Joe Sargent
Laurie LeMay
Chariese Adams
Susan Kinyon

Consumer Services Division Representation:

Deb Bortner, Division Director
Patrick Woods, Licensing and Administration Program Manager
James Brusselback, Enforcement Program Manager
Kwadwo Boateng, Examinations Program Manager
Ariana Wood, Customer Service Supervisor
Phil Brady, Financial Legal Examiner 3
Elizabeth Hampton, Administrative Assistant

Additional Guests (that reported their attendance):

Tammie Warnke
Julia Booth

Meeting Called to Order at 9:50 a.m.

Approve Minutes from October 20, 2009, Meeting

Patti Maddux moved to accept the minutes from the October 20, 2009, with one amendment. Joe Sargent abstained from approving the minutes from June since he was not present. Laurie LeMay seconded the motion. All were in favor and the minutes were approved as amended.

Legislation Update

Thanks to Tammie Warnke and the work of the commission, our bill was passed through the legislature. Contract collections were taken out of the definition. As a result of that, there will need to be discussions about where contract collections are going to reside. We do have a bill that passed that covers residential mortgage loan contract collections. We're

going to try to accommodate those that are licensed under the escrow act already. This will be discussed later in the meeting. We did change the definition of attorneys that are exempt. Now the attorneys that are principally engaged as an Escrow Agent will need to be licensed, this includes if they hold themselves out as an Escrow Agent. We're going to clarify that in the rules.

The changes in the act pertain to a fidelity bond that covers owners and the responsibility of all companies to go back through their employee records to make sure that you haven't hired any people that have committed a felony or gross misdemeanor involving dishonesty. Also, if they have extremely poor credit you will have to ensure they are not handling escrow funds.

Rulemaking Update

Phil Brady reported on rulemaking activity. Phil Brady is our new Financial Legal Examiner and is drafting the Escrow rules. DFI will be providing the first draft of rules after we receive them back from the code reviser. DFI will hold rule hearings and rule drafting meetings to involve the industry in the rulemaking process.

Technical Changes

DFI will be making extensive technical changes to the Escrow WACs. The following technical changes shouldn't affect day to day escrow businesses:

- A reorganization of WACs 208-680A-F into a single chapter of WAC, WAC 208-680.
- Some reorganization of the chapter, and some combining/splitting of existing sections that should not have any substantive impact.
- Revisions for clarity, and corrections of internal inconsistencies.
- Plain talking of the WAC, and a switch to question and answer format.

Substantive Changes

In addition to the technical changes, DFI will also make substantive changes. The substantive changes can be divided into two broad groups: 1) changes required to implement Chapter 34, Laws of 2010 (SHB 2564); and 2) changes to reflect DFI policies that are not specifically mentioned in the current WAC.

1) Required to Implement SHB 2564

New or amended sections:

- Definitions
 - o DEO, BDEO, department, director, "handling escrow transactions," etc.
- Exceptions from licensure
- The attorney exception

- Scope and effect of exception
- Application of DFI's various examination, investigation, and enforcement powers
- Bonding requirements
- Renewal and expiration/cancellation of licenses
- Employment restrictions
- DFI seizure of an escrow business
- Fingerprinting fees
- Escrow commission responsibilities/notice of meetings

2) Changes to reflect DFI's current policies

New or amended sections:

- DFI's ability to collect and store abandoned escrow records under DFI's existing authority
- License transfers
- Application process
- Existing fee increases that were never put in WAC
- Office closures
 - Post-closure reporting
 - Winding-up
 - Retention of bonds
- Deceptive names
- Reporting significant events (24-hour notice of changes to trust account status)
- Administration of trust funds
 - IOLTAs for attorneys
- Agreements & closings (use of average costs for sub-escrows)
- EO responsibilities (can't do transactions if not affiliated with an agent)
- Sanctions (updated to reflect DFI's powers, clarified which sanctions apply to all escrow agents and which apply only to licensed agents)

DFI hopes to have language to send out for review and comments in the next couple of weeks. The draft will be posted to the website under Escrow Rulemaking. We have tentatively schedule an Escrow rulemaking webinar for July 13th. More information regarding the meeting will be sent out via the Escrow ListServ. Please direct any comments you have to Phil Brady at DFI.

Licensing Update – Ariana Wood

Escrow Agent Numbers for the Escrow Commission Meeting – April 15, 2010

- 131 Main offices (145 reported at last meeting)
- 18 Branch offices (16 reported at last meeting)
- 197 Escrow Officers (229 reported at last meeting)

- 126 Inactive Escrow Officers (128 reported at last meeting)

Exam Report – Kwadwo Boateng

From October 2009 to March 2010, 21 exams were completed.

Average number of violations per exam: 5

Composite Rating	Number of Licensees
1	0
2	12
3	7
4	2
5	0

Explanation of examination ratings:

Exam Reports are rated on a 1-5 rating. A rating of 1 is the least amount of violations or findings. Ratings of 4 and 5 are the worst; a 5 rating typically isn't ever rated because at that point there are so many violations and findings the case would be referred to the enforcement unit. A rating of 4 indicates that there were a lot of findings but not sufficient reason to refer to the enforcement unit, typically DFI would go back and do another examination in 6 months or less to make sure that they are in compliance.

Escrow Agents referred to the Enforcement Unit: 3

- DEO preparing legal documents without an LPO license
- Agent failed to retain required records and failed to reconcile after going out of business
- Agent failed to renew DFI license and DEO license. DFI requested previous 12 month reconciliation records and Agent would not provide the documents

Common Violations:

1. Failing to timely submit Quarterly Reports
 - One-day examinations were conducted by the Department for late filers
2. The Agent's reconveyance procedures do not meet the requirements of Policy Statement 02-07
 - Policy Statement 02-07 requires, at a minimum, the Agent must maintain an itemized log or invoice of services showing the dates of services.
 1. Printing out the Deed of Reconveyance and placing it in the escrow file is not sufficient documentation.

3. Failing to maintain sufficient funds in the trust account
 - Agents failed to maintain positive balances in individual trust accounts.
 1. This is most commonly caused by receipt and disbursement errors that go unidentified until the month-end reconciliation. It is recommended that escrow agents perform daily reconciliation of the trust account to proactively identify these types of errors.
4. Failing to maintain required records
 - Agents failed to retain all required month-end reconciliation records.
 1. The records that support the three-way reconciliation balances should be printed, reviewed, and retained as permanent records on a monthly basis.
5. Charging fees not allowed by the Act
 - DFI found instances where escrow agents charged fees that should have been included in the agent's one time escrow fee.
 1. Escrow agents should not charge additional fees to consumers for services unless it is a bona fide out-of-pocket expense.

Enforcement Update – James Brusselback

James Brusselback provided an Enforcement Update on the last two quarters.

From January 1, 2010 to March 31, 2010, DFI's Enforcement Unit received 21 complaints and closed 18 complaints. For all industries, DFI received 470 complaints and closed 432 during this time period. As of April 8, 2010, DFI had a total of 604 open complaints for all industries (all numbers provided are approximate).

Enforcement Actions January 1, 2010 to March 31, 2010:

Statement of Charges (issued in period) – 1

Integrity Closing & Escrow LLC; Daralee Bridgers Neisess; Aloar Drade Durham; Dennis Ervin Chilberg: 01/08/2010 [C-09-029-09-SC01]

Approved Escrow Inc; Todd Charles Kennedy; Debbie Darlene Parker: 02/03/2010 [C-09-147-10-SC01]

EscrowPoint Inc: 02/03/2010 [C-10-003-10-SC01]

Final Order (issued in period) – 1

Higa Escrow Service Inc; Caroleann M Higa: 02/01/2010 [C-08-308-09-FO01]

Consent Order (issued in period) - 1

Data Search Inc: 01/06/2010 [C-09-033-09-CO01]

See DFI's website for more details of these actions:
http://www.dfi.wa.gov/cs/adminactions_2009.htm

Escrow Test

DFI has been working with PearsonVue to add the additional 20 test questions the commission went over. These questions should be added within the next couple of months.

Patrick Woods reported that the PearsonVue requested that we reduce the hours for testing due to the fact that the usage at the facilities across the state is very minimal. For the mortgage brokers and escrow agents combined, there have only been 60 individuals in to take the test, for the Escrow it was 11. They requested that we reduce the test dates to one day a month at each location. Wenatchee will be removed from the testing schedule altogether.

Storage of Records

We have a particular situation where a company went out of business and now their records are in storage and they are not paying their storage fees. Do you have any ideas about what to do about these records that are sitting in storage units that may be sold? DFI does not have the storage space and we are trying to figure out how to deal with this. Storage units are often put up for auction when a tenant doesn't pay their storage fees. In the past DFI has either had other escrow agents take in the records or we have called the former licensee to tell them they have to pay and they end up paying for the storage.

The files could be scanned onto a disk to keep the records electronically. Who would pay for this? Store this? DFI does not want to become the repository, even if it is electronic, because that would open the records up to public disclosure. DFI would have to search all of the records to make sure they aren't responsive to a public records request.

Phil Dryden suggested that an administrative bond might be helpful to cover this type of issue.

Please contact DFI if you have any suggestions.

Short Sale

Deb Bortner has received calls from real estate agents who are complaining that the escrow agent is not properly designating the proper amount of money that is going to the party that is negotiating the short sale with the lender. DFI will tell people that that amount will have to be reflected in the 700 series; it can't just be listed in the breakdown on page four. The negotiation fee would need to show up in the commission section. We believe that the third

party negotiator fee should be in the 700 series. It needs to be listed on the main part of the HUD. Currently, it is typically being reported under the 1300 series. The short sale lender often says they do not want to see this fee on the HUD. This is a RESPA violation because all fees should be listed. The department may put out a memo to say that any payees in a transaction will need to be posted on the HUD.

DFI is now part of a task force with the Department of Licensing's (DOL) Real Estate Commission. What will we do as far as training regarding short sales? There are some licensing and disclosure issues involved. We will discuss these issues with the DOL.

An escrow agent should not be negotiating short sales because they are not licensed to do so in the state of Washington.

New Business

Susan Kinyon has been contacted by individuals that are now under the impression that they have to be licensed as a mortgage broker to make hard-money loans. Can the lender have a mortgage broker make the loan and then assign it to a non-licensed third party lender? Deb Bortner explained that since June 10, 2008, lenders have had to get a license. There is no exemption for hard-money lenders. If one of our licensees made the loan and then assigned it to a third party hard-money lender that should work. As long as the consumer is protected by getting all of the proper disclosures DFI probably would not have a problem with that. Anyone that is servicing the loan, as of June 10th of this year, will have to be licensed. This is not a legal opinion. You will have to seek legal advice.

Brokers assist people in getting loans. Anyone who provides the funding and is a lender needs to be licensed. Consumer Loan company's are correspondent lenders and get money from other sources. If they get money from a hard-money lender and make sure the borrower gets all of the proper disclosures this would seem to be acceptable. Again, this is not our legal opinion.

If someone is lending money to their children and securing it with real estate, they should contact DFI to request an exemption. For the most part, DFI may not bring action against those that are lending money to a family member; however, there is not an exemption for this.

Elizabeth Hampton will send possible dates for the next commission meeting to the commissioners.

Tammie Warnke thanked everyone for the patience and participation throughout the legislative session.

Meeting adjourned at 11:47 a.m.

You may listen to a recording of the entire meeting at http://dfi.wa.gov/cs/escrow/escrow_commission.htm#audio .