

## TITLE 10. CALIFORNIA BUREAU OF REAL ESTATE

### PETITION PROCESS FOR WEBSITE DISCIPLINE INFORMATION REMOVAL

#### NOTICE IS HEREBY GIVEN

The Commissioner ("Commissioner") of the Bureau of Real Estate ("CalBRE") proposes to adopt Section 2915 of the Regulations of the Real Estate Commissioner (Title 10, Chapter 6 of the California Code of Regulations) ("the Regulations") after considering all comments, objections, and recommendations regarding the proposed action. Publication of this notice commences a 45-day public comment period.

#### AUTHORITY AND REFERENCE

Section 10080 of the Business and Professions Code ("the Code") authorizes the Commissioner to adopt regulations that are reasonably necessary for the enforcement of the provisions of the Real Estate Law (Code Sections 10000 et. seq.). Section 10083.2 of the Code authorizes CalBRE to set a fee and establish minimum petition requirements for a petition process pursuant to that section for current licensees. This proposal adopts Section 2915 of the Regulations to implement and interpret the recent amendment of Section 10083.2 of the Code.

#### PUBLIC HEARING

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to CalBRE at the contact listed below no later than 15 days prior to the close of the written comment period.

#### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Commissioner addressed as follows:

##### Regular Mail

Bureau of Real Estate  
Attn: Daniel E. Kehew, Sacramento Legal Office  
P.O. Box 137007  
Sacramento, CA 95813-7007

##### Electronic Mail

[BRERegs@dre.ca.gov](mailto:BRERegs@dre.ca.gov)

##### Facsimile

(916) 263-8767

**Comments may be submitted until 5:00 p.m., Monday, April 2, 2018.**

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW – SUMMARY OF PROPOSED REGULATION

The underlying statute, Section 10083.2 of the Code, requires CalBRE to post specified licensee discipline information to the agency's website. A small number of licensees have complained that this information, sometimes relating to discipline that occurred many years ago, has negative impacts on their life and work. In 2016, the Legislature amended Section 10083.2 to create a petition process for current licensees to seek removal of discipline done more than 10 years ago where there is no "credible risk" to consumers from removal of the discipline information.

This proposed regulation:

- Sets a petition fee, supported by documentation of average petition investigation costs.
- Sets standards for petition information.
- Requires submission of a Live Scan fingerprinting to ensure a thorough petition investigation. The regulation incorporates by reference the Live Scan Service Request form, RE 237 (Rev. 6/14).
- Specifies a one year wait period before making a new petition after an earlier petition is rejected.
- Establishes the existing Criteria for Rehabilitation as applicable to these petitions.
- Lists some specific circumstances that warrant denial of a petition.
- Clarifies the relief available through a successful petition.

## DETERMINATION OF CONSISTENCY/COMPATIBILITY WITH EXISTING STATE REGULATIONS

The Commissioner has determined that these proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to petitions for removal of discipline information from the website, the Commissioner has concluded that these are the only State of California regulations relating to the subject.

## PURPOSE, BENEFITS, AND GOALS OF THIS AMENDMENT

The proposed adoption of § 2915 to the Regulations serves to implement and clarify the new provisions within § 10083.2 of the Code, setting out a process and general standards for the petition process for seeking removal of certain license discipline information from the "Public License Information" feature of CalBRE's website. By implementing and clarifying the recent amendment to § 10083.2 of the Code, this regulation will enable a qualified real estate broker, salesperson, or corporate broker licensee to seek removal of information from the CalBRE website that negatively

impacts the personal or professional prospects of the licensee, without credible risk to members of the public. As noted above, the proposal establishes a petition fee, sets the minimum information needed to submit a petition, requires fingerprinting of petitioners, specifies the applicability of CalBRE's Criteria for Rehabilitation, and addresses the statute's use of the term "credible risk" to consumers. A more complete description of the intended goals appears within the Initial Statement of Reasons.

#### NECESSITY OF THIS AMENDMENT

The underlying statute, Section 10083.2, permits CalBRE to adopt regulations to set the fee for this petition process and to specify the minimum information to be included in the licensee's petition. This regulation meets that authority, and also clarifies issues arising in inquiries from licensees and other stakeholders interested in the petition process.

#### AVAILABILITY OF MODIFIED TEXT

The text of any modified regulation, unless the modification is only non-substantial or solely grammatical in nature, will be made available to the public at least 15 days prior to the date CalBRE adopts the regulation(s). A request for a copy of any modified regulation(s) should be addressed to the contact person designated below. The Commissioner will accept written comments on the modified regulation(s) for 15 days after the date on which they are made available. The Commissioner may thereafter adopt, amend or repeal the foregoing proposal substantially as set forth above without further notice.

#### AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS/INTERNET ACCESS

The express terms of the proposed action may be obtained upon request from the Sacramento offices of CalBRE. An initial statement of reasons, supporting fiscal analysis, and underlying data for the proposed action containing all the information upon which the proposal is based is available from the contact person designated below. These documents are also available at CalBRE's website at [www.bre.ca.gov](http://www.bre.ca.gov). As required by the Administrative Procedure Act, CalBRE's Sacramento Legal Office maintains the rulemaking file. The rulemaking file is available for public inspection during normal business hours at the Bureau of Real Estate, 1651 Exposition Boulevard, Sacramento, California.

#### AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website listed above.

## CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Commissioner must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the attention of CalBRE, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

## RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT (Pursuant to Government Code Section 11346.3(b))

The Commissioner has prepared an Economic Impact Assessment in the Initial Statement of Reasons, and has reached the following results:

- The proposal does not affect the creation or elimination of the number of jobs available within the State of California. The proposal, and the underlying statute it implements, minimally impact one factor that consumers may consider when deciding whether to hire a particular licensee.
- The proposal does not affect the creation of new businesses or the elimination of existing businesses within the State of California.
- The proposal does not affect the expansion of businesses currently doing business within the State of California.
- The proposal will have no affect on the health and welfare of California residents, worker safety, or the State's environment. The proposal ensures that only discipline information that is of no further practical use to consumers will be removed from CalBRE's website, as directed by the underlying statute.

## INITIAL DETERMINATIONS

The Commissioner has made an initial determination that the proposed regulatory action:

- Will have no fiscal impact on CalBRE. (Statement of Determination required by Government Code section 11346.5(a)(6).)
- Does not create a cost nor impose a mandate (nondiscretionary cost or savings) on local agencies or school districts, or a mandate that is required to be reimbursed pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. (Statements of Determination required by Government Code section 11346.5(a)(6).)
- Does not create a cost or savings to any state agency as well as federal funding to the state. (Statement of Determination required by Government Code section 11346.5(a)(6).)
- Does not have an effect on housing costs.
- Does not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

## COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The proposed regulation sets a petition fee of \$1,275, to be paid by a licensee making such application. Further, each petition must be accompanied by a Live Scan Service Request; this process costs approximately \$49. As of April, 2017, only 3,911 licensees (i.e., persons with active licenses) had discipline appearing on the website that is more than 10 years old and thus eligible for possible removal through this petition process. Once the underlying statute is operative, these licensees may choose to pay the petition and fingerprinting costs if they want the discipline information removed from the website.

## EFFECT ON SMALL BUSINESS

The Commissioner has determined that, based on a statistical projection of types of businesses currently licensed, of the 3,911 licensees with discipline over 10 years old that appears on the website, an estimated 821 are likely to be small businesses. For those licensees that are small businesses and that choose to petition, the total cost will be \$1,324.00 (the fee for the petition and a separate cost for the fingerprint process). Should a licensee's discipline information be removed from the website, the licensee may see some benefit to their business opportunities for minimizing the negative information about the licensee that appears on the web. That benefit cannot be estimated. Regardless, if an eligible licensee who operates as a small business chooses to petition, the proposed regulation will impact that small business.

## CONTACT PERSON

Inquiries concerning this action may be directed to Daniel Kehew at (916) 263-8681, or via email at BRERegs@dre.ca.gov. The backup contact person is Stephen Lerner at (916) 263-8704.

Dated: February 16, 2018  
Sacramento, California



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Daniel E. Kehew  
Real Estate Counsel  
Sacramento Legal Office