

SUPPLEMENT TO THE INITIAL STATEMENT OF REASONS

PROPOSED AMENDMENT TO TITLE 10, CHAPTER 6 § 2915, “PETITIONS FOR WEBSITE DISCIPLINE INFORMATION REMOVAL”

This regulation proposal adds § 2915 to the Regulations of the Real Estate Commissioner (California Code of Regulations, Title 10, Chapter 6) (“the Regulations”) to implement and clarify the requirements of § 10083.2 of the Business and Professions Code (“the Code”). DRE adds this Supplement to the Initial Statement of Reasons into the rulemaking file pursuant to Government Code Section 11347.1.

The Department of Real Estate (“DRE”) amended this proposal following the initial 45-day Public Comment to address issues identified by administrative reviewers, and again in response to comments from the Office of Administrative Law (“OAL”). In addition to several non-substantive amendments, which address clarity issues and style consistency, DRE amended subdivisions 2915(b)(1) and (2), (c)(1), (c)(2), and (f), for the following reasons:

2915(b)(1) and (2): As originally drafted, OAL indicated that the regulation could be read as restricting each petition to a request for a single discipline action to be removed from the website. This meaning was not DRE’s intent or expectation. DRE anticipates that where a licensee has more than one eligible discipline action (i.e., imposed more than 10 years earlier), all such discipline information would be eligible for removal upon a single petition. DRE amended 2915(b)(1) and (2) to clarify that the required lists of past convictions and past license discipline must commence on the date of the most recent license discipline action for which the petitioner seeks relief. This drafting encompasses situations where one or more 10-year-old disciplinary actions are documented on the website. DRE does not seek information on earlier convictions and past license discipline (those convictions and discipline actions that pre-date the most recent discipline for which petitioner seeks relief) because such information should already be within DRE’s existing discipline records.

2915(c)(1): As originally published, subdivision (c)(1) stated the fee for a licensee to petition for removal of discipline information from the DRE website. Further, subdivision (f)(3) referred to a possible concurrent petition for removal of restrictions from a license. The subsequent amendment of the proposed (c)(1) expressly states that, where a petitioner is eligible to make other petitions to DRE (specifically, petition for reinstatement of a license or petition for removal of restrictions for a license), those petitions may be made concurrently with this petition. DRE will not assess an additional fee for investigation where petitions are filed concurrently. The amendment also clarifies

that a single petition may seek removal of discipline information relating to more than one eligible discipline action through a single petition, without an additional fee for investigation.

The rationale for this standard is efficiency for both the licensee and DRE: The investigations involved in each of these types of petitions is substantially the same. Where possible, DRE can and will use the work product from one investigation to inform decisions on more than one sort of petition by the same licensee, or for more than one eligible discipline action.

One situation calls for additional description: DRE anticipates acceptance of petitions for reinstatement from persons whose real estate license was revoked or surrendered, concurrent with a petition for the past discipline to be removed from DRE's website. DRE acknowledges that, pursuant to this regulation's foundational statute, an unlicensed person is not eligible to petition for removal of discipline from the website. DRE's procedure will be to accept this combination of petitions, conduct the investigation relating to both petitions, and reach a determination relating to the reinstatement petition. Where reinstatement is granted and a license issues to the petitioner, subsequently DRE will reassess the results of the investigation to determine the reinstated licensee's eligibility for removal of discipline information from the website. This process will eliminate the need for duplicative investigations in such situations.

2915(c)(2): As originally published, this proposed regulation references the Live Scan Service Request, Form RE 237 (Rev. 6/14). DRE amended that form as of July 1, 2018, but only to reflect the change in status of the Bureau of Real Estate to Department of Real Estate on the same date, and an updated "revision date" in the title of the form. The substantive questions on the form are unchanged, as those questions are dictated by the model form provided by the Department of Justice, the Live Scan Request Form BCIA 8016. The current version of the DRE form is designated Form RE 237 (Rev. 7/18), and the revised text of the regulations proposal reflects this change.

Further non-substantive amendments throughout the proposed text change the word "Bureau" to "Department." As on the revised form, this reflects the new status of the agency as of July 1, 2018.

2915(f): As originally noticed to the public, proposed subdivision 2915(f) clarified the Real Estate Commissioner's ("Commissioner") finding pursuant to § 10083.2(c) of the Business and Professions Code ("the Code"). As described in the Initial Statement of Reasons, this subdivision highlighted the statute's term, "credible risk," and its impact on the Commissioner's finding. Petitioners were alerted that the Commissioner will take

into consideration any information arising from a petition investigation that reflects on petitioner's propensity to honestly, fairly, and efficiently engage in activities that require a real estate license – elements that may indicate an ongoing risk that necessitates consumer awareness. The subdivision would have defined "credible risk" in the context of this petition process. The subdivision also listed (not exhaustively) specific conditions that would result in a finding of "credible risk" and other bases for rejection of a petition.

The phrasing of proposed subdivision 2915(f) was amended to:

- Mandate the Commissioner's consideration of the evidence gathered from an investigation of a petition that reflects on the petitioner's propensity to honestly and fairly engage in activities requiring a real estate license.
- Eliminate "efficiency" as a licensee quality considered by the Commissioner when evaluating a petition.
- Eliminate the definition of "credible risk."
- Eliminate the language that specifies this as a non-exhaustive list. The remaining circumstances will be the only bases for a finding of "credible risk," resulting in denial of a petition to remove discipline from DRE's website.
- Specify that the Commissioner "may" deny a petition request on the listed bases, without requiring that the Commissioner do so. Where sufficient rehabilitation evidence is found, and no other legal basis for denial exists, a petition may still be approved and relief granted despite the existence of one of these bases for denial.
- Eliminate felony convictions that are not reduced or expunged from the list of issues that may generate a finding of "credible risk."
- Amend the wording of a listed issue that may generate a finding of "credible risk," referring to past discipline for an offense resulting in harm to a client or other consumer in a real estate transaction.

FINDING OF NO POTENTIAL FOR SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS AND INDIVIDUALS (Government Code Section 11346.3(a))

The Department adds this finding to those published in the Initial Statement of Reasons: The Commissioner has determined that the proposed regulatory action will not have a significant adverse economic impact or potential for significant adverse economic impact on business, including the ability of California businesses to compete with businesses in other states, or individuals. While the proposed rulemaking will require payment of a fee for the cost of the investigation associated with a petition, that cost is not prohibitive and is well documented in the Initial Statement of Reasons. No licensee is required to make a petition; eligible licensees may make an individual choice to

petition, and thus incur the cost of the fee. With the fee established, each eligible licensee may weigh their own possible benefit from a successful petition, and reach an individual conclusion regarding the relative cost/benefit of petitioning.