

INITIAL STATEMENT OF REASONS

IMPLEMENTATION OF SB 143 (2023) PORTABILITY OF MILITARY SERVICEMEMBER AND SPOUSE PROFESSIONAL LICENSES

TITLE 10, CHAPTER 6

PROPOSED ARTICLE 7.7, SECTIONS 2759.1 to 2759.8

This regulation proposal adopts eight new sections, 2759.1 through 2759.8, as a new Article 7.7 of the Regulations of the Real Estate Commissioner (California Code of Regulations, Title 10, Chapter 6) ("the Regulations"), "Military Servicemembers and Their Spouses." This Article implements the program for interstate professional license portability set out in newly adopted Section 115.10 of the Business and Professions Code ("Bus. & Prof. Code"). That Bus. & Prof. Code section was adopted as Section 1 of the larger SB 143 (Committee on Budget and Fiscal Review, Chapter 196, Statutes of 2023).

Bus. & Prof. Code Section 115.10 directs the Department of Real Estate ("DRE") and the boards and bureaus within the Department of Consumer Affairs to "register" and treat as California licensees any active-duty military servicemember or legal spouse of such a servicemember where those individuals (1) hold a "similar" license in good standing from another United States jurisdiction and (2) are subject to a "permanent order" transferring the servicemember to California.¹

The eight new sections include:

- Definitions for terms used in both the statute and the associated regulations.
- Clarification of the standard that DRE will use when assessing whether an applicant's out-of-state license is similar to one issued by DRE.
- The information DRE's laws require on an application for registration.

¹This portion of SB 143 is the State of California's response to similar language in recent federal legislation, the "Veterans Auto and Education Improvement Act of 2022," H.R. 7939. That bill included the "Military Spouse Licensing Relief Act of 2021," purporting to mandate a form of license reciprocity between States and other U.S. jurisdictions. This regulation proposal only addresses the California statute that authorizes DRE to participate in this form of reciprocity.

- Implementing language for DRE's registration process.
- The information that DRE will post to its website about a registrant.
- The events during one's registration that the registrant must notify DRE about, as well as a 30-day time limit to make that notification.
- Clarification of how the underlying licensing law impacts the term of registration and implementing information for the registrant's responsibility to comply with California's continuing education requirements for real estate licensees.
- Clarification of the underlying statute's description of the end of one's registration, including language to implement a grace period in certain circumstances.

PROBLEM STATEMENT

In adopting Bus. & Prof. Code Section 115.10, the Legislature intended to eliminate a barrier to employment for active servicemembers and the spouses (as defined in that statute) of servicemembers when the needs of the nation's military prompt orders that transfer a servicemember to California.

Prior to the adoption of Bus. & Prof. Code Section 115.10, DRE had no statutory authority to engage in license reciprocity with licensing systems from other states or jurisdictions. There is no standardization between California and other states regarding the scope of practices that constitute licensed real estate activities, and DRE has no existing process to consider how similar or dissimilar its licenses are from those of other states. This proposal addresses the questions associated with DRE's recognition and tracking of persons acting lawfully as real estate licensees in California who do not hold a DRE-issued license.

The statute impacts a wide range of professional licensing systems in California. By necessity, such a broadly applicable statute leaves significant details for each licensing system to implement through regulations such as this proposal.

Specifically, although the statute mentions some of the information requirements relevant to DRE, it does not include all relevant laws. The statute notes or implies the importance of specific events (such as renewal or expiration of the registrant's out-of-state license, or expiration of the registrant's military orders), but does not include requirements to ensure that DRE is kept aware of those events. The statute specifies that the continuing education requirements of each California licensing system will apply to a registrant, but does not specify how. Finally, the statute deals only in passing with the end of registration, leaving

licensing bodies the role of setting out appropriate details and accommodations for registrants at the end of this unique status.

This proposal is DRE's response to these prompts. In drafting this proposal, DRE continues to apply the requirement of Bus. & Prof. Code Section 10050.1:

“Protection of the public shall be the highest priority for the Department of Real Estate in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.”

PURPOSE, BENEFITS, AND GOALS OF THIS ADOPTION

In general, the purpose of Article 7.7 is to implement the program authorized by Bus. & Prof. Code Section 115.10, pursuant to the regulations authority granted in Section 115.10 and DRE's broader rulemaking authority in Section 10080. The purpose, benefits, and goals of the individual sections and, where necessary, their subdivisions are described below.

Proposed Section 2759.1. Definitions for this Article.

These terms are those used in this Article that require additional clarification. Notably, DRE chose to break out the terms “Applicant” and “Registrant” to clarify these regulations' expectations of persons seeking to be registered, versus those persons already registered. In doing so, the definition for “applicant” differs from that given in the underlying statute, but in a way that is more consistent with the common English language usage of the word and in a way that serves the one goal of the regulations: clarity.

Proposed Section 2759.2. Standard for Similar Licenses Qualified for Registration.

Bus. & Prof. Code Section 115.10 calls for registration where an applicant holds a “similar” license in another jurisdiction. In the field of real estate licensure, this requires some additional clarification for a prospective applicant. As noted in the Problem Statement above, there is no inter-state standardization for real estate licensure. To offer just one example, the State of Oregon issues three types of real estate licenses: “broker,” “principal broker,” and “property manager.” It is not immediately obvious from those names whether these licenses correspond to California's real estate salesperson and real estate broker licenses, licenses that are both issued by DRE.

There is also a question about which aspect or aspects of licensure should be considered. The statute appears to focus on the scope of the practice subject to licensure, but should consideration also be given to the education and continuing education required for licensure, or the standards for license discipline? And, upon deciding what aspects of licenses to consider, should DRE survey existing out-of-state license systems to make that determination now, or review only the licenses that applicants bring to California?

DRE believes that the simplest, effective meaning of "similar license" corresponds to the scope of the practice subject to licensure, specifically relying upon the phrasing of Bus. & Prof. Code Section 115.10(b)(1). While the other aspects of a given licensing system play a role in a professional license, the scope of practice is what sets a given profession apart from other professions.

The scope of practice that requires a real estate license in California can be found in its most general form in Business and Professions Code Section 10131. The work described there includes doing the following acts on behalf of clients in expectation of compensation: Selling or buying real property or business opportunities; leasing or renting real property or business opportunities; assisting others in purchasing, leasing, locating, or entering on lands owned by the state or federal government; mortgage brokering; buying, selling, or making offers to buy or sell real property sales contracts or promissory notes secured by real property or a business opportunity.

The scope of work described in the prior paragraph applies to both broker and salesperson licensees. A broker may do this work without supervision of another licensee. A salesperson license calls for lesser experience and education, and so a salesperson must be retained by a licensed broker to engage in these licensed activities. (Bus. & Prof. Code Section 10016.)

However, the following sections of Chapter 3 of the Real Estate Law include a variety of provisions that tailor the diverse scope just described. Exclusions from that scope exist for specific niche activities, for example rental or leasing of locations for movie or television production (Section 10133.4); leasing of specified lands for roadside billboards (Section 10133.5); mortgage activities regulated by the Department of Financial Protection and Innovation or other regulatory/licensing bodies (Section 10133.1(a)(5) as one example); etc. Other provisions of the Chapter require additional qualification to do mortgage loan origination work, pursuant to the federal and state versions of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008. (Public Law 110-289, Bus. & Prof. Code Section 10166.01 *et seq.*) DRE is not aware of any other state real estate license that corresponds exactly to the scope of DRE's licenses, but many

other states have followed California's model to institute their own, similar real estate licenses.

By offering applicants direction to the scope of licensure described in Chapter 3, this proposed section empowers prospective applicants the opportunity to determine whether their work falls within DRE's jurisdiction or is excluded.

As described further in the alternatives discussions below, DRE will refrain from evaluating possible "similar" license standards until a prospective applicant inquires with DRE's Licensing Division about whether their existing license is "similar" prior to applying, or a prospective applicant submits an application naming a specific out-of-state license system. In short, the anticipated low demand for registration, the relatively high cost to evaluate all possible out-of-state real estate licenses, and the cost to continuously monitor all possible out-of-state licenses for changes in their scope, are each factors in DRE's choice to wait for applications prior to assessing "similarity."

Finally, this proposed section also clarifies the impact of the existing licensing law on prospective registrants who only hold a mortgage loan origination license from another jurisdiction. DRE may only issue a mortgage loan originator license endorsement where the applicant also holds a real estate license. (Bus. & Prof. Code Section 10166.02)(b)(1).) Because this restriction also applies to registrants, this section specifies that prospective applicants should apply for registration as both a real estate licensee and a mortgage loan originator at the same time. Correspondingly, the section expressly states that registration as a mortgage loan originator alone, without a real estate license, is not possible under DRE's scope of authority.

Proposed Section 2759.3. Registration of Portable Licenses of Military Servicemembers and their Spouses.

This section sets out the information and documentation that an applicant must provide DRE as part of the registration process. Most of these requirements are based in specific provisions of Bus. & Prof. Code Section 115.10, but where other justifications exist, this description will include those foundations.

Rather than gather these requirements as a form, DRE has opted to list all the requirements in this section. DRE will provide an online tool on its website to facilitate applicants' provision of all the information listed below. Applicants may, of course, choose another format for providing the information as an application for registration.

Proposed Subdivision 2759.3(a) lists information that an applicant must provide. Just as with applicants for a real estate license, **subdivision (a)(1)** calls for the full legal name of the applicant, which presumably will match the name appearing on their out-of-state license.

Pursuant to Bus. & Prof. Code Section 115.10(b)(7), **subdivision (a)(2)** calls for the applicant's physical address of record in California. This information will be public, and DRE will caution applicants against using their home address for that reason. Most current licensees use an office address for this purpose.

Proposed subdivision (a)(3) calls for the applicant's Social Security Number or Tax Identity Number, a requirement based on Bus. & Prof. Code Sections 30(e) and 494.5(b)(3). Those statutes, which are also applicable to the other licensing agencies impacted by Section 115.10, require these private identifying numbers from both licensees and registrants in order to facilitate other departments' enforcement of California's tax laws and child support obligation laws.

Proposed subdivisions (a)(4) and (a)(5) call for the applicant's electronic mail address and telephone number. This information provide the simplest and most efficient means for DRE to communicate with an applicant/registrant.

Proposed subdivision (a)(6) calls for an applicant who is a spouse of a military servicemember to identify the form of relationship that qualifies the applicant for registration, relying upon the definition of "spouse" appearing in Bus. & Prof. Code Section 115.10(a)(5).

Proposed subdivision (a)(7) calls for the applicant to provide necessary information on their out-of-state license, pursuant to Bus. & Prof. Code Section 115.10(b)(1) and (d)(4).

Proposed subdivision (a)(8) applies to applicants for registration as a real estate salesperson in California. As defined in Bus. & Prof. Code Section 10016, salespersons cannot perform acts requiring a license without being retained by and thus under supervision from a licensed real estate broker. While the responsibility for reporting a broker-to-salesperson retention rests with the broker pursuant to Bus. & Prof. Code Section 10161.8 and Section 2752 of the Regulations, this inquiry is designed to ensure that out-of-state applicants for salesperson registration understand the need for broker retention and supervision prior to undertaking licensed acts. Where an applicant has yet to arrange a retention relationship with a responsible broker (as defined by Bus. & Prof. Code Section 10015.1), DRE will hold that application as incomplete in the

same manner as described in Bus. & Prof. Code Section 115.10(c)(2) relating to statutory application requirements, rather than rejecting registration.

Proposed subdivision 2759.3(b) lists the documentation that an applicant must provide. These requirements spring directly from language of Bus. & Prof. Code subdivision 115.10(b). **Proposed subdivision (b)(1)** requires a digital image of the military order to a California duty station, fulfilling Bus. & Prof. Code subdivision 115.10(b)(2). **Proposed subdivision (b)(2)** requires proof of out-of-state licensure, fulfilling Bus. & Prof. Code subdivisions 115.10(b)(4)(B) and 115.10(b)(5). **Proposed subdivision (b)(3)** requires legal proof of a spousal relationship where the applicant is not a servicemember, fulfilling Bus. & Prof. Code subdivision 115.10(b)(6).

Proposed subdivision 2759.3(c) lists the facts the truth of which the applicant must affirm via written attestation under penalty of perjury. **Proposed subdivision (c)(1)** seeks confirmation that the out-of-state license is in good standing, as the applicant may be aware of conditions that are not apparent from the supporting license documentation required under proposed subdivision (b)(2). **Proposed subdivision (c)(2)**, seeking the applicant's statement that they have done licensed acts within the last two years before application, corresponds to the requirement of Bus. & Prof. Code subdivision 115.10(b)(3). **Proposed subdivisions (c)(3) and (4)** seek the applicant's statements that they will submit to DRE oversight and that their application is accurate to the best of the applicant's knowledge, both requirements arising from Bus. & Prof. Code subdivision 115.10(b)(7).

Proposed Section 2759.4. Departmental Registration Process.

This proposed section sets forth DRE's public actions when it receives a registration application. Of specific note, these actions include issuance of a registration number, specifying that this number is to be used in place of a license number where the Real Estate Law and corresponding Regulations compel licensees to use their license number.

Proposed Section 2759.5. Registration Information on the Department's Website.

Although Bus. & Prof. Code Section 115.10(d) includes requirements for the registrant information that will appear on each registering body's website, DRE is also subject to other statutes that add other categories of information to DRE's online license information. This proposed regulations section harmonizes those requirements.

Where the registrant is acting as a salesperson or broker associate, this proposed section notes that the name and license number of the registrant's responsible broker will appear along with the registration data. Information regarding affiliation of a salesperson or a broker associate by a responsible broker, pursuant to Bus. & Prof. Code Section 10161.8 and Section 2752 of the Regulations, is an important part of clarifying for consumers which licensees owe duties to that consumer/client.

Bus. & Prof. Code Section 10176.1 requires that DRE include disciplinary information on licensees as part of the information that appears on its website. In light of the guidance of Bus. & Prof. Code Section 10050.1, with its priority for public protection in DRE's actions, DRE is compelled to extend this requirement to registrants under Bus. & Prof. Code Section 115.10.

Because the terms of Section 115.10 specify that the applicant's out-of-state license be in good standing at the time of registration, DRE chooses to commence its listing of disciplinary information at the time of registration. The proposed regulation limits DRE's posting of disciplinary information to any discipline against the registrant's California registration and any discipline against the registrant's out-of-state license while registered in California. DRE believes that this limitations fulfills the public protection function of both Sections 10050.1 and 10176.1, while avoiding unnecessary and possibly irrelevant inquiry into past out-of-state disciplinary actions.

DRE has also chosen to reiterate the specific information sought in the proposed Section 2759.3 that will become part of the internet's readily searchable public content. Applicants are reminded that the mailing address they use on their application will be published online.

Proposed Section 2759.6. Registrant Notifications to the Department.

Pursuant to the terms of Section 115.10, there are a number of situations where DRE will need the registrant to communicate information on an ongoing basis. For each of these notifications, DRE believes 30 days is a reasonable timeframe for the registrant to complete the task; this echoes the 30-day timeframe the authorizing statute grants DRE to complete a registration process, as well as similar reporting requirements related to criminal or disciplinary actions against licensees that appear in Bus. & Prof. Code Section 10186.2. Should a registrant fail to comply with this or any other regulation, Bus. & Prof. Code Section 10177(d) specifies that this failure is grounds for license discipline.

Proposed Subdivision 2759.6(a): Section 115.10(e) states that registration will expire when the orders qualifying the registration expire. DRE is not a party to those orders and needs the registrant to report the issuance of new orders that will cause the qualifying orders to expire. Proposed Section 2759.6(a) requires registrants to report such new orders to DRE. It is also possible for orders to expire through a servicemember's separation from service, or even through the servicemember's ultimate sacrifice while in service. Again, DRE will need to be made aware of this fact and must rely upon the registrant for this information where the registrant is a spouse of the servicemember. Please also consider the proposed Section 2759.8 and the rationale for that proposed section below prior to commenting on this proposed subdivision or this explanation.

Proposed Subdivision 2759.6(b): Bus. & Prof. Code Section 115.10(f) requires that the registrant maintain all of subdivision 115.10(b)'s qualifications throughout their registration, so the subdivision (b)(4) and (b)(5) requirement for an out-of-state license in good standing must be maintained during the term of registration. Upon application for registration, pursuant to Section 115.10(b) and more specifically proposed regulations section 2759.3(a)(7), the registrant will have provided documentation of that license in good standing and the expiration date of their out-of-state license. Where the term of registration extends beyond that stated expiration date, the proposed subdivision 2759.6(b) requires reporting to DRE of the renewal of an existing license, expressly including information on the new expiration date. Although this information will not be included in the information posted to the DRE website, DRE will track and maintain the latest expiration date for each registrant to ensure continued qualification for registered status.

Proposed Subdivision 2759.6(c): Another interaction between the subdivisions of Bus. & Prof. Code Section 115.10 is between subdivisions (f) and (e), creating a requirement for no change in the marital status of a registered spouse and the active duty servicemember whose order qualifies the registrant. Should there be a termination of that marital status, the registrant would no longer qualify. The proposed subdivision 2759.6(c) requires that the registrant report such changes to DRE. DRE suggests that readers consider the proposed Section 2759.8 and the rationale for that proposed section below prior to commenting on this proposed subdivision or this explanation, as that proposed section sets out a grace period for possible extension of registration, where issues such as termination of marital status arise.

Proposed Subdivisions 2759.6(d), (e), and (f): Bus. & Prof. Code Section 115.10(e) deems the registrant to be a real estate licensee for purposes of the laws that DRE administers relating to discipline (among other standards). DRE

needs to learn of any license discipline activity occurring in the registrant's home state, or of the entry of a criminal conviction against the registrant in any jurisdiction, in order to fulfill the consumer protection functions of Bus. & Prof. Code Section 10177(a), (b), and (f). Proposed subdivisions 2759.6(d), (e), and (f) echo the licensee reporting requirements of Bus. & Prof. Code Section 10186.2, ensuring that registrants are aware of, and bound by, these reporting requirements. As with licensees acting pursuant to Section 10186.2, this reporting allows DRE to open its own investigation relating to those actions or the circumstances that prompted those actions.

Proposed Section 2759.7. Continuing Education for Registrants.

Bus. & Prof. Code Section 115.10(e) states that each California licensing agency's continuing education standards will apply to registrants, while offering no practical details regarding how the standards are to be applied. This presents a number of issues that regulations must resolve, as each licensing agency's rules are specialized to suit the regulated industry. For reference, DRE's continuing education rules are based in Bus. & Prof. Code Section 10170.5 and Article 25 of the Regulations (commencing with regulations section 3006), which are designed to address the regular, four-year format of California real estate licenses rather than registrations. DRE resolves the open questions relevant to its existing continuing education system through the provisions of proposed section 2759.7.

Where a regular licensee has a "four-year period preceding the renewal application" in which to complete continuing education, starting on the date a license issues, **Proposed Subdivision 2759.7(a)** specifies that the registrant's "four-year period" is a term that will start on the date of registration. DRE considered and discarded the option of referencing the registrant's out-of-state license dates; an applicant for registration could arrive in California with an out-of-state license that is weeks or years from expiration, leading to inconsistent application. To be consistent between registrants and with DRE's expectations of its real estate licensees, each registrant should be able to shop for, enroll in, and complete continuing education on the same timeframe as a person with a newly-issued license.

DRE anticipates that the realities of military service may lead to further orders shipping registrants back out of California in this timeframe, without the registrant ever needing to take or report continuing education before their registration ends by rule of Bus. & Prof. Code Section 115.10(e). This presents no risk to public protection and is within the spirit of Section 115.10. Further, it is reasonable to expect a registrant who is stationed in California for more than

four years to seek continuing education for their California clients' benefit and their own.

Proposed Subdivision 2759.7(b) briefly restates Bus. & Prof. Code Section 115.10's requirement that the registrant's out-of-state license remain in good standing, which over a term of four years likely will include continuing education studies in service of the out-of-state system's requirements. Also, some registrants may find it advisable to seek California licensure rather than remain on registered status, leading those registrants to take education courses in preparation for applying for a real estate license. DRE's continuing education regulation section 3011.1 includes provisions for other education to be considered, via petition, for equivalency with DRE's approved continuing education courses. This proposed subdivision expressly applies this existing petition process for use by registrants when these conditions occur.

Proposed Subdivision 2759.7(c) creates a requirement for registrants to report completed, approved educational courses to DRE on a timeframe matching the existing pattern for real estate licensees. The information specified in this subdivision matches the information required on the parallel license renewal form completed by DRE's licensees. DRE will offer an electronic form on its website for submission of this data.

Proposed Section 2759.8. Petition for Extension of Registration.

Bus. & Prof. Code Section 115.10(e) states that "the registration shall expire when those military orders expire." A strict interpretation of this provision would impose an automatic cutoff of license rights upon the end of the qualifying servicemember's orders, whether it is the servicemember or the servicemember's spouse who is registered. But orders may "expire" in a number of ways, including circumstances that no one wants to anticipate: The death of the servicemember while in service of the nation. This harsh interpretation is not in the spirit of the present legislation, nor in the spirit of the prior legislation that created priority application status for past and present servicemembers and their spouses. Yet even in much less fraught circumstances, the nature of real estate practice entails business relationships with clients that often cannot be quickly terminated without significant risk to the clients.

DRE chooses instead to interpret the provision as identifying a trigger for ending registered status, while affording the registrant an opportunity to continue their career by applying for a California real estate license.

Proposed Section 2759.8 affords registrants a possible 90-day extension to their registered status via a petition to DRE stating “good cause” for such an extension. The section lists four scenarios that present realistic bases for a finding of “good cause,” while specifying that this list of scenarios is not exhaustive.

The final paragraph of the proposed section highlights that DRE will continue to apply priority status for registrants’ applications for a full California real estate license under the statutes that call for such priority. This priority status arises from Bus. & Prof. Code Section 10151.2. Again, a strict reading of that statute may give one the impression that the priority should not be given to a gold star widow, for example. This paragraph clarifies that DRE will not hold itself to that literal interpretation.

DRE also notes that Section 10151.2(c) includes as a qualification for former servicemembers seeking priority status that the individual was honorably discharged. This condition is echoed in proposed Section 2759.8(d). The condition is not extended to spouses of servicemembers in either the underlying statute or this proposed regulation. While a discharge for other than honorable reasons may present a cause for public protection concern relating to a registrant who is the affected servicemember, there is no legal reason to extend that caution to the spouse of a servicemember who is not honorably discharged.

NECESSITY OF THIS ADOPTION

The proposed regulations are necessary to set out the full requirements DRE must have in place to implement the program created by Bus. & Prof. Code Section 115.10. The regulations also clarify the standards that the foundational statute imposes regarding continuing education and termination of a registration, without which those aspects of the program would present both registrants and DRE with unneeded challenges.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

In estimating the number of possible applicants and registrants, DRE considered its own data regarding applications for expedited processing pursuant to Bus. & Prof. Code Sections 10151.2 and 10151.3. Although the present program differs in that it is open only to active duty military servicemembers and spouses, DRE believes the existing applicant data cited above provides a clear indication of

the limited size of the likely pool of applicants for the current program: fewer than 100 applicants per year.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

DRE does not anticipate a large volume of registrants under the present proposal. Unlike a number of the other professions licensed through our sister agency, the Department of Consumer Affairs, real estate practice is often based in familiarity with a specific geographic region, its real property inventory, and an extensive effort by the practitioner to develop a network of prospective clients. This isn't universally true, as practice areas such as mortgage loan origination or property management may "travel" more easily. Yet even these professional specialties are not as likely to seek registration as, for example, persons licensed to practice other professions such as barbering, accounting, or contracting.

DRE relies upon these facts to make the following findings.

- The proposal will not have a significant adverse economic impact on business.
- The proposal will not impact the creation or elimination of jobs available within the State of California, as the demand for licensed real estate services will not be impacted.
- The proposal will not significantly affect the creation of new business or the elimination of existing businesses within the State of California, again because the proposal does not impair or enhance the demand for real estate services.
- The proposal does not significantly affect the expansion of existing businesses within the State of California. The addition of clarity and consistency with statute will not impair or enhance the demand for real estate services.
- The proposal does not affect the elimination of existing businesses within the State of California. Again, this implementation of the statute that creates the registration program does not impact the work and workloads of existing licensees.
- The proposal will have a significant impact on the health and welfare of California residents, as registrants will have been screened by licensing bodies in other states and remain subject to possible discipline in California, pursuant to the terms of Bus. & Prof. Code Section 115.10(f).

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATION AND DRE'S REASONS FOR REJECTING THOSE ALTERNATIVES

Alternative 1: *Impose a requirement for applicants to be fingerprinted, as is the case for real estate licensees.* Bus. & Prof. Code Section 10152 relates to the screening of license applicants to ensure their honesty and truthfulness, but also includes this specific requirement: "To assist in his or her determination the (Real Estate Commissioner) shall require every original applicant to be fingerprinted prior to issuing a license." The Regulations voice this requirement in two locations: Section 2712 for general real estate licenses, and Section 2758.2 for MLO license endorsements. The fingerprint information is taken via the Department of Justice (DOJ) LiveScan system. Fingerprinting generates two public protection benefits for DRE's use. First, DOJ alerts DRE if a license applicant has a criminal record on file with DOJ prior to licensure, allowing DRE to investigate the facts and circumstances of past criminal activity that may be substantially related to a real estate license. Second, DOJ maintains a list of DRE licensees and alerts the DRE when a person with matching fingerprints and information is subject to a subsequent arrest. Given Bus. & Prof. Code Section 10050.1's call for DRE to place public protection as its highest priority, should DRE also require applicants for registration to submit fingerprints via the LiveScan process? **Reason for rejecting:** Bus. & Prof. Code Section 115.10 places a great deal of faith in the screening done by out-of-state licensing systems, granting a status of public trust equivalent to a real estate license despite waiving the benefits of DRE's applicant screening process. The Legislature could have required fingerprints as part of that law, but chose not to. Section 115.10 also directs DRE and its sister licensing agencies to waive the costs of California licensing where registrants are concerned. DRE does not control the costs associated with LiveScan and could not waive those costs should it choose to require fingerprinting.

Alternative 2: *Conduct a survey of other jurisdictions' current licenses for the sort of real estate licenses that may be seen as "similar" to California's, and set out a statement regarding which ones are or aren't.* **Reason for rejecting:** Given the likely low number of registrants for this area of licensure, as estimated from the existing low numbers of military and former military expedite applicants, such a survey would be needlessly detailed, cumbersome, and likely expensive (even if attorney resources are not needed for the assessment). The preferred option sets out the "measuring stick" that DRE will employ, offering applicants the opportunity to challenge the conclusions DRE reaches should DRE determine that their license is not "similar."

Alternative 3: *The documents an applicant must submit pursuant to Section 115.10 will almost certainly include some of the information required in the proposed Regulations Section 2759.3(a). Couldn't DRE use those documents to get the information it needs, and minimize each applicant's data entry burden?*

Reason for rejecting: It's not certain that the documents provided by each applicant will have the needed information. Even where the documents do have the information, the selected option of requiring the applicant to handle data entry ensures that the registrant information subsequently appearing on DRE's website appears according to the registrant's preference.

Alternative 4: *Specify the Administrative Procedure Act as a standard for "due process" as well as other applicable license rules, as was done in response to the introduction of the mortgage loan originator license endorsement. Perhaps the closest recent parallel to this registration program was the 2009 creation of mortgage loan originator (MLO) license endorsements. In that situation, it was not clear that the new "license endorsement" was in fact itself a license, albeit a license one could only qualify to receive from the DRE if one already held a real estate license. In that situation, to clarify the standards that would apply to the new license endorsements, DRE opted to specify via Section 2945.4 of the Regulations that the disciplinary laws and process applicable to a real estate license would also apply to the license endorsement. Should DRE do the same for a registration under this new program?* **Reason for rejecting:** Section 115.10 expressly directs that registrants be treated as licensees, and this should naturally extend to the disciplinary laws and process without additional clarification.

Alternative 5: Proposed subdivision 2759.6(b) would require a registrant to report to DRE within 30 days of renewal of their out-of-state license, but the requirement doesn't call for any official documentation from the state of origin to prove the renewal (despite the original statute calling for such documentation of the original licensed status). *Given DRE's public protection mandate, why not also ask for documentation?* **Reason for rejecting:** Bus. & Prof. Code Section 115.10 is drafted to minimize the regulatory burden on the registrants, and this is one small way of reinforcing that approach. Where DRE develops a concern about a registrant's original license status, confirmation through the original authority through other means is not burdensome on DRE.

Alternative 6: Proposed subdivisions 2759.6(d) and (e) would require a registrant to notify DRE upon the entry of license discipline or a criminal conviction against the registrant in any jurisdiction. But a registrant is subject to the same requirements as a real estate licensee, so Bus. & Prof. Code Section 10186.2 already requires this and other reporting. *If these provisions are redundant, could they be eliminated?* **Reason for rejecting:** Overall, proposed section

2759.6 is intended to list all the issues that could create a cause for ending a registration, and require reporting associated with those issues. For the sake of completeness and clarity, DRE chose to explicitly list these two items within the proposed section.

Alternative 7: Is there a better alternative to the definition and use of “spouse of a servicemember” in proposed section 2759.1(e)? What about just “spouse,” as in the statute? Or “servicemember’s spouse.” **Reason for rejecting:** DRE attempted drafting with both of these alternatives and found both had shortcomings that outweigh the chosen alternative. “Spouse” alone can generate confusion when reading requirements that are intended to apply only where the registrant is the spouse of a servicemember, because in instances where a registrant is themselves the servicemember but also coincidentally in an marriage or domestic partnership: That servicemember is a “spouse” in the common English use of the word, and despite the definition might believe the requirement applies, when it does not. “Servicemember’s spouse” does eliminate some words, but places unneeded emphasis on the servicemember and not the applicant/registant.

The Commissioner finds that no alternatives considered would be (1) more effective in carrying out the purpose of the proposed regulation to set out discriminatory real estate practices that are prohibited and (2) would be as effective and less burdensome to affected private persons than the proposed regulation amendment.

DETERMINATION REGARDING USE OF SPECIFIC TECHNOLOGY OR EQUIPMENT

The proposed regulation does not include any requirement that a specific technology or equipment be used by any affected party.