

NOTICE OF RULEMAKING PROPOSAL
CALIFORNIA DEPARTMENT OF REAL ESTATE

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

NOTICE IS HEREBY GIVEN

The Real Estate Commissioner and the Department of Real Estate (collectively, "DRE"), proposes adoption of Article 7.7, Sections 2759.1 to 2759.8 of the Regulations of the Real Estate Commissioner, California Code of Regulations, Title 10, Chapter 6 ("the Regulations"), after considering all comments, objections and recommendations regarding this proposed action. Publication of this notice commences a 45-day public comment period.

PUBLIC HEARING

A public hearing is not scheduled. A public hearing will be held if any interested person, or that person's duly authorized representative, submits a written request for a public hearing to the DRE, 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 that person's authorized representative, may submit written comments relevant to this proposed regulatory action to the DRE addressed as follows:

Regular Mail

Department of Real Estate
Attn: Dan Kehew, Sacramento Legal Office
651 Bannon Street, Suite 507
Sacramento, CA 95811

Electronic Mail

DRE.RegComments@dre.ca.gov

Comments may be submitted until 5:00 p.m., Tuesday, September 10, 2024.

AUTHORITY AND REFERENCE

Section 10080 of the Business and Professions Code ("Bus. & Prof. Code") authorizes DRE to adopt regulations that are reasonably necessary for the enforcement of the provisions of the Real Estate Law (Bus. & Prof. Code Sections 10000 et. seq.) ("the Real Estate Law"). Also, Section 115.10 of the Bus. & Prof.

Code, in subdivision (h), authorized DRE to “develop and publish guidance” on this newly adopted statute. The proposed Sections 2759.1 to 2759.8 of the Regulations implement, interpret and/or make specific Section 115.10 of the Bus. & Prof. Code (“Section 115.10) adopted as Section 1 of the larger SB 143 (Committee on Budget and Fiscal Review, Chapter 196, Statutes of 2023).

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW – SUMMARY OF PROPOSED REGULATION

Prior to the passage of SB 143, the licensing process set out in the Real Estate Law (as well as other California professional licensing laws) applied to active duty military personnel and their spouses when those individuals sought to practice real estate (as defined in Bus. & Prof. Code Section 10131 et seq.). Notably, Bus. & Prof. Code Section 10151.2 ensures priority processing of applications for licensure from military personnel, but the nature of real estate practice—which frequently calls for significant “local knowledge” for a successful practice—made requests for this priority handling of applications a relatively rare circumstance. Once licensed, military servicemembers and their spouses were held to the same standards and processes as all other licensees.

Proposed Article 7.7 will implement the program authorized by Bus. & Prof. Code Section 115.10, pursuant to the regulations authority granted in Section 115.10(h) and DRE’s broader rulemaking authority in Section 10080. The newly adopted Section 115.10 empowers DRE and the boards and bureaus within the Department of Consumer Affairs to “register” military servicemembers and their spouses who hold “similar” professional licenses in other jurisdictions.¹ This registration enables these servicemembers and spouses to act (and, if necessary, face discipline) as licensees of the registering licensing body.

This proposal addresses the details needed for DRE to effectively implement the new program. The eight proposed sections within the proposed article will:

- Offer definitions for words and terms used within the article.
- Clarify for prospective applicants and DRE staff the standard for “similar licenses” (as that term is used in Bus. & Prof. Code Section 115.10) that are eligible for registration through this program.
- Set out the requirements and process through which an applicant may register through this program.

¹ This 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 limited reciprocity.

- Set out the resulting registration actions that DRE will undertake upon successful registration.
- Clarify the information that all applicable laws require DRE to post to its website upon successful registration.
- Require the registrant to notify DRE upon occurrence of specific events that impact the registrant's eligibility to act as a licensee in California.
- Clarify the terms under which a registrant must remain in compliance with the continuing education requirements of DRE's licensing law, pursuant to the terms of Bus. & Prof. Code Section 115.10.
- Establish a petition process for temporary extension of registration, as necessitated by the nature of the regulated industry and common events that may impact registrants' qualification for the registration program.

Anticipated Benefits of the Proposed Regulation

Underlying both the federal and state legislation that prompts this proposal is the intent of those legislative bodies to minimize the licensing burden on active duty servicemembers and their spouses when military orders impose transfers between states and jurisdictions. Prior to this law, a servicemember or spouse with a real estate license in good standing from another jurisdiction would need to qualify, apply for, and pay for a DRE-issued California real estate license prior to conducting real estate business in California. Now, these individuals with appropriate qualifications may register their existing, similar license with DRE and enter California's real estate industry without additional process or cost.

This proposal implements and makes specific the provisions of Bus. & Prof. Code Section 115.10 with regard to DRE's license program. The proposal provides out-of-state licensees with the standard for determining whether their license is "similar" to a DRE license (given the present lack of standardization between differing states' licenses) and to understand what information is needed to register. Registrants will understand what information will be posted to DRE's website. The proposal imposes specific notice requirements on registrants to ensure that DRE is kept up to date on events that may impact a registrant's qualifications for registration, protecting the public from registrants who no longer qualify. Because the underlying statute provides that the DRE license program's continuing education requirements will apply to registrants, the proposal clarifies how these requirements apply.

Finally, the proposal includes an allowance for registrants to petition for a temporary extension of their registration. The plain language of the statute appears to cut off the qualification for registration when the servicemember's stationing in California ends, but (1) given the possible abrupt nature of such changes to orders or service status, and (2) the longer-term nature of a real estate licensee's business relationship and responsibilities to their clients, an allowance must be established to ensure that registrants may either complete

their existing licensed business in California or apply for, and receive, a full DRE-issued real estate license. This allowance serves to protect the financial interests of the clients served by registrants.

Consistency and Compatibility with Existing Regulations

As noted above, there are no prior statutory requirements that parallel the laws implemented by this proposal, and correspondingly there are no existing state regulations on this topic. DRE also evaluated its existing regulations pertinent to its applicants and licensees and (as described in the Initial Statement of Reasons) harmonized these proposed standards with current regulations. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

DRE has made the following determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Cost impacts on a representative private person or business: DRE is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states: None.

Significant effect on housing costs: None.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The DRE concludes that it is: (1) unlikely that this regulation proposal ("proposal") will eliminate any jobs for real estate licensees or associated professions; (2) unlikely that this proposal will create jobs; (3) unlikely that this proposal will create new businesses of any sort; (4) unlikely that this proposal will eliminate any existing businesses; (5) unlikely that this proposal will result in the expansion of businesses currently doing business in the state; (6) will benefit the health and welfare of California residents by ensuring that registrants are

qualified to act in the same capacity as real estate licensees; and (7) is not expected that this proposal will affect worker safety or the state's environment.

SMALL BUSINESS DETERMINATION

The DRE has determined that there will be very minimal fiscal impact on small businesses resulting from this regulation proposal. Aside from incidental, *de minimus* cost of providing required notifications to DRE as needed, applicants and registrants under Bus. & Prof. Code Section 115.10 will incur no expenses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the DRE must determine that no reasonable alternative considered, or that has otherwise been identified and brought to its attention, would be more effective in carrying out the purpose for which this regulatory 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.

DRE invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation during the written comment period.

CONTACT PERSON

Inquiries concerning this action may be directed to Dan Kehew at (916) 737-4391, or via email at DRE.RegComments@dre.ca.gov. The backup contact person is Stephen Lerner at (916) 737-4293.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

DRE will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its headquarters office: 651 Bannon Street, Suite 507, Sacramento, California. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons, and the Form 400 under which the package was submitted to the Office of Administrative Law for publication. Copies may be obtained by contacting Dan Kehew at the mailing address and email address listed on the first page of this notice.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, DRE may adopt the proposed regulations substantially as described in this notice. If DRE makes modifications that are sufficiently related to the originally proposed text,

DRE will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before DRE adopts the regulation as revised. A request for a copy of any modified regulation(s) should be addressed to the contact person designated above. DRE will accept written comments on the modified regulation for 15 days after the date on which they are made available.

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 below.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the notice, the initial statement of reasons, and the text of the regulations in underline and strikeout can be accessed through DRE's website at www.dre.ca.gov.