

INITIAL STATEMENT OF REASONS

PROPOSED CHANGES TO TITLE 10, CHAPTER 6

IMPLEMENTATION OF SB 887 – SECTIONS 3100, 3100.1 AND 3101

This regulation proposal (“proposal”) amends Sections 3100 and 3101 and adds Section 3100.1 to the Regulations of the Real Estate Commissioner, California Code of Regulations, Title 10, Chapter 6 (“the Regulations”). This proposal implements SB 887 (Committee on Business, Professions and Economic Development, Chapter 510 of the Statutes of 2023) (“SB 887”) which amended Business and Professions Code (“the Code”) section 10471(b). In pertinent part, SB 887 allows consumers to deliver their Consumer Recovery Account (“CRA”) application electronically to the Department of Real Estate (“DRE”).

Pursuant to Division 4, Part 1 of the Code (Sections 10000 through 10508) and related laws (collectively, “the Real Estate Law”), DRE is responsible for administering and implementing the laws governing the Real Estate Fund. Within that fund, the CRA was established to provide limited compensation to consumers defrauded by real estate licensees unable to pay judgments.

Since 1964, the CRA has paid out over \$68 million to victims of real estate fraud. To submit a claim under the CRA, consumers must first obtain a final judgment or criminal restitution order against a real estate licensee and then submit a timely application for payment to DRE. DRE determines if the criteria for recovery are satisfied and issues a written decision granting or denying each application. Prior to SB 887, the Real Estate Law required claimants to deliver their CRA application either in person or via certified mail to an office of the DRE. (Bus. & Prof. Code § 10471(b).)

PROBLEM STATEMENT

SB 887 amended Section 10471(b) of the Code to allow claimants to electronically submit their CRA application to DRE in a manner prescribed by DRE. Existing regulations do not establish guidelines and procedures for electronic submission of CRA applications. The proposed regulations provide claimants and their attorneys with the ability to upload and submit their CRA application and supporting documentation digitally via DRE's website. This proposal amends the Regulations to establish these guidelines and procedures which are necessary for DRE's implementation of SB 887.

PURPOSE, NECESSITY AND BENEFITS OF THIS PROPOSED AMENDMENT/ADOPTION

In general, implementation of SB 887 by amending Sections 3100 (Definitions) and 3101 (Application for Payment from Recovery Account) and adding Section 3100.1 (Electronic Submission of Application) to the Regulations is beneficial to the public by enhancing DRE's service to claimants, improving

government efficiency by allowing electronic submissions, and saving time and expense by eliminating claimants' need to send paper documents by mail.

As to claimants, the proposed regulations allow for the convenient and cost-effective means to electronically file CRA applications from any place and at any time. DRE's electronic submission process will be relatively simple. Claimants or their attorneys will be able to download or print an application from DRE's website, complete the application and save a copy on their own computer, smart phone or tablet in case they need to finish the application at a later date. Claimants will be able to manually or electronically sign the application using an electronic signature software and upload the signed PDF application to DRE without having to mail or physically deliver the application to DRE. Attorneys representing claimants may obtain claimants' digital signatures at any time from any location.

DRE's website will also provide detailed information and instructions on recommended electronic signature programs and software that claimants can use to electronically sign the CRA application. Additionally, DRE's website will provide an electronic contact form where claimants can reach DRE for assistance or report technical issues.

Specifically, DRE makes the following findings:

Section 3100, subdivision (b). This section is being amended to change the name "Bureau" to "DRE," as DRE is no longer a Bureau effective July 1, 2018. This is a non-substantive change.

Section 3100, subdivision (c). This section is being amended to change the name "Bureau" to "DRE," as DRE is no longer a Bureau effective July 1, 2018. This is a non-substantive change.

Section 3100, subdivision (j). This proposed subdivision is added to include the definition of "electronic filer." This definition is needed to identify the persons (the claimant or the claimant's attorney) allowed to electronically submit the CRA application and supporting documents to DRE in electronic form.

Section 3100, subdivision (k). This proposed subdivision is added to include the definition of "electronic signature" and "digital signature" as defined by California's Uniform Electronic Transactions Act (UETA) (Civil Code Sections 1633.1-1633.17). Pursuant to the UETA an "electronic signature" is valid and enforceable under any law that requires a signature in any transaction between two or more persons including a government agency. The UETA defines "electronic signature" as "an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record." (Civ. Code § 1633.2, subd. (h).) This proposed subdivision is needed to clarify that a "digital signature" as authorized and defined by subdivision (d) of Section 16.5 of the Government

Code is one type of electronic signature that also incorporates the applicable digital signature attributes of subdivision (a) of Section 16.5 of the Government Code.

Section 3100, subdivision (l). This proposed subdivision is added to include the definition of "electronic submission" and is necessary to provide clarification to claimants to upload or transmit the CRA application to DRE's website.

Section 3100.1, subdivisions (a) and (b). This proposed section is added to establish detailed requirements for electronic CRA application submissions, including file format type, file size limits, and daily cutoff times. This requirement is necessary to preserve the original layout of the CRA application and supporting documents where no changes can be made to the original document once uploaded to DRE's website. The Real Estate Law already gives the claimant the right to refile the CRA application in superior court if the Real Estate Commissioner renders a decision denying payment on the application. (Bus. & Prof. Code § 10473.) This proposed requirement for noneditable PDF file format enables DRE to meet its legal obligation of maintaining and preserving an accurate administrative record, as well as comply with the court's file formatting requirements pursuant to local and state court rules.

Section 3101, subdivision (a). This section is being amended to change the name "Bureau" to "DRE," as DRE is no longer a Bureau effective July 1, 2018. This is a non-substantive change.

Section 3101, subdivisions (b)(1), (b)(2) and (b)(3). These proposed new subsections add electronic signature conditions for verifying a CRA application submitted electronically through the DRE's website. The proposed text is necessary so that claimants and their attorneys may electronically "verify" the CRA application with an electronic or a digital signature that satisfies both the UETA and California Rules of Court, rule 2.257 requirements.

This is necessary because CRA applications must be verified in a manner specified in Section 446 of the Code of Civil Procedure consistent with the verification of a pleading. (Cal. Code Regs., tit. 10, § 3100, subd. (a).) A verification is an affidavit or declaration under penalty of perjury that the contents of the document are true of the verifying person's own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters believed to be true. (Code of Civ. Proc. § 446.) Section 446 provides, in part, that every pleading shall be "subscribed by the party or his or her attorney." The term "subscribed" means a pleading must be signed either by the hand of the litigant or by the hand of their attorney. (*Board of Trustees v. Superior Court* (2007) 149 Cal.App.4th 1154, 1165.)

Electronically filed court documents do not need to be signed by hand. California state courts have adopted the UETA electronic signature standards

into their rules and procedures, thereby making electronically signed pleadings (or in the DRE's case, CRA applications signed under penalty of perjury) acceptable in lieu of a signed, paper original, as long as the electronic filer satisfies the electronic signature conditions of California Rules of Court, rule 2.257(b).

Under California Rules of Court, rule 2.257(b), any document to be filed electronically that requires a signature under penalty of perjury from any person may be "electronically" signed (or verified) if the filer is also the declarant and declares under penalty of perjury under the laws of the state of California that the information submitted is true and correct. (Cal. Rules of Court, rule 2.257(b)(1).) If the filer of the electronic verified document is not the declarant, the electronic signature must be unique to the declarant, capable of verification, under the sole control of the declarant, and linked to data in such a manner that if the data are changed, the electronic signature is invalidated. (*Id.*) Although rule 2.257(b)(1) does not reference the term "digital signature" or section 16.5 of the Government Code, rule 2.257 embodies four of the five attributes for "digital signature" as set forth by subdivision (a) of Section 16.5 of the Government Code (it is unique to the person using it; it is capable of verification; it is under the sole control of the person using it; it is linked to data in a manner that if the data are changed, the digital signature is invalidated.)

Section 3101, subdivision (c). This subsection is renumbered from subdivision (b) to subdivision (c) and amended to change the name "Bureau" to "DRE," as DRE is no longer a Bureau effective July 1, 2018. This is a non-substantive change.

Section 3101, subdivision (d). This subsection is renumbered from subdivision (c) to subdivision (d). This is a non-substantive change.

Section 3101, subdivision (e). This subsection is renumbered from subdivision (d) to subdivision (e). This is a non-substantive change.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

DRE has determined that the proposed regulations to be adopted or amended will have a negligible economic impact on claimants and their attorneys. The regulations to be adopted or amended only address the procedures governing submission of the CRA application to the DRE electronically, thereby offering claimants and attorneys an alternative submission method.

Legal technology has evolved over the last decade, especially after the COVID pandemic. DRE anticipates most attorneys already use digital signature software (i.e., DocuSign) for clients to electronically sign court documents. Nearly all California counties have mandatory electronic filing requirements for attorneys. (California Rules of Court, rule 2.253(b).) Attorneys are expected to have a level of technological competence, as evident by California state courts mandatory

online filing requirements and rule 2.257's incorporation of the UETA "digital signature" attributes.

Claimants will also incur little to no cost to electronically sign and submit their CRA application through the DRE's website. Electronic signature software required to submit electronic signatures is readily available for free to minimal cost on web browsers and mobile devices. These software programs will also be highlighted on DRE's website to educate claimants.

DRE does not anticipate the proposed amendments or adoption will create or eliminate jobs or businesses in California or expand existing businesses.

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

DRE did not rely upon any technical, theoretical, or empirical study in developing this proposed regulation.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

DRE does not anticipate that these proposed regulations will have an adverse economic impact on business. The use of electronic filing is currently adopted and in practice by courts throughout the state. Litigants coming from the legal system will most likely have assumed the cost of electronic submittals and electronic/digital signatures. In addition, claimants have the availability of free to low-cost software to assist in the electronic filing process. For most claimants, the availability of electronic filing using a computer or cellular phone is an actual cost savings over the process of driving to the post office or DRE office and mailing the application to DRE by certified mail.

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 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 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 creates

an additional CRA application filing option and 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 claimants will have access to the convenience of electronic filing, pursuant to the terms of section 10471(b) of the Code.

REASONABLE ALTERNATIVES CONSIDERED FOR THE IMPLEMENTATION OF SB 887 BY DRE

1. Implementing SB 887 without amending Sections 3100 and 3101 or adding Section 3100.1.

DRE considered implementing SB 887 without regulatory amendments whereby a designated email address was created for submitting electronic CRA applications. Consultation with DRE's Information Technology staff advised that such a process presented a threat to digital security, increased spam, phishing and other forms of targeted attacks. In addition, DRE understood that the lack of uniform regulatory guidance would lead to confusion and error which could compromise the vital interests of CRA claimants.

2. Web-Based Portal.

DRE considered implementing SB 887 by creating a regulatory structure to support a web-based portal for application submittals. Claimants would utilize a username and password to log into their account, fill out the CRA application, save changes or modify their application before submission, and submit their application electronically. However, due to time constraints, security parameters, costs, and lack of available resources, DRE did not consider this alternative to be a viable option.

DETERMINATION REGARDING USE OF SPECIFIC TECHNOLOGY OR EQUIPMENT

The proposal does not require the use of any specific technology or equipment by any affected party.