

## INITIAL STATEMENT OF REASONS

### PROPOSED CHANGES TO TITLE 10, CHAPTER 6

#### SB 263 UPDATES – SECTIONS 3007.2, 3013.1, 3015 AND 3017

This regulation proposal (“proposal”) amends Section 3007.2, and adds Sections 3013.1, 3015 and 3017, to the Regulations of the Real Estate Commissioner, California Code of Regulations, Title 10, Chapter 6 (“the Regulations”). This proposal implements SB 263 (Rubio, Chapter 361, Statutes of 2021), which added items to the continuing education that is required by Section 10170.5 (“Section 10170.5”) of the Business and Professions Code (“the Code”) to renew any license (“license” or “real estate license”) issued by the Real Estate Commissioner and Department of Real Estate (collectively, “the Department”), pursuant to Division 4, Part 1 of the Code (Sections 10000 through 10508) and related laws (collectively, “the Real Estate Law”).

The Department is responsible for implementing the Real Estate Law, including the provisions governing the education of real estate license holders (collectively, “licensees”). Bus. & Prof. Code §§ 10050, 10071. The primary goal in its implementation is the protection of consumers who deal with licensees by ensuring that licensees are qualified and sufficiently educated about matters deemed crucially relevant to the real estate field. Bus. & Prof. § 10050.1.

### PROBLEM STATEMENT

#### *Relevant Background*

The Real Estate Law requires periodic renewal of all real estate licenses, and provides conditions for renewal. These conditions include the successful completion of 45 clock-hours of continuing education (Section 10170.4 of the Code), through continuing education courses specified in Section 10170.5 of the Code (“Section 10170.5”) that have been approved by the Department. The Department must review and approve such courses before they are offered to licensees, which it does through the application process set forth in Article 25 of the Regulations.

SB 263, enacted in September, 2021, amended statutes in the Real Estate Law to add certain education requirements. In pertinent part, SB 263 amended Section 10170.5 as follows:

1. Added a “component” to the existing three-hour course on “fair housing” in subdivision (a)(4), that specifies an “interactive participatory component” allowing students to roleplay as a consumer and a professional;
2. Added a new two-hour course on “implicit bias training” that must include components on: (A) the impacts of implicit, explicit and systemic biases; and (B) actionable steps licensees can take to recognize and address their own implicit biases (subdivision(a)(6)(A) and (B));
3. Increased from eight hours to nine hours the existing “update survey course” (“survey course”) required by subdivision (b). This course must cover the course subjects specified in subdivision (a); and
4. The new requirements above become “operative” on January 1, 2023 (subdivision (d).)

### *The Problems*

The SB 263 amendment to Section 10170.5 raises the following problems to be addressed by this regulation proposal.

First, Section 10170.5 is unclear on the particular nature of the “interactive participatory component” required in its subdivision (a)(4). The term “Interactive participatory” is not defined in SB 263 and the term is not used elsewhere in the existing Real Estate Law or Regulations.

On its face, “interactive participatory” is susceptible to various different but equally reasonable interpretations. Absent guidance from the Department, providers must interpret this language in developing or updating their courses to comply with SB 263. This will result in inconsistent and potentially conflicting education provided to licensees, which will undermine the Department's efforts to ensure sufficient uniformity and quality in the continuing education received by licensees.

Second, aside from the new component discussed above, the text of Section 10170.5(a)(4) is silent about the substantive topics to be covered in the “fair housing course.” This is not addressed in SB 263, or under existing law. The statute's brief description of the course - “fair housing” – is subject to a wide variety of reasonable but different interpretations. The title vaguely suggests the course should cover laws concerning discrimination in housing, but beyond this it does not indicate the intended topics. Some specific guidance from the Department on this is necessary for proper implementation of this statute and to

ensure sufficient uniformity and quality in continuing education provided to licensees.

Third, the text of Section 10170.5 does specify how the new SB 263 requirements will apply to licensees in a particular renewal circumstance. The Real Estate Law affords a licensee the opportunity to let their license lapse upon their renewal date, but renew late (rather than re-apply) within two years of that renewal date (the “grace period”). The January 1, 2023 “operative” date specified in subdivision (d) leaves open to question whether the new requirements apply to existing licensees whose license is lapsed on that date, but who are within their grace period and eligible to renew.

Fourth, current Section 3007.2(a) of the Regulations allows approved course offerings to be updated by education providers to reflect recent changes in statutes without resubmittal to and approval by the Department. However, given the foundational impact of SB 263 on the scope of continuing education, the Department’s review and approval of courses updated in response to SB 263 is needed to ensure educators’ understanding and satisfaction of SB 263’s requirements. The present Section 3007.2(a) must be adjusted to reflect this need.

#### PUPROSE, NECESSITY AND BENEFITS OF PROPOSED AMENDMENT/ADOPTION

- Amended Section 3007.2 is necessary to authorize the Department’s proper implementation of SB 263. The proposed amendment requires the Department’s re-approval of all previously-approved continuing education courses that are changed in an effort to comply with SB 263. The proposal also updates the Department’s former identification as a “Bureau” in response to the agency’s re-designation, effective July 1, 2018. (SB 173, Dodd, Chapter 828, Statutes of 2017.)

As explained regarding the fourth problem statement above, existing Section 3007.2 exempts courses updated in response to statutory changes from the “material changes” category, and thus from required resubmittal for Department approval. Normally, this allowance encourages educators to keep their courses up to date with the typically minor updates that may occur almost every year as the Real Estate Law and related statutes are amended by the Legislature. SB 263 stands in contrast

to those typical updates, as this bill amended the education requirements themselves and thereby necessitates a substantive review of the education providers' resulting product. This amendment is necessary to assist providers in complying with the new SB 263 requirements (especially in the first operative years), and to ensure proper implementation of SB 263 through sufficient uniformity and quality in the courses provided to licensees.

The proposal also adds a new subdivision (c), imposing a fee for review of re-submitted courses updated to respond to SB 263, but only when the course is submitted after January 1, 2023. It is likely that this regulation will not be effective before that date, and the Department will lack authority to require submissions or charge a fee in advance of that date. However, the Department highlights this specific cutoff to encourage education providers to voluntarily submit updated course materials for Department review in advance of this cutoff, but after the new standard is filed at the Secretary of State's office. Such early submission and review will ensure that updated educational courses are available to licensees at the earliest possible date.

The existing subdivisions (c) and (d) are archaic; this proposal repeals those archaic provisions.

The adoption of this regulation will benefit providers by empowering the Department to assist them in complying with the law. It will benefit the Department by allowing its proper implementation of the SB 263 requirements and the Real Estate Law, as described above.

- Section 3013.1 is designed to cure ambiguities in how the new SB 263 requirements will be applied and specific effects of the January 1, 2023 "operative" date in subdivision (d), the third problem discussed above. This new section specifies certain aspects of how these new requirements will apply to licensees on and after January 1, 2023. The purpose of this regulation is to provide licensees with crucial guidance they need to understand and comply with the new SB 263 requirements in advance of when their licenses will expire, to those renewing licensees taking advantage of the two-year "grace period" afforded by Business and Professions Code Section 10201, and for the Department's smooth and

effective implementation of the SB 263 requirements. Because any future amendments to Section 10170.5 will generate corresponding questions, this Departmental interpretation is made applicable to all such future updates to Section 10170.5.

The benefits of, and goals achieved by, adopting this regulation are the Department's provision of the aforementioned crucial guidance to licensees and effective implementation of the new SB 263 requirements.

- The purpose of proposed Section 3015 is to clarify the new SB 263 requirement adding an “interactive participatory” component in the fair housing courses provided in Section 10170.5 subdivision (a)(4) (the first problem discussed above), which it does by specifically defining this term. In doing so, this regulation will provide crucial information needed by providers to understand and comply with the new SB 263 requirement of Section 10170.5 subdivision (a)(4). This regulation is necessary for the Department's effective implementation of SB 263 by ensuring sufficient uniformity and quality in the fair housing courses offered to licensees pursuant to this statute. Among other things, it interprets and makes specific the law administered by the Department, including Section 10170.5.

The benefits of adopting this regulation are providing the aforementioned crucial guidance to providers and licensees, allowing the Department's effective implementation of SB 263 and the Real Estate Law as outlined above.

- Section 3017 is designed to address the problem of the ambiguity in Section 10170.5 regarding the substantive topics required for the fair housing course in subdivision (a)(4), the second problem explained above. This regulation removes this ambiguity by focusing instruction on all fair housing laws, as well as civil rights and anti-discrimination laws that are relevant to the real estate field. A range of legislative action has included prohibitions and requirements on the real estate industry because of this industry's history of significant discrimination. This regulation's specification is crucial guidance for education providers to understand and comply with SB 263.

Adopting this regulation will benefit providers by giving them the above-described crucial guidance they need to comply with the new requirements of Section 10170.5. It will also benefit the real estate industry and the Department by allowing the latter's smooth implementation of the SB 263 requirements, as well as ensuring sufficient uniformity and quality in the fair housing courses provided to licensees pursuant to this statute.

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

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

#### ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Department has determined that this regulation proposal has minor economic impact on business. Specifically, the revision of Regulations Section 3007.2 to require re-submission and re-approval of currently approved courses that are may compel a small number of education providers to pay an application fee if they fail to update their course before the effective date of SB 263. As of this drafting, approximately 20 existing courses could be impacted by this requirement, and the Department's fiscal analysis will reflect the maximum possible fiscal impact of that universe. The phrasing of the proposed amendment is intended, however, to encourage course providers to submit their revised courses in advance of SB 263's effective date, giving the greatest opportunity for licensees to seek SB 263-compliant courses at the earliest possible date.

As to the rest of this proposal, the newly-added regulations sections merely clarify certain aspects of the continuing education courses required by SB 263. This provides guidance to the field and ensures sufficient uniformity and quality in such courses provided to licensees. This has no known effect on the business of education providers, licensees, or other stakeholders.

The Department relies on these facts to make the following findings:

- This proposal will not have a significant adverse impact on any businesses in the State of California. As indicated, this proposal does not add

any continuing education requirements for licensees, as it merely implements the existing SB 263 statutes. Amended Section 3007.2 requires education providers who do not resubmit existing courses for re-approval by January 1, 2023, to re-apply and pay a fee of up to \$500 for each such course. The Section 3007.2 proposal does not involve any other cost, nor add anything to the approval criteria in the Regulations (generally, Sections 3006 through 3009). The rest of this proposal merely clarifies certain aspects of the continuing new continuing education requirements imposed by SB 263. This has no known economic impact on businesses.

- This proposal does not affect the creation or elimination of jobs available within the State of California, for the same reasons indicated above. It will not impact the demand for licensed real estate services.

- This proposal does not impact the creation of new business, nor cause the elimination of existing businesses, in the State of California. As noted, amended Section 3007.2 approval process does not impose significant additional cost on providers, and this proposal does not change any existing approval criteria. The other regulations in this proposal merely clarify certain aspects of the existing law governing continuing education, as necessary to ensure proper implementation of SB 263 and/or ensure sufficient uniformity and quality of in continuing education courses provided to licensees. This does not impact the creation or elimination of any business, nor does it impair or enhance the demand for real estate services.

- This proposal does not affect the expansion of existing businesses within the State of California. For the same reasons identified in the preceding paragraphs, this proposal does not impact any business and it does not impair or enhance the demand for real estate services.

- This regulation proposal does not affect the elimination of existing businesses within the State of California. For the same reasons indicated in the preceding paragraphs, this proposal does not have any impact on the work or workloads of existing licensees.

- To the degree that this regulation proposal reinforces the existing fair housing, civil rights, and anti-discrimination laws in the federal and California codes, it will benefit those aspects of the health and welfare of California residents within the protected classes.

- This regulation proposal does not affect the issue of worker safety, because the subject of the regulation is real estate licensee education and fair housing.
- This regulation proposal does not impact the state's environment, because the subject of the regulation is real estate licensee education and fair housing.

#### REASONABLE ALTERNATIVES TO THE PROPOSED REGULATION AND THE DEPARTMENT'S REASONS FOR REJECTING THEM

*1. Include implementing regulations that go beyond continuing education to address SB 263's impact on "pre-licensing" education courses—those courses offered to prospective applicants for a real estate license.*

The scope of SB 263 is not limited to continuing education for current licensees, as the bill also appears to impact the courses that will be offered to persons intending to apply for a new real estate license. Following the passage of SB 263, however, issues with this pre-licensing scope of the bill generated follow-up legislation that (as of this drafting) is moving through the legislative process. The Department will refrain from proposing regulations associated with pre-licensing education until the passage or failure of that ongoing legislative effort.

*2. Do not amend Section 3007.2, and allow already-approved courses to be updated without Departmental review. Alternatively, amend Section 3007.2 to require re-submission of all approved courses that are impacted by amendments to Bus. & Prof. Code Section 10170.5, or any statutory updates.*

As noted above, the existing Section 3007.2 allows education providers to update approved courses to address statutory, regulatory, or case-law changes to the law without resubmitting the full course for re-approval. This allowance encourages providers to keep their courses abreast of even minor changes in the underlying laws without the expense of constant re-submission for re-approval. The Department notes that, absent this existing allowance, just statutory changes alone would likely generate a burden of annual re-submission on the education providers.



SB 263 was not just a general change in the laws impacting real estate licensees, however; it was a direct and foundational change to the standards for existing continuing education courses. The Department believes that re-review of these courses must occur to ensure compliance.

This situation also prompted reconsideration of the existing allowance altogether: Is the present allowance of updates for other changes in the law still appropriate? Although the Department may revisit that question in the future, the impending effective date of SB 263 likely makes full discussion of the existing allowance untimely. The Department prefers to address SB 263's impact on the regulations specifically, and leave the question of a broader change for another, less time-constrained situation.

*In the proposed Section 3017, setting out the required content for Fair Housing Course, list the specific laws that are relevant to these courses rather than express categories as in the current proposal.*

Consideration was given to creating a list of the existing laws on fair housing that should be included in this requirement. Because any change in that list may entail further revision of the regulation to remain up-to-date, the Department believes that identification through the subject area phrasing of the present proposal is sufficient.

*In the proposed Section 3017, include required content for the history of housing discrimination as context for the need for the required fair housing laws.*

The federal and state laws that prohibit discriminatory housing practices sprang from many decades of culturally and economically impactful discrimination practices. Licensees' understanding of the context for these laws may go far in ensuring greater compliance with those laws. The Department recognizes, however, that the laws themselves are a complex subject area requiring significant time for a course of instruction to express, and for a student to digest. The Department believes that the proposed focus for the courses is the best approach for the education time SB 263 has dedicated to this subject.

#### 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.