

**State of California
Office of Administrative Law**

In re:
Department of Real Estate

Regulatory Action:

Title 10, California Code of Regulations

Adopt sections: 2915

Amend sections:

Repeal sections:

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3

OAL Matter Number: 2019-0123-01

OAL Matter Type: Regular Resubmittal (SR)

The Department of Real Estate (Department) proposed this action to implement new provisions in Business and Professions Code section 10083.2 by establishing a petition process for licensees to seek removal of certain license discipline information from the Department's website.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on March 7, 2019.

Date: March 7, 2019

Richard L. Smith

Richard L. Smith
Senior Attorney

**For: Debra M. Cornez
Director**

**Original: Daniel J. Sandri, Acting Real
Estate Commissioner**

Copy: Daniel Kehew

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER <i>OK</i> Z-2018-0206-01	REGULATORY ACTION NUMBER 2019-0123-01 SR	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

2019 JAN 23 A 9 56
OFFICE OF ADMINISTRATIVE LAW

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

MAR 07 2019
1:39 pm

AGENCY WITH RULEMAKING AUTHORITY Department of Real Estate	AGENCY FILE NUMBER (if any)
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A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER 2018 07-2	PUBLICATION DATE 2-16-18	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Petitions Process: Website Discipline Information	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) Z-2018-0206-01 E-2018-1022-025 <i>OK</i>
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)
ADOPT 2915
AMEND
REPEAL
TITLE(S) 10

3. TYPE OF FILING			
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input checked="" type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify)	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs. title 1, §100) <input type="checkbox"/> Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)
August 23, 2018 through September 7, 2018; December 20, 2018 through January 4, 2018.

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify)		

7. CONTACT PERSON Daniel E. Kehew, Real Estate Counsel	TELEPHONE NUMBER (916) 576-8681	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) daniel.kehew@dre.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Daniel J. Sandri</i>	DATE January 22, 2019
TYPED NAME AND TITLE OF SIGNATORY Daniel J. Sandri, Acting Real Estate Commissioner	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

MAR 07 2019

Office of Administrative Law

TITLE 10. INVESTMENT
CHAPTER 6. REAL ESTATE COMMISSIONER

ARTICLE 18.5. Substantial Relationship and Rehabilitation Criteria

Section 2915. Petitions for Removal of License Discipline Information from Department Internet Posting.

(a) This section establishes the process and standards for a petition by a current licensee, as defined by section 10011 of the Code, seeking removal of license discipline information from the Department internet website ("the website") for license discipline with an effective date more than ten (10) years prior, pursuant to section 10083.2 of the Code.

(b) A petitioner must submit the following information before the Department considers the petition complete:

(1) A list of petitioner's criminal convictions since the date of the most recent Department imposed license discipline for which the petitioner seeks removal from the website, including information on the date of the court action and identifying the court and jurisdiction of where the conviction occurred.

(A) "Conviction" includes all state, commonwealth, possession, federal, military, and foreign convictions. "Conviction" includes a verdict of guilty by judge or jury, a plea of guilty, of nolo contendere, or of no contest. A petitioner must disclose all convictions whether the plea or verdict was set aside, the conviction against the petitioner was dismissed or expunged, or if the petitioner was pardoned.

(B) For the purposes of this petition process, "Conviction" does not include:

(i) Convictions for infractions.

(ii) Convictions under section 11357(b), (c), (d), or (e) of the Health and Safety Code, or under section 11360(b) of the Health and Safety Code, if more than two years have passed since the date of the conviction.

(2) A list of all petitioner's professional license discipline since the date that the Department imposed the most recent license discipline action for which the petitioner seeks removal from the website. Disclosed license discipline must include surrender of a license whether or not an investigation was pending, whether in California or elsewhere. Each item on this list must include the date of discipline, the license type, and the jurisdiction in which the discipline was ordered.

(3) A list of all criminal, civil, or license discipline actions currently pending against petitioner, including the jurisdiction in which the action is pending.

(4) A signed attestation by the petitioner that petitioner certifies (or declares) under penalty of perjury under the laws of the State of California that the information provided as part of the petition is true and correct.

(c) A petitioner must submit all the following items before the Department considers the petition complete:

(1) A petitioner must submit the fee amount of \$1,275.00 with each petition. This petition fee is deemed earned by the Department upon receipt and not refundable. A petitioner may petition concurrently, when eligible, for reinstatement of a license, or for removal of restrictions from a license, without additional charge. A petitioner may request removal of more than one eligible discipline action from the website with a single petition, without additional charge.

(2) A petitioner, or a broker-officer of a corporate petitioner, who resides in California must submit a completed copy of a Live Scan Service Request, Form RE 237 (Rev. 7/18), hereby incorporated by reference, completed not earlier than 30 days before the date of submission of the petition to the Department.

(d) Section 10083.2 of the Code requires the petitioner to provide evidence of rehabilitation to the Commissioner indicating the posting of discipline is no longer needed to prevent a credible risk to members of the public. A petitioner may provide with the petition copies of any documentary evidence that supports petitioner's claims regarding rehabilitation, including, but not limited to, documentation evidencing expungement of criminal convictions and documentation of completed restitution, if applicable.

(e) The criteria for rehabilitation set forth in section 2911 of these Regulations will apply where a petitioner seeks removal of discipline information from the Department's website stemming from a Statement of Issues or where petitioner's license discipline stems from an original application for a license. The criteria for rehabilitation set forth in section 2912 of these Regulations will apply where a petitioner seeks removal of discipline information from the Department's website stemming from an Accusation,

surrender of a license, or other discipline actions ordered by the Commissioner except for a Statement of Issues.

(f) In evaluating a petition, the Commissioner shall take into consideration other violations that present a credible risk to the members of the public since the posting of discipline requested for removal. The Commissioner shall consider, when assessing the credible risk to members of the public utilizing licensed activity by the petitioner, any evidence gathered from an investigation that reflects on petitioner's propensity to honestly and fairly engage in activities requiring a real estate license. For purposes of this subsection, a "credible risk" may exist if any of the following circumstances apply:

- (1) Petitioner is currently registered pursuant to the provisions of section 290 of the Penal Code.
- (2) Petitioner is currently on probation or parole.
- (3) Petitioner's license is currently subject to restrictions, and a concurrent petition to remove those restrictions is not granted.
- (4) There is any professional license discipline on petitioner's Department record that is based on an offense that resulted in harm to a client or other consumer in a real estate transaction.
- (5) Petitioner does not make himself or herself reasonably available for interview by the Department investigator in the course of the petition investigation.
- (6) Petitioner has not reimbursed the Department for payments made from the Consumer Recovery Account associated with a claim filed wherein the petitioner was the judgment debtor.

(g) If the Commissioner grants the petition after investigation, the Commissioner will order removal of the eligible discipline item or items from the licensee's entry in the Public License Information feature on the website.

(h) If the Commissioner denies the petition for removal of discipline from the Public License Information website feature, the petitioner may not submit a new petition for a minimum of one year from the effective date of the denial.

Note: Authority cited: Sections 10080 and 10083.2, Business and Professions Code. Reference: Section 10083.2, Business and Professions Code.

ADOPT

STATE OF CALIFORNIA
DEPARTMENT OF REAL ESTATE

LIVE SCAN SERVICE REQUEST (Applicant/Petitioner)

RE 237 (Rev. 7/18)

Instructions on reverse.

Attention - Live Scan Service Providers

Please note the following information when processing Department of Real Estate (DRE) license applicants.

- ❖ The Type of Application should indicate **License, Certification, or Permit**, and the Application Title should indicate **Real Estate License**.
- ❖ The Department of Justice and FBI processing fee is to be paid by the applicant and *should be* collected at the live scan service provider site.

PART 1 CONTRIBUTING AGENCY

AGENCY ORI NUMBER A0075	AGENCY ADDRESS SET CALIFORNIA DEPARTMENT OF REAL ESTATE 1651 EXPOSITION BLVD, SACRAMENTO CA 95815	E-MAIL CODE 09416
APPLICATION TYPE LICENSE, CERTIFICATION, OR PERMIT		CONTACT NAME LICENSING SECTION
APPLICATION TITLE REAL ESTATE LICENSE		CONTACT TELEPHONE NUMBER 1-877-373-4542

PART 2 APPLICANT'S PERSONAL INFORMATION

APPLICANT NAME (LAST, FIRST, & MIDDLE INITIAL)

FORMER NAME/AKA'S (LAST, FIRST)

DATE OF BIRTH (MMDD/YYYY)	GENDER <input type="checkbox"/> MALE <input type="checkbox"/> FEMALE	HEIGHT	WEIGHT
EYE COLOR	HAIR COLOR	PLACE OF BIRTH	
SOCIAL SECURITY NUMBER	CALIFORNIA DRIVER'S LICENSE NO.	AGENCY BILLING NUMBER <i>Fees paid by applicant</i>	

RESIDENCE ADDRESS (STREET/P.O. BOX, CITY, STATE, ZIP CODE)

YOUR OCA NUMBER (USE SOCIAL SECURITY NUMBER)

LEVEL OF SERVICE
CALIFORNIA DEPARTMENT OF JUSTICE/FBI

PART 3 LIVE SCAN TRANSACTION

OPERATOR NAME	DATE COMPLETED	TRANSMITTING AGENCY
AMOUNT COLLECTED (FOR ROLLING FEE)	AMOUNT COLLECTED (FOR DOJ/FBI PROCESSING)	ATI NUMBER

PART 4 LIVE SCAN RESUBMISSION TRANSACTION

ORIGINAL ATI NUMBER	LEVEL OF SERVICE REQUESTED FOR RESUBMISSION <input type="checkbox"/> CALIFORNIA DEPARTMENT OF JUSTICE <input type="checkbox"/> FBI
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Original Copy
Live Scan Operator

Second Copy
Department of Real Estate

Third Copy
Applicant

APPLICANT INSTRUCTIONS

Fingerprint Requirement

One set of classifiable electronic fingerprints is required from every real estate license applicant. The fingerprint process is completed by a live scan service provider as noted below.

One set of classifiable electronic fingerprints is also required by licensees who hold a restricted license and who are petitioning for removal of restrictions or by individuals who have had their real estate license revoked and are petitioning for reinstatement of their license.

Applicants have the option of getting their fingerprints taken either after passing their examination or after they have submitted their examination application. However, fingerprint processing fees are not refunded if an applicant fails to pass the examination.

Out of state residents either need to make arrangements to get their fingerprints taken at a live scan service provider in California or get fingerprinted out of state using the FBI Applicant Fingerprint Card (FD-258 Rev. 5/99). A fingerprint card will be provided to all out of state applicants with the original license application. It should be taken to a local law enforcement agency for completion and submitted directly to DRE with the completed license application, license application fee, and \$49.00 fingerprint card processing fee. Applicants who wish to get their fingerprints taken out of state after submitting their examination application, but before passing their examination, may request a blank fingerprint card by contacting the Licensing Section at 1-877-373-4542.

Completion of Form RE 237 Live Scan Service Request

The following information must be entered in Part 2 of the form:

- Your printed name and former names (if any).
- Date of birth, gender, height, weight, eye color, hair color, place of birth, social security number (SSN), drivers license number, residence address, and OCA number (same as SSN).

The electronic fingerprint service provider will complete Part 3 of the form.

Submission of Fingerprint Form

After you have your fingerprints taken by the live scan service provider, a completed copy of this form must be submitted with your original license application or petition application (RE 506). If you choose to get your fingerprints taken before passing your examination, submit a completed copy of this form to the Department of Real Estate, P.O. Box 137002, Sacramento, CA 95813-7002, Attn: Fingerprint Desk.

Fees

Processing fee — A fee will be collected by the live scan provider for the processing of your fingerprints by the Department of Justice.

Service fee — A separate fee will be charged for the service of taking the electronic fingerprints by the live scan provider. That fee may vary depending on the live scan provider you choose.

Fingerprint Services (Contact the facility for fees & hours.)

Many California law enforcement agencies and other private providers provide electronic fingerprint services. You may obtain a complete list by checking the Web site of the California Department of Justice at <http://ag.ca.gov/fingerprints/publications/contact.php>. Please note that the hours of operation for each provider may vary and an appointment may be required.