

TITLE 16
PROFESSIONAL FIDUCIARIES BUREAU
DEPARTMENT OF CONSUMER AFFAIRS

PROPOSED TEXT

Article 7.5 (commencing with section 4550) is added to Division 41 of Title 16 of the California Code of Regulations, as follows:

Article 7.5. Notification of Licensure

§ 4550. Definitions.

For purposes of this article, the following terms have the following meanings:

- (a) The “agent” of a consumer is a person who is legally authorized to make decisions on the consumer’s behalf regarding professional fiduciary services provided by a licensee, including, but not limited to, the consumer’s guardian or conservator.
- (b) “Interested person,” regarding the performance of professional fiduciary services for a consumer, includes a person with any interest in the performance of those services, and is not limited to a person with an interest specified in Section 48 of the Probate Code.

NOTE: Authority cited: Sections 138 and 6517, Business and Professions Code.
Reference: Sections 138, 6530, 6532, and 6533, Business and Professions Code.

§ 4551. Initial Notice.

- (a) In General. Before a licensee begins performing professional fiduciary services for a consumer, the licensee shall provide written notice of the licensee’s licensure by the Bureau to the persons described in the applicable paragraph of subdivision (b) who are not the licensee. Persons who come to meet a description in that paragraph or become identifiable or accessible by the licensee only after the licensee begins performing services shall be provided written notice within 30 calendar days after the licensee becomes aware of their existence or gains access to that person. The notice shall include, at a minimum, the statement and information specified in subdivision (d).
- (b) Specific Notification Responsibilities. A licensee’s notification responsibilities under this section shall depend on the services to be performed, as follows:
 - (1) Responsibility of guardian.

(A) If the licensee’s services will be in the capacity of guardian, inclusion of the license information in the petition for the appointment of a guardian or

temporary guardian, as provided in Section 1510 or 2250(c)(2)(A) of the Probate Code, as applicable, that accompanies notice of the hearing on that petition, as required by Section 1460.2(b)(5)(D), 1511, or 2250(e)(3) of the Probate Code, shall satisfy the notice requirements of this section, except as provided in subparagraph (B).

(B) The licensee shall remain responsible for providing notice under this section to any of the following persons who are not provided notice under subparagraph (A), unless they are exempt from being provided notice under subparagraph (C):

(i) A person required to be named in a petition for a hearing pursuant to subdivision (b) or (c) of Section 1510 of the Probate Code or Section 2250(e)(1) of the Probate Code.

(ii) A person required to receive special notice pursuant to Section 2700 of the Probate Code.

(C) This paragraph does not require a licensee to provide notice to a person exempt from being provided notice of a hearing pursuant to Section 1511 or 2250(e) of the Probate Code or Chapter 3 (commencing with Section 1460) of the Probate Code, or consistent with another law, rule of court, or court order providing an exemption from notice regarding the guardianship or an express exemption from this paragraph.

(2) Responsibility of conservator.

(A) If the licensee's services will be in the capacity of conservator, inclusion of the license information in the petition for the appointment of a conservator, temporary conservator, or limited conservator, as provided in Section 1821 or 2250 of the Probate Code, as applicable, that accompanies the citation issued to the proposed conservatee, as required by Section 1824, or notice of the hearing on that petition, as required by Section 1460.2(b)(5)(D), 1822, or 2250(c)(2)(A) of the Probate Code, shall satisfy the notice requirements of this section, except as provided in subparagraph (B).

(B) The licensee, including a conservator or proposed conservator under the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), shall remain responsible for providing notice under this section to any of the following persons who are not provided notice under subparagraph (A), unless they are exempt from being provided notice under subparagraph (C):

(i) The conservatee or proposed conservatee.

(ii) A person or entity required to be named in a petition for a hearing pursuant to Section 1821(b) of the Probate Code or provided notice of a hearing pursuant to Section 1460.2(b)(1)-(3) of the Probate Code.

(iii) A person required to receive special notice pursuant to Section 2700 of the Probate Code.

(C) This paragraph does not require a licensee to provide notice to a person exempt from being provided notice of a hearing or appointment pursuant to Section 2250(e) or 2250.2(c) of the Probate Code, Chapter 3 (commencing with Section 1460) of the Probate Code, or Section 5350.2 of the Welfare and Institutions Code, or consistent with another law, rule of court, or court order providing an exemption from notice regarding the conservatorship or an express exemption from this paragraph.

(3) Responsibility of personal representative of a decedent's estate.

(A) If the licensee's services will be in the capacity of the personal representative of a decedent's estate, the licensee shall provide notice under subdivision (a) to each of the following, unless they are exempt from being provided notice under subparagraph (B):

(i) The petitioner for appointment of the licensee as personal representative of the decedent's estate.

(ii) The persons required to be provided notice of a hearing under Section 8110 of the Probate Code.

(iii) Any persons who file an effective request for special notice pursuant to Section 1250 of the Probate Code.

(B) This paragraph does not require a licensee to provide notice to a person who is exempt from being provided notice of a hearing pursuant to Section 1207 or 1220(c) of the Probate Code, or consistent with another law, rule of court, or court order providing an exemption from notice regarding the administration of the decedent's estate or an express exemption from this paragraph.

(4) Responsibility of trustee.

(A) If the licensee's services will be in the capacity of trustee, the licensee shall provide notice under subdivision (a) to each of the following, unless they are exempt from being provided notice pursuant to subparagraph (B) or the trustor has provided direction to the trustee, in writing, to provide notice to the beneficiary at a specific time or moment:

(i) Each settlor of the trust.

(ii) If the settlor is deceased, to the personal representative of the settlor's probate estate, if different from the licensee and known to the licensee, and the deceased settlor's surviving spouse, if any.

(iii) The person appointing the licensee.

(iv) Each co-trustee.

(v) Each consumer or, alternatively, the attorney representing the consumer or the consumer's agent. During the time that a person holding the power to revoke has the rights afforded beneficiaries under the Trust Law (Division 9 (commencing with Section 15000) of the Probate Code), as provided in Section 15800(a) of the Probate Code, the person holding the power to revoke shall be treated as the consumer for the purposes of this clause.

(vi) Any persons who file an effective request for special notice pursuant to Section 17204 of the Probate Code.

(B) This paragraph does not require a licensee to provide notice to a person who is exempt from being provided notice of a hearing pursuant to Section 1207 or 15804 of the Probate Code, or consistent with another law, rule of court, or court order providing an exemption from notice regarding the trust or an express exemption from this paragraph.

(5) Responsibility of agent under durable power of attorney. If the licensee's services will be in the capacity of agent under durable power of attorney, the licensee shall provide notice under subdivision (a) to the consumer or, alternatively, the attorney representing the consumer or the consumer's agent.

(c) Method of Providing Notice; Prohibition on Charging for Providing Notice.

(1) The written notice required by this section shall be provided using any of the following methods:

(A) Mail;

(B) Email;

(C) Facsimile;

(D) Written notice in person.

(E) Including the written notice in correspondence or a contract with the recipient pursuant to Section 4552.

(2) A licensee shall not charge the consumer, either directly or indirectly, for time, materials, or other resources used to provide notice in compliance with this subdivision, regardless of method used.

(d) Contents and Format of Notice. The notice shall be in at least 12-point bold face type, prominently placed on the page, and shall state the following:

NOTICE TO CONSUMERS

“ _____ (insert name) is a Professional Fiduciary licensed by the Professional Fiduciaries Bureau with the California Department of Consumer Affairs. Telephone and Website: (916) 574-7340; www.fiduciary.ca.gov”

NOTE: Authority cited: Sections 138 and 6517, Business and Professions Code. Reference: Sections 138, 6530, 6532, and 6533, Business and Professions Code; Sections 1250, 1511, 1822, 8110, and 17204, Probate Code.

§ 4552. Ongoing Notice in Official Correspondence and Contracts.

A licensee shall include the statement and information specified in subdivision (d) of Section 4551, in the format required by that subdivision, in each of the following:

(a) All official written correspondence, including notices and reports, to the consumer, the attorney representing the consumer, if any, the consumer’s agent, if any, and to each of the following additional persons:

(1) If acting in the capacity of a guardian or conservator, to interested persons regarding the guardianship or conservatorship, including persons who file an effective request for special notice pursuant to Section 2700 of the Probate Code.

(2) If acting in the capacity of the personal representative of a decedent’s estate, to interested persons regarding the management and control of the estate, including persons who file an effective request for special notice pursuant to Section 1250 of the Probate Code.

(3) If acting in the capacity of trustee, to interested persons regarding the trust, including persons who file an effective request for special notice pursuant to Section 17204 of the Probate Code, but not limited to interested persons as defined in that section.

(4) If acting in the capacity of agent under durable power of attorney during any period of incapacity of the consumer, to interested persons regarding the services performed by the licensee in that capacity.

(b) All contracts to perform professional fiduciary services. On a contract to perform professional fiduciary services, the notice shall be placed immediately above the signature line for the consumer.

NOTE: Authority cited: Sections 138 and 6517, Business and Professions Code.
Reference: Sections 138, 6530, 6532, and 6533, Business and Professions Code;
Sections 1250, 1511, 1822, 2700, and 17204, Probate Code.

§ 4553. Proof of Compliance with Notice Requirements.

Until the conclusion of a licensee's services in a matter, a licensee shall retain in electronic or paper form, and present to the Bureau for inspection upon request, a record, log, or copy of each notice provided pursuant to this article in connection with that matter. The record, log, or copy shall include or be filed with the recipient's name, the recipient's relationship to the matter that necessitated notice, the authorized method used to provide notice, the fax number, email address, or delivery address used, if applicable, and the date sent or provided.

NOTE: Authority cited: Sections 138 and 6517, Business and Professions Code.
Reference: Sections 138 and 6560, Business and Professions Code.