

**TITLE 16
PROFESSIONAL FIDUCIARIES BUREAU
DEPARTMENT OF CONSUMER AFFAIRS**

**NOTICE OF PROPOSED REGULATORY ACTION CONCERNING:
CLIENT NOTIFICATION**

NOTICE IS HEREBY GIVEN that the Professional Fiduciaries Bureau (Bureau) of the Department of Consumer Affairs (Department) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing via a WebEx event as follows:

Virtual Hearing via WebEx

Date: Friday, June 18, 2021

Time: 9:00 a.m.

To participate via Computer/Tablet/Smart Phone, please join via this website:

<https://dca-meetings.webex.com/dca-meetings/onstage/g.php?MTID=e6ba655b309ad57fbd26364d17026cc4d>

Event number: 187 612 7639

Event password: PFB06182021

To participate via Phone Call-In:

Phone Number: 1 (415) 655-001

Access Code: 187 612 7639

During hearing, use *3 to raise/lower hand

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Bureau at its office not later than **5:00 p.m. on Tuesday, June 8, 2021**, or must be received by the Bureau at the hearing. The Bureau, upon its own motion or at the request of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by sections 138 and 6517 of the Business and Professions Code (BPC), and to implement, interpret, or make specific BPC sections 138, 6530, 6532, 6533, and 6560, and Probate Code

sections 1250, 1511, 1822, 2700, and 17204, the Bureau is proposing changes to Division 41 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST

A. Summary of Existing Laws and Regulations:

Adopt Article 7.5 (commencing with section 4550) of Title 16 of the California Code of Regulations.

The Bureau was created within the Department by the Professional Fiduciaries Act (BPC Div. 3, Ch. 6), added by Chapter 491 of the Statutes of 2006 (SB 1550, Figueroa) as part of the Omnibus Conservatorship and Guardianship Reform Act of 2006 (Chs. 490-93, Stats. 2006 [SB 1116, Scott; SB 1550, Figueroa; SB 1716, Bowen; AB 1363, Jones]), to protect the “increasing number of people in the state [who] are unable to provide properly for their personal needs, manage their financial resources, or resist fraud or undue influence as well as fiscal, emotional, and physical harm,” and are therefore vulnerable to neglect or physical, emotional, or financial abuse by professional fiduciaries. (Ch. 491, Stats. 2006, § 2.) The Act makes the Bureau responsible for licensing and regulating professional fiduciaries and enforcing licensing requirements. (BPC §§ 6510, 6518.) The Act defines the “professional fiduciaries” who are subject to its provisions to include guardians, conservators, trustees, personal representatives of a decedent’s estate, and agents under durable power of attorney, with certain exceptions. (BPC §§ 6501, 6530.) Professional fiduciaries provide critical services to seniors, persons with disabilities, and children. They manage matters for clients including daily care, housing, and medical needs.

Existing law, BPC section 138, requires every board in the Department, as defined in BPC section 22, to initiate the process of adopting regulations that require its licensees to provide notice to their clients or customers that the practitioner is licensed in California. Notifying clients and customers that a professional is licensed by the state is a basic element of consumer protection. There currently is no regulation requiring Professional Fiduciary licensees to provide the BPC section 138 notification to their clients or customers. The proposed regulation would require each licensee of the Bureau to provide clients or customers with notice that the licensee is licensed by the Bureau and the Bureau’s contact information.

B. Policy Statement Overview/Anticipated Benefits of Proposal:

This proposed regulation would require all professional fiduciaries licensed by the Bureau to disclose to clients or customers that they are licensed in accordance with the Professional Fiduciaries Act. Due to the nature of professional fiduciary services, which a professional fiduciary may perform for a minor (in the capacity of guardian), a person who lacks decision making ability (in the capacity of conservator or attorney-in-fact), or a decedent (in the capacity of trustee or

personal representative of a decedent's estate), the proposed regulation would interpret the term "clients or customers" broadly, to include persons who may not hire or pay a licensee, but who are "clients or customers" in the sense that the licensee stands in the place of a person with whom they have, or had, a personal or professional relationship, and, because of this, are interested in the licensee's faithful performance of that role. (See Ch. 491, Stats. 2006, § 2(b)-(c).) This will help to ensure that all California consumers of professional fiduciary services, and those who are likely to be affected by the performance of those services, are protected from unlicensed activity and will provide all California consumers the ability to verify the validity of a license prior to acquiring the services of a professional fiduciary. The proposed regulation would make it easier for consumers to identify licensed and unlicensed individuals, providing greater protection for consumers.

Consistency and Compatibility with Existing State Regulations:

During the process of developing these regulations and amendments, the Bureau has conducted a search of similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

INCORPORATION BY REFERENCE

N/A

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: The Bureau is not required to verify licensees notify their clients to comply with the proposed regulations. As a result, no additional initial workload or costs are anticipated to verify compliance.

However, the Bureau is authorized to request a licensee's client records, as specified, which would contain the notification. The Bureau may also request proof of completion during an investigation. The Bureau indicates in either circumstance the workload would be incidental and does not have an estimate of workload or costs at this time.

The Bureau does anticipate the regulations will result in approximately 60 additional phone inquiries received per year with each call taking approximately 15 minutes to resolve, which would result in costs of approximately \$1,500 per year.

In the event an inquiry results in an investigation, the Bureau would incur additional enforcement-related costs. However, any workload and costs are unknown at this time.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Sections 17500 - 17630 Require Reimbursement: None.

Business Impact:

The Bureau has made an initial determination that this proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the following facts/evidence/testimony:

Although all licensees will be required to comply with this regulation, the economic impact to licensees would be negligible. Licensees would be required to provide initial written notice of their licensure by the Bureau to all clients and customers in person or by mail, email, or facsimile, or by including it in written correspondence or a contract with the client or customer. They would also be required to provide written notice of their licensure on an ongoing basis, in all written correspondence to clients and contracts for licensed services. The financial cost of providing this notification by mail, email, facsimile, and on written correspondence or contracts, is minimal (range \$0 - \$1 per notification). The Bureau does not have an estimate of the total impact economic impact to licensees because the number of client notifications is unknown.

Cost Impact on Representative Private Person or Business:

The known cost impacts that a representative private person or business would incur for reasonably complying with this proposed action are as follows:

This proposed regulation requires licensees to notify their clients that they are licensed by the Bureau and to provide the Bureau's contact information. Licensees will provide each client or any individual the licensee reasonably deems sufficient to constitute notice to the client with written notice. Written notice shall be provided to the client personally or by mail, email, or facsimile.

Licensees can implement the first requirement of this regulation via written notice to their clients. If the licensee chooses to email their clients, the cost of this method would be only the amount of time it takes to send an email. If the licensee chooses to mail a hard copy letter, the cost would be less than \$1.00 per client.

The Bureau finds that expenses per licensee would be minor and absorbable.

Effect on Housing Costs: None.

Business Reporting Requirement: None.

Effect on Small Business:

The Bureau has determined that the proposed regulations may affect small businesses in a negligible manner if the licensee is a small business and mails a notice to clients, as noted above (under business impact and cost impact on representative private person or business); however, consumer protection will be enhanced by ensuring that clients/consumers receive the information contained in the notification.

The Bureau has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting small business, including the ability of California businesses to compete with businesses in other states.

Although all licensees will be required to comply with these proposed regulations, the economic impact will be negligible.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/Businesses:

The Bureau has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the state of California.

Benefits of Regulation:

The Bureau has determined that this regulatory proposal will have the following benefits to health and welfare of California residents, worker safety, and the state's environment:

BPC section 6516 states: "Protection of the public shall be the highest priority for the Bureau in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount."

This proposal is consistent with the Bureau's priority of protecting the public. An informed consumer is in a better position to make a reasoned choice relating to fiduciary services. Additionally, an informed consumer would be able to assist the Bureau in regulating the professional fiduciary industry via the Bureau's complaint process should a problem arise. Consumers are often unaware of the existence and role of the Bureau and the services it offers. By ensuring that consumers know whether a person is licensed, they will know who to contact to verify a license or to lodge a complaint.

CONSIDERATION OF ALTERNATIVES

The Bureau must determine that no reasonable alternative to the regulation would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Bureau has prepared an initial statement of the reasons for the proposed regulations and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Professional Fiduciaries Bureau at 1625 N. Market Blvd., Suite. S-209, Sacramento, California 95834.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Bureau may adopt the proposed regulations substantially as described in this notice. If the Bureau makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Bureau adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Angela Cuadra at the address indicated below. The Bureau will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons, once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Angela Cuadra
Address: 1625 N. Market Blvd., Suite S-209
Sacramento, CA 95834
Telephone No.: (916) 574-7341
Fax No.: (916) 574-8645
E-Mail Address: fiduciary@dca.ca.gov

The backup contact person is:

Name: Rebecca May
Address: 1625 N. Market Blvd., Suite S-209
Sacramento, CA 95834
Telephone No.: (916) 574-7340
Fax No.: (916) 574-8645
E-Mail Address: fiduciary@dca.ca.gov

Website Access: Materials regarding this proposal can be found at www.fiduciary.ca.gov.