

PROFESSIONAL FIDUCIARIES BUREAU

INITIAL STATEMENT OF REASONS

Hearing Date: **October 13, 2015**

Subject Matter of Proposed Regulations: Client Notification

Section Affected: This regulatory action adopts Article 12, Section 4640 of Title 16 of the California Code of Regulations (CCR).

Specific Purpose of each adoption, amendment, or repeal:

1. Problem being addressed:

Existing law, Business & Professions (B&P) Code § 138, requires every board, as defined in § 22, within the Department of Consumer Affairs (Department), to initiate the process of adopting regulations requiring its licensees to provide notice to their clients or customers that they are licensed by the State of California. Pursuant to B&P § 22, the Professional Fiduciaries Bureau (Bureau) is deemed a "board", for purpose of the requirement.

B&P Code § 6517 authorizes the Bureau to adopt, amend, or repeal, such rules and regulations necessary to enable the Bureau to carry into effect the provisions of law relating to the Professional Fiduciaries Act (Act). Adopting proposed CCR 4640 effectuates the legal mandate of B&P 138 by informing clients when professional fiduciaries are licensed and regulated by the State.

2. Anticipated benefits from this regulatory action:

The Bureau currently regulates 811 Professional Fiduciaries. The Bureau's highest priority is the protection of the public when exercising its licensing, regulatory, and disciplinary functions. The primary methods by which the Bureau achieves this goal are: issuing licenses to eligible applicants; investigating complaints against licensees and disciplining licensees for violation of the Act, monitoring licensees whose licenses have been placed on probation; and educating the public about their consumer rights.

Notifying consumers that a professional is licensed by the State is a basic element of consumer protection. Mandating licensees notify consumers of licensure with the Bureau provides consumer protection to the public, as consumers will be made aware that they are able to get assistance, file complaints concerning a licensees, and get potential questions about the profession answered.

B&P Code § 6517 authorizes the Bureau to adopt, amend, or repeal, such rules and regulations necessary to enable the Bureau to carry into effect the provisions of law relating to the Act. The Bureau is proposing the following:

Adopt Article 12, Section 4640 of the CCR, Client Notification.

This proposal adopts Section 4640 of the California Code of Regulations to require licensed Professional Fiduciaries to provide notice to all clients of the fact that the professional is licensed and regulated by the Bureau. This proposal requires the notice to include a statement that Professional Fiduciaries are licensed and regulated by the Bureau and requires the notice to contain the Bureau's telephone number and website address. Notice shall be consistent with the following directives:

(a) At the licensee's place of business, in a location which is accessible to the public, notification shall be prominently posted in a conspicuous location visible to clients, and shall include the following statement and information in at least 48 – point type in Arial font:

NOTIFICATION TO CONSUMERS

Professional Fiduciaries are licensed and regulated
by the Professional Fiduciaries Bureau

Professional Fiduciaries Bureau: Telephone (916) 574-7340

Professional Fiduciaries Bureau Website: www.fiduciary.ca.gov

(b) Licensees shall provide a written notice to all clients stating the licensee is a licensed Professional Fiduciary and regulated by the Bureau. The written notice shall contain the Bureau's telephone number and website address. The notice shall be signed and dated by the client and retained in the client's records. If the client is a minor or deemed mentally or physically incapacitated, or has a court representative, or is represented by an attorney of law, a copy of the notice shall be mailed to the client's legal representative, court appointed representative, and/ or attorney's address of record.

(c) If the licensee maintains a Website, a written notice as described in subsection (a) "NOTIFICATION TO CONSUMERS," shall be posted on the licensee's Website.

The Bureau anticipates this regulatory proposal will benefit clients and consumers. Consumers will be better informed as to where to receive assistance to file complaints against licensees. Consumers will be notified that Professional Fiduciaries are licensed and regulated and that there is a Bureau available to address concerns and questions that the public has about the profession and its licensees.

Factual Basis/Rationale

Existing law, B&P Code § 138 states that every board in the Department, as defined in B&P Code section 22, shall initiate the process of adopting regulations to require its licensees, as defined in Section 23.8, to provide notice to their clients or customers that the Professional Fiduciary is licensed by this state. This proposed regulation is responsive to this mandate.

An informed consumer is in a better position to make an informed choice/ decision 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 or the public services it offers, e.g., license verifications, statutes and regulations, or the complaint process.

The adoption of this proposed text also ensures that the public and clients of Professional Fiduciaries are duly informed how to receive help regarding potential complaints against licensees, likely decreasing the occurrence of Professional Fiduciary abuse, neglect and financial exploitation.

Underlying Data

None.

Business Impact

This regulation will not have a significant adverse economic impact on businesses. This initial determination is based on the following facts or evidence/documents/testimony:

The Bureau has made an initial determination that the 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.

Although many businesses will be required to comply, the economic impact will be negligible. Professional Fiduciaries will be required to provide notice of the Bureau's

regulatory authority over the licensee by all of the following: post a sign in his/her place of business, using language which will be available on the Bureau's Website; provide written notice to be signed by the client and retained in the client's file or if the client is a minor or deemed mentally or physically incapacitated, a copy of the notice shall be mailed to the client's legal representative and if the fiduciary maintains a Website, include notice on his/her Website.

Economic Impact Assessment

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because it is an administrative change to require licensees to notify clients of the regulatory authority.
- It will not create new business or eliminate existing businesses within the State of California because it is an administrative change to require licensees to notify clients of the regulatory authority.
- It will not affect the expansion of businesses currently doing business within the State of California because it is an administrative change to require licensees to notify clients of the regulatory authority.
- This regulatory proposal benefits the health and welfare of California residents because the licensee will be required to notify clients of the regulatory authority.
- This regulatory proposal does not affect worker safety.
- This regulatory proposal does not affect the state's environment.

Economic Impact for "Major Regulations" (If applicable)

Standardized Regulatory Analysis: N/A

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or

less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Set forth below is the alternative which was considered and the reason the alternative was rejected:

Alternative #1: Not adopt the regulations. This alternative was rejected because Business and Professions Code section 138 requires this regulation to be adopted.