

**TITLE 16. California Professional Fiduciaries Bureau
Department of Consumer Affairs**

NOTICE IS HEREBY GIVEN that the Professional Fiduciaries Bureau (Bureau) of the Department of Consumer Affairs 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 to be held at

Professional Fiduciaries Bureau
1625 North Market Boulevard
1st Floor Hearing Room
Sacramento, CA 95834
Tuesday, October 13, 2015
10:30 - 11:30 a.m.

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, October 13, 2015** or must be received by the Bureau at the hearing. The Bureau, upon its own motion or at the instance 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, and to implement, interpret or make specific Sections 6515, 6516, 6520, 6530, 6532 and 6533 of said Code, the Bureau is considering changes to Division 41 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST

A. Informative Digest

Adopt Article 12 Section 4640 of Title 16 of the California Code of Regulations

The Professional Fiduciaries Bureau (Bureau) was created by legislation enacted in 2007 (SB 1550, Figueroa, Chapter 491, Statutes of 2006) to regulate non-family member Professional Fiduciaries, including conservators, guardians, trustees, and agents under durable power of attorney as defined by the Professional Fiduciaries Act (Business and Professions (B &P) Code § 6500 et seq.). The Bureau is under the authority of the Department of Consumer Affairs and is responsible for licensing and regulating Professional Fiduciaries under the Professional Fiduciaries Act. Professional Fiduciaries provide critical services to

seniors, persons with disabilities, and minors. They manage matters for clients including daily care, housing and medical needs, and also offer financial management services ranging from basic bill paying to estate and investment management.

Existing law, B&P Code § 138, requires every board in the Department, as defined in B&P Code 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 by this State. Notifying consumers that a professional is licensed by the State is a basic element of consumer protection. Knowing they can turn to an agency for questions or to file a complaint about the practitioner proves to be good customer service.

B. Policy Statement Overview/Anticipated Benefits of Proposal

This proposed regulation would require all Professional Fiduciaries licensed by the Bureau to disclose that they are licensed by the Bureau in accordance with the California Code of Regulations, Sections 4400-4622, to ensure that all California consumers are protected from unlicensed activity, and to provide all California consumers the ability to verify the validity of a license prior to acquiring the services of Professional Fiduciaries legally authorized to practice in the State of California.

C. Consistency and Compatibility with Existing State Regulations

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

INCORPORATION BY REFERENCE (if applicable)

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: None

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 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 to the licensee. Licensees would be required to 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, and if the fiduciary maintains a Website, include the notice on his/ her Website. Notice will be provided to both existing and prospective clients.

AND

The following studies/relevant data were relied upon in making the above determination:

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

Cost Impact on Representative Private Person or Business:

The cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action and that are known to the Bureau are:

This proposed regulation requires Licensees to notify their clients or their client's legal representatives, that they are licensed and regulated by the Professional Fiduciaries Bureau and to provide the Bureau's contact information. Professional Fiduciaries will provide the notice by all of the following three options: post a sign in his/her place of business, provide written notice to be signed by the client and retained in client's file, and if the fiduciary maintains a Website, include the notice on his/her Website.

Professional Fiduciaries would implement the first requirement of this regulation via posting a sign in a visible place, such as a reception/check-in area or waiting room at their place of business. The most "professional" way to achieve this would be for a Professional Fiduciary to print the sign on a laser jet printer (less than \$0.05 per page) and then buy a simple black plastic "document" frame (estimated to cost \$4.50 at an office supply store). Thus, per office, the cost would be less than \$5.00 to implement this method. The second method will be implemented by drafting a letter (less than \$0.05 per page) on the licensee's letterhead with the notice language. The letter would be signed by the client and retained in the clients records. 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. If the letter is mailed to the client or client's representative cost would increase by envelope cost (estimated at \$0.05 per envelope) and postage cost (\$0.49 per stamp). The final method would be implemented by updating the licensees Website with the notification language. The cost for this method is estimated at a one-time fee which may range from \$0 to \$25.

The total sum of the above estimated expenses per licensee would be minor and absorbable.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Bureau has determined that the proposed regulations would not affect small businesses.

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

Although all Professional Fiduciaries will be required to comply, the economic impact will be negligible. Professional Fiduciaries would be required to provide notice by all of the following three options: 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 client's file, and if the client maintains a Website, include the notice on his/ her Website.

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 state's environment:

Business and Professions Code section 6516 states that the "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 or the public services it offers, e.g., license verifications, statutes and regulations, or the complaint process. If consumers do not know that they can contact the Bureau when an issue with a licensee arises or where to seek information about a licensee, then the Bureau's effectiveness is hampered and its priority of public protection is compromised. The adoption of this proposal, will promote better communication with the public regarding the Bureau's contact information and purpose. The notice would also promote transparency in both government and the profession by making information regarding license status and the State's responsibility to regulate the profession easily available to the public.

CONSIDERATION OF ALTERNATIVES

The Bureau must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention 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 action 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 any document incorporated by reference, 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., Ste. S-209, Sacramento, California 95834

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: Julia G. Ansel
Address: 1625 North 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

The backup contact person is:

Name: Angela Bigelow
Address: 1625 North 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.