



Professional Fiduciaries Bureau
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California Code of Regulations
Sections 4400 - 4622
Article 1. General Provisions

§ 4400. Introduction.

These regulations are adopted by the Professional Fiduciaries Bureau to implement and make specific the provisions of the Professional Fiduciaries Act, commencing with Section 6500 of the Business and Professions Code.

NOTE: Authority cited: Section 6517, Business and Professions Code. Reference: Sections 6500 and 6510, Business and Professions Code.

§ 4402. Mailing Address of Bureau.

The mailing address of the Professional Fiduciaries Bureau is P.O. Box 989005, West Sacramento, CA 95798-9005.

NOTE: Authority cited: Section 6517, Business and Professions Code. Reference: Sections 6500 and 6510, Business and Professions Code.

§ 4404. Filing of Address of Record.

Each licensee shall have on file with the Bureau his or her correct street addresses, which shall include a physical business and residence address. In addition, each licensee shall designate an address of record that shall be public information, which may consist of a post office box number or other viable mailing address. Each licensee shall within fifteen (15) business days notify the Bureau in writing of any changes in his or her street or mailing addresses, giving both the old and new addresses and any changes.

NOTE: Authority cited: Sections 136 and 6517, Business and Professions Code. Reference: Sections 136, 6510 and 6534, Business and Professions Code.

§ 4406. Definitions.

For the purpose of the regulations contained in this division, the term:

(a) "Act" means the provisions of the Professional Fiduciaries Act, Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code.

(b) "Bureau" means the Professional Fiduciaries Bureau within the Department of Consumer Affairs, established pursuant to 6510 of the Business and Professions Code.

(c) "Licensee" means a person who is licensed under the Professional Fiduciaries Act, Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code as a "licensed professional fiduciary" pursuant to Section 6536.

(d) "Consumer," under the Act, means an individual with whom the licensee has established a fiduciary relationship including: a conservatee when the fiduciary is acting as a court-appointed conservator; a ward when the fiduciary is acting as a court-appointed guardian, a principal when the fiduciary is acting under a durable power of attorney, and a beneficiary when the fiduciary is acting as a trustee.

(e) Trustee as a Professional Fiduciary – A person acting as a trustee under the Act is an individual who meets the requirements of paragraph (1) and (2) and shall be licensed as a professional fiduciary unless exempt under the Act.

(1) Licensing applies to the following persons:

(A) An individual acting as trustee for a trust as defined in Section 82 of the Probate Code that includes at least one individual beneficiary, or

(B) An individual, acting on behalf of an entity appointed as trustee, to perform the functions of a trustee for a trust as defined in Section 82 of the Probate Code that includes at least one individual beneficiary.

(2) Number of non-family member trustors applies as follows:

A professional fiduciary as defined in Section 6501, includes a person acting as trustee for more than three people or more than three families or a combination of people and families that totals more than three, at the same time, who are not related to the professional fiduciary by blood, adoption, marriage, or registered domestic partnership, unless excluded under the Act. Trustors shall be counted and neither beneficiaries nor trusts shall be counted.

NOTE: Authority cited: Section 6517, Business and Professions Code. Reference: Sections 6500, 6501, 6502, 6510, and 6530 Business and Professions Code.

Article 2. Application and Licensure

§ 4420. Place of Filing.

An application for licensure shall be filed with the Bureau at its designated address.

NOTE: Authority cited: Section 6517, Business and Professions Code. Reference: Sections 6500, 6510, and 6533, Business and Professions Code.

§ 4422. Application.

(a) A person applying for a license as a professional fiduciary shall submit an application for licensure to the Bureau and pay the application fee required in Section 4580.

(b) An application for licensure shall require the applicant to meet the qualifications of Section 6533 of the Business and Professions Code and, in addition, provide the following information:

(1) For a determination of compliance with the education requirements under subdivision (g) of Section 6533, if applicable, the applicant shall provide the names of the universities or colleges, the dates of graduation, and the applicable degrees awarded.

(2) For a determination of compliance with the experience requirements under subdivision (g) of Section 6533, if applicable, the applicant shall provide information regarding the qualifying substantive fiduciary responsibilities, including type and dates of experience, and contact information for three references, and shall provide consent for the Bureau to contact the references for verification of specified experience.

(3) The applicant's physical business address, telephone number, and facsimile number.

(4) The applicant's designated address of record for public information.

(5) A list of any license or professional certificate ever held by the applicant, including information regarding the type, state/country, license or certificate number, date issued, status, and whether the license

or certificate has been subject to disciplinary action, including revocation or suspension. The applicant may attach a statement of explanation.

(6) Whether the applicant has filed for bankruptcy in the last ten (10) years or held a controlling financial interest in a business when that business filed for bankruptcy in the last ten (10) years, as required by paragraph (7) of subdivision (a) of Section 6534, and the date of the bankruptcy filing. The applicant may attach a statement of explanation.

(7) Whether the applicant has ever been convicted of a crime. The applicant may attach a statement of explanation.

(8) Whether the applicant has ever been found by a court to have breached a fiduciary duty, the date, case name, court location, and case number associated with each breach of fiduciary duty. The applicant shall submit a record of the court findings and orders related to each specific case. The applicant may file an additional statement of the issues and facts pertaining to each case.

(9) Whether the applicant has ever been removed as a fiduciary by a court for breach of trust, the date, case name, court location, and case number associated with each removal. Whether all related appeals have been taken or the time to file an appeal has expired. The applicant shall submit a record of the court findings and orders related to each specific case. The applicant may file an additional statement of the issues and facts pertaining to each case.

(10) Whether the applicant has ever resigned as a fiduciary in a matter in which a complaint has been filed with the court, the date the complaint was filed, the date of the resignation, case name, court location, and case number associated with each resignation, and a statement of the issues and facts pertaining to each allegation. The applicant shall submit a record of the court findings and orders related to each specific case.

(11) Whether the applicant has ever settled as a fiduciary in a matter in which a complaint has been filed with the court, the date the complaint was filed, the date of the settlement, case name, court location, and case number associated with each settlement, and a statement of the issues and facts pertaining to each allegation. The applicant shall submit a record of the court findings and orders related to each specific case.

(c) As used in this section "complaint" means a civil complaint, a petition, motion, objection, or other pleading filed with the court against the applicant alleging the applicant has not properly performed the duties of a fiduciary.

NOTE: Authority cited: Section 6517, Business and Professions Code. Reference: Sections 141, 480, 481, 490, 6533, 6534, 6536, 6538, 6539, and 6561, Business and Professions Code.

§ 4424. Review of Application; Processing Time; Issuance of License.

(a) Within ninety (90) days of receipt of an application for licensure the Bureau shall inform the applicant in writing that it is both complete and accepted for filing or that it is deficient and what specific information or documentation is needed to complete the application. An application is considered complete if it is in compliance with Section 4422.

(b) Once the application is complete and accepted for filing, the Bureau shall inform the applicant in writing within thirty (30) days that he/she are approved or denied for licensure. Once approved for licensure, the applicant shall submit the initial license fee required in Section 4580 subject to the limitation of subdivision (b) of Section 4426 to become a licensed professional fiduciary under the Act.

NOTE: Authority cited: Sections and 6517, Business and Professions Code. Reference: Sections 141, 6535, 6536, and 6537, Business and Professions Code.

§ 4426. Abandonment of Application.

(a) An application for licensure shall be deemed abandoned and the application fee forfeited when the applicant fails to complete the application within twelve (12) months from the date of notification of deficiency or, if applicable, within twelve (12) months from date of notification of examination eligibility as provided for in Section 4500.

(b) An application for licensure shall be deemed abandoned when an applicant approved for licensure by the Bureau fails to submit the initial license fee required in Section 4580 within twelve (12) months from the date of approval for licensure.

NOTE: Authority cited: Section 6517, Business and Professions Code. Reference: Sections 142 and 6533, Business and Professions Code.

§ 4428. Duration of Initial License Period; First License Renewal Date; Proration of Initial License Fee; Continued Education Requirements for Initial License Period.

(a) To adjust the duration of the initial license period setting the renewal date for each licensee, a professional fiduciary's initial license shall expire at twelve (12) midnight on the last day of the month in which the second birthday of the licensee occurs after the issuance of the license if not renewed. No license shall be issued for less than twelve (12) or more than 24 months.

(b) The initial license fee shall be prorated as required in Section 4580.

NOTE: Authority cited: Sections 152.6, and 6517, Business and Professions Code. Reference: Sections 134, 152.6, and 6541, Business and Professions Code.

Article 3. Prelicensing and Continuing Education

Section 4440. Prelicensing Education Requirements.

To qualify for licensure under the Act an applicant shall complete thirty (30) hours of prelicensing education credit subject to the conditions of this Article. The following courses shall qualify for prelicensing education credit:

(a) Any education course taken on or after January 1, 2007, that meets the requirements of an approved education course under Section 4444.

(b) Any fiduciary management course taken from the California State University, Fullerton, Extended Education Program.

NOTE: Authority cited: Section 6517, Business and Professions Code. Reference: Section 6538, Business and Professions Code.

Section 4442. Continuing Education Requirements.

(a) Annual time requirements.

(1) To renew a license, a licensee shall earn during each annual renewal period a minimum of fifteen (15) hours of continuing education credit from approved education courses as defined in Section 4444 subject to the conditions of this Article.

(2) Courses qualifying for continuing education credit must be completed following licensure and within the one-year renewal period each cycle.

(3) A licensee who serves as an instructor in an approved education course for continuing education as provided for in subdivision (a) of Section 4444, may receive 1.5 hours of continuing education course participation credit for each hour of new course instruction presented. A maximum of 6 of the fifteen (15) hours of continuing education credit may be earned under this paragraph.

(4) A maximum of 4 of the fifteen (15) hours of continuing education credit may be earned through independent study under the supervision of an approved education provider pursuant to Section 4446 that supplies evidence of completion.

(b) Annual subject topic requirements.

(1) Continuing education credit shall be earned by taking approved education courses in at least one of the subject topics as provided for in Section 4444.

(2) At least 2 hours of continuing education credits each year shall be in ethics for fiduciaries.

NOTE: Authority cited: Section 6517, Business and Professions Code. Reference: Section 6538, Business and Professions Code.

Section 4443. Continued Education for First License Renewal.

For the initial license period established pursuant to Section 4428, each licensee must comply with the continued education requirements of Section 4442.

NOTE: Authority cited: Sections 152.6, and 6517, Business and Professions Code. Reference: Sections 134 and 152.6, Business and Professions Code.

Section 4444. Approved Education Courses.

(a) Eligible education courses, as defined in subdivision (b), offered or approved by an approved education provider listed in Section 4446, are approved education courses that meet the prelicensing and continuing education requirements of this Article.

(b) Programs, seminars, and courses of study that are relevant to fiduciary responsibilities of estate management or of fiduciary responsibilities of the person for at least one of the subject topics as specified in subdivision (e), that address the areas of proficiency, competency, and performance of a fiduciary, and impart knowledge and increase understanding of the fiduciary profession or of the California judiciary or the legal process as it relates to the administration of fiduciary responsibilities are eligible education courses.

(c) An approved education course may be offered in a real-time classroom setting, delivered by video presentation from a remote location or by other delivery means, including online.

(d) An approved education course may include independent study, subject to the limitations of paragraph (4) of subdivision (a) of Section 4442, if the education provider supplies evidence of completion. A course is not independent study if the education provider requires evidence of comprehension prior to issuing a certificate of completion, as required in subdivision (c) of Section 4448.

(e) Subject topics for eligible education courses, as defined in subdivision (b), include the following:

- (1) Conservatorship;
- (2) Guardianship;
- (3) Trust administration;
- (4) Durable Power of Attorney;

(5) The California court system including court jurisdiction and responsibilities; the state and federal constitution, California statutes, rules of court, case law, administrative law, and current issues in the California court system relevant to the fiduciary profession;

(6) Ethics for fiduciaries.

NOTE: Authority cited: Section 6517, Business and Professions Code. Reference: Section 6538, Business and Professions Code.

Section 4446. Approved Education Providers.

(a) Approved education providers may include accredited educational institutions, professional associations, professional continuing education entities, public or private for-profit or not-for-profit entities, and court-connected groups. An "accredited educational institution" is a college or university, including a community or junior college, accredited by a regional accrediting organization recognized by the Council for Higher Education Accreditation.

(b) The following educational entities that offer or approve eligible education courses as defined in subdivision (a) of Section 4444, in accordance with the requirements of Section 4448, are approved education providers of courses that meet the prelicensing and continuing education requirements of this Article:

(1) An accredited educational institution;

(2) An education provider offering courses sponsored by a local court of the State of California;

(3) An education provider offering courses approved by the California State Bar for continuing education;

(4) An accountancy organization or an education provider, if the education qualifies with the California State Board of Accountancy for continuing education credit for renewal of an individual license as a Certified Public Accountant;

(5) An education provider offering courses registered with the Certified Financial Planner Board of Standards, Inc.;

(6) An education provider offering courses approved by the California Department of Insurance;

(7) An education provider of continuing education courses approved by the California Board of Registered Nursing;

(8) An education provider offering courses approved by the California Board of Psychology;

(9) An education provider offering courses approved by the California Board of Behavioral Sciences;

(10) The California Department of Mental Health, Social Services and Developmental Services;

(11) The Professional Fiduciary Association of California;

(12) The California State Association of Public Administrators, Public Guardians, and Public Conservators;

(13) The National Guardianship Association and its state affiliates;

(14) The National Association of Professional Geriatric Care Managers;

(15) The American Bar Association;

(16) The American Society of Aging;

(17) The Gerontological Society of America;

(18) The National Association of Social Workers;

(19) The National College of Probate Judges;

(20) The National Elder Law Foundation;

(21) The American Bankers Association and its training providers;

- (22) The Cannon Financial Institute.
(23) Any Long Term-Care Ombudsman program certified by the California Department of Aging;
and,
(24) An Internal Revenue Service/Office of Professional Responsibility Approved Program Sponsor for Continuing Education for Enrolled Agents.

NOTE: Authority cited: Section 6517, Business and Professions Code. Reference: Section 6538, Business and Professions Code.

Section 4448. Requirements for Education Providers.

Each education provider shall:

- (a) Ensure that the instructors teaching qualified education courses are proficient and knowledgeable in the subject matter;
(b) Monitor and evaluate the quality of courses, curricula, instructors, and instructor training;
(c) Maintain records of attendance or independent study and distribute to each participant a certificate of completion that identifies the education provider and documents the subject taught, the date of completion of the education course, and the amount of education credit offered;
(d) Maintain documentation of approved education courses offered for prelicensing and continuing education credit under this article for a period of at least five years from the date the education course was offered; and
(e) Provide to the Bureau upon request any documentation of approved education courses for prelicensing and continuing education credit, including records of attendance or independent study.

NOTE: Authority cited: Section 6517, Business and Professions Code. Reference: Section 6538, Business and Professions Code.

Section 4450. Proof of Compliance of Prelicensing Education.

Each applicant is responsible for ensuring compliance with the prelicensing education requirements of this Article.

- (a) To demonstrate compliance an applicant shall sign under penalty of perjury on an application form, as provided for in Section 4422, provided by the Bureau that they have completed thirty (30) hours of approved prelicensing education courses.
(b) An applicant shall maintain documentation of completion of prelicensing education courses for a period of at least three years from the date of the issuance of the license.
(c) Each applicant shall provide any information requested by the Bureau within ten (10) business days of the request, to determine compliance with the prelicensing education requirements of the Act.

NOTE: Authority cited: Section 6517, Business and Professions Code. Reference: Section 6538, Business and Professions Code.

Section 4452. Proof of Compliance of Continuing Education Requirements.

Each applicant is responsible for ensuring compliance with the continuing education requirements of this Article.

(a) To demonstrate compliance a licensee shall sign under penalty of perjury on an annual renewal application form provided by the Bureau that they have completed fifteen (15) hours of approved continuing education courses.

(b) A licensee shall maintain documentation of completion of continuing education courses for a period of at least three years from the date of renewal.

(c) Each licensee shall provide any information requested by the Bureau within ten (10) business days of the request, to determine compliance with the continuing education requirements for license renewal.

NOTE: Authority cited: Section 6517, Business and Professions Code. Reference: Section 6538, Business and Professions Code.

Article 4. Code of Ethics

Section 4470. General Principles.

(a) A licensee's fiduciary duties recognized under this Article are based upon the fiduciary relationship established with the consumer as follows:

- (1) A licensee's relationship to a conservatee when acting as a court appointed conservator;
- (2) A licensee's relationship to a ward when acting as a court appointed guardian;
- (3) A licensee's relationship to a principal when acting under a durable power of attorney; and,
- (4) A licensee's relationship to a beneficiary when acting as a trustee.

(b) The licensee shall comply with all local, state, and federal laws, regulations, and requirements developed by the courts and the Judicial Council as a minimum guide for the fulfillment of the fiduciary duties recognized under this Article.

(c) The licensee shall protect all rights of the consumer that relate to licensee's fiduciary duties to the consumer.

(d) The licensee shall refrain from representing the consumer in areas outside the scope of legal authority.

(e) The licensee shall seek competent professional advice whenever appropriate for the benefit of the consumer.

(f) Consistent with the licensee's fiduciary duties, the licensee shall provide or arrange for services to the consumer, to the extent they are appropriate and reasonable based upon the needs of the consumer, that are in the best interest of the consumer.

(g) Notwithstanding any other provision of law, any expense incurred by the licensee for the delivery of services that are provided to, or arranged for, the consumer by the licensee, including attorney fees or fees to the licensee for services, shall be considered reasonable if approved by the court.

NOTE: Authority cited: Sections 6517 and 6520, Business and Professions Code. Section 6520, Business and Professions Code.

Section 4472. Decision Standards.

(a) The provisions under this section apply to those licensed fiduciaries acting in the capacity of a conservator, guardian, or agent under durable power of attorney for health care or for finances.

(b) The licensee shall provide the consumer with every reasonable opportunity to exercise those individual choices that the consumer is capable of exercising.

(c) When the licensee is making decisions on behalf of the consumer, the licensee shall use every reasonable good faith effort to ascertain the desires of the consumer prior to making any decisions, and shall make decisions therefore predicated on the ascertained desires of the consumer, unless doing so would violate the licensee's fiduciary duties to the consumer or impose an unreasonable expense on the estate.

(d) If after every reasonable good faith effort the desires of the consumer cannot be ascertained or if exercising them would violate the licensee's fiduciary duties to the consumer or impose an unreasonable expense on the estate, the licensee shall make decisions that are in the best interest of the consumer.

(e) Decisions made on behalf of the consumer shall take into consideration all known ethnic, religious, social and cultural values of the consumer whenever possible.

NOTE: Authority cited: Sections 6517 and 6520, Business and Professions Code. Section 6520, Business and Professions Code.

Section 4474. Confidentiality.

(a) The licensee shall closely guard against the disclosure of personal information regarding the consumer except when such disclosure is required by law or necessary to protect the best interest of the consumer.

(b) Disclosure of consumer information shall be limited to what is lawful, necessary and relevant to the issue being addressed.

NOTE: Authority cited: Sections 6517 and 6520, Business and Professions Code. Section 6520, Business and Professions Code.

Section 4476. Conflict of Interest.

(a) The licensee shall avoid actual conflicts of interest, and consistent with the licensee's fiduciary duties, shall not engage in any activity where there is the reasonable appearance of a conflict of interest.

(b) The licensee shall not engage in any personal, business, or professional interest or relationship that is or reasonably could be perceived as self-serving or adverse to the best interest of the consumer.

(c) The licensee shall protect the rights of the consumer and the estate against infringement by third parties.

NOTE: Authority cited: Sections 6517 and 6520, Business and Professions Code. Section 6520, Business and Professions Code.

Section 4478. Residential Placement.

(a) The provisions under this section apply to those licensed fiduciaries acting in the capacity of a conservator, guardian, or agent under durable power of attorney for health care.

(b) The licensee shall be informed and aware, and consider the options and alternatives available when establishing the consumer's place of residence.

(c) The licensee shall use every reasonable good faith effort to ascertain the desires of the consumer prior to making any decisions when establishing the consumer's residence, unless doing so would violate the licensee's fiduciary duties to the consumer or impose an unreasonable expense on the estate.

(d) If after every reasonable good faith effort the desires of the cannot be ascertained or if exercising them would violate the licensee's fiduciary duties to the consumer or impose an unreasonable expense on the estate, the licensee shall select the least restrictive and appropriate residence that is available and necessary to meet the needs of the consumer that are in the best interest of the consumer.

(e) The licensee shall not remove the consumer from his or her home or separate the consumer from family and friends unless such removal is appropriate and in the best interest of the consumer.

(f) The licensee shall seek professional evaluations and assessments whenever appropriate to determine whether the current or proposed placement of the consumer represents the least restrictive and appropriate residence that is available and necessary to meet the needs of the consumer that are in the best interest of the consumer.

(g) The licensee shall monitor the placement of the consumer on an on-going basis to ensure its continued appropriateness, and shall make changes whenever necessary that are in the best interest of the consumer.

(h) The licensee shall take all action necessary to protect the consumer from financial and/or physical harm or abuse.

NOTE: Authority cited: Sections 6517 and 6520, Business and Professions Code. Section 6520, Business and Professions Code.

Section 4480. Care, Treatment and Services.

(a) The provisions under this section apply to those licensed fiduciaries acting in the capacity of a conservator, guardian, or agent under durable power of attorney for health care.

(b) The licensee shall protect the personal and pecuniary interests of the consumer.

(c) The licensee shall use every reasonable good faith effort to ascertain the desires of the consumer prior to making any decisions regarding all care, treatment, or services, unless doing so would violate the licensee's fiduciary duties to the consumer or impose an unreasonable expense on the estate.

(d) If after every reasonable good faith effort the desires of the consumer cannot be ascertained or if exercising them would violate the licensee's fiduciary duties to the consumer or impose an unreasonable expense on the estate, the licensee shall make decisions regarding care, treatment, and services that are in the best interest of the consumer.

(e) The licensee shall be cognizant of his or her own limitations of knowledge, and shall seek professional evaluations and assessments whenever appropriate to determine whether the current or proposed care, treatment, and services are appropriate and in the best interest of the consumer.

(f) The licensee shall monitor the care, treatment, and services on an on-going basis to ensure its continued appropriateness, and shall make changes whenever necessary that are in the best interest of the consumer.

NOTE: Authority cited: Sections 6517 and 6520, Business and Professions Code. Section 6520, Business and Professions Code.

Section 4482. Management of the Estate.

(a) The licensee shall protect the assets of the estate.

(b) The licensee shall pursue claims against others when it reasonably appears to be in the best interest of the consumer or the estate to do so.

(c) The licensee shall defend against actions or claims against the estate when it reasonably appears to be in the best interest of the consumer or the estate to do so.

(d) The licensee may incur expenses that are appropriate to the estate, in relation to the assets, overall investment strategy, purpose, and other relevant information and circumstances when investing and managing estate assets.

(e) Consistent with the licensee's fiduciary duties, the licensee shall manage the assets of the estate in the best interest of the consumer.

(f) The licensee shall manage the estate with prudence, care and judgment, maintaining detailed fiduciary records as required by law.

NOTE: Authority cited: Sections 6517 and 6520, Business and Professions Code. Section 6520, Business and Professions Code.

Section 4484. Limitation or Elimination of Fiduciary Powers; Restoration of Capacity; Termination of Fiduciary Relationship.

(a) When appropriate and in the best interest of the conservatee, licensed conservators under the Act shall not oppose and, in appropriate circumstances shall seek, limitations on the licensee's powers or authority to act, elimination of unnecessary or no-longer necessary powers, or termination of the proceeding and restoration of the conservatee's legal capacity.

(b) In all fiduciary relationships subject to the Act, when appropriate and in the best interest of the consumer, the licensee shall take all reasonable steps to facilitate termination of the fiduciary relationship.

(c) In all fiduciary relationships subject to the Act, the licensee shall not oppose or interfere with efforts to terminate the licensee's fiduciary relationship with a consumer for any reason other than as necessary or appropriate to protect or promote the best interest of that consumer.

NOTE: Authority cited: Sections 6517 and 6520, Business and Professions Code. Section 6520, Business and Professions Code.

Article 5. Examination

§ 4500. Examination.

(a) Once an applicant is deemed eligible to take the licensing examination, the applicant has twelve (12) months in which to achieve a passing score. If an applicant initially fails to pass the examination the applicant may sit for re-examination a maximum of four times within the twelve (12) month eligibility period not to exceed one re-examination attempt every 30 days.

(b) The licensing examination shall include a portion that is specific to California law.

NOTE: Authority cited: Sections 6517 and 6539, Business and Professions Code. Reference: Sections 6518, 6533, and 6539, Business and Professions Code.

Article 6. License Denial

§ 4520. Substantially Related Criteria for Denial of License.

For purposes of denial of a license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a professional fiduciary if to a substantial degree it demonstrates present or potential unfitness of a person holding a license to perform the functions authorized by the license in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include but not be limited to fiscal dishonesty or breach of fiduciary responsibilities of any kind.

NOTE: Authority cited: Sections 481 and 6517, Business and Professions Code. Reference: Sections 481, 6536, and 6537, Business and Professions Code.

§ 4522. Rehabilitation Criteria for Denial of License.

When considering the denial of a license under Section 480 or 6536 of the Business and Professions Code, the Bureau, in evaluating the rehabilitation of the applicant and his or her present eligibility for a license, shall consider the following criteria:

- (a) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- (b) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered grounds for denial under Sections 480 and 6536.
- (c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (a) or (b).
- (d) The extent to which the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant.
- (e) Evidence, if any, of rehabilitation submitted by the applicant.

NOTE: Authority cited: Sections 482 and 6517, Business and Professions Code. Reference: Sections 482, 6536, and 6537, Business and Professions Code.

Article 7. Reporting Duties of Licensee

§ 4540. Annual Reporting Requirements of Licensee.

(a) A licensee is required to file an annual statement that complies with the requirements of Section 4542, within sixty (60) days from the date of issuance of a license as a professional fiduciary. A licensee may be subject to cite or fine or disciplinary action for failure to comply with this subdivision.

(b) A licensee is required to file an annual statement that complies with the requirements of Section 4542 no later than sixty (60) days prior to the expiration of the license. A licensee may be subject to cite or fine or disciplinary action for failure to comply with this subdivision.

(c) If an annual statement is filed electronically, the licensee shall fill out the form completely and print and mail in a signed copy within five business days of the electronic filing. The signed copy must be received by the Bureau within the timeframes established in subdivisions (a) and (b) for compliance.

NOTE: Authority cited: Section and 6517, Business and Professions Code. Reference: Sections 6534, and 6561, Business and Professions Code.

§ 4542. Annual Statement.

(a) As provided for in the Act, each annual statement shall include the following information:

(1) Current addresses and telephone and facsimile numbers for licensee's place of business and place of residence.

(2) The licensee's designated address of record for public information.

(3) A list of any other license or professional certificate held by licensee, including information regarding the type, state/county, license or certificate number, date issued, status, and whether the license or certificate has been subject to disciplinary action, including revocation or suspension. The licensee may attach a statement of explanation.

(4) The case name, type of case, date of appointment, court location, and case number for all matters where the licensee has ever been appointed by the court to serve as a fiduciary.

(5) The names of the licensee's current conservatees and wards, and the respective case names, court locations, and case numbers; and the names and dates of beginning services for all trusts and estates currently administered by the licensee, and if applicable, the respective case names, court locations, and case numbers for the trusts and estates currently administered by the licensee.

(6) The aggregate dollar value of all assets currently under the licensee's supervision as a professional fiduciary.

(7) The case names, court locations, and case numbers of all conservatorships and guardianships that are closed, and the dates of closure, for which the licensee served as the conservator or guardian; and the names of all trusts or other estates that are closed for which the licensee served as the trustee or personal representative and the dates of closure, and if applicable, the case names and case numbers for the trusts or other estates that are closed for which the licensee served as the trustee or personal representative.

(8) Whether the licensee or a family member of the licensee holds any ownership or beneficial interests in any businesses or other enterprises that have received payment from a client of the licensee, including the names of the applicable businesses or other enterprises, the names of the respective clients, and the dates of any payments received.

(9) The names of any persons or entities that have an interest in the licensee's professional fiduciary business.

(10) Whether the licensee has filed for bankruptcy or held a controlling financial interest in a business when that business filed for bankruptcy in the last ten (10) years and the date of the bankruptcy filing. The licensee may attach a statement of explanation.

(11) Whether the licensee has been convicted of a crime. The licensee may attach a statement of explanation.

(12) Whether the licensee has been found by a court to have breached a fiduciary duty, the date, case name, court location, and case number associated with each breach of fiduciary duty. The licensee shall submit a record of the court findings and orders related to each specific case. The licensee may file an additional statement of the issues and facts pertaining to each case.

(13) Whether the licensee has been removed as a fiduciary by a court for breach of trust, the date, case name, court location, and case number associated with each removal. Whether all related appeals have been taken or the time to file an appeal has expired. The licensee shall submit a record of the court findings and orders related to each specific case. The licensee may file an additional statement of the issues and facts pertaining to each case.

(14) Whether the licensee has resigned as a fiduciary in a matter in which a complaint has been filed with the court, the date the complaint was filed, the date of resignation, the case name, court location, and case number associated with each resignation, and a statement of the issues and facts pertaining to each allegation. The licensee shall submit a record of the court findings and orders related to each specific case.

(15) Whether the licensee has settled as a fiduciary in a matter in which a complaint has been filed with the court, the date the complaint was filed, the date of the settlement, the case name, court location, and case number associated with each settlement, and a statement of the issues and facts pertaining to each allegation. The licensee shall submit a record of the court findings and orders related to each specific case.

(b) Unless otherwise indicated, each annual statement filed with the Bureau shall report updated information reflecting any changes from the date of reporting the information on the application for licensure as a professional fiduciary or from the date of signing the last, report as required by law, whichever is applicable, to the present.

(c) As used in this section "complaint" means a civil complaint, a petition, motion, objection, or other pleading filed with the court against the licensee alleging the licensee has not properly performed the duties of a fiduciary.

NOTE: Authority cited: Section 6517, Business and Professions Code. Reference: Sections 141, 480, 481, 490, 6534, 6536, 6560, and 6561, Business and Professions Code.

§ 4544. Ongoing Reporting Duties

(a) A licensee has a duty to report the following information to the Bureau within fifteen (15) business days of the following occurrences:

(1) Any change to addresses and telephone numbers for the licensee's place of business or place of residence.

(2) If the licensee is removed as a fiduciary by the court for breach of trust, the date, case name, court location, and case number associated with the removal. The licensee shall submit a record of the court findings and orders related to the case. The licensee may file an additional statement of the issues and facts of the case.

(3) If the licensee files for bankruptcy or holds a controlling financial interest in a business that files for bankruptcy.

(b) Each licensee shall report any information that is required to be reported on the annual statement, as specified in Section 4542, or that is otherwise authorized by the act or regulation, or provide any information for verification of compliance with any item that is required to be reported on the annual statement or that is authorized by the Act or regulation as requested by the Bureau to the Bureau within fifteen (15) business days of the request or later as specified. Compliance with this subdivision shall be in addition to compliance with the reporting requirements in subdivision (a).

(c) Reporting requirements pursuant to this Section shall be in addition to the annual reporting duties of Section 4540 or any other provision of law.

(d) A licensee may be subject to a citation, that may include a fine, or other disciplinary action for failure to comply with this Section.

NOTE: Authority cited: Section 6517, Business and Professions Code, Reference: Sections 141, 480, 481, 490, 6534, 6536, 6560, and 6561, Business and Professions Code.

Article 8. Renewal of License

§ 4560. Renewal.

(a) A license may be renewed for a period of twelve (12) months.

(b) For license renewal, a licensee shall have met the annual reporting requirements of subdivision (b) of Section 4540, show proof of compliance with the continuing education requirements of Section 4442, and submit the renewal fee as required in Section 4580.

(c) For the first license renewal following the initial license period as provided in Section 4428, each licensee shall comply with the continued education requirements of Section 4442.

NOTE: Authority cited: Sections 152.6 and 6517, Business and Professions Code. Reference: Sections 152.6, 6538, 6541, 6561, and 6592, Business and Professions Code.

§ 4562. Delinquency.

(a) Except as otherwise provided by law, a license which has expired may be renewed upon the filing of an application for renewal and payment of the renewal fee.

(b) If a license is renewed more than thirty (30) days after its expiration, the licensee, as a condition prior to renewal, shall also pay the late delinquency fee required in Section 4580.

NOTE: Authority cited: Section 6592, Business and Professions Code. Reference: Sections 163.5, 6541, and 6592, Business and Professions Code.

Article 9. Fees

§ 4580. Fees.

The following fees are established:

(a) The application fee for a professional fiduciary license shall be four hundred dollars (\$400).

(b) The initial license fee shall be six hundred dollars (\$600) for the first twelve (12) months plus a prorated amount of the renewal fee required in subdivision (c) to adjust the duration of the initial license period to set the renewal date for each licensee as provided in Section 4428.

(c) The renewal fee for a license shall be seven hundred dollars (\$700).

(d) The delinquency fee for a license shall be one hundred and fifty dollars (\$150).

(e) The fee for a duplicate or replacement license shall be twenty-five dollars (\$25).

NOTE: Authority cited: Sections 6517 and 6592, Business and Professions Code. Reference: Sections 122, 134, 152.6, 163.5, 6533, 6541, and 6592, Business and Professions Code.

Article 10. Citations

4600. Authority to Issue Citations: Citation Format.

(a) The Bureau is authorized to issue citations containing orders of abatement and/or administrative fines pursuant to Sections 125.9 or 148 of the Business and Professions Code against a professional fiduciary or an unlicensed person who has committed any acts or omissions which are in violation of the Act or the regulations contained in this Division.

(b) A citation shall be issued whenever any order of abatement is issued or any fine is levied. Each citation shall be in writing and shall describe with particularity the nature and facts of the violation, including a reference to the statutes or regulations alleged to have been violated. The citation shall be served upon the individual.

(c) Each citation issued shall inform the cited person that, if he or she desires a hearing to contest the finding of a violation, that a hearing shall be requested by written notice to the Bureau within thirty (30) days of the issuance of the citation or assessment.

NOTE: Authority Cited: Sections 125.9, 148, and 6517, Business and Professions Code. Reference: Sections 124, 125.9, 148, and 6580, and 6583, Business and Professions Code.

4602. Administrative Fines for Citations.

(a) Where citations issued pursuant to Section 4600 of this Article include an assessment of an administrative fine, the fine shall be up to \$5,000 for each violation.

(b) The Bureau shall consider the factors specified in Section 4604 when determining the amount of the administrative fine.

NOTE: Authority cited: Sections 125.9, 148, and 6517, Business and Professions Code. Reference: Sections 125.9, 148, 6580, and 6583, Business and Professions Code.

4604. Citation Factors.

(a) The following factors shall be considered when determining the amount of an administrative fine:

(1) The good or bad faith exhibited by the cited person.

(2) The nature and severity of the violation.

(3) Evidence that the violation was willful or not.

(4) History of previous violations.

(5) The extent to which the cited person has cooperated with the Bureau.

(6) The extent to which the cited person has mitigated or attempted to mitigate any damage or injury caused by his or her violation.

(7) Extenuating circumstances as justice may require.

(8) A finding by a court in a matter related to the violation.

(b) The sanctions authorized under this section shall be separate from, and in addition to, any other civil or criminal remedy.

(c) Any costs related to a citation issued pursuant to Section 4600, including but not limited to, the payment of the fine levied or costs related to the defense of, or compliance with,

an order issued in the citation, shall not be borne by the consumer served by the licensee in the matter.

NOTE: Authority cited: Sections 125.9, 148, and 6517, Business and Professions Code. Reference: Sections 125.9, 148, 6580, and 6583, Business and Professions Code.

4606. Contest of Citations; Informal Conference.

(a) In addition to requesting an administrative hearing as provided for in subdivision (b)(4) of Section 125.9 of the Business and Professions Code, the cited person may request an informal conference to review the acts charged in the citation. A request for an informal conference shall be made in writing, within ten (10) days after the citation has been served upon the individual.

(b) The Bureau shall hold, within sixty (60) days from the receipt of the request, an informal conference with the cited person. At the conclusion of the informal conference, the Bureau may affirm, modify or dismiss the citation, including any fine levied or order of abatement issued. The Bureau shall state in writing the reasons for the action and transmit a copy of the findings and decision to the cited person. The decision shall be deemed to be a final order with regard to the citation issued, including any administrative fine levied or order of abatement.

(c) If the citation, including any fine levied or order of abatement, is modified, the citation originally issued shall be considered withdrawn and a new citation issued. If the cited person desires a hearing to contest the new citation, he or she shall make a request in writing, within thirty (30) days of receipt of the informal conference decision, to the Bureau. The hearing shall be conducted as provided for in subdivision (b)(4) of Section 125.9. A cited person may not request an informal conference for a citation which has been modified following an informal conference.

NOTE: Authority cited: Section 125.9, 148, and 6517, Business and Professions Code. Reference: Sections 124, 125.9, 148, 6580, and 6583, Business and Professions code.

4608. Compliance with Citation.

The failure of a licensee to comply with a citation containing an assessment of administrative fine, an order of abatement or both an administrative fine and an order of abatement after the citation is final and has been served in accordance with the provisions of Section 11505(c) of the Government Code shall constitute a ground for revocation or suspension of a license.

NOTE: Authority cited: Sections 125.9 and 6517, Business and Professions Code. Reference: Sections 125.9, 6580 and 6583, Business and Professions Code.

4610. Compliance with Order of Abatement.

(a) The time allowed for abatement of a violation shall begin the first day after the order of abatement has been served or received. If a cited person who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his or her control after the exercise of reasonable diligence, the person

cited may request an extension of time from the Bureau in which to complete the correction. Such a request shall be in writing and shall be made within the time set forth for abatement.

(b) When an order of abatement is not contested or if the order is appealed and the person cited does not prevail, failure to abate the violation charged within the time specified in the citation shall constitute a violation and failure to comply with the order of abatement. Failure to timely comply with an order of abatement or failure to pay the fine included in the citation within the time allowed may result in disciplinary action being taken by the Bureau or other appropriate judicial relief being taken against the person cited.

*NOTE: Authority cited: Sections 125.9, 148, and 6517, Business and Professions Code.
Reference: Sections 125.9, 148, 6580 and 6583, Business and Professions Code.*

Article 11. Enforcement

4620. Substantially Related Criteria for License Suspension or Revocation.

For purposes of suspension or revocation of a license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a fiduciary if to a substantial degree it demonstrates present or potential unfitness of a person holding a license to perform the functions authorized by the license in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include but not be limited to fiscal dishonesty or breach of fiduciary responsibilities of any kind.

*NOTE: Authority cited: Sections 481 and 6517, Business and Professions Code,
Reference: Sections 481, 490, 493, 6580 and 6584, Business and Professions Code.*

4622. Rehabilitation Criteria for License Suspension or Revocation.

When considering the suspension or revocation of a license under Section 480 or 6536 of the Business and Professions Code, the Bureau, in evaluating the rehabilitation of the licensee and his or her present eligibility for a license, shall consider the following criteria:

(a) The nature and severity of the act(s) or crime(s) under consideration as grounds for suspension or revocation.

(b) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for suspension or revocation which also could be considered grounds for suspension or revocation under Section 6584 of the Business and Professions Code.

(c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (a) or (b).

(d) The extent to which the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(e) Evidence, if any, of rehabilitation submitted by the licensee.

*NOTE: Authority cited: Sections 482 and 6517, Business and Professions Code,
Reference: Sections 482, 6580, and 6584, Business and Professions Code.*