

PROFESSIONAL FIDUCIARIES BUREAU

ADDENDUM TO INITIAL STATEMENT OF REASONS OF ORIGINALLY PROPOSED TEXT

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:

Introduction

The Professional Fiduciaries Bureau (Bureau) currently licenses and regulates 811 Professional Fiduciaries engaged in the profession as guardians, conservators, trustees and agents under durable power of attorney. 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.

As a condition of licensure to ensure fitness to render professional services, all licensees must submit initial, then annual, statements of their cases and client history. Information about the aggregate dollar value of all assets currently under the licensee's supervision as a professional fiduciary, whether the licensee has filed for bankruptcy or held a controlling financial interest in a business that filed for bankruptcy in the last 10 years, and whether the licensee has ever been removed for cause or resigned in a specific case, the circumstances causing that removal or resignation, and the case names, court locations, and case numbers associated with the removal or resignation, and are a part of the statements and are public record. Licensees must also publicly disclose any discipline imposed by the Bureau.

Problem Being Addressed:

Existing law, Business & Professions (B&P) Code § 138, requires every board, as defined in § 22 of the B&P, 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 (State). Pursuant to B&P § 22, the 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). The Bureau proposes to adopt CCR 4640 to comply with the Department-wide client notice requirement. The adoption of proposed CCR 4640 is intended to effectuate the Bureau's legal mandate of B&P § 138 by requiring professional fiduciary licensees to provide notice sufficient for their clients to know they are regulated by the State through the Bureau.

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 licensees 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.

Anticipated Benefits From This Regulatory Action:

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 licensee, and get potential questions about the profession answered.

Adopt introductory paragraph: The introductory paragraph informs professional fiduciary licensees that they are required to provide notice to current and prospective clients.

Problem: While the Bureau was created in 2007 to regulate professional fiduciaries engaged in the requisite number of cases as guardians, conservators, trustees and agents under durable power of attorney, their clients and often the general public are often unaware that they are licensed by the Bureau and/or that the Bureau regulates the professional services they render. Therefore, clients do not know who to contact for concerns they have about their professional fiduciaries' services or where to make complaints. In addition, individuals do not know they can obtain information from the Bureau about a professional fiduciary's fitness to practice beforehand.

Anticipated Benefit: The Bureau anticipates this provision of the regulatory proposal will benefit licensees' clients and the general public who are prospective clients because they will be informed that professional fiduciaries are licensed and regulated by the Bureau. The Bureau anticipates it will assist current clients because current clients will now be aware that the Bureau is available to address concerns and questions about the professional fiduciary handling their case.

The Bureau anticipates it will also assist prospective clients because prospective clients' knowledge of the Bureau's regulation will afford prospective clients the opportunity to contact the Bureau to obtain information about a licensee's history of discipline, bankruptcy, case removal and resignations to assist the prospective client in determining whether to secure a licensee's services.

Adopt section (a): This provision requires licensees to post a prominently displayed notice at the licensee's place of business with a bold statement of NOTICE TO CONSUMERS and a clear statement that the licensee is both licensed and regulated by the Bureau, along with the Bureau's telephone number for the ease of consumers in contacting the Bureau. The Bureau also proposes the Bureau's website address be included in the notice since having this available will help consumers easily access other questions which may already be answered on the Bureau's website.

Problem: Professional fiduciary licensees' clients and the general public are unaware that professional fiduciaries are a licensed profession.

Anticipated Benefit: The Bureau anticipates this provision of the regulatory proposal will not only make clients and consumers knowledgeable of the Bureau's regulatory authority over licensees, but also make it easier for clients and consumers to contact the Bureau.

Requiring prominent display in a location accessible to clients, in 48-point font is intended to make it easier for clients to see the notice. Requiring the Bureau's contact information

should make it easier for clients and consumers to know how to contact the Bureau. Identifying the Bureau's telephone number allows clients to easily contact the Bureau and identifying the Bureau's website to assist with questions and concerns which may already be posted on the Bureau's website.

Adopt section (b): This provision requires licensees to provide the same information contained in the prominently posted notice, in writing to their clients and/or the client's legal representative, court appointed representative or attorney of law.

Problem: Licensed professional fiduciaries perform their Bureau regulated services in various environments. Some perform them from home while others perform them at established places of business, including a business office location, medical facility, health facility or nursing facility. As such, many licensees' do not maintain an office and even if they do, they regularly meet with clients away from their place of business. Since a client may never frequent a licensee's place of business, the client may never know that the licensee is regulated by the Bureau absent an additional method of notice. Additionally, due to the innate nature of the profession, many licensees' clients are minors or vulnerable individuals who have been determined to be mentally or physically incapacitated and thus unable to comprehend and/or are prohibited from making decisions on their own. Therefore, notice to these clients alone would be insufficient to adequately inform them about the Bureau. And, since licensees are often designated to make decisions on these vulnerable clients' behalf, to better ensure notice of Bureau regulation of the licensee, notice may also need to be provided to another individual designated as the client's legal representative, legal court representative, or attorney of law.

Anticipated Benefit: The Bureau anticipates this provision will benefit clients because it is a mechanism to ensure that either the client, or the individual designated to make decisions on the client's behalf, other than the licensees, is adequately informed about the Bureau. And, requiring licensees maintain a signed copy in the client's file benefits the Bureau in its regulatory capacity as it is the best way for the Bureau to verify whether a licensee complied with his/her duty to notify clients.

Adopt section (c):

Problem: In addition to direct client interactions, profession fiduciary licensees routinely interact with various people and entities on their client's behalf, such as employees of banking and financial institutions, healthcare and medical facilities, and court personnel. Employees of these businesses would not normally frequent a licensees' place of business to do business, so they would not be able to see the prominently posted notice, even if the licensee had a place of business. And, since these individuals are not clients, they would not receive written notice required by subdivision (b).

Anticipated Benefit: The Bureau anticipates this website provision will benefit clients and the general public by providing additional protection to ensure members of the public who interact with licensees, but would not have access to the notices required by subdivisions (a) and (b), are informed that licensees are regulated by the Bureau in case they need to make a complaint about a licensee's conduct.

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.