

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-08)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-7369-0165-024	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY DEPARTMENT OF REAL ESTATE			AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE Fee and Subdivision Regulations		TITLE(S) 10	FIRST SECTION AFFECTED 2716.1	2. REQUESTED PUBLICATION DATE January 16, 2009
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON DAVID B. SEALS	TELEPHONE NUMBER (916) 227-0791	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved- Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S)		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)		
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)				
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT			
	AMEND			
	REPEAL			
3. TYPE OF FILING				
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)	
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only	
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Other (Specify) _____			
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)				
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)				
<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____	
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY				
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal		
<input type="checkbox"/> Other (Specify) _____				
7. CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)	

8.

I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE

TYPED NAME AND TITLE OF SIGNATORY

TITLE 10. CALIFORNIA DEPARTMENT OF REAL ESTATE

**NOTICE OF PROPOSED CHANGES IN THE REGULATIONS
OF THE REAL ESTATE COMMISSIONER**

Jeff Davi, Real Estate Commissioner, proposes to adopt, amend and/or repeal the proposed regulations described below in Title 10, California Code of Regulations, after considering all comments, objections and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Commissioner proposes to adopt, amend and/or repeal sections 2716.1, 2790.1.5, 2797, and 2810.5 in Title 10 of the California Code of Regulations (CCR).

PUBLIC COMMENTS

The Commissioner or his representative will hold a public hearing starting at 10:00 AM, on March 6, 2009, at the Department of Real Estate Examination Room, located at 2200 X Street, Suite 120B, Sacramento, California. The Examination Room is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony to the Commissioner.

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Commissioner. The written comment period closes on March 6, 2009. All written comments must be received by 5:00 p.m. on that date at the Department's Sacramento Office as follows:

David B. Seals, Real Estate Counsel
Department of Real Estate
2201 Broadway
P. O. Box 187000
Sacramento, CA 95818-7000

Telephone: (916) 227-0791

Comments may be sent via electronic mail to regulations@dre.ca.gov or via fax to David B. Seals at (916) 227-9458.

AUTHORITY AND REFERENCE

The changes to the regulations are authorized by Business and Professions Code sections 10080, 10226, 11001, 11011, and 11281 to implement, interpret or make specific Business and

Professions Code sections 10153.4, 10201, 10209.5, 10210, 10214.5, 10215, 11003, 11004.5, 11010, 11018.5, and 11232 and Civil Code section 1351.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

SUMMARY OF EXISTING LAWS AND REGULATIONS

Sections 10201, 10209.5, 10210, 10214.5 and 10215 of the Business and Professions Code specify the maximum fees to be charged for the various licenses of real estate brokers and salespersons, for the renewal or late renewal of those licenses, and for examinations required to obtain the licenses. As a result of various factors, in 1997, Section 10226 of the Business and Professions Code was amended and Section 10226.5 was adopted to require the Department to assess the fees charged and revenues to be raised from those fees to determine if fees should be raised or lowered. Section 2716.1 was adopted in 2003 to stabilize the fees while maintaining compliance with the new and amended statutes. The changes proposed herein in Regulation Section 2716.1 are intended to implement, interpret or make specific the applicable laws and regulations cited hereinabove.

Section 11011 of the Business and Professions Code specifies the maximum filing fees in connection with applications to the Department relating to subdivisions. As a result of various factors, in 1997, Section 10226 of the Business and Professions Code was amended and Section 10226.5 was adopted to require the Department to assess the fees charged and revenues raised from those fees to determine if fees should be raised or lowered. Section 2790.1.5 was adopted in 2003 to stabilize the fees while maintaining compliance with the new and amended statutes. The changes proposed herein in Regulation Section 2790.1 are intended to implement, interpret or make specific the applicable laws and regulations cited hereinabove.

Section 11018.5(e) of the Business and Professions Code states that the commissioner shall issue a public report if the commissioner finds with respect to any subdivision that reasonable arrangements have been or will be made as to the interest of each of the purchasers of lots, apartments, or condominiums in the subdivision with respect to the management, maintenance, preservation, operation, use, right of resale, and control of their lots, apartments, or condominiums, and such other areas or interests, whether or not within, or pertaining to, areas within the boundaries of the subdivision, as have been or will be made subject to the plan of control proposed by the owner and subdivider, and which are included in the offering. Regulation 2797 allows individual homeowner maintenance of attached dwelling units in limited circumstances but incorrectly appears to restrict the types of dwellings to which it applies. The changes proposed herein in Regulation Section 2797 are intended to clarify the existing regulation by removing references to common interest development types as defined in California Civil Code §1351 and implement, interpret or make specific the applicable laws and regulations cited hereinabove.

Section 11232 of the Business and Professions Code, part of the Vacation Ownership and Time-Share Act of 2004, specifies the maximum filing fees in connection with applications to the Department relating to time-share interests. As a result of various factors, in 1997, Section 10226 of the Business and Professions Code was amended and Section 10226.5 was adopted to require

the Department to assess the fees charged and revenues to be raised from those fees to determine if fees should be raised or lowered. Section 2810.5 was adopted in 2005 to stabilize the fees while maintaining compliance with the new and amended statutes. The changes proposed herein in Regulation Section 2810.5 are intended to implement, interpret or make specific the applicable laws and regulations cited hereinabove.

SUMMARY OF THE EFFECT OF THE PROPOSED ACTION

AMENDMENT OF SECTION 2716.1

Increases fees charged for the various licenses of real estate brokers and salespersons, for the renewal or late renewal of those licenses, and for examinations required to obtain the licenses, from the current 1982 levels to the statutory maximums. This action is required to allow the Department to remain solvent.

AMENDMENT OF SECTION 2790.1.5

Increases fees, in connection with applications to the Department relating to subdivisions, from the current 1982 levels to the statutory maximums. This action is required to allow the Department to remain solvent.

AMENDMENT OF SECTION 2797

This regulation is being amended to clarify that the type of a common interest development (whether a condominium or a planned development) is not affected by homeowner association maintenance responsibilities or physical construction of a residential dwelling by changing references from “unit(s)” to “dwelling(s)”, substituting “residential” for “condominium” where appropriate, and making specific reference to the controlling statute.

AMENDMENT OF SECTION 2810.5

Increases fees, in connection with applications to the Department relating to time-share interests, to the statutory maximums. This action is required to allow the Department to remain solvent.

EFFECT ON SMALL BUSINESS

The proposed regulatory changes will not substantially adversely affect small business. A detailed estimate of the costs is included in the 399 included as a part of this package as well as in Exhibit 1 to the Initial Statement of Reasons.

DISCLOSURES REGARDING THE PROPOSED ACTION

1. Plain English drafting: The Commissioner has confirmed that these regulations have been drafted in plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).

2. Mandate on local agencies and school districts: None.
3. Cost or savings to any state agency: None.
4. Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 - 17630: None.
5. Other non-discretionary cost or savings imposed upon local agencies: None.
6. Cost or savings in federal funding to the state: None.
7. The Department is not aware of any substantial cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
8. The Commissioner has made an initial determination that the adoption, amendment or repeal of these regulations will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
9. Impact on jobs and business expansion, elimination or creation: The Commissioner has determined that this regulatory proposal will not have a significant impact on the creation or elimination of jobs within the State of California nor will it significantly affect the creation of new businesses, the elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California.
10. Significant effect on housing costs: None.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Commissioner must determine that no reasonable alternative he considered or that has otherwise been identified and brought to his attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Commissioner invites interested persons to present statements or arguments with respect to alternatives to the proposed regulatory action during the written comment period.

CONTACT PERSON

Inquiries concerning the proposed action may be directed to:

David B. Seals, Real Estate Counsel
Department of Real Estate
2201 Broadway
P. O. Box 187000

Sacramento, CA 95818-7000

Telephone: (916) 227-0791

The backup contact person is:

John VanDriel, Assistant Chief Counsel
Department of Real Estate
2201 Broadway
P. O. Box 187000
Sacramento, CA 95818-7000

Telephone: (916) 227-0791

The name of the person who can respond to questions concerning the substance of the proposed regulatory action is:

David B. Seals, Real Estate Counsel
Department of Real Estate
2201 Broadway
P. O. Box 187000
Sacramento, CA 95818-7000

Telephone: (916) 227-0791

Please direct requests for copies of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulation, if any, or other information upon which the rulemaking is based to:

David B. Seals, Real Estate Counsel
Department of Real Estate
2201 Broadway
P. O. Box 187000
Sacramento, CA 95818-7000

Telephone: (916) 227-0791

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS AND INTERNET SITE

The Commissioner will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at his office, at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. The final statement of reasons once it is prepared pursuant to Section 11346.9 of the Government Code will also be a part of the

rulemaking file and available for inspection and copying as indicated above. Portions of the rulemaking file and information regarding the Department are available through our website (www.dre.ca.gov). The express terms of the proposed action written in plain English are available from the agency contact person named in this notice. Copies may be obtained by contacting David B. Seals at the address and phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The Real Estate Commissioner may, on his own motion or at the recommendation of any interested person made by written or oral comment, modify the Proposed Regulation and adopt the Regulation Change as modified if the change is determined to be one that the public could have reasonably anticipated from this Notice, the Informative Digest, and the Initial Statement of Reasons.

If the Commissioner decides to modify the Proposed Regulation change, the Department will make copies of the full text of the regulation, as originally proposed with the proposed modifications clearly indicated, available for not less than 15 days prior to adopting the modified regulation. Copies of the modified regulation will be mailed to all persons who have made written or oral comments concerning the Proposed Regulation and all persons who have requested notification of availability of the modifications.

Requests for modified regulations or other communications concerning the Proposed Regulation change should be addressed to the Department's contact person, David B. Seals, at the address and/or telephone number above.

COMPLIANCE WITH GOVERNMENT CODE §11346.4(A)(1) THROUGH (4)

The Department of Real Estate (the Department) has complied with Government Code §11346.4(a)(1) through (4) and Section 86, Title 10 of the California Code of Regulations, by mailing or delivering a copy of this Notice of Proposed Changes in the Regulations of the Real Estate Commissioner and of the Proposed Regulations with changes indicated in strikeout and underline to the Department's list of interested persons including:

1. Every person who has filed a Request for Notice of Regulatory Action with the Department.
2. The Director of the Department. (The Real Estate Commissioner and the Secretary of the Business, Transportation and Housing Agency).
3. A substantial number of real estate brokers. They are predominantly small businesses, some of which may be, or have been in the past, affected by our Proposed Regulation change. The Department has no way of knowing which are small businesses.
4. The California Association of Realtors, a real estate licensee trade organization and the California Building Industry Association, a homebuilders trade organization.

5. A substantial number of land developers. Not small businesses by definition, but some of which may be, or have been in the past, affected by our Proposed Regulations.

DATED: _____

Jeff Davi
Real Estate Commissioner