

TITLE 10. CALIFORNIA DEPARTMENT OF REAL ESTATE

REGULATIONS TO IMPLEMENT SB 1495

NOTICE IS HEREBY GIVEN

The Real Estate Commissioner and the Department of Real Estate (collectively, "DRE"), propose amending Section 3002 of the Regulations of the Real Estate Commissioner, California Code of Regulations, Title 10, Chapter 6 ("Regulations"), and adding Section 3002.2 to the Regulations, after considering all comments, objections and recommendations regarding this proposed action. Publication of this notice commences a 45-day public comment period.

PUBLIC HEARING

A public hearing is not scheduled. A public hearing will be held if any interested person, or that person's duly authorized representative, submits a written request for a public hearing to the DRE, at the contact listed below, no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or that person's authorized representative, may submit written comments relevant to this proposed regulatory action to the DRE addressed as follows:

Regular Mail

Department of Real Estate
Attn: Jeanine Clasen, Sacramento Legal Office
P.O. Box 137007
Sacramento, CA 95813-7007

Electronic Mail

DRE.RegComments@dre.ca.gov

Facsimile

(916) 263-8767

Comments may be submitted until 5:00 p.m., September 19, 2023.

AUTHORITY AND REFERENCE

Section 10080 of the Business and Professions Code (the "Code") authorizes the DRE to adopt regulations that are reasonably necessary to enforce the provisions of Division 4, Part 1 Part 1 of the Code (Sections 10000 through 10508) and related laws (collectively, the "Real Estate Law"), including the laws governing the real estate education courses that must be completed to qualify for the real estate salesperson license examination and/or license, and the real estate broker license examination and/or license. Herein, persons applying for such license examinations or licenses are referred to as "prospective licensees."

This regulation proposal implements, interprets and makes specific the new law enacted in 2022 known as SB 1495 (Committee on Business, Professions and Economic Development, Chapter 511, Statutes of 2022) ("SB 1495"), which (in pertinent part) revised the "real estate practice" course set forth in Code section 10153.2 ("Section 10153.2"), to include components on implicit bias and fair housing (anti-discrimination) laws, beginning January 1, 2024. Specifically, Section 10153.2, as amended by SB 1495 ("Amended 10153.2"), requires the real estate practice course provided in subdivision (a)(1)(A)(ii) to include the following:

1. A component on implicit bias, including education regarding the impact of implicit bias, explicit bias, and systemic bias on consumers, the historical and social impacts of those biases and actionable steps students can take to recognize and address their own implicit biases.
2. A component on federal and state fair housing laws as those laws apply to the practice of real estate. The fair housing component shall include an interactive participatory component during which the applicant shall roleplay as both a consumer and real estate professional.

Prospective licensees must complete the real estate practice course and other courses set forth in Code sections 10151 and/or 10152.3 to qualify for a real estate license. Courses that count toward these statutory education requirements must meet all applicable statutory criteria. Such courses are provided to prospective licensees by accredited institutions¹ and private vocational schools (collectively, "course providers" or "providers"). Courses that count toward the statutory education requirements must receive the DRE's prior approval if they are offered by private vocational schools. Courses offered by accredited institutions need not have DRE's prior approval, but many accredited institutions seek the DRE's prior approval anyway to ensure that their students meet all statutory real estate education requirements. Once the DRE has approved a real estate education course, existing Section 3002 of the Regulations (or "current Section 3002") requires the provider (regardless of whether it is a private vocational school or accredited institution) to obtain prior DRE approval (or "reapproval") of any "material change" to that course.

The above-referenced portion of SB 1495 follows a related 2021 bill known as SB 263, (Rubio, Chapter 361, Statutes of 2021) ("SB 263"), which made very similar changes to the continuing education course requirements for real estate licensees under Code section 10170.5. Like SB 1495, SB 263 added requirements

¹ An "accredited institution" in this context is defined by Section 10153.5 of the Code as "a college and university" that either: (a) is accredited by the Western Association of Schools and Colleges, or any other regional accrediting agency recognized by the United States Department of Education; or (b) in the judgment of the Real Estate Commissioner, has "a real estate curriculum equivalent in quality to that of an institution accredited as provided in subdivision (a)."

for continuing education on implicit bias and fair housing laws, with an “interactive participatory component,” to Code section 10170.5. In 2022, the DRE adopted regulations necessary for the effective implementation of SB 263 similar to those proposed herein.

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW – SUMMARY OF PROPOSED REGULATION

In this proposal, the DRE amends current Section 3002 and adds new Section 3002.2 to the Regulations (“Section 3002.2”), as necessary to implement SB 1495. Specifically, this proposal:

- Amends Section 3002 to include, in its definition of a “material change” to a real estate education course (“course” or “courses”) previously approved by the DRE, changes that are made to that course for the purpose of satisfying Section 10153.2, as amended by SB 1495.
- Amends Section 3002 to specify, in subdivision (d), that course providers who apply for the DRE’s reapproval of their courses updated to comply with a legislative change to Section 10153.2 must pay the standard fee for course approval applications if their applications are submitted on or after the effective date of the new legislation.
- Amends Section 3002 to remove outdated and obsolete references to “Bureau.”
- Adds new Section 2002.2, which interprets and makes specific the term “interactive participatory component” as used in Amended 10153.2.

Anticipated Benefits of the Proposed Regulation

Section 3002, as amended, benefits the DRE, course providers affected by SB 1495, prospective licensees and members of the public as set forth below.

First, amended Section 3002 benefits the DRE by allowing its effective implementation of the revised education requirements of SB 1495. It allows DRE to require its approval of all previously-approved real estate practice courses that are updated in an effort to comply with Amended 10153.2. Under current Section 3002, real estate education courses offered by private vocational schools that count towards the statutory education requirements in Section 10151 and/or Section 10153.2 must have DRE’s prior approval obtained through a course-approval application procedure. Bus. & Prof. Code § 10153.5. Current Section 3002 also requires the DRE’s reapproval of any approved course (regardless of whether it is provided by an accredited institution or private vocational school) that is “materially changed,” but expressly excludes from this requirement courses that are modified to comply with new legislation. Accordingly, existing law does not currently authorize the DRE to require its reapproval of previously-approved real estate practice courses that are

modified to comply with the revised education requirements of SB 1495. Amended Section 3002 authorizes this by slightly expanding its definition of “material change” to include any course modifications made for the purpose of complying with legislative changes to Section 10153.2 (including those imposed by SB 1495).

Second, amended Section 3002 benefits the DRE and the field by allowing the DRE to ensure the proper and uniform application of the new SB 1495 requirements by course providers throughout this state. The real estate courses required by Amended 10153.2 include components on “implicit bias” and “fair housing,” which are generally described therein and susceptible to a wide range of different interpretations. Without the DRE’s reapproval process, providers may update their real estate practice courses based on their own interpretations of these requirements, which is likely to result in inconsistent and/or lower quality updated courses, and/or “updated” courses that do not comply with SB 1495 being offered to prospective licensees. The DRE’s reapproval process authorized by amended Section 3002 benefits the DRE and the field by avoiding this result and allowing the DRE to ensure the uniform, effective implementation of SB 1495. Through this process, the DRE can give course providers crucial guidance necessary for them to understand and make their updated courses comply with SB 1495. This benefits prospective licensees who take their updated courses by ensuring sufficient quality and uniformity in the course contents. Ensuring proper and sufficient education of prospective licensees benefits members of the public who deal with them as licensees.

Third, amended Section 3002 allows the DRE’s implementation of SB 1495 in a manner consistent with its 2021 implementation of parallel changes to statutory continuing education requirements for real estate licensees imposed by SB 263. As noted above, in 2022, the DRE adopted regulations necessary to implement SB 263 that are very similar to those proposed here.

Fourth, amended Section 3002 clarifies for course providers how they can comply with Amended 10153.2, and when they will have to pay a course-approval fee to obtain the DRE’s approval of their real estate practice courses modified for such compliance. This information also serves to underscore the fact that DRE approval is required for such modified courses.

As to Section 3002.2, it benefits the DRE, course providers, prospective licensees and members of the public who deal with them, in that it enhances implementation of course education by specifically defining the term “interactive participatory component” required in Section 10153.2, as amended by SB 1495. Proposed Section 3002.2 benefits the DRE by allowing its effective and efficient dissemination of crucial guidance on the meaning of this otherwise-ambiguous term in the form of a regulation. This regulation will benefit course providers by giving them a specific definition of “interactive participatory component” which they can use to make sure their courses comply with SB 1495.

Section 3002.2 allows the DRE to implement the “interactive participatory component” required by SB 1495 in a manner consistent with its implementation of the parallel requirement for continuing education of licensees added to Section 10170.5 by SB 263.

Lastly, by helping the DRE to ensure course providers’ proper compliance with SB 1495, Section 3002.2 will benefit prospective licensees by ensuring their receipt of sufficient education on subjects intended by the Legislature. This, in turn, benefits members of the public who deal with them.

DISCLOSURES REGARDING THE PROPOSED ACTION

The DRE has made the following determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: The DRE anticipates a cost resulting from its waiver of standard course-approval fees (\$150) for providers that apply for its reapproval of their courses updated to comply with SB 1495 before January 1, 2024. Although it is likely that many of these providers will file their reapproval applications on or after January 1, 2024 and therefore be charged such fees, DRE’s economic impact assessment assumes its maximum possible cost based on the maximum possible amount of fees waived.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Cost impacts on a representative private person or business: There are approximately 133 small business providers that will have to apply for DRE’s reapproval of their courses updated to comply with SB 1495 under the proposed regulation. Providers who file such applications with the DRE on or after January 1, 2024 will incur the cost of DRE’s standard course-approval fee (\$150). Although many providers are likely to file their reapproval applications before January 1, 2024 and thereby avoid paying such fees, the economic impact assessment assumes the maximum possible cost to providers based on the maximum possible number of reapproval applications filed on or after January 1, 2024.

Significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states: None.

Significant effect on housing costs: None.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations

The DRE has determined that these proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to the sections affected by this proposal, the DRE has concluded that these are the only State of California regulations relating to these subjects.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The DRE concludes that it is: (1) unlikely that this regulation proposal ("proposal") will eliminate any jobs for real estate licensees or associated professions; (2) unlikely that this proposal will create jobs; (3) unlikely that this proposal will create new businesses of any sort; (4) unlikely that this proposal will eliminate any existing businesses; (5) unlikely that this proposal will result in the expansion of businesses currently doing business in the state; and (6) unlikely that the proposal will benefit worker safety or the state's environment, but will benefit the health and welfare of California residents through improved real estate licensee understanding of implicit bias and fair housing laws.

BENEFITS OF THE PROPOSED ACTION

As to amended Section 3002, it benefits the DRE, course providers and others in at least the following ways. It allows the DRE's effective implementation of SB 1495 by authorizing the requirement that all approved courses modified in an attempt to comply with Amended 10153.2 must be re-reviewed and reapproved by the DRE through its course-approval application process. This requirement allows the DRE to ensure that providers of approved real estate practice courses properly comply with new law affecting those courses, including SB 1495. This benefits course providers, since they will receive crucial one-on-one guidance from the DRE during the approval process on how to make their courses satisfy Amended 10153.2. This benefits the DRE by allowing it to ensure sufficient uniformity and quality in the real estate practice courses received by prospective licensees throughout the state. This benefits prospective licensees who take those courses by ensuring their receipt of sufficient quality education on matters covered in the real estate license examinations and which are relevant to their future licensed activities. Ensuring the proper quality and content of education received by licensees generally benefits consumers who deal with them.

As to Section 3002.2, it benefits course providers and prospective licensees who take their courses by interpreting and specifying certain ambiguous terms in Section 10153.2, as amended by SB 1495. Such specification or interpretation is necessary guidance for providers and prospective licensees to understand and comply with the law. This proposal also benefits the DRE by allowing its efficient and effective dissemination of such crucial guidance in regulatory form. This guidance also helps the DRE ensure the proper content and quality of courses provided to prospective licensees pursuant to Section 10153.2, as amended by

SB 1495. Ensuring the sufficient quality of prospective licensees' education on real estate subjects relevant to their future licensed activity is generally in the best interest of members of the public who deal with them as explained in the preceding paragraph.

SMALL BUSINESS DETERMINATION

All providers affected by this regulation proposal are small businesses. The fiscal impact of this regulation proposal on such providers consists of the standard course-approval fee (\$150) charged to providers that apply on or after January 1, 2024 for the DRE's reapproval of their courses updated to comply with SB 1495. Although many providers are likely to avoid this fee by filing their reapproval applications before January 1, 2024, the DRE's economic impact assessment assumes the maximum possible cost to providers based on the maximum possible number of reapproval applications filed on or after January 1, 2024.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the DRE must determine that no reasonable alternative considered, or that has otherwise been identified and brought to its attention, would be more effective in carrying out the purpose for which this regulatory action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The DRE invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation during the written comment period.

CONTACT PERSON

Inquiries concerning this action may be directed to Jeanine Clasen at (916) 576-3783, or via email at DRE.RegComments@dre.ca.gov. The backup contact person is Stephen Lerner at (916) 576-8100.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The DRE will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its headquarters office: 1651 Exposition Boulevard, Sacramento, California. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons, the Form STD 399 fiscal analysis of the proposal. Copies may be obtained by contacting Jeanine Clasen at the mailing address and email address listed on the first page of this notice.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the DRE may adopt the proposed regulation substantially as described in this notice. If the DRE makes modifications that are sufficiently related to the originally proposed text, DRE will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the DRE adopts the regulation as revised. A request for a copy of any modified regulation(s) should be addressed to the contact person designated above. The DRE will accept written comments on the modified regulation for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website listed below.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the notice, the initial statement of reasons, and the text of the regulations in underline and strikeout can be accessed through DRE's website at www.dre.ca.gov.