

INITIAL STATEMENT OF REASONS

HARMONIZING AND IMPLEMENTATION OF SB 164 (2024) STATE BUDGET FEE ADJUSTMENT FOR THE DEPARTMENT OF REAL ESTATE

TITLE 10, CHAPTER 6

AMENDING SECTIONS 2716.1, 2790.1.5, 2790.6, 2793, 2799.2, 2810.5, 2847, 2915, 3002, AND 3009; AND ADOPTING SECTIONS 2790.1.7, 2851.5, AND 2931

This regulation proposal amends eight existing sections and adds three new sections to the Regulations of the Real Estate Commissioner (California Code of Regulations, Title 10, Chapter 6) ("the Regulations"). The changes proposed will harmonize the fee structure within the Regulations with the statutory fees set by SB 164 (Committee on State Budget and Fiscal Review, Chapter 41, Statutes of 2024) ("SB 164") and implement the full fee restructuring represented by that bill's approval and set out in the supporting materials reviewed and/or approved by the Legislature and Governor's Office.

PROBLEM STATEMENT

The Department of Real Estate ("DRE") is a public entity within the executive branch of the California state government and receives funding to conduct its operations through the fees charged to and collected from applicants, examinees, licensees, and others. As a special funded department, DRE does not receive any monies from the state's General Fund.

Prior to 2024, the Legislature last addressed DRE's fees in 1996 when it passed legislation increasing the statutory maximum or "ceiling" on the amount of fees DRE could charge and collect from its applicants, examinees, licensees, and others. That same year, DRE promulgated regulations increasing its fees to their statutory maximum. DRE promulgated further regulations in 1998, 1999, and 2003 to reduce its fees after securing an operating reserve and thereafter raised its fees in 2009 back to the statutory maximum when its operating reserves dropped.

DRE's present situation, described in detail within the attached Budget Change Proposal ("BCP") that supported the passage of SB 164, which the Legislature passed and Governor signed in 2024, prompted the fee adjustment process that this regulations proposal will complete.

In drafting this proposal, DRE continues to apply the requirement of Bus. & Prof. Code Section 10050.1:

Protection of the public shall be the highest priority for the Department of Real Estate in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

PURPOSE, BENEFITS, AND GOALS OF THIS ADOPTION

This regulatory process completes the fee adjustment process initiated and, in part, accomplished by SB 164. In completing this process, DRE ensures that its regulatory fees are consistent with those established by statute. For details of the specific reasons for this fee resetting process and the chosen amounts, please see the attached Budget Change Proposal ("BCP").

To ensure consistency throughout this fee adjustment process, DRE will rely upon that previously published description of this situation and DRE's proposed approach to its solution, with only one significant exception: The petition process through which certain licensees may request relief from some consequences of past license discipline. DRE's petitions processes are presently subject to regulations development at DRE and will be addressed in a subsequent, subject-specific proposal.

Some additional changes to existing text were added for the following reasons:

DRE notes that SB 164 itself included not just a "ceiling" on most fees. Rather, the language of the bill acted to reset many of DRE's fees via statute upon SB 164's signing, while adding a "ceiling" amount under which DRE may subsequently propose adjustments. Where that is the case, this proposal merely harmonizes the amount appearing in the Regulations to match the amount set in statute by SB 164.

In two instances, fees that were previously set as a firm number within statute were amended by SB 164 to include a current, statutory amount and a ceiling for future adjustments. Where this occurred, DRE's prior regulations did not address those fees at all, as the number within the statutes was fixed. The present proposal includes new regulations language to match the amount that SB 164 set for these fees, and thus create a regulations location for any

subsequent adjustments under the new ceiling for those fees. These new sections are:

- Section 2790.1.7, relating to Out-of-State Land Promotions (pursuant to the fee set out in Bus. & Prof. Code Section 10249.3).
- Section 2851.5, relating to license fees for Prepaid Rental Listing Service licenses (pursuant to the fee set out in Bus. & Prof. Code Section 10167.3).

In Section 2716.1, this proposal eliminates an arcane subdivision (number (3)) and renumbers subsequent references under a new master subdivision (a). A previous renumbering eliminated the lettered master subdivisions, without altering the numerals, a deviation from standard regulations subdivision numbering. In this instance, re-inserting the "(a)" allows DRE to segregate the existing fees together. The eliminated subdivision (3) refers to the conditional licensing program outlined in Bus. & Prof. Code Section 10153.4, which was eliminated via statutory change in 2007.

This proposal also adds a new subdivision (b) within Section 2716.1, specifying the fee for any person to request a certified license history on any licensee. DRE is adding this fee to this section on Licensing because the service is provided within the same division (the Licensing Division) of DRE.¹ The amount for this fee is included in the BCP underlying both SB 164 and this regulations proposal.

In Section 2790.1.5, relating to Public Report Application fees, DRE proposes to insert subdivisions to correspond with existing statutory subdivisions amended by SB 164:

¹ A certified license history is a DRE product, most frequently requested by attorneys involved in litigation where a licensee's licensed status during a particular timeframe is at issue. A certified license history is a summary timeline of critical dates in a given licensee's record. This timeline is written by DRE staff with training in the details of DRE's forms, reviewing each of the individual licensing applications, renewals, broker affiliation transition forms, etc., that appear within DRE's file for each licensee. The end product timeline is certified by DRE's Licensing custodian of records as an accurate reflection of DRE's information on the licensee, and thus admissible as evidence. This product is an efficient alternative to producing certified copies of all the source documents for the court, saving time for litigants, judges, and juries.

- The new subdivision 2790.1.5(a)(10) implements Section 11011(b)(9) of the Code.
- The new subdivision 2790.1.5(a)(11) implements Section 11011(b)(8) of the Code.
- The new subdivision 2790.1.5(a)(14) implements Section 11011(b)(12) of the Code.
- The new subdivision 2790.1.5(a)(15) implements Section 11011(b)(13) of the Code.

Also in Section 2790.1.5 and Section 2810.5, relating to Vacation Ownership and Timeshare Application fees, DRE proposes to eliminate each section's fee "cap" that currently appears in each section's subdivision (b). The caps do not appear in statute, and DRE cannot identify a specific reason why these caps were set (and set to this amount) in regulation. The cap language was added to predecessor fee-setting section (Section 2790.1, previously repealed) of the present regulations sections in an action effective on January 10, 1971. The regulations package that documents the 1971-era proposal does not offer the rationale for implementing a cap for these fees, a common shortcoming in regulations proposals of that era.² In that 1971 regulations package, the description of this amendment states:

Amendment of Section 2790.1³ - This proposed amendment will place a ceiling of \$3,000 on filing fees for standard subdivisions and a \$5,000 ceiling on fees for all other types of subdivisions. In addition, it provides for less than the \$500 base filing fee for subdivisions other than standard subdivisions where there are less than ten lots, parcels, units or undivided interests being offered for sale.

² DRE posted a PDF scan of the 1971-72 regulations package on its website as part of the present proposal, enabling stakeholders to assess DRE's conclusion about the origins of this cap. The digital copy of that regulations package accompanies the present proposal's Notice, Proposed Text, and Initial Statement of Reasons at: dre.ca.gov/About/InvitationPublicComment.html.

³ This section was the direct predecessor of the current Section 2790.1.5 (relating to Subdivisions Public Report Applications) and indirect predecessor of Section 2810.5 (relating to Timeshare Public Reports, as the current law relating to Timeshares originated from corresponding Subdivisions statutes and regulations).

DRE reviewed its records for actual, recent instances where the caps were reached by applicants to assess the possible impact of this proposed change. That payment history shows that a single Public Report Application reached the cap in 2014 and another in 2018, with no more recent such applications. The cap for applications on Timeshare interests is more commonly reached, with an average of 26 applications per year currently paying the maximum set in regulation.

Section 2931 sets out in regulations the fee amount required for the Reinstatement Qualifying Examination (also referred to as the “Professional Responsibility Examination”) that may be required by Order of the Commissioner for reinstatement of a previously disciplined license, pursuant to Section 10182 of the Business and Professions Code. The amount for this fee is included in the BCP underlying both SB 164 and this regulations proposal.

In Section 3002, relating to Continuing Education applications and associated fees, this proposal eliminates a reference to the DRE form for making these applications. The form exists and is frequently used by applicants, but is not required. The required information is already set out in the regulation.

In a number of subdivisions throughout the proposal, DRE made non-substantive changes for consistency of language or improved clarity.

NECESSITY OF THIS ADOPTION

The proposed regulations are necessary to ensure consistency and fairness in its fee schedule which, in turn, ensures the continued funding of DRE – allowing DRE to fulfill its consumer protection functions.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

As noted above, DRE is relying upon the approved BCP document that is attached to this Initial Statement of Reasons.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Prior to 2024, there was a significant passage of time since DRE’s most recent fee increase and, as a result of the 2024 statutory increase, some fees are

changing by a significant percentage, DRE's fees are a relatively minor business expense for the average industry stakeholder. DRE notes, for example, that a DRE license has a four-year term, and that on an annual basis, the cost of a broker license is just over \$100 per year and the cost of a salesperson license remains under \$100 per year.

DRE relies upon these facts to make the following findings.

- The proposal will not have a significant adverse economic impact on business.
- The proposal will not impact the creation or elimination of jobs available within the State of California, as the demand for licensed real estate services will not be impacted.
- The proposal will not significantly affect the creation of new business or the elimination of existing businesses within the State of California, again because the proposal does not impair or enhance the demand for real estate services.
- The proposal does not significantly affect the expansion of existing businesses within the State of California, as the cost impact on a given business remains low.
- The proposal does not affect the elimination of existing businesses within the State of California. Again, this harmonization with the fee statutes does not impact the work and workloads of existing licensees.
- The proposal will have a significant impact on the health and welfare of California residents, as the funding achieved through this fee adjustment ensures DRE's continued consumer protection.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATION AND DRE'S REASONS FOR REJECTING THOSE ALTERNATIVES

Alternative: Include an adjustment for the Mortgage Loan Originator Fees.

The addition of license endorsements for real estate licensees who are mortgage loan originators is the most recent significant addition to DRE's licensing program, with statutory basis added in 2009 (via SB 36, Chapter 160, Statutes of 2009.) and implementing regulations adopted in February, 2010. The annual fee for a mortgage loan originator license endorsement was set at that time to \$300, has not changed since, and is not proposed for adjustment in this package. Why not?

Quite unusually, DRE is not the only California State agency that issues this specific sort of license. DRE shares that role with our sister agency, the Department of Financial Protection and Innovation ("DFPI"). DRE has elected to maintain mortgage loan originator license endorsement fees at their current levels to remain aligned with the fees charged by DFPI for their mortgage loan originator license. Both agencies regulate different industry approaches to the mortgage industry, and so both agencies are involved in licensing this state's mortgage loan originators. DRE and DFPI work closely to ensure that their enforcement of this industry is as consistent between the two agencies as their foundational laws allow, and that includes working in tandem to ensure that the license cost is consistent. Any proposed adjustment of this fee at DRE will necessitate a significant amount of coordination with DFPI, but the nature and timing of DRE's current funding issue made such a project unwise at this time.

Alternative: Consolidate the various fee sections into a single Fee Schedule regulation.

There are a lot of different regulations sections in this proposal, and even with some consistency added to the language by this proposal, some inconsistencies remain. Why not move all of DRE's fees into a single fee schedule for ease of reference?

DRE, with over 100 years in operation, has added fees for different aspects of its responsibilities as its public protection functions were expanded. Each change made sense at the time, we are sure, and the distributed fee sections really only present a challenge when a holistic revision of the fee structure occurs. DRE does not anticipate another holistic revision in the near future, but the concept of a clearer, unified fee schedule remains an attractive option. The same can also be said for the underlying statutes, however, which reflect the same accumulation of different fees in different sections distributed across the variety of code sections that DRE enforces. Rather than attempt creation of a holistic fee schedule in regulations alone at this time, DRE prefers to "table the idea" and consider whether this approach would benefit both the department and its stakeholders sufficiently to warrant uniform and consistent consolidation of fees in both statutes and regulations.

Industry Suggested Alternatives

Pursuant to Business & Professions Code Section 10227, DRE is required to hold a meeting with specified stakeholder groups prior to submitting a fee increase regulations proposal for publication at the Office of Administrative Law. For this proposal, that meeting occurred on December 17, 2025. Two suggestions for this proposal arose at

that hearing, both from persons involved in the housing development industry as regulated by the Subdivided Lands Law.

Industry Alternative 1:

Although DRE's proposal does not extend to the statutory fee maximum for Public Report Applications and other fees that appear in Bus. & Prof. Code Sec. 11011, DRE should consider adopting a variable fee schedule with higher fees charged for expedited processing and lower fees charged for standard processing of Public Report Applications.

For context, this suggestion stems from DRE's oversight of the Subdivided Lands Act, Bus. & Prof. Code Sec. 11000 et seq. That law requires housing developers in California to fully document the substantive promises they intend to make to initial purchasers of new housing developments with five or more units as part of developers' planned sales of new housing. The requirements of the Subdivided Lands Act mitigate the incidence of the variety of housing development fraud that necessitated establishment of the Subdivided Lands Act. The present code sections of the Act have been in place since 1943, but derive from statutes that date back to the creation of DRE in 1919.

The individual initiating this suggestion offered additional description and supporting argument on the record, repeated here to ensure his suggestion is fully described. The concept would parallel the more expensive "expedited filing" offered by the Secretary of State's Office ("SOS") for some filings, such as corporate registrations. Where an applicant at SOS is motivated by time constraints to pay a higher fee, the SOS will reduce its processing times. The industry commenter suggests that ability to use this expedited process would need to be limited in some way, perhaps by regulating how often a given developer and its subsidiaries could pay for the faster service in a given year. Absent that limitation, he believes developers would overwhelm the system with expedite requests if faster service became available (i.e., an excessive number of expedite requests would make expedited handling more difficult if not impossible). He argues that DRE's present statutory timeframes for Public Report Application processing represent much more significant cost to developers than DRE's actual fees themselves, and developers would willingly pay higher fees to reduce processing times. He notes that developers cannot begin to recover sunk costs and interest carrying costs on real estate that may be worth "literally millions of dollars in value" until DRE completes its application review and approval process. Finally, he notes that an expedited process would bring additional housing units to the market faster, in line with the Governor's stated policy.

DRE is already engaged in analysis of its Public Report Application process in light of the housing emphasis in the 2025 State Budget and its trailer bills, as well as the passage of

SB 92 (Weiner, Chapter 512, Statutes of 2025). Presently, DRE is in compliance with the review timeframes that appear in Section 11010.2 of the Subdivided Lands Act, but with present staffing and Public Report Application caseloads, does not have significant flexibility to delay any application in favor of creating a process for expedited review for some other application. Significant additional resources would be needed to add staff and equipment in order to reduce caseloads.

Although DRE appreciates the suggestion, this alternative is outside scope of DRE's proposed regulatory fee package. Plus, adoption of this alternative would require the creation and funding of additional positions, which would necessitate the cooperation and coordination from the Governor's Office, the Legislature, and the Department of Finance through the State Budget Process. That process for Fiscal Year 2026-27 is already underway, and this alternative suggestion is not in that process.

Industry Alternative 2:

The present fee structure includes a fee for DRE review of amended Public Report Applications. Sometimes amendments are very simple and make non-substantive changes, requiring little DRE time and expense to complete. Other times the amendments are significant and require significant time and expense for DRE to analyze. DRE should consider amending the fee schedule to differentiate between "simple" and "substantive" amendments to a Public Report Application, and also consider the timeframes allotted for review of each type.

While the commenter's suggestion is well taken, DRE will not pursue this alternative in the present package.

The commenter is referring to fees for different sorts of amended original, preliminary, and conditional public reports that appear in four statutory subdivisions: Section 11011(b)(10), (11), (12), and (13). Each of these subdivisions describe a flat fee and an additional fee for each "interest" (unit for sale) in the planned development. Pursuant to the 2024 statutory fee increase, the flat fees described presently range from \$500 for an amended preliminary public report to \$1,950 for an amended original public report for a common interest development.

The proposal raises issues that are not readily resolved. How would DRE know at the time of submission of the amended application whether the amendments within are genuinely *de minimis* corrections of "scrivener's errors" as another industry commenter described on the record, or more substantial amendments requiring re-evaluation of the application? Would resolution of the first question through some DRE analysis of the amended application itself require that the fee be charged after DRE has begun its review? When would be the appropriate timing for that "late" charge? Last but not

least, what would be an appropriate reduced fee if an amendment is “not substantial”?

DRE anticipates that assessment of the proposal would involve analysis of a significant sampling of the sorts of amended applications presently received to assess (1) if there is a readily identifiable or simply justifiable dividing line for distinguishing *de minimus* amendments from significant amendments, and (2) to calculate appropriate adjustments to the fee schedule, if needed.

Regardless, the proposal is a more complex change than the “harmonizing” intent of the present regulations proposal, and so we will set it aside for now.

DETERMINATION REGARDING USE OF SPECIFIC TECHNOLOGY OR EQUIPMENT

The proposed regulation does not include any requirement that a specific technology or equipment be used by any affected party.