

## **Notice of Proposed Action**

### **Title 10: Bureau of Real Estate Appraisers**

NOTICE IS HEREBY GIVEN that the Bureau of Real Estate Appraisers (“Bureau” or “BREA”) is proposing to take the action described in the informative digest below. Any interested person may present statements or arguments relevant to the action proposed, orally or in writing, at a hearing to be held at:

Bureau of Real Estate Appraisers  
1102 Q Street, Suite 4100  
Sacramento, CA 95811

Date: May 1, 2018

Time: 10:00 a.m.

Written comments including those sent by mail, facsimile, or email to the address listed under “Contact Person” in this Notice, must be received by the Bureau at its office not later than 5:00 p.m. on April 30, 2018, or must be received by the Bureau at the hearing.

The Bureau, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 11313 and 11314 of the Business and Professions Code and to implement, interpret and make specific Section 11340 of the Business and Professions Code, the Bureau is considering revising section 3704 to Title 10 of the California Code of Regulations as described in this Notice.

### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

Title 10, section 3704 of the California Code of Regulations (“CCR”) prohibits Bureau employees from performing appraisals except in the performance of his or her official duties. However, the Bureau does not need the exception for performance of official duties. Bureau investigators do not conduct appraisals or appraisal reviews. Instead they conduct investigations to determine if the appraiser followed the law. As such, the exception should be eliminated as it is unnecessary. Furthermore, the Bureau seeks to add the term “appraisal review” to clarify its investigators do not conduct appraisal reviews.

## **ANTICIPATED BENEFITS**

The benefit is to codify Bureau practice into the regulation and make clear through regulation that Bureau employees shall not perform appraisals or appraisal reviews. The regulation will also ensure the integrity of the roles of the Bureau and its employees as oversight and investigator functions over real estate appraisers.

## **CONSISTENCY OR COMPATIBILITY WITH EXISTING STATE REGULATIONS**

During the process of developing these regulations, the Bureau has conducted a search of any similar regulations on this topic and has determined that there is no reasonable interpretation of any state regulation that is inconsistent or incompatible with the proposed action.

## **FISCAL IMPACT ESTIMATES**

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Cost to, or mandate imposed on, any Local Agency or School District for Which Government Code Section 17500-17630 Require Reimbursement: None

Business Impact: The Bureau initially determines that the proposed regulation 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.

Impact on Jobs/New Businesses: None

Cost Impact on Representative Private Person or Business: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

Effect on Small Businesses: None. This minor change does not affect any business as it simply clarifies existing practice.

## **RESULTS OF THE ECONOMIC IMPACT ASSESSMENT**

Impact on Jobs/New Businesses: There will be no creation or elimination of jobs, businesses nor will it affect the expansion of existing businesses.

Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment: This proposed regulation will codify current Bureau practice of prohibiting employees from conducting appraisals or appraisal reviews. This will ensure the

Bureau is not using resources to develop appraisals and instead will devote resources to investigating cases. This regulation will clarify current Bureau practices and eliminate unnecessary language.

### **CONSIDERATION OF ALTERNATIVES**

The Bureau must determine that no reasonable alternative considered by the Bureau or that has otherwise been identified and brought to the attention of the Bureau would be more effective in carrying out the purpose for which the 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.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above mentioned hearing.

### **INITIAL STATEMENT OF REASONS AND INFORMATION**

The Bureau has prepared an initial statement of reasons which contains the purpose, rationale, and necessity for the proposed action.

The proposed text, this notice, the statement of reasons, and any other relevant documents are on the Bureau's website at [www.brea.ca.gov](http://www.brea.ca.gov). Click the "Laws & Enforcement" tab at the top of the page. Under the heading "Rulemaking Notifications" find the documents associated with this rulemaking subject: "Bureau Employees."

### **AVAILABILITY AND LOCATON OF THE STATEMENT OF REASONS, TEXT OF PROPOSED REGULATION AND RULEMAKING FILE**

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below. As of the date this notice is published in the Notice of Register, the rulemaking file consists of this notice, the proposed text of the regulation and the initial statement of reasons. Copies may be obtained by contacting person named below or by accessing the website as provided above.

### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After holding the hearing and considering all timely and relevant comments received, BREa may adopt the proposed regulation substantially, as described in this notice. If BREa makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before BREa adopts the regulations as revised. Please send requests for copies of any modified regulation to the attention of the contact person named below. BREa 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 competition, copies of the Final Statement of Reasons may be obtained by contacting the person named below.

**CONTACT PERSON**

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Kyle Muteff, Legal Counsel  
1102 Q Street, Suite 4100  
Phone: 916-341-6126  
FAX: 916-440-7406  
[kyle.muteff@orea.ca.gov](mailto:kyle.muteff@orea.ca.gov)

The backup person is:  
Thu Tran  
1102 Q Street, Suite 4100  
Phone: 916-440-7876  
FAX: 916-440-7406  
[Thu.Tran@orea.ca.gov](mailto:Thu.Tran@orea.ca.gov)

**Bureau of Real Estate Appraisers  
Initial Statement of Reasons**

**Hearing Date: May 1, 2018**

**Subject Matter of Proposed Regulations: Bureau Employees**

**Sections Affected:** Amend Section 3704 of Title 10 of the California Code of Regulations

**Background/Problem Addressed**

Currently, Section 3704 prohibits Bureau employees from performing appraisals except in the performance of his or her official duties. There are two problems. First, Bureau employees should be prohibited from performing appraisals including appraisal reviews. Second, there is no need for the exception because the Bureau does not request such services from its investigators.

**Factual Basis/Rationale**

California Code of Regulations, Title 10, Section 3704 is proposed to be amended as follows:

An employee of the Bureau shall not perform appraisals or appraisal reviews, ~~except in the performance of his or her official duties.~~

The Bureau seeks to eliminate the exception that allows Bureau employees to perform appraisals in the performance of his or her official duties. Bureau employees are not asked to appraise property for the Bureau. The Bureau employs appraisers as investigators to determine whether licensed appraisers complied with the Bureau's minimum standard of conduct, primarily contained within the Uniform Standards of Professional Appraisal Practice (USPAP). The Bureau has no need for appraisals or appraisal reviews. During the Bureau's investigations, its employees are asked to determine if the appraiser complied with the minimum standard of care (USPAP) and other Bureau laws. Bureau employees act as investigators not as appraisers. Therefore, Bureau employees are not tasked with appraising property or conducting review appraisals for the Bureau. As such, the exception is misleading as to the scope of Bureau employee functions and is not necessary. The Bureau also seeks to add "appraisal reviews" to make clear its investigators cannot engage in such conduct.

**Underlying Data**

The Bureau did not rely on any underlying data.

**Fiscal Impact Analysis in General**

This proposal has no fiscal impact because there will be no change in practice, but merely codification of Bureau practice.

## Economic Impact Analysis/Assessment

The Bureau has made the initial determination that the proposed regulatory action would have no statewide adverse economic impact directly affecting California because the regulatory language conforms to Bureau practice.

- **Analysis of creation/elimination of jobs:** There will be no creation or elimination of jobs because the amendments do not affect jobs. Instead, it regulates Bureau employees.
- **Analysis of creation/elimination of businesses:** There will be no creation or elimination of businesses because the amendments do not affect businesses only Bureau employees.
- **Analysis of expansion of business:** The proposed regulations are not expected to, directly or indirectly, lead to the expansion of new businesses within California because the amendments do not affect businesses only the Bureau.
- **Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:** There will be no benefit to the Health and Welfare of California Residents, Worker Safety, or the State's Environment because the amendments do not affect the Health and Welfare of California Residents, Worker Safety, or the State's Environment.

## Significant Adverse Economic Impact on Business

The proposed action will not have a significant adverse economic impact on business. The Bureau supports this finding on the fact that the change simply conforms the regulation to current Bureau practice. Bureau investigators should not be performing appraisal or appraisal reviews. Further, there is no need for an exception because there are no official duties that would require an investigator to complete an appraisal or appraisal review.

## Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

## Consideration of Alternatives

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of BREA would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to the affected parties than the proposed regulation.

Proposed Text  
California Code of Regulations  
Title 10, Chapter 6.5, Article 11

The text below represents existing language modified to show proposed changes. Proposed deletions are in ~~strikethrough~~. Proposed additions are in underline.

**§ 3704. Employees of BREa.**

An employee of the Bureau shall not perform appraisals or appraisal reviews.~~except in the performance of his or her official duties.~~

Note: Authority cited: Sections 11313 and 11314, Business and Professions Code. Reference: Section 11340, Business and Professions Code.