

**State of California
Office of Administrative Law**

In re:
Bureau of Real Estate Appraisers

Regulatory Action:

Title 10, California Code of Regulations

Adopt sections:

Amend sections: 3542, 3570, 3577

Repeal sections:

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3

OAL Matter Number: 2016-0906-01

OAL Matter Type: Regular (S)

This rulemaking action by the Bureau of Real Estate Appraisers (Bureau) updates three sections in title 10 of the California Code of Regulations for consistency with new federal requirements and to allow the Bureau to approve practicum courses for trainee appraisers.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 9/29/2016.

Date: September 29, 2016



Eric Partington
Senior Attorney

For: Debra M. Cornez
Director

Original: James Martin
Copy: Kyle Muteff

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2016-0614-01	REGULATORY ACTION NUMBER 2016-0906-019	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY Bureau of Real Estate Appraisers			AGENCY FILE NUMBER (If any)

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

SEP 29 2016
1:45 P.M.

2016 SEP -6 A 10:33
OFFICE OF
ADMINISTRATIVE LAW

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

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER 2016, 26-2	PUBLICATION DATE 6/24/2016

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Consulting Appraisals	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) N/A
---	---

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
ACTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT N/A AMEND 3542, 3570, 3577 REPEAL N/A
TITLE(S) 10	

3. TYPE OF FILING			
<input checked="" 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) _____	

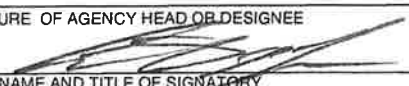
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)
N/A

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" 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 checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM 56660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify) _____			

7. CONTACT PERSON Kyle Muteff	TELEPHONE NUMBER 916.341.6126	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 8/31/16
TYPED NAME AND TITLE OF SIGNATORY Awet Kidane, Director, Department of Consumer Affairs	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

SEP 29 2016

Office of Administrative Law

BUREAU OF REAL ESTATE APPRAISERS

ORDER OF ADOPTION

Amend Section 3542, 3570, and 3577 of Chapter 6.5 of Title 10 of the California Code of Regulations to read as follows:

§ 3542. Acceptable Categories of Experience and Criteria for Each Category.

(a) Acceptable categories of experience to meet the minimum requirements of Section 3541 and the criteria for each category are as follows:

(1) Fee and staff appraisal (a real property appraisal prepared by a person who is employed by another, usually a lending institution or government agency, or who is paid a fee for the appraisal assignments he or she performs):

(A) Shall be a written document;

(B) Shall have used the entire appraisal process;

(C) Shall have used all appraisal methods (market, cost, income) customarily used for a particular property type (i.e., residential, commercial, industrial, etc.);

(D) Shall conform to USPAP, particularly Standards Rules 1 and 2; and

(E) Analysis must be completed by the applicant.

(2) Ad valorem tax appraisal (a real estate appraisal prepared by an appraiser which estimates a value that is used for property tax purposes):

(A) Appraisal:

1. Shall be a written document;

2. Shall use appraisal methods (sales comparison, cost, income) required for the property type being appraised (i.e. residential or non-residential);

3. Shall effectively use the appraisal process; and

4. Shall conform to USPAP, particularly Standards Rules 1 and 2.

(B) Mass Appraisal:

1. Shall conform to USPAP, particularly Standards Rules 1 and 2, or 6.

(3) Review of an appraisal (field or desk):

- (A) Shall be a written document separate from the appraisal itself;
- (B) The review shall be of an appraisal prepared either by employees, associates or others;
- (C) The appraisal being reviewed shall not be signed by the reviewer;
- (D) Shall be a “technical review” where the review appraiser forms an opinion as to whether the analyses, opinions, and conclusions in the appraisal report under review are appropriate and reasonable, as opposed to an “administrative review”, which is work performed by clients and users of appraisal services as a due diligence function in the context of making a business decision (e.g., underwriting, buying, selling, etc.); and
- (E) The work shall conform to USPAP, particularly Standard Rule 3.

(4) Appraisal analysis:

- (A) Shall be a written document; and
- (B) The work shall conform to USPAP, ~~particularly Standards Rules 4 and 5.~~

(5) Real Estate consulting:

- (A) Shall be a written document; and
- (B) The work shall conform to USPAP, ~~particularly Standards Rules 4 and 5; and~~
- ~~(C) “Real estate consulting” incorporates those activities described in USPAP Standards Rules 4 and 5.~~

(6) Highest and best use analysis:

- (A) Shall be a written document; and
- (B) The work shall conform to USPAP, ~~particularly Standards Rules 4 and 5.~~

(7) Feasibility analysis/study:

- (A) Shall be a written document; and
- (B) The work shall conform to USPAP, ~~particularly Standards Rules 4 and 5.~~

(8) Teaching of appraisal courses:

Teaching of appraisal courses shall not be an acceptable category of experience to meet minimum requirements after December 31, 1997.

(9) Setting forth opinions of value of real property for tax purposes:

(A) Shall be experience as an employee of a California County Assessor's Office or the California Board of Equalization in setting forth opinions of value of real property for tax purposes, and;

1. Shall be a written document;
2. Shall use appraisal methods (sales comparison, cost, income) required for the property type being appraised (i.e. residential or non-residential);
3. Shall effectively use the appraisal process; and
4. Shall conform to USPAP, particularly Standards Rules 1 and 2, or 6.

(10) Assisting in the preparation of appraisals:

(A) Shall be a written document;

(B) Shall effectively use the appraisal process performing market research, data analysis and applying the appropriate appraisal techniques. The work experience must go beyond such tasks as taking photographs, typing the appraisal report, measuring improvements, or finding sales that may or may not be used in the appraisal. At least 75% of the professional work shall have been performed by the applicant;

(C) The work shall conform to all of the applicable USPAP standards, state laws and Bureau of Real Estate Appraisers (BREAA) regulations; and

(D) A maximum of 400 hours of assisting in the preparation of appraisals may be accepted for credit towards meeting the minimum experience requirements.

(11) Real estate valuation experience such as that of a real estate lending officer or a real estate broker:

(A) Appraisal: Same requirements as Category 1;

(B) Review of Appraisals: Same requirements as Category 3; and

(C) Consulting:

1. Shall be a written document; and
2. The work shall conform to USPAP, particularly Standards Rules 4 and 5.

(b) Only appraisals performed for a business purpose (e.g. loans, litigation, etc.) may be credited for purposes of meeting the minimum experience requirements except that experience gained through case studies and practicum courses that are approved by the AQB Course Approval Program or the Bureau may be credited for no more than 50 percent of the total experience requirement.

(c) Each applicant shall meet additional requirements as may be established from time to time by the Appraiser Qualifications Board of The Appraisal Foundation.

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

Reference: Section 11340, Business and Professions Code.

§ 3570. Time Limits for Processing Applications.

(a) Within 90 days of receipt of the Initial Application, Forms REA 3001 (Rev. 6/1/09), 3002 (Rev. 3/16/10), 3003 (Rev. 3/16/10) and 3004, (Rev. 4/7/08), Upgrade Application, Form REA 3023 (Rev. 5/8/00), Renewal Application, Form REA 3012 (Rev. 5/8/00), ~~Request for Temporary Permit, Form REA 3009 (Rev. 3/16/10)~~, Course Provider Accreditation Form REA 3013 (Rev. 5/8/00), or Course Accreditation and Description Form REA 3014 (Rev. 5/8/00), the Bureau shall give written notice to the applicant that:

(1) the application is complete; or

(2) the application is deficient, describing what information is deficient and/or inadequate.

(A) An application is deficient if the applicant has not completed and provided the Bureau with all of the items required by Article 4 of these regulations, or any other information requested by the Bureau to complete the application.

(b) Within 90 days of receipt of a completed Request for Issuance, Form REA 3008 (Rev. 5/8/00), Application for Renewal, Form REA 3012, (Rev. 5/8/00) ~~or Request for Temporary Practice Permit, Form REA 3009, (Rev. 3/16/10)~~, Course Provider Accreditation Form REA 3013 (Rev. 5/8/00), or Course Accreditation and Description Form REA 3014 (Rev. 5/8/00), the Bureau shall issue or deny the requested license or accreditation provided that:

(1) The applicant has provided all required information;

(2) All required fees have been received by the Bureau; and

(3) Results of applicable criminal records checks have been received from the Department of Justice and/or Federal Bureau of Investigation, and any background check has been completed.

~~(c)~~ The Bureau's completed review of an application for the two years immediately preceding this regulation has been approximately:

- ~~(1) a minimum of 90 days.~~
- ~~(2) a median of 120 days.~~
- ~~(3) a maximum of 150 days.~~

~~(c)~~(d) A notice of deficiency pursuant to (a)(2) above shall include written notice of the following:

(1) That the applicant shall have the right to request a hearing by the Chief on the grounds that:

(A) The Bureau did not send the applicant a deficiency notice or a completed application notice within the time provided in (a) above; or

(B) The Bureau did not issue the license or submit to the applicant a deficiency notice within the time provided in (b) above.

(2) A request for hearing under this section shall be made to the Chief, in writing, clearly specifying the violations alleged, within 30 days from the date the notice of deficiency is mailed from the Bureau.

(3) If the Chief determines that the Bureau exceeded the time limits without good cause, ~~as defined in Section 15376 of the Government Code or exempted in Section 15377 of the Government Code~~, the applicant shall be reimbursed in full of any and all filing fees paid by the applicant and actually received by the Bureau.

~~(d)~~(e) The time necessary to complete an informal conference in accordance with Section 3729 of these regulations, and/or a hearing pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, shall be excluded in determining whether or not the Bureau has complied with the 90 day requirement of subsections (a) and (b) above.

~~(e)~~(f) Every adjudicatory hearing to determine whether an application should be granted shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

~~(f)~~(g) In no event shall a failure to comply with the requirements of this Section constitute grounds in and of itself for the issuance of a license or approval of accreditation.

Note: Authority cited: Sections 11313 and 11314, Business and Professions Code. Reference: ~~Sections 15376 and 15378, Government Code~~ Section 11340, Business and Professions Code.

§ 3577. Minimum Standards of Practice for Appraisal Management Companies.

All Appraisal Management Companies must ensure that they adhere to the following business practices when performing appraisal management services for properties located within the State of California:

- (a) Appraisal Management Companies will delegate appraisal assignments for completion only to independent contractor or employee appraisers that possess the licenses and certificates required by the Bureau.
- (b) Appraisal Management Companies must adopt reasonable procedures designed to ensure that all appraisal assignments completed by its independent contractor or employee appraisers are performed in accordance with the Uniform Standards of Professional Appraisal Practice.
- (c) Appraisal Management Companies must maintain records of each of the following for each service request:
 - (1) Date of the receipt of the request;
 - (2) The name of the person from whom the request was received;
 - (3) The name of the client for whom the request was made, if different from the name of the person from whom the request was received.
 - (4) The name of the appraiser or appraisers assigned to perform the contracted service; and
 - (5) The date of delivery of the appraisal product to the client.
- (d) Appraisal Management Companies must maintain records of all appraisal fees dispersed to contracted appraisers and the final fee charged to the lender/client.
- (e) An Appraisal Management Company cannot prohibit a contracted appraiser/client from disclosing the fee paid to the appraiser/client for an appraisal assignment in the body of the appraisal report.
- (f)(1) No Appraisal Management Company shall improperly influence or attempt to improperly influence the development of an appraisal report ~~or, review or consulting assignment~~ by engaging in, without limitation, any of the following actions:
 - (A) Withholding or threatening to withhold the timely payment for a contracted appraisal assignment that is completed in accordance with the Uniform Standards of Professional Appraisal Practice and with contractual provisions as agreed to by the Appraisal Management Company and the appraisal contractor;

(B) Withholding or threatening to withhold future business with an appraisal contractor solely based on an appraisal result;

(C) Basing the appraisal fee for an appraisal assignment on a pre-determined value;

(D) Attempting to influence the development of an appraisal assignment through coercion, extortion or bribery;

(E) Expressly or impliedly promising future business, promotions, or increased compensation for a contracted appraiser based on certain business practices not in compliance with the Uniform Standards of Professional Appraisal Practice;

(2) Subdivision (f)(1) of this Section does not prohibit an Appraisal Management Company or an individual with an interest in a real estate transaction from requesting an appraiser to:

(A) Consider additional appropriate property information including relevant sales comparables not considered in the initial appraisal report;

(B) Provide further detail, substantiation or explanation of the appraiser's conclusion of value; or

(C) Correct errors in the appraisal report.

(g) The Appraisal Management Company shall not base the payment of an appraisal fee on a mortgage-related event occurring subsequent to completion of the appraisal, i.e. close of escrow.

(h) The appraiser shall not be required to provide the Appraisal Management Company with the appraiser's digital signature.

(i) The Appraisal Management Company shall not alter, amend, or change an appraisal report submitted by a licensed or certified appraiser by removing the appraiser's signature or seal or by adding information to or removing information from the appraisal report with an intent to change the value conclusion.

(j) The Appraisal Management Company shall not remove an independent appraiser from their panel of approved appraisers without prior written notice that includes evidence which supports the basis of fact that the appraiser has violated the Uniform Standards of Professional Appraisal Practice or other applicable appraisal regulations or state statutes, or evidence which demonstrates substandard performance, improper or unprofessional behavior, or other substantive deficiencies.

(k) An Appraisal Management Company shall notify the Bureau within 10 business days of any change to or addition of a Controlling Person of the company.

Note: Authority cited: Sections 11313 and 11314, Business and Professions Code. Reference: Sections 11345.4, 11345.45 and 11345.6, Business and Professions Code; and Section 1090.5, Civil Code.

BUREAU OF REAL ESTATE APPRAISERS

FINAL STATEMENT OF REASONS

Hearing Date: August 10, 2016

Subject Matter of Proposed Regulations: Consulting Appraisals

Section Affected: Amend Section 3542, 3570, and 3577 of Title 10 of the California Code of Regulations

Updated Information

The Initial Statement of Reasons is included in the file. There is no updated information.

Local Mandate

A mandate is not imposed on local agencies or school districts.

Small Business Impact

This action does not have a significant adverse economic impact on small businesses. No alternatives were proposed to BREA that would lessen any adverse economic impact on small business.

The benefit will be compliance state and federal requirements, removal of outdated language, and allowance of BREA approved practicum courses.

Consideration of Alternatives

BREA has determined no reasonable alternative which was considered or that has otherwise been identified and brought to the attention of BREA would be more effective in carrying out the purpose for which it was proposed or would be as effective and less burdensome to affected private persons than the adopted regulation or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The regulations adopted by BREA are the only regulatory provisions identified by BREA that accomplish the goal of protecting consumers and ensuring compliance with federal law. No other alternatives have been proposed or otherwise brought to BREA's attention.

Objections or Recommendations/Responses

There were no objections or recommendations regarding the proposed action.