

TO: Chester Ruiz & Helen Bellamy  
FROM: ELIZABETH OLVERA, CALDA Member & LDA  
DATE: April 26, 2022

**RE: STATE BAR OF CALIFORNIA PROPOSAL TO REGULATE THE LDA PROFESSION**

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This memo attempts to summarize the State Bar of California’s proposed revisions to the Business and Professions Code 6400, et seq. in an effort to regulate the Legal Document Assistant and Unlawful Detainer Assistant Professions.

What are some of the changes the State Bar proposes?

- The entire LDA/UDA profession to be regulated by the State Bar of California.
- State Bar administers the LDA Registration process
- State Bar to issue electronic registration cards to applicants
- State Bar manages appeal process and determines the appeal format
- State Bar runs the discipline process, State bar determines the disciplinary format.
- State Bar to determine “Proof” requirements of compliance with CLEs.
- State Bar maintains LDA directory (register of legal document assistants)
- State Bar to retain LDA registration records for 3 years

Why would the State Bar do all of this? According to them, The State Bar’s goals are to create disciplinary standards.

“The standards shall be designed to fulfill the primary purposes of discipline, which include:

- (A) protection of the public
- (B) maintenance of the highest professional standards; and
- (C) preservation of public confidence in the profession”

- per [Proposed] BPC 6412.2

**2 YR ANNUAL REGISTRATION (MONTH & TIME TO BE FIXED BY STATE BAR)**

6402.

The registration of any legal document assistant or unlawful detainer assistant whose registration is subject to renewal between January 1, 2024 and August 1. , 2024 shall be extended automatically until August 1, 2024 (or other date they specify).

6402.2 (a)

At the time of registration...registrants shall be required to complete implicit bias and elimination of bias education which meet the requirements of Section 6070.5 and State Bar rules.

6402.2 (b) The State Bar may develop or prescribe an ethics course for registrants to also be included in the 15-hour biennial continuing education requirement.

“(a) The registration of any legal document assistant or unlawful detainer assistant whose registration is subject to renewal between January 1, 2024 and August 1, 2024 shall be extended automatically until August 1, 2024.

(b) By August 1, 2024, every A legal document assistant or unlawful detainer assistant shall be registered pursuant to this chapter by with the county clerk in the county in which their principal place of business is located, and in which they maintain a branch office, State Bar of California, and provide proof that the registrant has satisfied the bonding requirement of Section 6405, and provide proof of satisfying all other eligibility requirements of this chapter. No person who has been disbarred or suspended from the practice of law pursuant to Article 6 (commencing with Section 6100) of Chapter 4 may, during the period of any disbarment or suspension, register as a legal document assistant or unlawful detainer assistant. The State Bar shall develop the application required to be completed by a person for purposes of registration as a legal document assistant. The application shall specify the types of proof that the applicant shall provide to the county clerk the State Bar in order to demonstrate the qualifications and requirements of Section 6402.1.

( ) Legal document assistants and unlawful detainer assistants shall be required to renew their registration by August 1, 2025, and then every other year thereafter.

(a) This section is effective on January 1, 2024”

### ADDITIONAL DISCLOSURES

*(EO note: Registration would be by electronic/online application submitted to the State Bar. In addition to general name, business info disclosures, the LDAs would also need certain additional disclosures be made, such as: practice sector, employment information (LDA or non-LDA employer), any other info as required by law, etc. )*

6403. (a)

“(a) The application for registration of a natural person shall **be submitted electronically in the form directed by the State Bar, and shall** contain all of the following ~~statements~~ about the applicant:

- (1) **Last name, first name, and any middle names**
- (2) **An email address to be used for State Bar communications. This email address shall not be subject to disclosure under the California Public Records Act.**
- (3) **Office address or, if no office is maintained, an address to be used for State Bar purposes**
- (4) **Office telephone number, of, if no office is maintained, a telephone number to be used for State Bar purposes**
- (5) **Practice sector**
- (6) **Whether they are employed by a legal document assistant or unlawful detainer assistant partnership or corporation, and if, the size of the entity.**

**(7) Whether they are employed by an entity other than a legal document assistant or unlawful detainer assistant partnership or corporation, and if so, the type of organization.**

**(8) Any other information as may be required by law** ~~Name, age, address, and telephone number.~~

~~(9)~~ **(9)** Whether the applicant has been convicted of a felony, or of a misdemeanor under Section 6126 or 6127, or found liable under Section 6126.5.

~~(10)~~ **(10)** Whether the applicant has been held liable in a civil action by final judgment or entry of a stipulated judgment, if the action alleged fraud, the use of an untrue or misleading representation, or the use of an unfair, unlawful, or deceptive business practice.

~~(11)~~ **(11)** Whether the applicant has ever been convicted of a misdemeanor violation of this chapter.

~~(12)~~ **(12)** Whether the applicant has had a civil judgment entered against them in an action arising out of the applicant's negligent, reckless, or willful failure to properly perform their obligation as a legal document assistant or unlawful detainer assistant.

~~(13)~~ **(13)** Whether the applicant has had a registration revoked pursuant to Section 6413 **by a county or by the State Bar.**

~~(14)~~ **(14)** If the application is for a renewal of registration, a statement by the applicant that they have completed the legal education courses required by Section 6402.2 **and any other proof as required by the State Bar.**

....

### **3-YR BAR POST CONVICTION**

**(b) No application for registration shall be approved unless at least three years have elapsed since the conviction, finding of liability, entry of judgment, or registration revocation described in paragraphs (8) – (12) of subdivision (a), and, if applicable, the applicant satisfies the requirements of subdivisions (b) and (c) of section 6413.**

~~(c)~~ **(c)** The application for registration of a natural person shall be accompanied by the display of personal identification, such as a California driver's license, birth certificate, or other identification acceptable to the ~~county clerk~~ **State Bar** to adequately determine the identity of the applicant.

**(d) (1) In order to be eligible for initial registration with the State Bar, applicants must complete the fingerprinting process pursuant to the procedure identified by the State Bar for the purpose of obtaining criminal offender record information regarding state and federal level convictions and arrests from the Department of Justice and the Federal Bureau of Investigations. These fingerprints will be retained by the Department of Justice for the limited purpose of subsequent arrest notification. No applicant may be registered until such they are cleared following receipt of the criminal offender record information.**

**(2) The State Bar shall request from the Department of Justice subsequent arrest notification service, as provided pursuant to Section 11105.2 of the Penal Code, for legal document assistants and unlawful detainer assistants."**

### **FINGERPRINTING REQUIREMENT (State (DOJ) and Federal Level (FBI))**

6403. (d)(1) (previously 6403.(c)) ...[A]pplicants must complete the fingerprinting process ... for the purpose of obtaining criminal offender record information regarding state and federal level convictions and arrests from the Department of Justice and the Federal Bureau of Investigations. These fingerprints will be retained by the Department of Justice for the limited purpose of subsequent arrest notification. No applicant may be registered until such they are cleared following receipt of the criminal offender record information.

(2) The State Bar shall request from the Department of Justice subsequent arrest notification service, as provided pursuant to Section 11105.2 of the Penal Code, for legal document assistants and unlawful detainer assistants.

**CHANGES TO CORPORATIONS CODE – to match LDA registration requirements**

6403 (e) A partnership or corporation described in paragraph (2) of subdivision (a) of Section 6400 shall register with the State Bar and shall renew its registration annually at a time to be fixed by the State Bar. In addition to any applicable requirements set forth in the Corporations Code, such partnership or corporation shall comply with all administrative or filing requirements of the State Bar, including, but not limited to, the payment of fees, and all rules adopted by the Board of Trustees. The application for registration of a partnership or corporation shall contain all of the following statements about the applicant:

(1) For the general partners and officers, the information required by paragraphs (1) – (7) of subdivision (a).

**BOND AND 60 DAY SUSPENSION FOR NOT BEING IN COMPLIANCE WITH BOND REQUIREMENTS**

6405.

–“a certified copy of a recorded bond”

6405 (3)- Continued operation shall result in a minimum 60-day suspension of registration of the partnership or corporation and the individuals.

**ADDED** - 6405 (5) The bond must be replenished after any recovery, as described in Section 6413.

**STATE BAR WILL SEND OUT “RENEWAL REMINDERS”**

6406 – excerpted part of (a).

The State Bar shall send electronic notification to all registered legal document assistants and unlawful detainer assistants of the time frame in which to submit a request for renewal of their certification. A legal document assistant or unlawful detainer assistant who fails to renew or be approved for renewal of registration prior to the expiration of the prior registration shall not be permitted to act as or hold themselves out in any way as a legal document assistant or unlawful detainer assistant.

Revised section 6406 (d)

**“The denial of an application may be appealed by the applicant by submitting, to the director or his or her designee, in the format required by the State Bar any information relevant to the reasons stated for denial of the application. Documents provided shall be certified or otherwise have their validity substantiated.”**

6407 – Minimal changes to reflect State Bar as regulator

**6408** – Grammatical changes, and removes references to “county of Registration” as mandatory disclosures in advertisements and solicitations

**ARTICLE 3. Conduct of Business and Prohibited Acts [6408 - 6415]**

**6408.5**

Removes reference to “yellow pages” and instead refers to “advertisements” generally.

6409 – No changes

**STATE BAR TO CONTROL LDA CONTRACT, and would modify disclosures re State Bar & Bond info, etc.**

6410 (a) revised substantially, and includes:

“Any guidelines, rules, or policies developed by the State Bar on or after January 1, 2024, regarding the contents of contracts between legal document assistants or unlawful detainer assistants and clients, shall supersede the regulations adopted by the Department of Consumer Affairs.” AND...

Adds that the contract shall have:

“(3)The contact information of ~~the county clerk’s office~~ State Bar at which complaints may be lodged against the legal document assistant or unlawful detainer assistant by the client.” AND

“(4)The contract shall contain a statement in 12-point boldface type explaining that the legal document assistant or unlawful detainer assistant is covered by a bond from a corporate surety and the process for a consumer to file a claim against the bond”

6410 (c) “The contract shall be written both in English and in any other language **necessary for the client’s oral and written comprehension**. The legal document assistant or the unlawful detainer assistant is responsible for translating the contract into the language **requested by the client.**”

6410.5 And describes method of how the Contract can be sent to the client.

“If the first contact is not in person, the legal document assistant or unlawful detainer assistant shall, with the agreement of the prospective client, provide the notice electronically and then provide the notice in hardcopy to the prospective client at the first in-person meeting” . . . “. If sent electronically, the notice shall be on a white background, but otherwise meet the requirements described above and below”.

**EXPANDS “MEANS OF RECOVERY BY AN INJURED CLIENT “**

6412.

**(a) In addition to any other means in which an injured client may recover losses from the bond, any owner or manager of residential or commercial rental property, tenant, or other person who is awarded damages in any action or proceeding for injuries caused by the acts of a registrant while in the performance of their duties as a legal document assistant or unlawful detainer assistant may recover damages from the bond or cash deposit required by Section 6405.**

**6412.1** – No proposed changes (...Any person injured by the unlawful act of a legal document assistant or unlawful detainer assistant shall retain all rights and remedies cognizable under law....)

**6412.1** – No proposed changes (...Any person injured by the unlawful act of a legal document assistant or

**ADDS the ENTIRE section 6412.2 – REGULATION, DISCIPLINARY SANCTIONS, FINES, CITATIONS, WARNING LETTERS,**

**6412.2**

(a) The State Bar shall develop a process for the intake, investigation, and added resolution of complaints submitted against legal document assistants and unlawful detainer assistants subject to all of the following requirements:

(1) the discipline process shall be handled within the State Bar’s Division of Regulation or its successor entity and shall be separate and apart from the Office of Chief Trial Counsel

(2) The State Bar Board of Trustees or designee shall adopt standards for sanctions for professional misconduct of legal document assistants and unlawful detainer assistants to set forth a means for

determining the appropriate disciplinary sanction in a particular cases and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances. The standards shall be designed to fulfill the primary purposes of discipline, which include:

- (A) protection of the public
- (B) maintenance of the highest professional standards; and
- (C) preservation of public confidence in the profession

(3) Sanctions for misconduct may include: warning letters, the issuance of a citation and fines; public reproof; interim suspension; suspension of registration, which may include a period of actual suspension, stayed suspension, or both; or revocation of registration. All disciplinary and nondisciplinary actions shall be public with the exception of warning letters.

(4) conditions attached to a reproof or probation may require a registered legal document assistant or unlawful detainer assistant to:

- (A) make specific restitution
  - (B) undergo treatment, at the expense of the legal document assistant or unlawful detainer assistant, for medical, psychological, or psychiatric conditions for problems related to substance use
  - (C) complete probation, subject to reporting requirements
  - (D) give notice to affected parties; or
  - (E) comply with any other conditions consistent with the primary purposes of discipline.
- (5) A revocation may also require the payment of restitution.

(b) The Division of Regulation may issue warning letters and citations and fines. The Division of Regulation may recommend suspension or regulation to a three-person hearing panel, selected pursuant to a process adopted by Stats. 2002, Ch. 1018, Sec. 2.the State Bar Board of Trustees. Objections to a citation and fine shall also be heard by the hearing panel. Appeals of the decision of the three-person hearing panel shall be heard by a court of competent jurisdiction.

**6412.5 – no changes** – “A legal document assistant or an unlawful detainer assistant may neither seek nor obtain a client’s waiver of any of the provisions of this chapter. Any waiver of the provisions of this chapter is contrary to public policy, and is void and unenforceable.”

#### **SELF REPORTING OF COURT JUDGMENTS/VIOLATIONS, ETC.**

**6413 (a) & (c)** – minimal changes to reflect State Bar to regulate LDAs

(b) The registrant shall within 3 business days provide the State Bar notice of the disposition in any court action that the registrant has been found guilty of the unauthorized practice of law pursuant to Section 6125, 6126, or 6127, has been found guilty of a misdemeanor violation of this chapter, has been found liable under Section 6126.5, or that a civil judgment has been entered against the registrant in an action arising out of the registrant’s negligent, reckless, or willful failure to properly perform their obligation as a legal document assistant or unlawful detainer assistant.

**6414 minimal changes**

“A registrant whose ~~certificate~~ registration is revoked shall be entitled to challenge the decision in a court of competent jurisdiction.”

**6415 minimal changes, -(regarding fines and restitution.)**

Other questions that came up:

Should bond be filed with the State (as opposed to the County)