

CALIFORNIA BOARD OF LEGAL SPECIALIZATION OF THE STATE BAR OF CALIFORNIA



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DATE: April 27, 2005

TO: Members of the Board Committee on Member Oversight

FROM: Alice J. MacAllister, Chair, Board of Legal Specialization

SUBJECT: Proposed Standards for Certification and Recertification of Real Estate Law Specialists -- Request for Public Comment

ATTACHMENT: Proposed Standards for Certification and Recertification of Real Estate Law Specialists

EXECUTIVE SUMMARY

The Board of Legal Specialization recommends that the Board Committee publish proposed Standards for Certification and Recertification (Standards) of Real Estate Law Specialists, as set forth in the attachment to this memorandum, for a 90-day public comment period.

The Board of Legal Specialization (BLS), which administers the Legal Specialization program, is charged with proposing additional fields of law in which attorneys may be certified. One purpose of the program is to help the public identify attorneys who are proficient in a particular area of law by providing a method of certification based on objective criteria. Another is to encourage attorney competence by providing attorneys with the means of obtaining a professional credential that recognizes their proficiency. In order to be certified, attorneys must pass a written exam, demonstrate a high level of experience in the specialty field, complete ongoing education requirements, and be favorably evaluated by other attorneys and judges familiar with their work. Certification also serves to regulate claims of special skills by attorneys to assure that such claims are not made in a manner that misleads the public.

The BLS looked at adding real estate law to its certification program because of the myriad of issues centered around real estate (e.g., landlord/tenant, land use and development, environmental concerns, construction and design, residential and commercial leasing, agriculture and ranching, natural resources) and the perceived increasing need for consumers and attorneys not practicing in that area to be able to identify attorneys who have demonstrated proficiency in the field of real estate law.

At the request of the BLS, the Board of Governors appointed a Real Estate Law Consulting Group to look into the feasibility of, and develop standards for, certifying legal specialists in the area of real estate law. The Consulting Group recommends that the BLS go forward with the proposed specialty and, working with liaisons from the Real Property Law Section Executive Committee, has developed the attached Standards to be circulated for public comment.

Board members with questions on this item may contact Phyllis Culp at (415) 538-2118 or phyllis.culp@calbar.ca.gov.

BACKGROUND

In 1970, based on a proposal by the Committee on Legal Specialization, the Board of Governors adopted a pilot program to develop an attorney certification program to identify for the public attorneys who have demonstrated their experience and proficiency in specific areas of law. The pilot program, which certified specialists in criminal law, taxation law, and workers' compensation law, was approved by the Supreme Court of California in 1972.

In 1985, the Supreme Court of California approved a permanent legal specialization program. Currently, there are eight specialty areas: Appellate Law; Bankruptcy Law; Criminal Law; Estate Planning, Trust and Probate Law; Family Law; Immigration and Nationality Law; Taxation Law; and Workers' Compensation Law.

In September 1996, the Board of Governors, upon recommendation of the BLS, appointed a Real Estate Law Consulting Group to advise the BLS of the feasibility of establishing a new specialty in real estate law and to draft Standards in that area. The BLS decided to look at real estate law because of the myriad of issues centered around real estate (e.g., landlord/tenant, land use and development, environmental concerns, construction and design, residential and commercial leasing, agriculture and ranching, natural resources) and the perceived increasing need for consumers and attorneys not practicing in that area to be able to identify attorneys who have demonstrated proficiency in the field of real estate law.

The Consulting Group met several times and reviewed existing certification programs in other states (at present, Arizona, Florida, Texas, New Mexico, Minnesota and North Carolina certify in real estate or real property law) and recommended that the BLS go forward with a new specialty in that area. The Consulting Group had nearly completed its draft of standards for certification and recertification when the State Bar's funding crisis hit in 1997, which left remaining State Bar staff able to focus only on application processing and other essential administrative duties, and the Consulting Group did not present its final report and recommendations to the BLS. At the end of 2003, staff contacted members of the Consulting Group to determine if there was still interest in pursuing the specialty and discovered that several members were still available and willing to continue the task. Working with members of the State Bar's Real Property Law Section Executive Committee, the Consulting Group completed the attached Standards that we are now requesting be published for public comment.

FISCAL AND PERSONNEL IMPACT

There is no fiscal and personnel impact on the general fund as the Legal Specialization Program is a special fund program that pays all its direct and indirect (interfunded) costs.

PROPOSED BOARD COMMITTEE ACTION

Should the Board Committee determine to adopt the recommendation of the Board of Legal Specialization, it would be appropriate to adopt the following resolution:

RESOLVED, that the Board Committee on Member Oversight directs the publication of proposed Standards for Certification and Recertification in Real Estate Law, in the form attached to these minutes and made a part hereof, for a 90-day comment period; and it is

FURTHER RESOLVED that publication of the foregoing is not, and shall not be construed as, a recommendation by the Board Committee.