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AB-1213 Legal document assistants and unlawful detainer assistants. (2019-2020)

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Assembly Bill No. 1213

CHAPTER 128

An act to amend Sections 6400, 6401, 6401.7, 6402, 6403, 6404, 6406, 6407, 6409, 6409.1, 6410, 6410.5, 6411, 6412, and 6413 of the Business and Professions Code, relating to professions and vocations.

[Approved by Governor July 30, 2019. Filed with Secretary of State July 30, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1213, Chen. Legal document assistants and unlawful detainer assistants.

Existing law provides for the regulation of legal document assistants and unlawful detainer assistants, and requires a legal document assistant or unlawful detainer assistant to be registered by the county clerk in the county in which the legal document assistant's or unlawful detainer assistant's principal place of business is located and where they maintain a branch office. Existing law makes the failure by a person who engages in acts of a legal document assistant or unlawful detainer assistant to comply with certain requirements for legal document assistants and unlawful detainer assistants a misdemeanor. Existing law repeals all of the provisions regulating legal document assistants and unlawful detainer assistants on January 1, 2021.

This bill would extend the operation of these provisions to January 1, 2024. The bill would also make various nonsubstantive changes to the provisions regulating legal document assistants and unlawful detainer assistants. Because the bill would continue the duties imposed on county clerks relating to legal document assistants and unlawful detainer assistants and because the bill would extend the operation of various provisions a violation of which is a misdemeanor, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 6400 of the Business and Professions Code is amended to read:

6400. (a) "Unlawful detainer assistant" means any individual who for compensation renders assistance or advice in the prosecution or defense of an unlawful detainer claim or action, including any bankruptcy petition that may affect the unlawful detainer claim or action.

(b) "Unlawful detainer claim" means a proceeding, filing, or action affecting rights or liabilities of any person that arises under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure and that contemplates an adjudication by a court.

(c) "Legal document assistant" means:

(1) Any person who is not exempted under Section 6401 and who provides, or assists in providing, or offers to provide, or offers to assist in providing, for compensation, any self-help service to a member of the public who is representing themselves in a legal matter, or who holds themselves out as someone who offers that service or has that authority. This paragraph does not apply to any individual whose assistance consists merely of secretarial or receptionist services.

(2) A corporation, partnership, association, or other entity that employs or contracts with any person not exempted under Section 6401 who, as part of their responsibilities, provides, or assists in providing, or offers to provide, or offers to assist in providing, for compensation, any self-help service to a member of the public who is representing themselves in a legal matter or holds themselves out as someone who offers that service or has that authority. This paragraph does not apply to an individual whose assistance consists merely of secretarial or receptionist services.

(d) "Self-help service" means all of the following:

(1) Completing legal documents in a ministerial manner, selected by a person who is representing themselves in a legal matter, by typing or otherwise completing the documents at the person's specific direction.

(2) Providing general published factual information that has been written or approved by an attorney, pertaining to legal procedures, rights, or obligations to a person who is representing themselves in a legal matter, to assist the person in representing themselves. This service in and of itself, shall not require registration as a legal document assistant.

(3) Making published legal documents available to a person who is representing themselves in a legal matter.

(4) Filing and serving legal forms and documents at the specific direction of a person who is representing themselves in a legal matter.

(e) "Compensation" means money, property, or anything else of value.

(f) A legal document assistant, including any legal document assistant employed by a partnership or corporation, shall not provide any self-help service for compensation, unless the legal document assistant is registered pursuant to Section 6402.

(g) A legal document assistant may not provide any kind of advice, explanation, opinion, or recommendation to a consumer about possible legal rights, remedies, defenses, options, selection of forms, or strategies. A legal document assistant shall complete documents only in the manner prescribed by paragraph (1) of subdivision (d).

SEC. 2. Section 6401 of the Business and Professions Code is amended to read:

6401. This chapter does not apply to any person engaged in any of the following occupations, provided that the person does not also perform the duties of a legal document assistant in addition to those occupations:

(a) Any government employee who is acting in the course of their employment.

(b) A licensee of the State Bar of California, or their employee, paralegal, or agent, or an independent contractor while acting on behalf of a licensee of the State Bar.

(c) Any employee of a nonprofit, tax-exempt corporation who either assists clients free of charge or is supervised by a licensee of the State Bar of California who has malpractice insurance.

(d) A licensed real estate broker or licensed real estate salesperson, as defined in Chapter 3 (commencing with Section 10130) of Part 1 of Division 4, who acts pursuant to subdivision (b) of Section 10131 on an unlawful detainer claim as defined in subdivision (b) of Section 6400, and who is a party to the unlawful detainer action.

(e) An immigration consultant, as defined in Chapter 19.5 (commencing with Section 22440) of Division 8.

(f) A person registered as a process server under Chapter 16 (commencing with Section 22350) of Division 8 or a person registered as a professional photocopier under Chapter 20 (commencing with Section 22450) of Division 8.

(g) A person who provides services relative to the preparation of security instruments or conveyance documents as an integral part of the provision of title or escrow service.

(h) A person who provides services that are regulated by federal law.

(i) A person who is employed by, and provides services to, a supervised financial institution, holding company, subsidiary, or affiliate.

SEC. 3. Section 6401.7 of the Business and Professions Code is amended to read:

6401.7. This chapter shall remain in effect only until January 1, 2024, and as of that date is repealed.

SEC. 4. Section 6402 of the Business and Professions Code is amended to read:

6402. A legal document assistant or unlawful detainer assistant shall be registered pursuant to this chapter by the county clerk in the county in which their principal place of business is located, and in which they maintain a branch office, and provide proof that the registrant has satisfied the bonding requirement of Section 6405. 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 Department of Consumer Affairs 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 in order to demonstrate the qualifications and requirements of Section 6402.1.

SEC. 5. Section 6403 of the Business and Professions Code is amended to read:

6403. (a) The application for registration of a natural person shall contain all of the following statements about the applicant:

(1) Name, age, address, and telephone number.

(2) 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.

(3) 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.

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

(5) 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.

(6) Whether the applicant has had a registration revoked pursuant to Section 6413.

(7) 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.

(b) 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 to adequately determine the identity of the applicant.

(c) The application for registration of a partnership or corporation shall contain all of the following statements about the applicant:

(1) The names, ages, addresses, and telephone numbers of the general partners or officers.

(2) Whether the general partners or officers have ever been convicted of a felony, or a misdemeanor under Section 6126 or 6127, or found liable under Section 6126.5.

(3) Whether the general partners or officers have ever 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.

(4) Whether the general partners or officers have ever been convicted of a misdemeanor violation of this chapter.

(5) Whether the general partners or officers have had a civil judgment entered against them in an action arising out of a negligent, reckless, or willful failure to properly perform the obligations of a legal document assistant or unlawful detainer

assistant.

(6) Whether the general partners or officers have ever had a registration revoked pursuant to Section 6413.

(7) If the application is for a renewal of registration, a statement by the applicant that the individuals performing legal document assistant or unlawful detainer assistant services have completed the legal education courses required by Section 6402.2.

(d) The applications made under this section shall be made under penalty of perjury.

(e) The county clerk shall retain the application for registration for a period of three years following the expiration date of the application, after which time the application may be destroyed if it is scanned or if the conditions specified in Section 26205.1 of the Government Code are met. If the application is scanned, the scanned image shall be retained for a period of 10 years, after which time that image may be destroyed and, notwithstanding Section 26205.1 of the Government Code, no reproduction thereof need be made or preserved.

SEC. 6. Section 6404 of the Business and Professions Code is amended to read:

6404. An applicant shall pay a fee of one hundred seventy-five dollars (\$175) to the county clerk at the time the applicant files an application for initial registration or renewal of registration. An additional fee of ten dollars (\$10) shall be paid to the county clerk for each additional identification card.

SEC. 7. Section 6406 of the Business and Professions Code is amended to read:

6406. (a) If granted, a certificate of registration shall be effective for a period of two years, until the date the bond expires, or until the total number of legal document assistants and unlawful detainer assistants employed by a partnership or corporation exceeds the number allowed for the amount of the bond in effect, whichever occurs first. Thereafter, a registrant shall file a new certificate of registration or a renewal of the certificate of registration and pay the fee required by Section 6404, and increase the amount of the bond if required to comply with subdivision (a) of Section 6405. A certificate of registration that is currently effective may be renewed up to 60 days prior to its expiration date and the effective date of the renewal shall be the date the current registration expires. The renewal shall be effective for a period of two years from the effective date or until the expiration date of the bond, or until the total number of legal document assistants and unlawful detainer assistants employed by a partnership or corporation exceeds the number allowed for the dollar amount of the bond in effect, whichever occurs first.

(b) Except as provided in subdivisions (d) to (f), inclusive, an applicant shall be denied registration or renewal of registration if the applicant has been any of the following:

(1) Convicted of a felony, or of a misdemeanor under Section 6126 or 6127, or found liable under Section 6126.5.

(2) Held liable in a civil action by final judgment or entry of a stipulated judgment, if the action alleged fraud, or the use of an untrue or misleading representation, or the use of an unfair, unlawful, or deceptive business practice.

(3) Convicted of a misdemeanor violation of this chapter.

(4) 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.

(5) Had their registration revoked pursuant to Section 6413.

(c) If the county clerk finds that the applicant has failed to demonstrate having met the requisite requirements of Section 6402, 6402.1, or 6402.2, or that any of the paragraphs of subdivision (b) apply, the county clerk, within three business days of submission of the application and fee, shall return the application and fee to the applicant with a notice to the applicant indicating the reason for the denial and the method of appeal.

(d) The denial of an application may be appealed by the applicant by submitting, to the director, the following:

(1) The completed application and notice from the county clerk specifying the reasons for the denial of the application.

(2) A copy of any final judgment or order that resulted from any conviction or civil judgment listed on the application.

(3) Any relevant information the applicant wishes to include for the record.

(e) The director shall order the applicant's certificate of registration to be granted if the director determines that the issuance of a certificate of registration is not likely to expose consumers to a significant risk of harm based on a review of the application and any other information relating to the applicant's unlawful act or unfair practice described in paragraphs (1) to (5), inclusive, of subdivision (b). The director shall order the applicant's certificate of registration to be denied if the director determines that

issuance of a certificate of registration is likely to expose consumers to a significant risk of harm based on a review of the application and any other information relating to the applicant's unlawful act or unfair practice described in paragraphs (1) to (5), inclusive, of subdivision (b). The director shall send to the applicant and the county clerk a written decision listing the reasons registration shall be granted or denied within 30 days of the submission of the matter.

(f) If the director orders that the certificate of registration be granted, the applicant may resubmit the application, with the appropriate application fee and the written decision of the director. The county clerk shall grant the certificate of registration to the applicant within three business days of being supplied this information.

SEC. 8. Section 6407 of the Business and Professions Code is amended to read:

6407. (a) The county clerk shall maintain a register of legal document assistants, and a register of unlawful detainer assistants, assign a unique number to each legal document assistant, or unlawful detainer assistant, and issue an identification card to each one. Upon renewal of registration, the same number shall be assigned, provided that the applicant is renewing registration in the same county in which they were previously registered and there is no lapse of three or more years in the period of registration.

(b) The identification card shall be a card not less than three and one-quarter by two inches, and shall contain at the top, the title "Legal Document Assistant" or "Unlawful Detainer Assistant," as appropriate, followed by the registrant's name, address, registration number, date of expiration, and county of registration. It shall also contain a photograph of the registrant in the lower left corner. The identification card for a partnership or corporation registration shall be issued in the name of the partnership or corporation, and shall not contain a photograph. The front of the card, above the title, shall also contain the following statement in 12-point boldface type: "This person is not a lawyer." The front of the card, at the bottom, shall also contain the following statement in 12-point boldface type: "The county clerk has not evaluated this person's knowledge, experience, or services."

SEC. 9. Section 6409 of the Business and Professions Code is amended to read:

6409. No legal document assistant or unlawful detainer assistant shall retain in their possession original documents of a client. A legal document assistant or an unlawful detainer assistant shall immediately return all of a client's original documents to the client in any one or more of the following circumstances:

(a) If the client so requests at any time.

(b) If the written contract required by Section 6410 is not executed or is rescinded, canceled, or voided for any reason.

(c) If the services described pursuant to paragraph (1) of subdivision (b) of Section 6410 have been completed.

SEC. 10. Section 6409.1 of the Business and Professions Code is amended to read:

6409.1. Notwithstanding any other law, the venue for an action arising out of a dispute between a legal document assistant or unlawful detainer assistant and their client shall be the county in which the client has their primary residence.

SEC. 11. Section 6410 of the Business and Professions Code is amended to read:

6410. (a) Every legal document assistant or unlawful detainer assistant who enters into a contract or agreement with a client to provide services shall, prior to providing any services, provide the client with a written contract, the contents of which shall be prescribed by regulations adopted by the Department of Consumer Affairs.

(b) The written contract shall include all of the following provisions:

(1) The services to be performed.

(2) The costs of the services to be performed.

(3) The contact information of the county clerk's office for the county in which the legal document assistant or unlawful detainer assistant is registered, including the address, phone number, and, if available, internet website.

(4) There shall be printed on the face of the contract in 12-point boldface type a statement that the legal document assistant or unlawful detainer assistant is not an attorney and may not perform the legal services that an attorney performs.

(5) The contract shall contain a statement in 12-point boldface type that the county clerk has not evaluated or approved the registrant's knowledge or experience, or the quality of the registrant's services.

(6) The contract shall contain a statement in 12-point boldface type that the consumer may obtain information regarding free or low-cost representation through a local bar association or legal aid foundation and that the consumer may contact local law

enforcement, a district attorney, or a legal aid foundation if the consumer believes that they have been a victim of fraud, the unauthorized practice of law, or any other injury.

(7) The contract shall contain a statement in 12-point boldface type that a legal document assistant or unlawful detainer assistant is not permitted to engage in the practice of law, including providing any kind of advice, explanation, opinion, or recommendation to a consumer about possible legal rights, remedies, defenses, options, selection of forms, or strategies.

(c) The contract shall be written both in English and in any other language comprehended by the client and principally used in any oral sales presentation or negotiation leading to execution of the contract. The legal document assistant or the unlawful detainer assistant is responsible for translating the contract into the language principally used in any oral sales presentation or negotiation leading to the execution of the contract.

(d) A written contract entered into on or after January 1, 2016, shall contain a statement that, pursuant to Section 6409.1, the venue for an action arising out of a dispute between a legal document assistant or unlawful detainer assistant and their client shall be the county in which the client has their primary residence.

(e) Failure of a legal document assistant or unlawful detainer assistant to comply with subdivisions (a), (b), (c), and (d) shall make the contract or agreement for services voidable at the option of the client. Upon the voiding of the contract, the legal document assistant or unlawful detainer assistant shall immediately return in full any fees paid by the client.

(f) In addition to any other right to rescind, the client shall have the right to rescind the contract within 24 hours of the signing of the contract. The client may cancel the contract by giving the legal document assistant or the unlawful detainer assistant any written statement to the effect that the contract is canceled. If the client gives notice of cancellation by mail addressed to the legal document assistant or unlawful detainer assistant, with first-class postage prepaid, cancellation is effective upon the date indicated on the postmark. Upon the voiding or rescinding of the contract or agreement for services, the legal document assistant or unlawful detainer assistant shall immediately return to the client any fees paid by the client, except fees for services that were actually, necessarily, and reasonably performed on the client's behalf by the legal document assistant or unlawful detainer assistant with the client's knowing and express written consent. The requirements of this subdivision shall be conspicuously set forth in the written contract.

SEC. 12. Section 6410.5 of the Business and Professions Code is amended to read:

6410.5. (a) It is unlawful for any legal document assistant or unlawful detainer assistant, in the first contact with a prospective client of legal document or unlawful detainer assistant services, to enter into a contract or agreement for services or accept any compensation unless the legal document assistant or the unlawful detainer assistant states orally, clearly, affirmatively, and expressly all of the following, before making any other statement, except statements required by law in telephonic or home solicitations, and a greeting, or asking the prospective client any questions:

(1) The identity of the person making the solicitation.

(2) The trade name of the person represented by the person making the solicitation, if any.

(3) The kind of services being offered for sale.

(4) The statement: "I am not an attorney" and, if the person offering legal document assistant or unlawful detainer assistant services is a partnership or a corporation, or uses a fictitious business name, "[name] is not a law firm. I/we cannot represent you in court, advise you about your legal rights or the law, or select legal forms for you."

(5) The county in which the legal document assistant or unlawful detainer assistant is registered and their registration number.

(6) The expiration date of the legal document assistant's or unlawful detainer assistant's current registration period.

(b) After the legal document assistant or unlawful detainer assistant makes the oral statements required pursuant to subdivision (a), and before the legal document assistant or unlawful detainer assistant enters into a contract or agreement for services or accepts any compensation, the legal document assistant or unlawful detainer assistant shall provide the prospective client with a "Notice to Consumer" set forth below. After allowing the prospective client time to read the notice, the legal document assistant or unlawful detainer assistant shall ask the prospective client to sign and date the notice. If the first contact is not in person, the legal document assistant or unlawful detainer assistant shall provide the notice to the prospective client at the first in-person meeting or mail the notice to the prospective client before entering into a contract or agreement for services or accepting any compensation. The notice shall be set forth in black, bold, 12-point type on a separate, white, 8¹/₂ by 11 inch sheet of paper that contains no other print or graphics, and shall be in the form set forth below. The notice shall contain only the appropriate name or other designation from those indicated in brackets below. At the time a prospective client signs the notice and before that prospective client is offered any contract or agreement for signature, the legal document assistant or unlawful detainer assistant shall give the

prospective client a clearly legible copy of the signed notice. A legal document assistant or unlawful detainer assistant shall not ask or require a prospective client or a client to sign any other form of acknowledgment regarding this notice.

NOTICE TO CONSUMER

DO NOT SIGN ANYTHING BEFORE YOU READ THIS
PAGE

In the first conversation when you contacted [the unlawful
detainer assistant or the legal document assistant], did they
explain

[Name of unlawful detainer assistant or legal document
assistant] is not an attorney.

[Name of corporation or partnership, if any, that is offering
legal document assistant services or unlawful detainer
assistant services] is not a law firm.

[They/name of the business] cannot represent you in court.

[They/name of the business] cannot advise you about your
legal rights or the law.

[They/name of the business] cannot select legal forms for
you.

[They/name of the business] is registered in [county name]
and the registration number is [registration number].

[They/name of the business]'s registration is valid until [date
of expiration of registration], after which it must be renewed.

To confirm that [they/name of business] is registered, you
may contact the [county name] clerk's office at [office
address], [or] [office phone number], [or] [if available, office
internet website].

Choose one:

Yes, they explained.

No, they did not explain.

Date:

Signature:

(c) The legal document assistant or unlawful detainer assistant shall be responsible for translating, if necessary, the "Notice to Consumer" required pursuant to subdivision (b) into the language principally used in any oral sales presentation or negotiation.

SEC. 13. Section 6411 of the Business and Professions Code is amended to read:

6411. It is unlawful for any person engaged in the business or acting in the capacity of a legal document assistant or unlawful detainer assistant to do any of the following:

(a) Make false or misleading statements to the consumer concerning the subject matter, legal issues, or self-help service being provided by the legal document assistant or unlawful detainer assistant.

(b) Make any guarantee or promise to a client or prospective client, unless the guarantee or promise is in writing and the legal document assistant or unlawful detainer assistant has a reasonable factual basis for making the guarantee or promise.

(c) Make any statement that the legal document assistant or unlawful detainer assistant can or will obtain favors or has special influence with a court, or a state or federal agency.

(d) Provide assistance or advice which constitutes the unlawful practice of law pursuant to Section 6125, 6126, or 6127.

(e) Engage in the unauthorized practice of law, including, but not limited to, giving any kind of advice, explanation, opinion, or recommendation to a consumer about possible legal rights, remedies, defenses, options, selection of forms, or strategies. A legal document assistant shall complete documents only in the manner prescribed by subdivision (d) of Section 6400.

(f) Use in the person's business name or advertising the words "legal aid," "legal services," or any similar term that has the capacity, tendency, or likelihood to mislead members of the public about that person's status as a nonprofit corporation or governmentally supported organization offering legal services without charge to indigent people, or employing licensees of the State Bar to provide those services.

SEC. 14. Section 6412 of the Business and Professions Code is amended to read:

6412. (a) 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.

(b) If there has been a recovery against a bond or cash deposit under subdivision (a) and the registration has not been revoked pursuant to Section 6413, the registrant shall file a new bond or deposit an additional amount of cash within 30 days to reinstate the bond or cash deposit to the amount required by Section 6405. If the registrant does not file a bond, or deposit this amount within 30 days, the registrant's certificate of registration shall be revoked.

SEC. 15. Section 6413 of the Business and Professions Code is amended to read:

6413. The county clerk shall revoke the registration of a legal document assistant or unlawful detainer assistant upon receipt of an official document or record stating 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. The county clerk shall be given notice of the disposition in any court action by the city attorney, district attorney, or plaintiff, as applicable. A registrant whose registration is revoked pursuant to this section may reapply for registration three years after the revocation.

SEC. 16. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.