

## TITLE 10. CALIFORNIA DEPARTMENT OF REAL ESTATE

### CRITERIA FOR SUBSTANTIAL RELATIONSHIP – SECTIONS 2910 and 2910.5

#### NOTICE IS HEREBY GIVEN

The Commissioner (“Commissioner”) of the Department of Real Estate (“DRE”) proposes to amend Section 2910 and add Section 2910.5 to the Regulations of the Real Estate Commissioner (Title 10, Chapter 6 of the California Code of Regulations) (“the Regulations”) after considering all comments, objections, and recommendations regarding the proposed action. Publication of this notice commences a 45-day public comment period.

#### PUBLIC HEARING

A public hearing is not scheduled. A public hearing will be held if any interested person, or that person’s duly authorized representative, submits a written request for a public hearing to DRE at the contact listed below no later than 15 days prior to the close of the written comment period.

#### WRITTEN COMMENT PERIOD

Any interested person, or that person’s authorized representative, may submit written comments relevant to the proposed regulatory action to the Commissioner addressed as follows:

##### Regular Mail

Department of Real Estate  
Attn: Daniel E. Kehew, Sacramento Legal Office  
P.O. Box 137007  
Sacramento, CA 95813-7007

##### Electronic Mail

DRERegs@dre.ca.gov

##### Facsimile

(916) 263-8767

**Comments may be submitted until 5:00 p.m., Tuesday, August 18, 2020.**

#### AUTHORITY AND REFERENCE

Section 10080 of the Business and Professions Code (“the Code”) authorizes the Commissioner to adopt regulations that are reasonably necessary for the enforcement of the provisions of the Real Estate Law (Code Sections 10000 et. seq.). The proposed regulations implement, interpret, and make specific Sections 480, 481, and 490 of the Code.

The reference note for Section 2910 includes the California Supreme Court decision *In re Gossage* (2000) 23 Cal 4<sup>th</sup> 1080. That case addressed a licensing body’s use of past criminal convictions to determine an applicant’s fitness to practice. DRE relied on *In re Gossage* in its earlier development of the Section 2910. The case remains relevant to the section as amended.

## INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW – SUMMARY OF PROPOSED REGULATION

DRE is responsible for the licensing of real estate brokers and salespersons in the State of California. In this role, DRE evaluates the fitness of an individual applicant or licensee for real estate licensure where DRE becomes aware of criminal convictions or other license discipline imposed upon the applicant or licensee.

In language that remains in effect until July 1, 2020, Code section 480 authorizes specified licensing agencies to deny an application for a license where the applicant was previously convicted of a crime substantially related to the profession for which the applicant seeks a license. Correspondingly, section 490 currently authorizes the same licensing agencies to discipline an existing license when an existing licensee is convicted of a crime substantially related to the licensed profession. Current section 481 requires the specified licensing agencies to set out standards that identify which crimes or acts are substantially related to the regulated profession. DRE's Criteria for Substantial Relationship appear in Title 10 of the California Code of Regulations, Chapter 6, Section 2910.

AB 2138 (Chiu, Chapter 995, Statutes of 2018) amended sections 480 and 481 of the Code. Effective on July 1, 2020, the amendments limit the specified licensing agencies' use of past criminal convictions in denying license applications. The amendments also necessitate the amendment of existing Criteria for Substantial Relationship, including DRE's regulation section 2910. Further, the revised statute also calls for several specific licensing fields involving financial regulation, including real estate licensure, to define the financial crimes that those agencies may use to deny a license beyond the seven-year maximum time limit imposed by AB 2138 on the use of other types of convictions. DRE defines this term by adding proposed Section 2910.5 to the Regulations.

Finally, existing references to "Bureau" or "department" in the existing section 2910 of the Regulations are amended to "Department" for consistency.

### *Anticipated Benefits of the Proposed Regulation*

The proposed language brings the existing DRE Criteria for Substantial Relationship into consistency with the updated statutory standard. Also, the proposed amendment will make specific the scope of the financial convictions that still may be used to deny a real estate license application beyond the seven-year limit on corresponding use of other convictions, allowing DRE to remain in harmony with the federally-established scope of the Secure and Fair

Enforcement for Mortgage Licensing Act of 2008 (Public Law 110-289). ("SAFE Act".)

### *Evaluation of Inconsistency/Incompatibility with Existing State Regulations*

The Commissioner has determined that these proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to criteria for determining the substantial relationship of an applicant's or licensee's criminal convictions or license discipline to the practice of real estate, the Commissioner has concluded that these are the only State of California regulations relating to the subject.

### DISCLOSURES REGARDING THE PROPOSED ACTION

*The Commissioner has made the following determinations:*

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

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

Significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states: None.

Significant effect on housing costs: None.

### RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The Commissioner concludes that it is (1) unlikely that the proposal will eliminate any jobs for real estate licensees or associated professions, (2) unlikely that the proposal will create jobs,<sup>1</sup> (3) unlikely the proposal will create new

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<sup>1</sup> Although AB 2138 appears to modify the screening standards applied to real estate license applicants, DRE's existing Criteria for Rehabilitation (sections 2911 and 2912 of the Regulations) already encompass almost all of the scope of the

businesses of any sort, (4) unlikely that the proposal will eliminate any existing businesses, and (5) unlikely that the proposed regulations will result in the expansion of businesses currently doing business in the state.

#### BENEFITS OF THE PROPOSED ACTION

The stated goal of AB 2138 was to increase access to licensure for persons with criminal convictions in their background. Although DRE's Criteria for Rehabilitation includes provisions that already encompass much of the scope of the standard set by AB 2138, this proposal will harmonize DRE's Criteria for Substantial Relationship with the new AB 2138 and, prospectively, allow for some issuance of licenses where present law would limit such access. The proposed regulatory amendments and addition will not benefit worker safety or the state's environment.

#### SMALL BUSINESS DETERMINATION

The Commissioner has determined that there is no fiscal impact to small businesses resulting from this proposed regulatory amendment. The amendments serve only to implement the statutory standard, rather than impose a substantial change in that standard.

#### CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Commissioner must determine that no reasonable alternative they considered, or that has otherwise been identified and brought to the attention of DRE, 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.

DRE invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at during the written comment period.

#### CONTACT PERSON

Inquiries concerning this action may be directed to Daniel Kehew at (916) 576-7842, or via email at [DRERegs@dre.ca.gov](mailto:DRERegs@dre.ca.gov). The backup contact person is Stephen Lerner at (916) 576-8100.

#### AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

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statute that will go into effect on July 1, 2020. DRE predicts that practical impact of these changes on applicants will be minimal.

DRE will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its headquarters office: 1651 Exposition Boulevard, Sacramento, California. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons, and the Form 400 under which the package was submitted to the Office of Administrative Law for publication. Copies may be obtained by contacting Daniel E. Kehew at the mailing address and email address listed above.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Commissioner may adopt the proposed regulations substantially as described in this notice. If the Commissioner makes modification that are sufficiently related to the originally proposed text, DRE will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Commissioner adopts the regulation as revised. A request for a copy of any modified regulation(s) should be addressed to the contact person designated above. The Commissioner 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 completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website listed below.

#### AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the notice, the initial statement of reasons, and the text of the regulations in underline and strikeout can be accessed through DRE's website at [www.dre.ca.gov](http://www.dre.ca.gov).