

## Regulations Proposal: Criteria for Substantial Relationship

### Article 18.5. Substantial Relationship and Rehabilitation Criteria (Refs and Annos)

#### § 2910. Criteria ~~of~~ for Substantial Relationship.

(a) When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime, or on the basis of an act described in Section 480(a)(2) ~~or 480(a)(3)~~ of the Code, the crime or act ~~shall~~ may be deemed to be substantially related to the qualifications, functions or duties of a licensee of the ~~Bureau-Department~~ within the meaning of Sections 480 and 490 of the Code if it involves any of the following characteristics:

(1) The fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person.

(2) Counterfeiting, forging or altering of an instrument or the uttering of a false statement.

(3) Willfully attempting to derive a personal financial benefit through the nonpayment or underpayment of taxes, assessments or levies duly imposed upon the licensee or applicant by federal, state, or local government.

(4) The employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end.

(5) Sexually related conduct affecting a person who is an observer or non-consenting participant in the conduct or convictions which require registration pursuant to the provisions of Section 290 of the Penal Code.

(6) Willfully violating or failing to comply with a provision of Division 4 of the Business and Professions Code of the State of California.

(7) Willfully violating or failing to comply with a statutory requirement that a license, permit or other entitlement be obtained from a duly constituted public authority before engaging in a business or course of conduct.

(8) Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another.

(9) Contempt of court or willful failure to comply with a court order.

(10) Conduct which demonstrates a pattern of repeated and willful disregard of law.

(11) Two or more convictions involving the consumption or use of alcohol or drugs when at least one of the convictions involve driving and the use or consumption of alcohol or drugs.

(b) The conviction of a crime constituting an attempt, solicitation or conspiracy to commit any of the above enumerated acts or omissions ~~is also~~ may also be deemed to be substantially related to the qualifications, functions or duties of a licensee of the ~~department~~ Department.

~~(c) If the crime or act is substantially related to the qualifications, functions or duties of a licensee of the department, the context in which the crime or acts were committed shall go only to the question of the weight to be accorded to the crime or acts in considering the action to be taken with respect to the applicant or licensee.~~

(c) The nature and gravity of the offense, the number of years that have elapsed since the date of the offense, and the nature and duties of a real estate licensee shall be taken into consideration when determining whether to deem an offense to be substantially related to the qualifications, functions or duties of a licensee. The Department's consideration of these factors in assessing the substantial relationship of an offense does not alter, or act in place of, consideration of these same factors in the Criteria for Rehabilitation.

Note: Authority cited: Section 10080, Business and Professions Code. Reference: Sections 480, 481 and 490, Business and Professions Code; and *In re Gossage* (2000) 23 Cal 4th 1080.

### **§ 2910.5. Financial Crimes Regulatory Finding and Definition.**

(a) Pursuant to Business and Professions Code Section 480(a)(1)(B), the Department finds that financial crimes currently classified as a felony and described by the following definition are directly and adversely related to the fiduciary qualifications, functions, or duties of a licensee.

(b) A financial crime, as referenced in Business and Professions Code Section 480(a)(1)(B), is any crime where the applicant did one or more of the following in the commission of a criminal offense:

(1) Obtained money, property, or services.

(2) Deprived their victim of money, property, or services.

(3) Engaged in acts involving mishandling of money, property, or services, including but not limited to money laundering.

(4) Committed an act of fraud, dishonesty, a breach of trust, or money laundering, as those terms are referenced in the United States Code Service at Title 12, Section 5104(b)(2)(B).

Note: Authority cited: Section 10080, Business and Professions Code. Reference: Sections 480, 481 and 490, Business and Professions Code.