

**State of California  
Office of Administrative Law**

**In re:**  
**Department of Real Estate**

**Regulatory Action:**

**Title 10, California Code of Regulations**

**Adopt sections: 2910.5**

**Amend sections: 2910**

**Repeal sections:**

**NOTICE OF APPROVAL OF REGULATORY  
ACTION**

**Government Code Section 11349.3**

**OAL Matter Number: 2021-0211-02**

**OAL Matter Type: Regular (S)**

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In this rulemaking action, the Department amends its regulations for substantial relationship criteria and rehabilitation criteria for crimes, professional misconduct, or acts considered substantially related to the qualifications, functions, or duties of a licensee. The Department also adopts a new section related to the denial of a license or registration on basis of a financial crime conviction. The regulatory changes align the regulations with Assembly Bill 2138 (Stats. 2018, Ch. 995).

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 3/26/2021.

**Date: March 26, 2021**



**FOR**

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**Peggy J. Gibson  
Senior Attorney**

**For: Kenneth J. Pogue  
Director**

**Original: Douglas McCauley, Real Estate  
Commissioner**

**Copy: Daniel Kehew**

**NOTICE PUBLICATION/REGULATIONS SUBMISSION**

# REGULAR

For use by Secretary of State only

STD. 400 (REV. 10/2019)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-2020-0618-01</b>	REGULATORY ACTION NUMBER <b>2021-0211-025</b>	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

**ENDORSED - FILED**  
in the office of the Secretary of State  
of the State of California

**MAR 26 2021**

2:25 P.M.

2021 FEB 11 P 3:43  
OFFICE OF  
ADMINISTRATIVE LAW

AGENCY WITH RULEMAKING AUTHORITY  
Department of Real Estate

AGENCY FILE NUMBER (if any)  
N/A

**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER	FAX NUMBER (Optional)
<b>OAL USE ONLY</b> <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER		PUBLICATION DATE	

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) Criteria for Substantial Relationship	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
<b>SECTION(S) AFFECTED</b> (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 2910.5
	AMEND 2910
TITLE(S) 10	REPEAL

3. TYPE OF FILING			
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify)	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY		
<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify)		

7. CONTACT PERSON Daniel E. Kehew	TELEPHONE NUMBER (916) 576-7842	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) daniel.kehew@dre.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE Feb. 11, 2021
TYPED NAME AND TITLE OF SIGNATORY Stephen M. Lerner, Assistant Commissioner for Legal	

For use by Office of Administrative Law (OAL) only

**ENDORSED APPROVED**

**MAR 26 2021**

Office of Administrative Law

## Regulations As Adopted: 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~~ Sections 481 and 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: Sections 481 and 10080, Business and Professions Code.  
Reference: Sections 480, 481 and 490, Business and Professions Code.