

DEPARTMENT OF ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
2900 REAL ESTATE COMMISSION
Statutory Authority: 24 Delaware Code, Section 2905(a)(1) (24 Del.C. §2905(a)(1))
24 DE Admin. Code 2900

ORDER

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on February 10, 2005 at a scheduled meeting of the Delaware Real Estate Commission to receive comments regarding proposed Regulation 16.0. The proposed regulation identifies crimes substantially related to services provided by real estate brokers, salespersons and appraisers as mandated by SB 229 enacted by the 142nd General Assembly. The proposed regulation was published in the *Register of Regulations*, Vol. 8, Issue 7, January 1, 2005.

Background

Under Title 24, Chapter 29, as amended by SB 229, one of the qualifications for licensure is that the applicant “shall not have been convicted of a crime that is substantially related to the practice of real estate brokering or real estate sales, nor have been professionally penalized, nor convicted for drug addiction nor have been professionally penalized or convicted for fraud.” 24 **Del.C.** §2907(a)(4). In addition, a real estate appraiser may be subject to disciplinary action for conduct which includes, but is not limited to, “conviction of a crime that is substantially related to the practice of real estate appraisal.” 24 **Del.C.** § 2938(4).

“‘Substantially related’ means the nature of the criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform 1 or more of the duties or responsibilities necessarily related to the practice of real estate brokering, real estate sales or real estate appraisal.” 24 **Del.C.** §2901(a)(7).

The Board’s authority to promulgate rules and regulations implementing or clarifying specific sections of Chapter 29 is set forth in 24 **Del.C.** §2905(2)(1). The specific mandate for this rule is set forth in 24 **Del.C.** §2905(c). The proposed regulation specifically identifies those crimes which are substantially related to the practice of real estate brokering, real estate sales or real estate appraisal.

Summary Of The Evidence And Information Submitted

No written comments were received. No public comment was received at the February 10, 2005 hearing.

Findings Of Fact With Respect To The Evidence And Information Submitted

Within the purview of its responsibilities, the Board has carefully reviewed and considered the crimes presented as a compilation of crimes extracted from the Delaware Code. The overarching concern of the Board was the safety of the public since the licensed practitioners work closely in a position of trust and responsibility with the members of the public they serve. For example, they gain access to their homes and businesses, many times without the knowledge of others. Oftentimes too, licensed practitioners transport to or meet prospective buyers at homes or other locations in isolated situations when no one else is aware of their whereabouts. Clients and coworkers should not have to be concerned for their physical safety or the safety of their property. Licensees also have access to confidential financial information pertaining to prospective sellers and buyers. In addition, they deal with individuals who seldom experience real estate transactions and are unaware of the proper conduct of such endeavors. The Board also considered that many sellers and buyers are elderly and may be mentally or physically impaired. Many of these individuals are often in stressful situations when buying or selling a home and may be subject to undue influence or manipulation.

The “primary objective of the Real Estate Commission, to which all other objectives and purposes are secondary, is to protect the general public, especially those persons who are direct recipients of services regulated by this chapter from unsafe practices, and from occupational practices which tend to reduce competition or fix the price of services rendered. The secondary objectives of the Commission are to maintain and establish minimum standards of licensee competency, and establish and maintain certain standards in the delivery of services to the public.” 24 **Del.C.** §2929.

The Board finds that the crimes identified in the proposed rule are substantially related to fitness or ability to perform one or more of the duties and responsibilities of a real estate broker, real estate salesperson or real estate appraiser in that they involve: the use of physical violence or force, or the threat thereof, toward or upon the person

of another; sexual abuse or inappropriate sexual conduct; burglary and arson offenses evidencing a disregard for safety of persons and property; violation of privacy; theft, dishonesty, or false or fraudulent conduct; mistreatment or abuse of children and the elderly, including financial exploitation; and those drug offenses classified as violent felonies involving manufacture, delivery and intent to deliver and/or trafficking.

In summary, the Board finds that adopting regulation 16.0, as proposed, is in the best interest of the citizens of the State of Delaware and is necessary to protect the health and safety of the general public, particularly the recipients of real estate brokering, real estate sales and rentals, or real estate appraisal services.

Decision And Effective Date

The Board hereby adopts the changes to Regulation 16.0 to be effective 10 days following publication of this order in the *Register of Regulations*.

Text And Citation

The text of the revised rule remains as published in *Register of Regulations*, Vol. 8, Issue 7, January 1, 2005, and as attached hereto as Exhibit A.

SO ORDERED this 10th day of February, 2005.

DELAWARE REAL ESTATE COMMISSION

Marvin R. Sachs, Chairperson, Presiding

Joseph P. Connor, Jr., Vice-Chairperson

Paul Davis

John R. Giles

Harry W. Kreger

James D. McGinnis

16.0 Crimes Substantially Related To The Practice Of Real Estate Brokers, Salespersons And Appraisers

16.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of real estate brokers, salespersons and appraisers in the State of Delaware without regard to the place of conviction:

- | | |
|---------|--|
| 16.1.1 | Murder by abuse or neglect in the second degree; class B felony. 11 Del.C. §633. |
| 16.1.2 | Murder by abuse or neglect in the first degree; class A felony. 11 Del.C. §634. |
| 16.1.3 | Murder in the second degree; class A felony. 11 Del.C. §635. |
| 16.1.4 | Murder in the first degree; class A felony. 11 Del.C. §636. |
| 16.1.5 | Unlawful sexual contact in the second degree; class G felony. 11 Del.C. §768. |
| 16.1.6 | Unlawful sexual contact in the first degree; class F felony. 11 Del.C. §769. |
| 16.1.7 | Rape in the fourth degree; class C felony. 11 Del.C. §770. |
| 16.1.8 | Rape in the third degree; class B felony. 11 Del.C. §771. |
| 16.1.9 | Rape in the second degree; class B felony. 11 Del.C. §772. |
| 16.1.10 | Rape in the first degree; class A felony. 11 Del.C. §773. |
| 16.1.11 | Continuous sexual abuse of a child; class B felony. 11 Del.C. §778. |
| 16.1.12 | Dangerous crime against a child; class B felony. 11 Del.C. §779. |
| 16.1.13 | Kidnapping in the second degree; class C felony. 11 Del.C. §783. |
| 16.1.14 | Kidnapping in the first degree; class B felony. 11 Del.C. §783A. |
| 16.1.15 | Arson in the third degree; class G felony. 11 Del.C. §801. |
| 16.1.16 | Arson in the second degree; class D felony. 11 Del.C. §802. |
| 16.1.17 | Arson in the first degree; class C felony. 11 Del.C. §803. |
| 16.1.18 | Burglary in the second degree; class D felony. 11 Del.C. §825. |
| 16.1.19 | Burglary in the first degree; class C felony; class B felony. 11 Del.C. §826. |
| 16.1.20 | Robbery in the second degree; class E felony. 11 Del.C. §831. |

- 16.1.21 Robbery in the first degree; Class B. 11 **Del.C.** §832.
- 16.1.22 Carjacking in the first degree; class C felony; class B felony. 11 **Del.C.** §836.
- 16.1.23 Extortion; class E felony. 11 **Del.C.** §846.
- 16.1.24 Misapplication of property; class G felony. 11 **Del.C.** §848.
- 16.1.25 Theft of rented property; class G felony. 11 **Del.C.** §849.
- 16.1.26 Identity theft; class E felony; class D felony. 11 **Del.C.** §854.
- 16.1.27 Forgery; class F felony; class G felony. 11 **Del.C.** §861.
- 16.1.28 Possession of forgery devices; class G felony. 11 **Del.C.** §862.
- 16.1.29 Tampering with public records in the first degree; class E felony. 11 **Del.C.** §876.
- 16.1.30 Issuing a false certificate; class G felony. 11 **Del.C.** §878.
- 16.1.31 Fraudulent conveyance of public lands; class G felony. 11 **Del.C.** §911.
- 16.1.32 Fraudulent receipt of public lands; class G felony. 11 **Del.C.** §912.
- 16.1.33 Insurance fraud; class G felony. 11 **Del.C.** §913.
- 16.1.34 Home improvement fraud; class G felony. 11 **Del.C.** §916.
- 16.1.35 New home construction fraud; class C felony, class F felony, class G felony. 11 **Del.C.** §917.
- 16.1.36 Dealing in children; class E felony. 11 **Del.C.** §1100.
- 16.1.37 Endangering the welfare of a child; class E or G felony. 11 **Del.C.** §1100.
- 16.1.38 Sexual exploitation of a child; class B felony. 11 **Del.C.** §1108.
- 16.1.39 Unlawfully dealing in child pornography; class D felony. 11 **Del.C.** §1109.
- 16.1.40 Possession of child pornography; class F felony. 11 **Del.C.** §1111.
- 16.1.41 Sexual solicitation of a child; class C felony. 11 **Del.C.** §1112A.
- 16.1.42 Bribery; class E felony. 11 **Del.C.** §1201.
- 16.1.43 Receiving a bribe; class E felony. 11 **Del.C.** §1203.
- 16.1.44 Perjury in the second degree; class F felony. 11 **Del.C.** §1222.
- 16.1.45 Perjury in the first degree; class D felony. 11 **Del.C.** §1223.
- 16.1.46 Tampering with physical evidence; class G felony. 11 **Del.C.** §1269.
- 16.1.47 .Hate crimes; class G felony, class F felony, class E felony, class D felony, class C felony, class B felony, class A felony. 11 **Del.C.** §1304.
- 16.1.48 Possession of a deadly weapon during commission of a felony; class B felony. 11 **Del.C.** §1447.
- 16.1.49 Possession of a firearm during commission of a felony; class B felony. 11 **Del.C.** §1447A.
- 16.1.50 Removing a firearm from the possession of a law enforcement officer; class C felony. 11 **Del.C.** §1458.
- 16.1.51 Organized Crime and Racketeering, Class B Felony. 11 **Del.C.** §1504.
- 16.1.52 Abuse of patient or resident in nursing home; Class D felony; Class G felony; Class A felony. 16 **Del.C.** §1136(a).
- 16.1.53 Prohibited acts A; Class B felony. 16 **Del.C.** §4751.
- 16.1.54 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, Lysergic Acid Diethylamide (L.S.D.), designer drugs, or 3,4-methylenedioxymethamphetamine (MDMA); Class B felony. 16 **Del.C.** §4753A.
- 16.1.55 Knowing or reckless abuse of an infirm adult; Class D felony; Class E felony; Class G felony; Class A felony. 31 **Del. C.** §3913.
- 16.2 Crimes substantially related to the practice of real estate brokers, salespersons and appraisers shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

***Please Note: As the rest of the sections were not amended, they are not being published. A complete set of the rules and regulations for the Real Estate Commission is available at:**

<http://www.professionallicensing.state.de.us/boards/realestate/index.shtml>

8 DE Reg. 1283 (3/1/05)