

## APPLICANT ELIGIBILITY INFORMATION

RE 222 (Rev. 7/20)

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### **Application review**

Upon successful completion of the real estate license examination, an applicant has one year to file a license application. Each real estate license application is reviewed separately, and an individual determination is made concerning an applicant's eligibility to receive a license. If the Department determines that an application requires further investigation, the file would be referred to the appropriate District Office, and the applicant would be advised of that fact by mail. Should the Department decide to deny the license application, the applicant would be entitled to a hearing to offer arguments in support of his or her request for issuance of a license. All hearings are presided over by an Administrative Law Judge who would make a recommendation to the Real Estate Commissioner regarding whether a license should be issued or denied, or whether the right to a restricted license should be granted. The Department of Real Estate and the Administrative Law Judge use the criteria set forth in Commissioner's Regulations 2910 and 2911 to determine whether a particular crime is considered substantially related and if (during the hearing process) the individual has demonstrated his or her rehabilitation.

For your reference, Regulations 2910 and 2911 (as well as Sections 10156.5–10156.8 of the Business and Professions Code, which refer to the issuance of a restricted license), are provided below. Not all of the factors listed in these Regulations will be applicable in the case of every person, nor will each factor necessarily be given equal weight in evaluating the rehabilitation of an individual. Information regarding rehabilitation should not be submitted with examination or original license applications. This information would only be needed if the application is referred to the District Office for further investigation.

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### **2910. Criteria of 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 be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Department within the meaning of Sections 480 and 490 of the Code if it involves:

- (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 nonconsenting 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 deemed to be substantially related to the qualifications, functions, or duties of a licensee of the 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 act 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.

### **2911. Criteria of Rehabilitation (Denial)**

- (a) The following criteria have been developed and will be considered by the Bureau pursuant to Section 482 of the Business and Professions Code for the purpose of evaluating whether or not an applicant is rehabilitated for purposes of issuance or for reinstatement of a license:
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- (1) The time that has elapsed since commission of the act(s) or offense(s):
    - (A) The passage of less than two years after the most recent criminal conviction or act of the applicant that is a cause of action in the Bureau's Statement of Issues against the applicant is inadequate to demonstrate rehabilitation.
    - (B) Notwithstanding subdivision (a)(1)(A), above, the two year period may be increased based upon consideration of the following:
      - (i) The nature and severity of the crime(s) and/or act(s) committed by the applicant.
      - (ii) The applicant's history of criminal convictions and/or license discipline that are "substantially related" to the qualifications, functions, or duties of a real estate licensee. However, no rehabilitation shall be required where the sole proven basis or bases for denial of an application is an expunged conviction as described in Business and Professions Code Section 480(c).
  - (2) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the applicant, or escheat to the State of these monies or other properties if the victim(s) cannot be located.
  - (3) Expungement of criminal convictions.
  - (4) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.
  - (5) Successful completion or early discharge from probation or parole.
  - (6) Abstinence from the use of controlled substances and/or alcohol for not less than two years if the conduct which is the basis to deny the Bureau action sought is attributable in part to the use of controlled substances and/or alcohol.
  - (7) Payment of the fine and/or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment.
  - (8) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial of the Bureau action sought.
  - (9) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement.
  - (10) Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others.
  - (11) Correction of business practices resulting in injury to others or with the potential to cause such injury.
  - (12) Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.
  - (13) New and different social and business relationships from those which existed at the time of the conduct that is the basis for denial of the Bureau action sought.
  - (14) Change in attitude from that which existed at the time of the conduct in question as evidenced by the following:
    - (A) Testimony and/or other evidence of rehabilitation submitted by the applicant.
    - (B) Evidence from family members, friends and/or other persons familiar with applicant's previous conduct and with his or her subsequent attitudes and/or behavioral patterns.
    - (C) Evidence from probation or parole officers and/or law enforcement officials competent to testify as to applicant's social adjustments.
    - (D) Evidence from psychiatrists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.
    - (E) Absence of subsequent felony convictions, misdemeanor convictions, or other conduct that provides grounds to discipline a real estate licensee, which reflect an inability to conform to societal rules when considered in light of the conduct in question.
- (b) The SAFE Act, commencing with section 10166.01 of the Business and Professions Code, imposes specific conditions that apply to applications for a mortgage loan originator license endorsement. Each of the above criteria notwithstanding, no mortgage loan originator license endorsement shall be issued to an applicant for such license endorsement where the applicant:
    - (1) Has been convicted of any felony during the seven year period preceding the date of his or her application for a license endorsement. This ban is not subject to mitigation or rehabilitation unless the felony conviction has been expunged or pardoned, or unless the real estate licensee has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.
    - (2) Has ever been convicted of a felony where such felony involved an act of fraud, dishonesty, a breach of trust, or money laundering. This ban is not subject to mitigation or rehabilitation unless the felony conviction has been expunged or pardoned, or unless the real estate licensee has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

**Restricted License**

**10156.5** The commissioner may issue a restricted license to a person:

- (a) Who is or has been licensed under this chapter and who has been found by the commissioner after a hearing to have violated provisions of Division 4 of this code where such violation would justify the suspension or revocation of the license.

- (b) Who is applying for a license under this chapter, who has met the examination and experience requirements, but who has been found by the commissioner after a hearing to have failed to have made a satisfactory showing that he meets all of the other requirements for the license applied for, where such failure would justify the denial of the license applied for.

***Restricted License — Restrictions Authorized***

**10156.6** A restricted license issued pursuant to Section 10156.5 as the commissioner in his discretion finds advisable in the public interest may be restricted:

- (a) By term.
- (b) To affiliate with a particular real estate broker, if a salesman.
- (c) By conditions to be observed in the exercise of the privileges granted.

***Restricted License — Privileges — Suspension — No Renewal Rights***

**10156.7** A restricted license issued pursuant to Section 10156.5 does not confer any property right in the privileges to be exercised thereunder, and the holder of a restricted license does not have the right to renewal of such license.

The commissioner may without hearing issue an order suspending the licensee's right to further exercise any privileges granted under a restricted license pending final determination made after formal hearing.

***Surety Bonds Restricted License***

**10156.8** As one of the conditions to the issuance of a restricted license authorized by Section 10156.5 the commissioner may require the filing of surety bonds in such form and condition as he may require in respect to the restricted licensee for the protection of persons or classes of persons with whom said licensee may deal.