

# MASSACHUSETTS BOARD OF REAL ESTATE BROKERS AND SALESPERSONS

## Determination of Good Moral Character Compliance for Initial Broker or Salesperson

To assist applicants in understanding when a crime may lead to a license denial, the Board of Registration of Real Estate Brokers and Salesperson ("the Board") voted at its meeting on November 20, 2019 to adopt the following Policy Guideline. The Board has created this policy, which explains when a conviction rises to the level where it could lead to a license denial. Pursuant to Chapter 69 of the Acts of 2018 (An Act Relative to Criminal Justice Reform), the Board is required to provide "a list of the specific criminal convictions that are directly related to the duties and responsibilities for the licensed occupation that would disqualify an applicant from eligibility for a license." The Board has determined that no single conviction, on its own, would result in rendering an applicant disqualified from being eligible for a license. However, other factors, such as a conviction being very recent, the applicant having a history of other criminal convictions, or the conviction involving aggravating factors (such as a crime being caused by substance abuse issues, the crime being part of a pattern of violence, the matter leading to a level 3 Sex Offender designation, etc.) might justify denying a license to an otherwise eligible candidate. As a result any conviction could lead to a license denial. This includes ALL the crimes listed on the Master Crime List issued by the Massachusetts Sentencing Commission. These guidelines shall be deemed to be in addition and in harmony with any requirements by Division of Professional Licensure policy and/or regulations of the Department of Criminal Justice Information Services.

Due to the need for the Board to ensure its decisions are not arbitrary or capricious, the provisions of these guidelines shall be deemed to override any past licensing decisions of the Board to the contrary. Additionally, for purposes of disciplinary actions, these guidelines shall be deemed to override any past precedent.

### I. REVIEW OF CRIMINAL RECORDS AT TIME OF APPLICATION

Purpose:

To provide guidance to applicants, licensees and to Board staff members regarding the type, age and disposition of conviction and pending criminal case information that may impact eligibility for licensure.

Overview:

**These guidelines shall govern the review of records of criminal convictions and pending criminal cases received from the Massachusetts Department of Criminal Justice Information Services and other sources to determine whether an applicant is eligible for a license or a licensee is subject to disciplinary action based on criminal conduct. In conjunction with these guidelines, the Executive Director, Associate Executive Director, and Board Counsel ("Board staff") are authorized to review criminal matters on behalf of the Board and to execute these guidelines. These**

**guidelines are not intended to be comprehensive or cover extenuating circumstances, which may justify departure from these guidelines. Accordingly, any decision to depart from these guidelines under such extenuating circumstances shall be made on a case by case basis and determined entirely at the sole discretion of the Board and/or Board Staff whose decisions shall be final.**

A. Major Crimes -Automatic Disqualification without a Board review

Several major crimes exist which, by their very nature, may indicate that the applicant, if provided a license, would pose a potential or unacceptable risk to the public health, safety or welfare or to the provision of safe and competent practice in the profession. As such, the Board has determined that certain crimes are representative of a lack of good moral character and are reasonably related to the profession. All applicants disqualified for a license per this finding shall be afforded the right to an adjudicatory hearing to challenge such disqualification and the factual and/or legal basis for same.

The following list of crimes reflected in Table 1 (including attempt or conspiracy to commit), represents convictions which, if on an applicant's Criminal Offender Record Information ("CORI"), or other sources will disqualify an applicant for TEN (10) years from the date of conviction.

TABLE 1

CONVICTION	BASIC DEFINITIONS (for basic understanding only)
Murder	First degree murder is the killing of a human being committed with deliberately premeditated malice aforethought (intentionally), or with extreme cruelty. All other murder, arising from reckless or negligent conduct, is second degree murder.
Rape	Rape by a person with another person who is compelled to submit against their will by force or threat of bodily injury or sexual intercourse with a child under sixteen years of age.
Aggravated sexual assault	The unwanted touching of the genitals, mouth or anus of one person by the genitals of another person as the result of violence, force or the threat of force.
Assault with intent to rape	The use of force or the threat of force with intent to commit rape.
Armed assault with intent to murder with felony intent	Assaulting another with intent to commit murder or maim or disfigure that person.
Armed assault with intent to rob	While being armed with a dangerous weapon assaulting another and robbing, stealing or taking money or personal property from that person.

Burglary, armed assault on occupant	Breaking and entering a dwelling in the nighttime, to commit a felony, armed with a dangerous weapon at the time of such breaking, with any other person being lawfully therein
Kidnapping	Without lawful authority, forcibly or secretly confining or imprisoning another person within this commonwealth against his will or forcibly carrying a person from the commonwealth against their will or secretly confining or imprisoning a person
Burning a building	Willfully and maliciously setting fire to, burning or causing to be burned a building other than a dwelling.
Indecent assault and/or battery	Any unwanted touching of the breast or genitals either directly or indirectly, enhanced penalty the younger the
Unnatural acts	Committing any unnatural and lascivious act with another person, enhanced penalty the younger the victim.

Assault and battery dangerous intimidation, race, color, religion	Committing an assault or a battery upon a person or damaging the real or personal property of a person with the intent to intimidate such person because of such person's race, color, or religion; an enhanced penalty is imposed if serious bodily injury occurs.
Administering drugs to obtain sex	Administering to or causing to be taken by a person any drug, matter or thing with intent to stupefy or overpower such person so as to thereby enable any person to have unlawful sexual relations.
Induce sex, minor	Inducing any person under eighteen of chaste life to have unlawful sexual relations.

B. Sexual Crimes - Special Rules

Due to the severe nature of sexual crimes as well as concern that sexual offenders may reoffend, the Commonwealth of Massachusetts has enacted laws requiring sexual offenders to be reviewed and classified by a specialized state agency, the Sex Offender Registry Board ("SORB"). Hence, the Board has determined that applicants who are subject to classification by SORB require heightened scrutiny before being allowed to obtain a license and/or sit for any license exam. Therefore, after the expiration of the period of automatic disqualification in A, above, the following rules shall apply to individuals convicted of a sexual crime:

1. Level 3 Sex Offenders - Due to a determination from the SORB that they are a high risk of re-offense, level 3 sex offenders are not eligible for licensure. Individuals with such a classification must seek and obtain a reclassification from the SORB to

a lower level prior to seeking licensure.

2. Level 2 Sex Offenders - Due to a determination from the SORB that they are a moderate risk of re-offense, level 2 sex offenders must provide an evaluation from a Massachusetts licensed psychologist or psychiatrist stating that, based on their education, training, experience, and evaluation of the applicant and his/her record, the applicant has a low risk of reoffending and that they present very little risk to the community if allowed to practice in the profession. Applicants who are unable to provide such documentation are not eligible for licensure; they will not be considered until they obtain this documentation or have been reclassified by the SORB to be a level 1 sex offender. Once the documentation has been obtained, they shall be subject to the standard screening requirements in these guidelines.
3. Level 1 Sex Offenders - Due to a determination by the SORB that they are a low risk of re-offense, level 1 sex offenders shall be subject to the standard screening requirements in these guidelines.
4. Unclassified Sex Offenders -Applicants who are not classified as sex offenders but who have been convicted of sexual crimes must report their status to the Board prior to being approved for licensure. Subject applicants who are unclassified due to not being required to be registered (and can produce documentation to that effect) shall be subject to the standard screening requirements in these guidelines. Subject applicants who have been convicted of a sexual crime and are unclassified pending the final determination of classification by the SORB must wait until they are assigned a classification level before being eligible for further Board review.

C. Board review standards and Staff screening

1. Board appearance *required*. In general, an applicant whose criminal record falls into one of the following categories must appear at a Board meeting for a determination as to whether or not they may seek licensure in light of their record:
  - (a) The applicant's record of convictions includes any felony conviction(s) less than ten (10) years of age from the date of application;
  - (b) The applicant's record of convictions includes any misdemeanor conviction(s) less than five (5) years of age from the date of application;
  - (c) The applicant's record contains a sexual crime, regardless of age; or
  - (d) The applicant's record contains open misdemeanor or felony criminal charges for which a disposition has not yet been entered.
2. Board appearance may not be required. Notwithstanding the above rules, the following matters may be approved by Board staff without need of a Board appearance:
  - (a) Misdemeanor and felony convictions falling outside of the timeframes in

paragraph C, above.

- (b) Records showing the following misdemeanors (including open charges):
  - (1) A single instance of operating under the influence of liquor;
  - (2) A single instance of assault and/or battery so long as there are no aggravating factors; or
  - (3) The following motor vehicle related charges: attaching wrong plates, compulsory insurance violations, and operating a vehicle negligently.
- (c) The applicant's record contains any other open misdemeanor charge (or charges) for which a disposition has not yet been entered in which:
  - (1) The applicant does not have a criminal record reflecting other charges which would have mandated a Board appearance; or
  - (2) The initial court appearance associated with the pending charge(s) occurred more than ten years from the time of application.

In all cases, Board Staff is free to decide in their sole discretion that an individual's record must be subject to full Board review.

D. Matters which shall be denied/put on hold by Board Staff without a Board appearance

- (1) For matters in which the applicant has made a false statement on his/her application for licensure regarding a criminal history, the application may be denied by a Board Staff for SIX MONTHS. Individuals so denied may have a limited adjudicatory hearing to contest the accuracy of this determination as allowed by law. **This denial period shall not apply to individuals whose record, in its entirety, would fit under one of the three exceptions cited under section C(2)(b).**
- (2) Applicants whose CORI lists a crime in which the status code is "W" to indicate there is an outstanding warrant shall have their application placed on HOLD. The applicant shall be given six months to submit documentation that the warrant is withdrawn, otherwise the application will be denied for failure to cooperate with a Board request.

E. General Rules

- (1) All CORI reviews will occur in executive session, with applicant notification provided as required by law unless affirmatively waived by the applicant. The applicant shall be permitted to be present during all Board deliberations.
- (2) The following factors will be applied by the Board when analyzing an applicant's

CORI at its meeting in order to determine whether to approve or deny a license application:

- (a) The requirements of public protection
- (b) Relationship between the scope of practice and public protection;
- (c) Time since the conviction;
- (d) Age of the applicant/licensee at the time of the offense(s);
- (e) Seriousness and specific circumstances of the offense(s);
- (f) The number of offenses;
- (g) Whether the applicant/licensee has pending charges;
- (h) Any relevant evidence of rehabilitation or lack thereof;
- (i) Submission of false information on an application for licensure and/or failure to provide required notification of new information;
- (j) Any other relevant information, including information submitted by the applicant/licensee or requested by the Board.
- (k) Applicants indicating their CORI is inaccurate may be allowed to place their application on hold for up to six months while seeking to correct the CORI.
- (l) All denials must be issued in writing as soon as practicable after the decision to deny a license is made.
- (m) Denial letters must state the factual and legal reasons justifying the denial.
- (n) Unless the denial is to be permanent, denial letters should specify when the applicant may file a new application for licensure.
- (o) The denial must outline the applicant's right to request a limited hearing on the Board's rationale for the denial. This must include requiring the applicant to file, in writing, a request for a hearing within fourteen (14) days of the date of the denial letter (or any amendment thereof) and must notify the applicant that this request must specifically refute the facts upon which the Board has based its decision. If the applicant does this, they are entitled to a hearing, if they do not, they should be provided with a notice that their request is denied and notify them of their appellate rights.