

POLICY STATEMENT
2003-001 -Criminal Conviction and Discipline Review Policy
Amended February 21, 2019

**Initial Appraiser Licensure by Examination, Temporary Permit or by Reciprocity:
Determination of Eligibility in the Case of a Criminal Conviction
or Disciplinary Action by a Licensing Board**

To assist applicants in understanding when a crime may lead to a license denial, 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 and found at this link:

<https://www.mass.gov/files/documents/2016/08/my/mastercrimelist.pdf>

Purpose: The Board of Registration of Real Estate Appraisers (Board) establishes this policy to identify its criteria for determining whether an applicant for initial Appraiser licensure, temporary permit or by reciprocity qualifies for licensure under the following provisions:

- Massachusetts General Laws ("MGL") Chapter 112, section 189(4), **"the rights of any applicant ... may be revoked or suspended ... for the following... (4) a conviction, including a conviction based upon a plea of guilty or nolo contendere, of a crime which is substantially related to the qualifications, functions, and duties of a person developing appraisals and communicating appraisals to others, or convicted of any felony;"**
- Regulations governing licensure requirements:
 - 264 CMR 2.01, **"to establish professional standards...(that) promote and protect the public interest"** and
 - 265 CMR 5.01, **"each applicant must be of good moral character with a reputation for honesty, trustworthiness and integrity"**

Application of Policy

The Board will evaluate each applicant for initial appraisal licensure who has been convicted of one or more criminal convictions, MGL Chapter 112 section 189, or one or more disciplinary actions by another jurisdiction's licensing authority, 264 CMR 1.04(5)(a), under this policy.

POLICY

Criminal Conviction and Discipline Review (CCDR) is Prerequisite for Initial Licensure

Each applicant for initial Appraiser licensure may be denied licensure should the Board determine that the applicant's criminal or discipline history indicates that the applicant does not possess the requisite good moral character (GMC) or it is not in the public interest to issue a license. 265 CMR 2.01.

Attributes of CCDR

The Board shall determine whether an applicant's criminal or discipline history indicates that the applicant is not of good moral character, 264 CMR 5.01, and whether it is in the public interest to issue a license, certification or permit by evaluating the applicant's demonstrated honesty, trustworthiness, integrity, accountability, reliability, ability to distinguish between right and wrong and to observe the difference between the two, avoidance of aggression to self and others, and avoidance of injustice and deceit, among other relevant attributes.

Conduct Demonstrating Absence of Good Moral Character and a Threat to the Public Welfare and Safety

The Board has determined that certain conduct demonstrates a lack of good moral character and a threat to the welfare and safety of the public. Such conduct includes hostile or destructive conduct to another or to self and conduct that demonstrates a disregard for the welfare, safety or rights of another or disregard for honesty, integrity or trustworthiness. Examples of such conduct include, but are not limited to, the conduct underlying certain criminal convictions and disciplinary actions taken by a licensure/certification body in another jurisdiction based on a criminal conviction.

Burden of Demonstrating that issuing a license is in the public interest is on the Applicant

The burden of demonstrating that an applicant for initial licensure possess good moral character and is not a threat to the public welfare and safety is on the applicant. The applicant bears the burden of submitting to the Board for its evaluation documentation and other information upon which the Board may rely in determining whether the applicant qualifies for licensure or certification. In evaluating an applicant's criminal or discipline history, the Board considers all available pertinent information as to the applicant's present and past conduct.

"Conviction" Defined

For the purpose of this Policy, "conviction" means the final judgment on a verdict or finding of guilty, a plea of guilty, a plea of *nolo contendere* (no contest), or a plea treated by the court as a guilty plea, regardless of the jurisdiction in which the conviction was entered.

All Criminal Cases and Disciplinary Actions Must Be Closed

The Board will not evaluate any application for initial licensure submitted by an applicant with any conviction(s) or with disciplinary action(s) imposed by a licensure/certification body until the applicant has provided documentation satisfactory to the Board that the applicant has met:

1. All court-ordered requirements and that all criminal matters involving the applicant have been closed; and

2. All requirements imposed by a licensure/certification body in connection with disciplinary action.

Case by Case Evaluation:

With the exception of those applicants who are required to be excluded from initial licensure under the *Mandatory Ten (10) Year or Mandatory Five (5) year Exclusion* provisions of this Policy, the Board will evaluate each applicant for initial licensure on a case by case basis in accordance with the procedure and factors enumerated in the following section.

Criteria for Board's Case by Case Determination of Compliance with GMC Licensure Requirement

In each case where an applicant is not required to be excluded from initial licensure under the *Mandatory Ten (10) Year or Mandatory Five (5) Year Exclusion* provisions of this Policy, the Board will evaluate on a case by case basis any conduct of the applicant that demonstrates an absence of the necessary attributes of good moral character as set forth in the section above, to determine whether the conduct:

1. poses a threat to the public health, safety or welfare;
2. is of significance to the provision of safe and competent appraisal practice; and
3. is characteristic of the applicant's conduct.*

In making its determination, the Board will evaluate factors including, but not limited to:

1. the nature and seriousness of all conduct at issue, including any criminal conviction(s) or disciplinary action(s) by a licensure/certification body;
2. the sufficiency of the applicant's sustained rehabilitation;
3. the applicant's age at the time all conduct at issue occurred;
4. the frequency of occurrence of all conduct at issue;
5. the recency of all conduct at issue; and
6. any mitigating or aggravating circumstances related to the conduct.

MANDATORY EXCLUSIONS FROM LICENSURE

Conduct Warranting Mandatory Ten (10) Year Exclusion from Initial Licensure

The Board has determined that the conduct underlying certain felony convictions poses an unacceptable risk to the public safety or welfare or indicates an inability to apply the Uniform Standards of Professional Appraisal Practice (USPAP), or both. Where the applicant has engaged in any of the following conduct within the ten (10) year period immediately preceding the date the applicant submits an application for initial licensure, then this conduct is deemed to be conduct that warrants a mandatory 10 year exclusion;

1. the conduct underlying the crimes listed on Attachment A;
2. the conduct underlying any violent crime against any person(s) that exhibits intentional or deliberate disregard of human life; and
3. the conduct underlying any felony which is related to an appraisal assignment or the qualifications, functions and duties used to develop and communicate appraisals.

Conduct Warranting Mandatory Five (5) year Exclusion from Initial Licensure. Unless the *Exception to Mandatory Five (5) year Exclusion* section of this Policy set forth below, applies, the Board has also determined that an unreasonable risk to the public safety or welfare, or to the provisions of USPAP, or both, is posed where the applicant has engaged in any of the following conduct within the five (5) year period immediately preceding the date the applicant submits an application for initial licensure:

1. any criminal conviction that does not otherwise require mandatory exclusion from licensure under the *Mandatory Ten (10) Year Exclusion* provisions of this Policy;
2. knowingly falsifying, or knowingly attempting to falsify, any documentation or information submitted on an application for licensure or examination
3. cheating on the Appraiser Examination or on any other licensure or certification examination.
4. the revocation of an appraiser certification, license or permit by any jurisdiction
5. the suspension of any appraiser certification, license or permit by any jurisdiction other than Massachusetts

The Board shall temporarily exclude from initial licensure, for the duration set forth below, an applicant who has engaged in any of the conduct described above and as evidenced by certified official records or other similarly reliable documentation.

Duration of the Mandatory Five (5) Year Exclusion from Licensure. The five (5) year period of exclusion from initial licensure shall be as follows:

1. at least five (5) years from the date of the most recent conviction or date the conduct at issue last occurred whichever is later, and
2. for at least one (1) year from the date of the applicant's successful completion of all court-ordered requirements where any such requirements have been imposed.

Exception to the Mandatory Five (5) Year Exclusion from Initial Licensure. An applicant for initial licensure who falls under the *Mandatory Five (5) year Exclusion* section of this Policy, set forth above, due to his or her criminal conviction may nevertheless request that the Board evaluate his or her criminal history in accordance with the case by case determination process set forth in the sections above, *provided that*, the applicant meets *all* of the following requirements:

1. the applicant has submitted a written request for CCDR, together with substantiating documentation satisfactory to the Board;
2. the applicant:
 - a) during the five (5) years immediately preceding the date that the applicant submits an application for initial licensure, has only one criminal conviction for a single misdemeanor offense or multiple criminal convictions for misdemeanor offenses that are *all* based on the same criminal incident or episode;
 - b) was not sentenced to any period of incarceration, whether suspended or stayed; and
 - c) has successfully completed all related court-ordered requirements, if any, including probation;
3. the applicant's criminal conduct, if it occurred outside Massachusetts, would constitute a misdemeanor if it had occurred in Massachusetts;
4. the crime(s) for which the applicant was convicted was victimless and nonviolent; *and*
5. the applicant has no open criminal case(s) against him or her.

Determination of CCDR and Eligibility for Initial Licensure. An applicant who the Board determines to be eligible for licensure upon completion of the CCDR must then successfully complete all other licensure requirements.

An applicant who the Board determines to be ineligible for licensure upon completion of the CCDR will be denied as provided by this Policy.

Notice of Denial of Licensure. The Board will notify in writing each applicant for initial licensure whom the Board does *not* find eligible under this Policy of its decision to deny licensure, the reason(s) for the denial, and the opportunity for review of the denial. As part of its notification, the Board, in its discretion, may also inform the applicant denied licensure under this Policy of the requirements, if any, that the applicant must satisfy before the applicant may reapply for initial licensure.

Review of Denial of Initial Licensure Based on the CCDR. The Board will advise each applicant denied initial licensure of her or his right to review of the denial.

The Board shall afford an applicant an opportunity for a hearing where the applicant alleges, and can reasonably substantiate, the existence of specific areas of factual dispute relevant to the issue of licensure under this Policy. If there are no areas of factual dispute, the Board may rely on the applicant's written submissions in rendering a final decision on review. Judicial review of a Board final decision to deny licensure may be sought as provided by G.L. c. 30A, s. 14.

Criminal Convictions Excluding Individuals from Licensure as a Massachusetts Real Estate Appraiser for Ten (10) Years

The felony convictions that will result in the mandatory ten (10) year exclusion from initial licensure, certification or temporary permit as an Appraiser Trainee, State Licensed Appraiser, Certified Residential Appraiser, or Certified General Appraiser in Massachusetts include, but are not limited to, convictions for the criminal offenses listed below:

CONVICTION	DEFINITION
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.
Convictions related to Sex Offender Registry Law	Any crime listed under the definition of “sex offense,” “sex offense involving a child,” or “sexually violent offense” under the Sex Offender Registry Law, General Laws c. 6, s. 178C, by any court.
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.
Breaking and entering, day/night, intent to commit felony, fear	Entering or breaking and entering, in the day time, a building, ship, vessel or vehicle with intent to commit a felony and placing any person lawfully therein in fear.
Burning a building	Willfully and maliciously setting fire to, burning or causing to be burned a building other than a dwelling.
Burning dwelling house (attempt)	Willfully and maliciously setting fire to, burning or causing to be burned a dwelling house or a building adjacent to a dwelling house.

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 intercourse.