Board Policies and Guidelines: Determination of Good Moral Character Compliance for Initial Broker or Salesperson Licensure by Examination, Reciprocity, Waiver of Educational Requirement or as an Attorney Broker:

Licensure Policy 04-07-08

Date Adopted/Revised: First Adopted April 7, 2008; revised November 14, 2016.

Title

Determination of Good Moral Character Compliance for Initial Broker or Salesperson Licensure by Examination, Reciprocity, Waiver of Educational Requirement or as an Attorney Broker. This policy also applies to the renewal of a license.

Purpose

The Board of Registration of Real Estate Brokers and Salespersons (Board) establishes this policy to identify its criteria for determining whether an applicant for initial licensure by examination, reciprocity, waiver of educational requirement or as an attorney broker (permitted by the licensing law) meets the prerequisite for licensure that such applicant be "of good moral character" (GMC) as required by Massachusetts General Laws (G.L.) Chapter 112, section 87AAA and the Board's regulations at 254 CMR 2.00. The Board will also use this policy as a guide for determinations of GMC of salespersons and brokers licensed by the Board if and when such questions arise.

Application of Policy

The Board will evaluate each application for initial licensure permitted by the licensing law under the policy governing the
determination of GMC in effect on the date the Board receives the application.

**GMC is Prerequisite for Licensure and licensure Renewal**

**DETERMINATION OF GMC COMPLIANCE**

Each applicant must be "of good moral character" for the Board to approve the applicant for licensure. The word "applicant" shall hereinafter be used to mean any applicant for initial Massachusetts licensure as a real estate salesperson or broker.

**Attributes of GMC**

The Board shall determine whether an applicant possesses the GMC essential for the safe and competent practice as a real estate agent 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 GMC**

The Board has determined that certain conduct demonstrates the absence of the GMC essential for safe and competent practice as a real estate agent. 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 licensing authority, commission or board in another jurisdiction based on a criminal conviction.
Burden of Demonstrating GMC is on the Applicant

The burden of demonstrating that an applicant for initial licensure or renewal licensure is of "good moral character" 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 possesses the requisite GMC. In evaluating an applicant's GMC, 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.

1. REVIEW OF CRIMINAL RECORDS AT TIME OF APPLICATION

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 Real Estate 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 Real Estate 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 (including attempt or conspiracy to commit), represent 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>
<thead>
<tr>
<th>CONVICTION</th>
<th>DEFINITION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Murder</td>
<td>First degree murder is the killing of a human being committed with deliberately premeditated malice aforethought (intentionally), or with extreme cruelty. A murder, arising from reckless or negligent conduct, is second degree murder.</td>
</tr>
<tr>
<td>Rape</td>
<td>Rape by a person with another person who is compelled to submit against the force or threat of bodily injury or sexual intercourse with a child under sixteen years of age.</td>
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<tr>
<td>Aggravated sexual assault</td>
<td>The unwanted touching of the genitals, mouth or anus of one person by the genitals, mouth or anus of another person as the result of violence, force or the threat of force.</td>
</tr>
<tr>
<td>Assault with intent to rape</td>
<td>The use of force or the threat of force with intent to commit rape.</td>
</tr>
<tr>
<td>Armed assault with intent to murder with felony intent</td>
<td>Assaulting another with intent to commit murder or maim or disfigure that person.</td>
</tr>
<tr>
<td>Armed assault with intent to rob</td>
<td>While being armed with a dangerous weapon assaulting another and robbing, stealing or taking money or personal property from that person.</td>
</tr>
<tr>
<td>Burglary, armed assault on occupant</td>
<td>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 therein.</td>
</tr>
<tr>
<td>Kidnapping</td>
<td>Without lawful authority, forcibly or secretly confining or imprisoning another within this commonwealth against his will or forcibly carrying a person from this commonwealth against their will or secretly confining or imprisoning a person.</td>
</tr>
<tr>
<td>Description</td>
<td>Definition</td>
</tr>
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<td>-----------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
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<tr>
<td>Breaking and entering, day/night, intent to commit felony, fear</td>
<td>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.</td>
</tr>
<tr>
<td>Burning a building</td>
<td>Willfully and maliciously setting fire to, burning or causing to be burned a building other than a dwelling.</td>
</tr>
<tr>
<td>Burning dwelling house (attempt)</td>
<td>Willfully and maliciously setting fire to, burning or causing to be burned a dwelling house or a building adjacent to a dwelling house.</td>
</tr>
<tr>
<td>Indecent assault and battery, child under 14</td>
<td>Any unwanted touching of the breast or genitals either directly or indirectly, enhanced penalty if the victim is fourteen years of age.</td>
</tr>
<tr>
<td>Indecent assault and battery, child 14 or over</td>
<td>Any unwanted touching of the breast or genitals either directly or indirectly, enhanced penalty if the victim is fourteen years of age.</td>
</tr>
<tr>
<td>Unnatural acts with child under 16</td>
<td>Committing any unnatural and lascivious act with another person, enhanced penalty if the other person is under sixteen years of age.</td>
</tr>
<tr>
<td>Assault and battery dangerous intimidation, race, color, religion</td>
<td>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.</td>
</tr>
<tr>
<td>Administering drugs to obtain sex</td>
<td>Administering to or Causing to be taken by a person any drug, matter or thing with the intent to stupefy or overpower such person so as to thereby enable any person to have unlawful sexual intercourse.</td>
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<td>Induce sex, minor</td>
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**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 reoffense, 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 reoffense, 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 real estate 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 reoffense, 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 of the convictions listed above in Table 1 (after the mandatory 10 year disqualification period has expired).

(b) The applicant’s record of convictions includes any felony conviction(s) less than ten (10) years of age from the date of application;

(c) The applicant’s record of convictions includes any misdemeanor conviction(s) less than five (5) years of age from the date of application;

(d) The applicant’s record contains a sexual crime, regardless of age; or
(e) 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(1), 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.
3. 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 real estate work 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.

3. 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.

4. All denials must be issued in writing as soon as practicable after the decision to deny a license is made.

5. Denial letters must state the factual and legal reasons justifying the denial.

6. Unless the denial is to be permanent, denial letters should specify when the applicant may file a new application for licensure.
7. The denial must outline the applicants 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.

2. Other conduct warranting exclusion from licensure and licensure renewal

A. Mandatory Temporary Exclusion

The Board has determined that an unreasonable risk to the public health, safety or welfare, or to the provision of safe and competent services as a real estate agent, 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 licensure:

1. Knowingly falsifying, or knowingly attempting to falsify, any documentation or information submitted on an application for examination or licensure that is directly related to the qualifications for such examination or licensure, or

2. Cheating on any examination for licensure offered by the Board or through its agent.

The Board shall temporarily exclude from 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.
B. Duration of the Mandatory Temporary Exclusion

The period of such mandatory temporary exclusion shall be at least five (5) years from the date the conduct at issue last occurred.

C. Case by Case GMC Evaluation

In each case where an applicant has a GMC issue not specifically addressed above but is not required to be excluded from licensure under this Policy, the Board will evaluate the applicant's compliance with the GMC requirement on a case by case basis in accordance with the process and factors enumerated as follows:

The Board will evaluate any conduct of the applicant that demonstrates an absence of the necessary attributes of GMC as set forth above in this Policy 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 services as a real estate agent; and
3. is characteristic of the applicant's conduct.

In making its determination of an applicant's compliance with the GMC requirement, 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 authority, commission or board;
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;
6. Any mitigating or aggravating circumstances related to the conduct; and
7. The applicant's acknowledgment of her or his accountability for her or his conduct and recognition of its significance to licensure as a real estate agent.

D. Determination of GMC Compliance and Eligibility

An applicant who the Board determines to be in compliance with the GMC requirement will be eligible for licensure upon the applicant's successful completion of all other licensure requirements or both.

An applicant who the Board determines is not in compliance with the GMC requirement will not be eligible for licensure and such licensure will be denied.

E. Notice of Denial

The Board will notify in writing each applicant 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 of the requirements, if any, that the applicant must satisfy before the applicant may reapply for licensure.

F. Review of Denial Based on Noncompliance with GMC Licensure Requirement

When licensure is denied under this Policy, the Board shall afford the applicant an opportunity for a hearing where the applicant alleges, and can reasonably substantiate, the existence of specific areas of material factual dispute relevant to
the issue of licensure under this Policy. If there are no areas of material factual dispute, the Board may consider 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, § 14.

**Board Policies and Guidelines: Advisory/Apartment Rentals**

Recently concerns over broker conduct in renting apartments to an impermissible number of unrelated individuals were directed to the Board.

Public health and safety concerns related to the over-crowding of residences have resulted in a number of legal restrictions that brokers should be aware of when leasing apartments.

The Board advises that real estate brokers and salesmen become familiar with the following laws concerning rentals to unrelated individuals. These provisions are Massachusetts General Laws chapter 140, section 22, 105 Code of Massachusetts Regulations 410 (the State Sanitary Code), 780 Code of Massachusetts 310 (the State Building Code) and the local Boston zoning code, cited as Article 2, Section 2-1(19) and Article 2A - Definition of Family, Boston Zoning Code.

The Board suggests that you obtain copies of the above-cited statutory and regulatory provisions for a more comprehensive understanding of Boston's occupancy restrictions and building restrictions.
You can access the state statutes on the Internet at [www.state.ma.us/legis](http://www.state.ma.us/legis). You can also contact the Regulation's Division of the Massachusetts Secretary of State at (617) 727-2831 for copies of the regulatory codes. Questions regarding the Boston Zoning Code concerning maximum apartment occupancy should be directed to the City of Boston, Division of Inspectional Services at (617) 635-5322. You can access the zoning code on line at [www.ci.boston.ma.us/bra](http://www.ci.boston.ma.us/bra).

If you have questions in particular rental situations you may want to consult with the City and State authorities noted herein and seek legal advice. The Board thanks you for your attention to this matter.