

MASSACHUSETTS BOARD OF _____
Determination of Good Moral Character Compliance for Initial Broker or Salesperson
Licensure by Examination, Reciprocity, Waiver of Educational Requirement
or as an Attorney Broker

The following guidelines shall be utilized by the Board of _____ for the purpose of determining eligibility to obtain a license and/or take an examination where an applicant has a record of criminal convictions or pending criminal cases. 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 overide any past licensing decisions of the Board to the contrary. Additionally, for purposes of disciplinary actions, these guidelines shall be deemed to overide 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 victim.
Unnatural acts	Committing any unnatural and lascivious act with another person, enhanced penalty the younger the victim.

CONVICTION	DEFINITION
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 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 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 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.
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 CORJ 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 _____ 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;

- U) 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 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.

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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

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.

Date Adopted/Revised: April 7, 2008; effective April 7, 2008.

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.

All Criminal Cases and Disciplinary Actions Must be Closed

The Board will not evaluate any application for compliance with the GMC requirement submitted by an applicant with any conviction(s) or with disciplinary action(s) imposed by a licensure authority, commission or board 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 including the completion of any probation; and
- 2) all requirements imposed by a licensure authority, commission or board in connection with disciplinary action.

Mandatory *Permanent* Exclusion

CONDUCT WARRANTING MANDATORY PERMANENT EXCLUSION FROM LICENSURE AND LICENSURE RENEWAL

The Board has determined that the conduct underlying certain felony convictions poses an unacceptable risk to the public health, safety or welfare or to the provision of safe and competent practice as a real estate agent. Such conduct includes, but is not limited to, any of the following:

- 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 extreme disregard of human life;
- 3) trafficking in, or illegally manufacturing, any controlled substance; and
- 4) exploitation or criminal mistreatment of a vulnerable individual including, but *not* limited to, a minor, elder and/or disabled person.

The Board shall permanently exclude from licensure as a real estate agent in Massachusetts an applicant who has engaged in such conduct as identified above and as evidenced by certified official records or other similarly reliable documentation.

Mandatory *Temporary* Exclusion

CONDUCT WARRANTING MANDATORY TEMPORARY EXCLUSION FROM LICENSURE AND LICENSURE RENEWAL

The Board has also determined that unless the exception to mandatory temporary exclusion set forth in the section below applies, 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) any criminal conviction that does not otherwise require mandatory permanent exclusion under this Policy;
- 2) 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
- 3) 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.

Duration of the Mandatory *Temporary* Exclusion

The period of such mandatory temporary exclusion 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) 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 *Temporary* Exclusion

EXCEPTION TO THE MANDATORY TEMPORARY EXCLUSION

An applicant who falls under the Mandatory Temporary Exclusion section of this Policy as set forth above, due to his or her criminal conviction may nevertheless request that the Board evaluate his or her compliance with the GMC licensure requirement in accordance with the case by case evaluation process set forth in the section below, provided that, the applicant meets all of the following requirements:

- 1) the applicant has submitted a written request for the Board's determination of his or her compliance with the GMC requirement, 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 licensure he or she 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.

If the Board finds that an applicant meets all of the above-referenced requirements for it to approve an exception to mandatory temporary exclusion, the applicant's GMC compliance will then be determined by the Board in accordance with the case by case evaluation process set forth in the section below.

Case by Case GMC Evaluation

CASE BY CASE EVALUATION PROCESS FOR DETERMINATION OF GMC COMPLIANCE

In each case where an applicant is not required to be permanently or temporarily 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.

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.

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.

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.

ATTACHMENT A

Criminal Convictions Excluding Individuals from Initial Licensure as a Licensed Real Estate Salesperson or Broker by Examination, Reciprocity, Waiver of Educational Requirements or as an Attorney Broker

The felony convictions that will result in the mandatory *permanent* ineligibility for Initial Massachusetts licensure as a Licensed Real Estate Salesperson or Broker by the Board include, but are not limited to; convictions (as defined by Licensure Policy 06-04-07) for any of the following criminal offenses by *any* court in the Commonwealth of Massachusetts, or convictions for any similar criminal offenses by a court in another state or by a federal court:

CONVICTION	DEFINITION
Murder	First degree murder is the killing of a human being committed with deliberately premeditated malice

CONVICTION	DEFINITION
	aforethought (intentionally), or with-extreme cruelty. All other murder, arising from reckless or negligent conduct, is second degree murder.
Rape	Sexual intercourse 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.
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.
Indecent assault and battery, child under 14	Any unwanted touching of the breast or genitals either directly or indirectly, enhanced penalty if the victim is fourteen years of age.
Indecent assault and battery, child 14 or over	Any unwanted touching of the breast or genitals either directly or indirectly, enhanced penalty if the victim is fourteen years of age.
Unnatural acts with child under 16	Committing any unnatural and lascivious act with another person, enhanced penalty if the other person is under sixteen years of age.
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.

CONVICTION	DEFINITION
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.
Induce sex, minor	Inducing any person under eighteen of chaste life to have unlawful sexual intercourse.

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