

BUREAU OF REAL ESTATE APPRAISERS

ORDER OF ADOPTION

The text below represents existing language modified to show proposed changes. Proposed deletions are in ~~strikethrough~~. Proposed additions are in underline.

Amend Sections 3722 and 3723 of Article 12 of Chapter 6.5 of Title 10 of the California Code of Regulations to read as follows:

§ 3722. ~~Criteria of Substantial Relationship~~ Criteria.

(a) For the purposes of the denial, suspension, or revocation of a license pursuant to Section 141 or Division 1.5 (commencing with section 475) of the Business and Professions Code, a crime, professional misconduct, or act shall be considered to be substantially related to the qualifications, functions, or duties of a licensee if to a substantial degree it evidences present or potential unfitness to hold such a license to perform the functions authorized by the license in a manner consistent with the public health, safety, or welfare.

(b) In making the substantial relationship determination required under subdivision (a) for a crime, the Bureau shall consider the following criteria:

(1) The nature and gravity of the offense;

(2) The number of years elapsed since the date of the offense; and

(3) The nature and duties of the profession in which the applicant seeks licensure or in which the licensee is licensed.

~~(a) A crime or act shall be deemed to be substantially related to the qualifications, functions or duties of an appraiser if, to a substantial degree, it evidences present or potential unfitness of a person holding a license to perform the functions authorized by his/her license.~~ (c) For purposes of subdivision (a), the crimes, professional misconduct, or acts deemed to be substantially related to the qualifications, functions, or duties of a licensee include, but are not limited to, the following:

(1) Crimes or Acts involving the use of fraud, deceit or dishonesty for profit or gain;

(2) Taking, appropriating or retaining the funds or property of another;

(3) Forging, counterfeiting or altering any instrument affecting the rights or obligations of another;

(4) Evasion of a lawful debt or obligation, including but not limited to tax obligations;

(5) Traffic in any narcotic or controlled substance in violation of law;

(6) Driving under the influence of alcohol or drugs, while conducting business related to real estate appraisals; conviction of felony driving under the influence of alcohol or drugs; or conviction of two or more misdemeanor driving under the influence of alcohol or drugs within any three year period, whether or not while conducting business;

(7) Violation of a relation of trust or confidence;

(8) Theft of personal property or funds;

(9) Crimes or acts of violence or threatened violence against persons or property;

(10) The commission of any crime or act punishable as a sexually related crime, if that crime or act is substantially related to the duties and functions of the licensee; or

(11) Misrepresentation of facts or information on the appraisal license application and/or cheating on the examination.

~~(b) An act or crime shall be deemed to be substantially related to the functions, duties or qualifications of an appraiser if it involves any~~ (12) Any willful violation of the Real Estate Appraisers' Licensing and Certification Act or provisions of the Business and Professions Code applicable to appraisers.

~~(c) The weight to be accorded to a substantially related crime or act under (a) or (b) shall be determined by application of the following standards:~~

~~(1) The extent to which the particular acts or omissions have adversely affected other persons, including but not limited to lenders, clients, employers or other persons; and the probability that such adverse effects will continue;~~

~~(2) The recency or remoteness in time of the acts or omissions;~~

~~(3) The type of license applied for or held by the person involved;~~

~~(4) The extenuating or aggravating circumstances surrounding the acts or omissions;~~

~~(5) The motivation of the acts or omissions, whether praiseworthy or blameworthy;~~

~~(6) The probability that the questioned acts or omissions will continue or be repeated; and~~

~~(7) The extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the person involved or other licensed persons.~~

Note: Authority cited: Section 481, 11313, and 11314, Business and Professions Code.
Reference: Sections 141, 475, 480, 481, 490, and 493482, Business and Professions Code.

§ 3723. Criteria of Rehabilitation.

~~(a) Upon a determination pursuant to Section 3722 that a substantial relationship exists between particular acts or omissions and the qualifications, functions or duties authorized or to be authorized by a license applied for or held, the Chief shall consider all competent evidence provided by the applicant or licensed appraiser or known to the Chief, consisting of testimony or other facts showing:~~

~~(1) The effect of the passage of time since the most recent conviction or offense;~~

~~(2) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the Applicant;~~

~~(3) Judicial relief from the consequences of criminal convictions resulting from immoral or antisocial acts including but not limited to Release from Probation (PC 1203.4), Certificate of Rehabilitation (PC 4852.01), finding of factual innocence (PC 841.8, 851.85), Diversion (completed), or other comparable orders of a court, including federal courts;~~

~~(4) Successful completion or early discharge from probation or parole;~~

~~(5) Abstinence from the use of controlled substances or alcohol for not less than two years if the crime or offense is attributable in part to the use of controlled substances or alcohol;~~

~~(6) Payment of any fine or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment;~~

~~(7) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or offense;~~

~~(8) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement;~~

~~(9) Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others;~~

~~(10) Correction of business practices resulting in injury to others or with the potential to cause such injury;~~

~~(11) Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems;~~

~~(12) New and different social and business relationships from those which existed at the time of the crime or offense; or~~

~~(13) Change in attitude from that which existed at the time of the crime or offense as evidenced by any or all of the following:~~

~~(A) Testimony of applicant or licensed appraiser;~~

~~(B) Evidence from family members, friends or other persons familiar with applicant's previous conduct and with his or her subsequent attitudes and behavioral patterns;~~

~~(C) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments; or~~

~~(D) Evidence from psychiatrists or other persons competent to testify with regard to psychiatric or emotional disturbances.~~

~~(b) The enumeration of criteria in (a) does not preclude the consideration of other competent evidence of rehabilitation.~~

(a) Denial of License

(1) When the Bureau is considering denying a license under Section 480 of the Business and Professions Code on the ground that the applicant has been convicted of a crime, the Bureau shall consider whether the applicant made a showing of rehabilitation, if the applicant has completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the Bureau shall consider the following criteria:

(A) The nature and gravity of the crime(s);

(B) The length(s) of the applicable parole or probation period(s);

(C) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified;

(D) The terms or conditions of parole or probation and the extent to which they bear on the applicant's rehabilitation;

(E) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification;

(F) The effect of the passage of time since the most recent conviction or offense;

(G) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the applicant;

(H) Judicial relief from the consequences of criminal convictions resulting from immoral or antisocial acts including, but not limited to, Release from Probation (PC 1203.4), Certificate of Rehabilitation (PC 4852.01), finding of factual innocence (PC 841.8, 851.85), Diversion (completed), or other comparable orders of a court, including federal courts;

(I) Successful completion or early discharge from probation or parole;

(J) Abstinence from the use of controlled substances or alcohol for not less than two years if the crime or offense is attributable in part to the use of controlled substances or alcohol;

(K) Payment of any fine or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment;

(L) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or offense;

(M) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement;

(N) Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others;

(O) Correction of business practices resulting in injury to others or with the potential to cause such injury;

(P) Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems;

(Q) New and different social and business relationships from those which existed at the time of the crime or offense; and

(R) Change in attitude from that which existed at the time of the crime or offense as evidenced by any or all of the following:

(i) Testimony of applicant or licensed appraiser;

(ii) Evidence from family members, friends or other persons familiar with applicant's previous conduct and with his or her subsequent attitudes and behavioral patterns;

(iii) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments; or

(iv) Evidence from psychiatrists or other persons competent to testify with regard to psychiatric or emotional disturbances.

(2) If the applicant has not completed the criminal sentence at issue without a violation of parole or probation, the bureau determines that the applicant did not make the showing of rehabilitation based on the criteria in subdivision (a)(1), or the denial is based on professional misconduct, the bureau shall apply the following criteria in evaluating an applicant's rehabilitation:

(A) The nature and gravity of the act(s), professional misconduct, or crime(s) under consideration as grounds for denial;

(B) Evidence of any act(s), professional misconduct, or crime(s) committed subsequent to the act(s), professional misconduct, or crime(s) under consideration as grounds for denial;

(C) The number of years that has elapsed since the commission of the act(s), professional misconduct, or crime(s) under consideration as grounds for denial;

(D) Whether the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant;

(E) Evidence, if any, of rehabilitation submitted by the applicant; and

(F) The criteria in subdivision (a)(1)(A) through (R), as applicable.

(b) Suspension or revocation of a license

(1) When considering suspending or revoking a license, the Bureau, in evaluating the rehabilitation of a licensee, shall consider the following criteria:

(A) Nature and gravity of the act(s), professional misconduct, or crime(s);

(B) The number of years that has elapsed since commission of the act(s), professional misconduct, or crime(s) under consideration as grounds for suspension or revocation;

(C) Total history of act(s), professional misconduct, or crime(s);

(D) Whether the licensee has complied with all terms of parole, probation, restitution, or any other sanctions lawfully imposed against the licensee;

(E) Evidence, if any, of rehabilitation submitted by the licensee;

(F) The criteria in subdivision (a)(1)(A) through (R), as applicable; and

(G) If applicable, evidence of dismissal proceedings pursuant to Section 1203.4 of the Penal Code.

Note: Authority cited: Sections 482, 11313, and 11314, Business and Professions Code.
Reference: Sections 480, 481, 482, 488, 493, and 11340, Business and Professions Code.