

Regulatory Amendment: Criteria for Rehabilitation

Article 18.5. Substantial Relationship and Rehabilitation Criteria (Refs and Annos)

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Sec. 2911. Criteria ~~of~~ for Rehabilitation (Denial).

(a) The following criteria have been developed by the Bureau pursuant to Section 482(a) of the Business and Professions Code for the purpose of evaluating the rehabilitation of an applicant for issuance or for reinstatement of a license in considering whether or not to deny the issuance or reinstatement on account of a crime(s) and/or act(s) committed by the ~~applicant.~~ applicant:

~~(a) The passage of not less than two years since the most recent criminal conviction or act of the applicant that is a basis to deny the Bureau action sought. (A longer period will be required if there is a history of acts or conduct substantially related to the qualifications, functions or duties of a licensee of the Bureau.)~~

(1) The mere passage of time without further unlawful activity that is substantially related to the qualifications, functions, or duties of a licensee, alone, is not sufficient to establish rehabilitation. A demonstration of rehabilitation includes the passage of not less than two years after the most recent of the following events associated with a criminal conviction, license discipline order, or act of the applicant that is a basis for the denial of the application:

(A) Applicant's release from incarceration.

(B) Applicant's completion of parole or probation.

(C) The most recent criminal conviction, license discipline order, or act of the applicant that is a basis for the denial of the application, where that conviction, order, or act did not result in incarceration, parole, or probation. Where the same act or acts resulted in both a conviction and an order or orders, the date of the earliest conviction or order will commence the two year period.

(2) The two year minimum required to demonstrate rehabilitation may be increased by any or all of the following:

(A) The nature and severity of the crime(s) and/or act(s) committed by the applicant,

(B) The applicant's history of criminal convictions and/or license discipline that are substantially related to the qualifications, functions, or duties of a real estate licensee,

(C) The applicant's past breach(es) of a position of trust and confidence,

(D) The applicant's history of other acts or conduct that violate the Real Estate Law (commencing with section 10000 of the Business and Professions Code), the Subdivided Lands Law (commencing with section 11000 of the Business and Professions Code), or the Commissioner's Regulations (commencing with section 2700 of title 10 of the California Code of Regulations).

~~(b)-(3)~~ Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the ~~applicant~~ applicant, or escheat to the State of these monies or other properties if the victim(s) cannot be located.

~~(c)-(4)~~ Expungement of criminal convictions ~~resulting from immoral or antisocial acts.~~

~~(d)-(5)~~ Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.

~~(e)-(6)~~ Successful completion or early discharge from probation or parole.

~~(f)-(7)~~ Abstinence from the use of controlled substances and/or alcohol for not less than two years if the conduct which is the basis to deny the Bureau action sought is attributable in part to the use of controlled substances and/or alcohol.

~~(g)-(8)~~ Payment of the fine and/or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment.

~~(h)-(9)~~ Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial of the Bureau action sought.

~~(i)-(10)~~ Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement.

~~(j)-(11)~~ Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others.

~~(k)-(12)~~ Correction of business practices resulting in injury to others or with the potential to cause such injury.

~~(l)-(13)~~ Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

~~(m)-(14)~~ New and different social and business relationships from those which existed at the time of the conduct that is the basis for denial of the ~~departmental~~ Bureau action sought.

~~(n)-(15)~~ Change in attitude from that which existed at the time of the conduct in question as evidenced by ~~any or all of the following~~:

~~(1)-(A)~~ Testimony of applicant.

~~(2)-(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.

~~(3)-(C)~~ Evidence from probation or parole officers and/or law enforcement officials competent to testify as to applicant's social adjustments.

~~(4)-(D)~~ Evidence from psychiatrists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.

~~(5)-(E)~~ Absence of subsequent felony convictions, ~~or~~ misdemeanor convictions, or other conduct that provides grounds to discipline a real estate license, that are reflective of which reflect an inability to conform to societal rules when considered in light of the conduct in question.

~~(o) Each of the above criteria notwithstanding, no mortgage loan originator license endorsement shall be issued to an applicant for such license endorsement where the applicant has been convicted of any felony within seven (7) years from the date of his or~~

~~her application for a license endorsement. This ban is not subject to mitigation or rehabilitation.~~

~~(p) Each of the above criteria notwithstanding, no mortgage loan originator license endorsement shall be issued to an applicant for such license endorsement where the applicant has ever been convicted of a felony where such felony involved an act of fraud, dishonesty, a breach of trust, or money laundering. This ban is not subject to mitigation or rehabilitation.~~

(b) “Competent evidence” as used in Business and Professions Code section 482 means admissible, persuasive, and credible evidence that the applicant has met the criteria in subdivision (a), above. The applicant’s own testimony will be given little weight as evidence except where specific assertions in that testimony are supported by direct evidence from another source.

(c) The SAFE Act, commencing with section 10166.01 of the Business and Professions Code, imposes specific conditions that apply to applications for a mortgage loan originator license endorsement. Each of the above criteria notwithstanding, no mortgage loan originator license endorsement shall be issued to an applicant for such license endorsement where the applicant:

(1) Has been convicted of any felony during the seven year period preceding the date of his or her application for a license endorsement. This ban is not subject to mitigation or rehabilitation unless the felony conviction has been expunged or pardoned, or unless the real estate licensee has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(2) Has ever been convicted of a felony where such felony involved an act of fraud, dishonesty, a breach of trust, or money laundering. This ban is not subject to mitigation or rehabilitation unless the felony conviction has been expunged or pardoned, or unless the real estate licensee has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

Note: Authority cited: Sections 10080 and 10166.17, Business and Professions Code. Reference: Sections 480, 482, 10166.05(b), and 10166.051, Business and Professions Code, In re Gossage (2000) 23 Cal 4th 1080, and In re Andreani, (1939) 14 Cal.2d 736.

Sec. 2912. Criteria ~~of~~ for Rehabilitation (Revocation or Suspension).

(a) The following criteria have been developed by the Bureau pursuant to Section 482(b) of the Business and Professions Code for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation, restriction, or suspension of the license has been initiated on account of a crime committed by the licensee.

~~(a) The passage of not less than two years from the most recent criminal conviction that is “substantially related” to the qualifications, functions or duties of a licensee of the Bureau. (A longer period will be required if there is a history of criminal convictions or acts substantially related to the qualifications, functions or duties of a licensee of the Bureau.)~~

(1) The mere passage of time without further unlawful activity that is substantially related to the qualifications, functions, or duties of a licensee, alone, is not sufficient to establish rehabilitation. A demonstration of rehabilitation includes the passage of not less than two years after the most recent of the following events associated with a criminal conviction of the licensee that is a basis for the present accusation:

(A) Licensee’s release from incarceration.

(B) Licensee’s completion of parole or probation.

(C) The most recent criminal conviction, license discipline order, or act of the licensee that is a basis for the present accusation, where that conviction, order, or act did not result in incarceration, parole, or probation. Where the same act or acts resulted in both a conviction and an order or orders, the date of the earliest conviction or order will commence the two year period.

(2) The two year minimum required to demonstrate rehabilitation may be increased by any or all of the following:

(A) The nature and severity of the crime(s) and/or act(s) committed by the licensee,

(B) The licensee’s history of criminal convictions, and/or license discipline, that are substantially related to the qualifications, functions, or duties of a real estate licensee,

(C) The licensee’s past breach(es) of a position of trust and confidence,

(D) The licensee's history of other acts or conduct that violate the Real Estate Law (commencing with section 10000 of the Business and Professions Code), the Subdivided Lands Law (commencing with section 11000 of the Business and Professions Code), or the Commissioner's Regulations (commencing with section 2700 of title 10 of the California Code of Regulations).

~~(b)-(3)~~ Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the licensee, or escheat to the State of these monies or other properties if the victim(s) cannot be located.

~~(c)-(4)~~ Expungement of the conviction(s) ~~or convictions~~ which culminated in the administrative proceeding to take disciplinary action.

~~(d)-(5)~~ Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.

~~(e)-(6)~~ Successful completion or early discharge from probation or parole.

~~(f)-(7)~~ Abstinence from the use of controlled substances and/or alcohol for not less than two years if the criminal conviction was attributable in part to the use of a controlled substance and/or alcohol.

~~(g)-(8)~~ Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license.

~~(h)-(9)~~ Correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted.

~~(i)-(10)~~ New and different social and business relationships from those which existed at the time of the commission of the acts that led to the criminal conviction or convictions in question.

~~(j)-(11)~~ Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction.

~~(k)-(12)~~ Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.

~~(l)-(13)~~ Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

~~(k)-(14)~~ Change in attitude from that which existed at the time of the commission of the criminal acts in question as evidenced by any or all of the following:

~~(1)-(A)~~ Testimony of ~~applicant~~ licensee.

~~(2) (B)~~ Evidence from family members, friends and/or other persons familiar with the licensee's previous conduct and with subsequent attitudes and/or behavioral patterns.

~~(3) (C)~~ Evidence from probation or parole officers and/or law enforcement officials competent to testify as to ~~applicant's~~ licensee's social adjustments.

~~(4) (D)~~ Evidence from psychiatrists, clinical psychologists, sociologists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.

~~(5) (E)~~ Absence of subsequent felony convictions, ~~or~~ misdemeanor convictions, or other conduct that provides grounds to discipline a real estate license, that are reflective of which reflect an inability to conform to societal rules when considered in light of the conduct in question.

(b) "Competent evidence" as used in Business and Professions Code section 482 means admissible, persuasive, and credible evidence that the licensee has met the criteria in subdivision (a), above. The licensee's own testimony will be given little weight as evidence except where specific assertions in that testimony are supported by direct evidence from another source.

Note: Authority cited: Sections 482 and 10080, Business and Professions Code.
Reference: Sections 482 and 490, Business and Professions Code ~~and Code~~, In re Gossage (2000) 23 Cal 4th 1080, and In re Andreani, (1939) 14 Cal.2d 736.