

ANSWERS TO FREQUENTLY ASKED QUESTIONS (FAQs) ABOUT “BACKGROUND” REVIEWS AND SCREENINGS, AND POLICIES, PROCEDURES AND STATUTORY REQUIREMENTS IN CONNECTION WITH THE ISSUANCE AND DISCIPLINE OF LICENSES

The California Department of Real Estate (“DRE” or “the Department”) frequently receives questions from consumers, applicants, licensees, other government agencies, the legislature, and members of the media, regarding the extent of “background” reviews and screenings for the issuance of licenses by the Department, and whether certain events (such as an arrest, indictment, a plea of guilty, and related matters) can be used as the basis for the denial of and/or discipline against a license.

In addition to providing the FAQs, you will also find hyperlinks. If materials below are shown in blue and underlined, you can click on those materials for easy access.

FAQs

LICENSING STANDARDS/APPLICANT QUESTIONS:

1. Q - Does the Department of Real Estate (DRE) screen real estate license applicants for criminal records prior to licensure?

A – Yes. Prior to the issuance of a real estate license, DRE conducts a detailed background investigation check on all license applicants, which includes mandatory fingerprinting. An original applicant for a real estate license must submit one set of classifiable fingerprints, acceptable to the State Department of Justice (DOJ). The DOJ then notifies DRE of past arrests and criminal convictions. After a license is issued to an applicant, the licensee’s fingerprints remain in the DOJ’s database, which allows the DOJ to notify the DRE of a licensee’s subsequent arrest by a State or local law enforcement agency.

2. Q - Does DRE automatically deny the issuance of a license to an applicant with a criminal record?

A - DRE may deny the issuance of a license to an applicant if he or she has been convicted of a substantially related crime. The same applies to the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation’s stock has been convicted of a substantially related crime. DRE uses Criteria of Substantial Relationship to determine if a crime is substantially related to the qualifications, functions, and duties of a real estate licensee. As part of the DRE's background investigation of applicants, the Department reviews all applicants’ criminal histories and determines if the applicant has committed any substantially related crime(s) which would serve as a basis for denial of the license. Additionally, pursuant to Section 485 of the Business and Professions Code, the Department may deny an application for a license without first filing a Statement of Issues. However, when this occurs the applicant has 60 days from the date of the denial to request a hearing to contest the Department's denial.

*Please note that because of Constitutional rights relating to due process, the Real Estate Commissioner cannot deny the issuance of a license to an applicant who has only been arrested and/or charged – via an indictment, arraignment, or similar charging procedure (even if those charges are still pending at the time of application) -- with a crime. Pursuant to Business and Professions Code section 10177(b), only criminal convictions that are final, meaning the time for appeal has lapsed or the conviction has been affirmed on appeal, can be used as a basis for license denial or license disciplinary action.

3. Q - What prior criminal activity and license discipline must an applicant disclose on his or her real estate application?

A - An applicant for a real estate license is required to fully disclose any misdemeanor or felony criminal conviction(s). Additionally, an applicant must disclose if he or she has ever had a license in California or any other State denied, suspended, restricted or revoked, along with any pending criminal charges against them. More importantly, the failure to disclose any convictions on a real estate application may be considered an attempt to obtain a license by fraud or misrepresentation, and can result in the denial of a real estate license.

An applicant for a real estate license is not required to disclose any Juvenile Court adjudication, any conviction sealed under Penal Code section 1203.45 or Welfare and Institutions Code section 781, and any conviction under Health and Safety Code section 11357(b), (c), (d), or (e), or Health and Safety Code section 11360(b) after at least two years have passed since the date of the conviction.

4. Q - Does DRE issue real estate licenses to individuals who are required to register as sex offenders?

A - While there is no specific law that prohibits DRE from licensing an individual who is required to register as a sex offender, DRE must and will consider whether a license should be denied, suspended or revoked on the basis of a conviction that involves sexual conduct. Part of DRE's consideration is whether the crime is substantially related. The Department's regulations provide that any crime involving sexually related conduct affecting a person who is an observer or non-consenting participant in the conduct, or convictions which require registration pursuant to the provisions of Section 290 of the Penal Code, are substantially related and may be the basis of denial of a real estate license.

LICENSEE QUESTIONS/INVESTIGATIVE PROCESS:

5. Q - How does the DRE learn of an arrest and/or conviction of a real estate licensee?

A - All licensees have fingerprints on file with the DOJ by virtue of having been fingerprinted during the license application process. If a licensee is arrested, charged and/or convicted of a crime, the DOJ notifies DRE electronically, and the Department immediately begins a screening process to determine if the crime is “substantially related” and merits further investigation and/or possible discipline. Sections 480 and 490 of the Business and Professions Code define the term “substantially related” as an act that may be deemed substantially related to the qualifications, functions or duties of a real estate licensee. Additionally, pursuant to B&P Code Section 10186.2, a licensee is required to report to the Department in writing within 30 days from the date of the bringing of an indictment or the charging of a felony, a conviction, or disciplinary action. Failure to make a report required by this section shall constitute a cause for license discipline.

6. Q - Why is someone who has been arrested or formally charged with a crime still licensed and allowed to conduct real estate activities?

A - Under the United States Constitution, a person is presumed innocent until proven guilty and is entitled to due process. Many people who are arrested and charged are either released without a trial or ultimately found to be “not guilty”. Therefore, DRE can only take disciplinary action against a licensee if there has been a conviction, the appeal process has elapsed or the judgment of conviction has been affirmed on appeal, and the person has been sentenced for the crime. The Department may then proceed with an administrative hearing to determine if disciplinary action can be taken against the licensee based on Section 10177(b) of the Business and Professions Code. However, under Business and Professions Code 10186.1, the Department can automatically suspend a license during any time that the licensee is incarcerated after conviction of a felony, regardless of whether that conviction has been appealed. When this occurs, the Department is required to notify the licensee of the suspension and of his or her right to elect to have the issue of penalty heard by hearing.

7. Q - Why doesn't DRE's on-line public information reveal that a licensee has been arrested or formally charged with a crime so that the public is aware of this information?

A – Because of the Constitutional protections for the rights of the accused, information on a licensee being arrested or charged with a crime is not always made available to the public. If a licensee is arrested or charged with a crime, DRE is notified by the DOJ and a DRE investigation will begin. However, information regarding investigations must remain confidential per Government Code 6254(f) and Evidence Code 1040 unless and until the Department files a formal pleading recommending that the license be disciplined. With the exception of suspending a license during the period of incarceration after conviction of a felony, regardless of whether that conviction has been appealed, the Department cannot take action against a licensee until there is a conviction and the licensee has been sentenced.

8. Q - If a real estate applicant or licensee has been convicted of a crime, how and when does the Department proceed with formal administrative licensing disciplinary action?

A - Once DRE is certain that an applicant or licensee has been convicted of a crime that is substantially related to the qualifications, functions or duties of a real estate licensee, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, DRE can begin to obtain all the necessary evidence. Department investigators obtain copies of the reports generated from the arresting agencies and the certified records and pleadings of the subject court(s). These documents are necessary to prove up the crime and conviction at the Administrative Law Court proceedings. Once all documentation is received, DRE's Legal Section prepares and files a formal legal pleading called a **Statement of Issues** against a license applicant whom the Legal Section has determined should not receive a real estate license because of his or her crime. When a licensed broker or salesperson is convicted of a crime that is substantially related as identified above, DRE files an **Accusation** against his or her license. The applicant or licensee then has the option of proceeding to an administrative hearing where he or she can present a defense before an Administrative Law Judge (ALJ). With regard to a hearing based on criminal convictions, the ALJ will assess the nature, circumstances, and gravity of the crime or crimes for which the applicant or licensee was convicted, the time that has passed since the conviction and/or the completion of the sentence, and the rehabilitation efforts of the applicant or licensee.

After the hearing, the ALJ issues a proposed decision, which is subject to the Real Estate Commissioner's approval. Discipline can range from outright denial or revocation to suspension of license rights or the granting of a restricted license, depending on the severity of the crime and the rehabilitation efforts shown by the applicant or licensee.

For the same reasons stated above, the Department does not release information to the public on "complaints" or the "number of complaints" filed with DRE against a licensee. Such complaints are only "bald" allegations and they are not (prior to substantiation through the investigatory process) reliable indicators that a licensee has violated the law.

9. Q - Are all crimes committed by a real estate licensee within the jurisdiction of DRE?

A - All criminal convictions, whether State or federal, if committed by an applicant for a real estate license or by a real estate licensee, are subject to the Department's review for licensure, denial or discipline. Each and every conviction that the Department receives notice of is reviewed under criteria to determine the degree of materiality of the underlying crime and whether it is "substantially related to the qualifications, functions, or duties of a real estate licensee" *§ 10177(b) of the Business and Professions Code]. The criteria that have been established for determining substantially related crimes are extensive. Any crime of dishonesty or involving fraud or theft, whether a misdemeanor or a felony, is investigated and adjudicated at an administrative hearing or resolved via settlement for the voluntary surrender of or restriction of the convicted criminal's license.

DISCIPLINARY PROCESS:

10. Q - Can the Department immediately suspend or revoke the license of someone convicted of a crime when the crime clearly appears to be one which would qualify the licensee for discipline?

A – With the exception of automatically suspending a license during the period of incarceration after conviction of a felony, regardless of whether that conviction has been appealed, the Department must first file a formal accusation against the licensee which describes the acts or omissions which justify discipline [Government Code Section 11503]. The accusation must be served on the licensee who then has the option of defending against the charges in an administrative hearing before an ALJ [Government Code Section 11505]. At the time of the hearing the Department must prove the charges in the accusation by clear and convincing evidence. The only exception to this process is if a licensee holds a "restricted" license. When a licensee who holds a "restricted" license is convicted of a crime that is substantially related to the qualifications, functions, or duties of a real estate agent, the Department may issue an interim order, without a hearing, suspending the license rights of a restricted licensee if the terms and conditions of the "restricted" license are not met.

11. Q - If a licensee pleads guilty to a crime, can the Department use the admission of guilt to suspend or revoke their license?

A - No. The Department may only discipline a licensee once their guilty plea results in a qualifying conviction [Business and Professions Code Section 10177(b)].

12. Q - What happens to someone's license if he or she has been convicted of a crime but is appealing the conviction to a higher court?

A - Business and Professions Code 10186.1 allows the Department to automatically suspend a license during any time that the licensee is incarcerated after conviction of a felony, regardless of whether that conviction has been appealed. The Department shall notify the licensee of the suspension and of his or her right to elect to have the issue of penalty heard by hearing.

13. Q - Why would someone who has been convicted of a crime and is actually serving their sentence in prison still have an active real estate license?

A - With the exception of the Department automatically suspending a license during the period of incarceration after conviction of a felony, regardless of whether that conviction has been appealed, a real estate license is not automatically suspended or revoked when a licensee is incarcerated. The same procedure that governs all criminal convictions as a basis for license discipline must be followed even in this circumstance. This means that the Department must first file an accusation against the individual.

14. Q - If a real estate broker or salesperson voluntarily surrenders his or her real estate license, or if his or her license is revoked in a disciplinary proceeding, can the former licensee ever obtain a DRE issued real estate license again?

A - Yes. If a real estate broker or salesperson voluntarily surrenders his or her real estate license, or the license is revoked after an administrative disciplinary proceeding, he or she has the right to petition the Department for reinstatement of license rights [Government Code §11522]. Unless a longer period of time is required pursuant to the Decision accepting the voluntary surrender of the license or revoking the license, the former licensee must wait at least one year from the effective date of the Decision to petition for reinstatement of the license that was revoked or surrendered. The purpose of the petition is to require the former licensee to demonstrate that it would not be against the public interest for the petitioner to hold a real estate license. In deciding whether or not to grant the petition the Department relies on its own background investigation of the former licensee as well as its evaluation of the steps the petitioner has taken toward achieving rehabilitation [Section 2911 of the Commissioner's Regulations]. The burden of proof lies with the petitioner to show that he or she is sufficiently rehabilitated to hold a real estate license.

15. Q - Does a licensee have to disclose to a client or potential client if he or she has ever been subject to disciplinary action by the Department?

A - Licensees do not have any specific statutory obligation to disclose prior or pending disciplinary action to their clients. However, if formal disciplinary action against the licensee is pending, or the licensee has actually been disciplined by the Department, this information is a matter of public record and is noted at part of the individual's public license record. Where the Department is conducting an investigation of a licensee but has not yet filed formal disciplinary action, the existence of the investigation, as well as the information compiled during the course of the investigation, is confidential and no reference will be made to the existence of an investigation on the public website [Government Code Section 6254(f); Evidence Code 1040].

Anyone may call the DRE to inquire about the record of a licensee, including any disciplinary history or may view disciplinary action documents via the DRE's website

Phone numbers for the five DRE offices can be found at DRE's Web site:

<http://www.dre.ca.gov/Contact.html>

A license status check can be completed at:

<http://www2.dre.ca.gov/PublicASP/pplinfo.asp>

NOTE: The FAQs cover the policies, procedures, and statutory requirements as of September 2014. It is important to remember that laws, policies and procedures are subject to change, and the information in the FAQs may be outdated at the time you access it

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FOR MORE INFORMATION REGARDING THE ABOVE TOPICS, PLEASE SEE THE FOLLOWING REFERENCE MATERIALS:

Regarding Licensing Standards and Applicant Information:

Real Estate Form RE237B and other licensing forms can be viewed at:

<http://www.dre.ca.gov/files/pdf/forms/re237b.pdf>

DRE publication entitled "Instructions to License Applicants":

<http://www.dre.ca.gov/files/pdf/re4.pdf>

Information on background checks performed by California Department of Justice can be viewed at:

<http://ag.ca.gov/fingerprints/>

DRE publication entitled "Help Avoid DENIAL of Your License Application":

<http://www.dre.ca.gov/files/pdf/forms/re229.pdf>

California Real Estate and Subdivided Lands Law can be viewed

at: <http://www.dre.ca.gov/files/pdf/relaw/relaw.pdf>

California Regulations of the Real Estate Commissioner can be viewed at: <http://www.dre.ca.gov/files/pdf/relaw/regs.pdf>

California Penal Code 290 can viewed at:
<http://leginfo.legislature.ca.gov/faces/codes.xhtml>

California Department of Justice's Megan Law site:
<http://www.meganslaw.ca.gov/>

Regarding Petition Process and Criteria of Rehabilitation:

Commissioner's Regulation 2911 – Criteria of Rehabilitation (Revocation or Suspension) can be viewed at: <http://www.dre.ca.gov/files/pdf/relaw/regs.pdf>

DRE Chief Counsel Wayne S. Bell's article discussing "rehabilitation and petitioning for reinstatement of a real estate license", can be viewed at:

<http://www.dre.ca.gov/files/pdf/reb/rebSpring07.pdf>

Other Related Materials:

Summary of Enforcement Actions, including disciplinary actions initiated against real estate licensees; filed orders to desist and refrain from unlawful activities; decisions on petition applications to reinstate/remove restrictions from licenses; applications for licenses that have been denied and/or were issued restricted licenses; and licenses that have been voluntarily surrendered, can be viewed at: <http://www.dre.ca.gov/Licensees/DisciplinaryActions.html>

DRE's consumer alerts can be viewed at:
<http://www.dre.ca.gov/Consumers/ConsumerAlerts.html>

General information about the DRE can be viewed at:
<http://www.dre.ca.gov/About>

California Department of Justice website:
<http://oag.ca.gov/>

Information on the Administrative Procedures Act can be viewed at:
http://www.oal.ca.gov/Administrative_Procedure_Act.htm

California Government Code can be viewed at:
<http://leginfo.legislature.ca.gov/faces/codes.xhtml>

California Evidence Code can be viewed at:
<http://leginfo.legislature.ca.gov/faces/codes.xhtml>