

## The Effects of a Criminal Conviction on a Real Estate License in California

A criminal conviction can have the result of suspension, revocation, or denial of a real estate license in California. However, not all convictions will result in such disciplinary actions. A number of factors will be used by the California Real Estate Commissioner to determine if a suspension, revocation or denial is appropriate.

First, it must be determined if the circumstances of the crime are substantially related to the functions, qualifications, or duties of a real estate broker or salesperson. For example, a licensee convicted of vandalism for vandalizing a home he or she is attempting to sell is more likely to be disciplined than that same licensee breaking a window during a bar fight. The Commissioner will also consider the seriousness of the offense. Generally, convictions for the following crimes are considered substantially related and can result in discipline:

- any felony;
- theft, embezzlement, or fraud;
- intent or threat to commit significant harm to the person or property of another;
- any sex crime requiring registration pursuant to Penal Code Section 290;
- repeated conduct which shows a willful disregard for the law;
- contempt of court or willful disregard for a court order; and
- two or more convictions involving alcohol or drugs where at least one conviction involves driving and the consumption of alcohol or drugs.

The Commissioner will also consider the past criminal history of a licensee to determine if discipline is necessary. In addition, those holding a real estate broker license will be held to a higher standard than those holding a real estate salesperson license due to the higher level of self-regulation.

Usually the determination of whether discipline is necessary is made by an administrative hearing on a case by case basis, after the conclusion of the criminal case. At the hearing, a licensee may appear with an attorney and present evidence that the conduct was not substantially related to the licensee's professional duties or mitigating the seriousness of the offense. However, if the licensee was convicted in the criminal court, they may not present evidence to attempt to prove he or she was not guilty.

The administrative hearing may also include an inquiry into the facts of a conviction beyond simply the plea or verdict. For example, a defendant may plead guilty to a lesser included offense that is not substantially related to his or her profession. However, if the circumstances surrounding the original charge are substantially related to his or her profession, the board may inquire regarding those facts in making a determination on whether to deny, revoke, or suspend a license.

It is also important to understand that an acquittal or dismissal of the criminal case will not bar subsequent administrative proceedings to suspend, revoke or deny a license. Even if you are found "not guilty" your license can still be taken away! This is because the "beyond a reasonable doubt" standard in criminal cases is higher than the "clear and

convincing proof to a reasonable certainty” standard applicable to the administrative hearing. In the event of an acquittal or dismissal in criminal court, it is often wise for a licensee to petition the court for a finding of factual innocence under Penal Code 851.8 to prevent action against his or her professional license. In addition, a past conviction that has been expunged from a potential licensee’s criminal record *can* be used as a basis for denying an application for a license.

Because of the many ways in which a professional license can be suspended, revoked, or denied, any time a licensee is facing a potential criminal conviction it is wise to have the assistance of an attorney.