

Can a Convicted Felon Regain a Real Estate License?

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Real Property Law Section 440-a. provides that a person cannot obtain a license as a real estate salesperson or broker if that person was convicted of a felony and has not subsequently received an executive pardon, a Certificate of Relief from Disabilities or a Certificate of Good Conduct. What, then, are the realistic possibilities that an individual once convicted of a felony can regain a license to act as a salesperson or licensed real estate broker?

Nature of the Conviction

Section 440-a. of the Real Property Law does not differentiate between types of felony convictions. Section 440-a. states in relevant part:

“No person shall be entitled to a license as a real estate broker or a real estate salesman under this article who has been convicted in this state or elsewhere of a felony, and who has not subsequent to such conviction received executive pardon therefor or a certificate of good conduct from the parole board, to remove the disability under this section because of such conviction.”

The provisions of the Real Property Law apply to real estate licensees, whether or not the felony conviction arises from a second driving while intoxicated arrest or from a fraudulent act committed while the person was already a real estate licensee. The one exception is an offense which constitutes a sex offense. In 2008, the Real Property Law was amended so that any sex offense (even one which is not a felony) would constitute a barrier to retaining or obtaining a real estate license.

Each time that a licensee renews his or her license, a question must be answered that requires the licensee to report to the Department of State whether or not that person has, during the period since the issuance of the existing license, been convicted of a felony. Moreover, every licensee is now required to notify the Department of State if the licensee is convicted of a sex offense or a sexually violent offense whether in New York State or elsewhere. Once noted by the Department of State, a renewal license will not be issued.

Procedure for Reinstatement

Once an individual is convicted of a felony and that individual seeks to regain his or her license as a salesperson or real estate broker, the burden is upon the licensee to prove

“by substantial evidence that he or she is entitled to regain renewal of a license from the Department of State.”

Section 440-a. requires that the Division of Licensing Services confirm that the applicant for licensure has received a Certificate of Relief from Disabilities, a Certificate of Good Conduct or is granted an executive pardon. Section 440-a. makes it clear that, without an executive pardon, a Certificate of Relief from Disabilities or a Certificate of Good Conduct, the Department of State has no discretion to grant the person the right to hold a real estate salesperson’s or broker’s license.

What is a Certificate of Relief from Disabilities?

When a person has been convicted of a felony, the person can make application to the New York State Department of Correctional Services or to the judge who sentenced the individual or to the federal court in which the criminal conviction occurred, for a Certificate of Relief from Disabilities. These Certificates may be issued when the convicted felon has not had more than one felony conviction. The New York State Correction Law Section 753 governs the issuance of such Certificates. The stated purpose of this provision is “to reduce the automatic rejection and community isolation that often accompany conviction of crimes” and “contribute to the complete rehabilitation of first offenders and their successful return to responsible lives in the community.” The person seeking a new or renewed real estate license must show good cause that the inability to regain licensure or obtain licensure will negatively impact the individual or the individual’s family, and that the person has been “rehabilitated” and is living his or her life in compliance with all laws. The effect of an executive pardon (issued by the Governor), a Certificate of Good Conduct (issued by the Department of Corrections) or a Certificate of Relief from Disabilities (issued by the Court) is the same.

The Department of State Policy

Even under circumstances in which a person receives a Certificate of Relief from Disabilities, it has been the Department of State’s policy to have the individual appear before an administrative law judge so that the individual can be questioned regarding what they have done since the time of their conviction and release from prison. The person must show clear and convincing evidence that he or she has been rehabilitated, is living life in a lawful manner and that the issuance of a real estate license to the individual will not put the public at risk.

Under the State Administrative Procedures Act (SAPA) Section 306(1), the convicted felon has the burden of showing justification for issuance of the license. It provides in part as follows:

“Except as otherwise provided by statute, the burden of proof shall be on the party who initiated the proceeding.

No decision, determination or order shall be made except upon consideration of the record as a whole or such portion thereof as may be cited by any party to the proceeding and as supported by and in accordance with substantial evidence."

"Substantial evidence" is defined as "such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact." Higher standards are required in criminal cases in which a person must be convicted by evidence which results in there being no reasonable doubt that the person is guilty.

A Federal Criminal Conviction

If a licensed real estate broker engages in an activity which results in mortgage fraud, the likelihood is that a criminal conviction would occur in the federal courts rather than the state courts. For many years, the Department of State would not review a matter involving a federal crime. In 1997, however, the New York courts found that in a case entitled *Chu v. Association of the Bar of City of New York*, 369 N.E.2d 1 (N.Y. 1997), that there is "little or no reason for distinguishing between [a] conviction of a Federal felony and [a] conviction of a New York State felony as a predicate for professional discipline."

The Hearing Process

When an individual comes before the Department of State with a Certificate of Relief from Disabilities in hand, the individual still must show that he or she is deserving of regaining a real estate license. Doing so usually requires the testimony of other individuals who are familiar with the convicted felon (e.g. familiar with his or her current lifestyle, attempts to rehabilitate himself or herself, his or her contributions to the community, aspects of his or her family life, and the convicted felon's efforts to be counseled by psychological professionals or clergymen in order to gain insight about prior behavior).

The Department of State Decision

Once an individual can, after a felony conviction, provide a Certificate of Relief from Disabilities or a Certificate of Good Conduct, the Department of State's Division of Licensing Services almost uniformly will submit the matter to the Administrative Law Judges. The individual will be given the opportunity to prove himself or herself worthy of regaining or obtaining a license and, typically, these licenses are granted. Without, however, the Certificate of Relief from Disabilities, the statutory prohibition under Section 440-a. of the Real Property Law prohibits the Department of State from having any discretion to issue a license. Potential difficulty arises for the convicted felon if the criminal conviction came as a result of activity as a real estate broker or salesperson. The Administrative Law Judge will usually carefully consider the nature of the

underlying felony conviction and whether it is likely to be a cause of concern for the public interest.

Regaining a license after a felony conviction requires a thorough and well prepared presentation. Having competent and experienced legal counsel to guide the person through the process is a valuable resource.

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