

2012 Kansas Statutes

58-4505. Same; authority to deny, suspend or revoke registration; probationary conditions; fines. (a) Except as provided in subsections (b) and (c), the board may deny, suspend or revoke a registration, or may impose probationary conditions on a registrant or applicant if the registrant or applicant has engaged in any of the following conduct:

- (1) Making a materially false or fraudulent statement in an application for registration or renewal;
 - (2) been convicted of or plead guilty or nolo contendere in a court of competent jurisdiction to any misdemeanor involving dishonesty;
 - (3) intentionally falsifying a home inspection report;
 - (4) performing any of the following acts as part of the home inspection:
 - (A) Inspecting for a fee any property in which the home inspector has any personal or financial interest unless the interest is disclosed in writing to the client before the home inspection is performed and the client signs an acknowledgment of receipt of the disclosure;
 - (B) offering or delivering any commission, referral fee or kickback for the referral of any business to the home inspector; and
 - (C) accepting an engagement to perform a home inspection or to prepare a home inspection report in which the employment itself or the fee payable for the inspection is contingent upon the conclusions in the home inspection report, pre-established or prescribed findings or the closing of the underlying real estate transaction;
 - (5) including as a term or condition in an agreement to conduct a home inspection any provision that disclaims the liability of the registered home inspector for any errors and omissions which may arise during a home inspection or to limit the amount of damage for liability for any errors and omissions which may arise during a home inspection to less than \$10,000 in the aggregate for each home inspection;
 - (6) failing to provide a client with a pre-inspection notice prior to the home inspection;
 - (7) failing to substantially follow the approved standards of practice and code of ethics;
 - (8) failing to respond as requested by the board to any summons for attendance and testimony or to produce documents or any other physical evidence during an investigation into the qualifications of or allegations of misconduct of an applicant or registrant; and
 - (9) violating any provision of this act or rules and regulations promulgated by the board pursuant to this act.
- (b) (1) Except as provided in paragraph (2), the board shall refuse to issue a registration to an applicant or registrant if the applicant or registrant has entered a plea of guilty or nolo contendere to, or has been convicted of:
- (A) (i) Any offense that is comparable to any crime which would require the applicant to register as provided in the Kansas offender registration act; or
 - (ii) any federal, military or other state conviction for an offense that is comparable to any crime under the laws of this state which would require the applicant to register as provided in the Kansas offender registration act; or
 - (B) (i) Any felony other than a felony under subparagraph (A); or
 - (ii) any federal, military or other state conviction for an offense that is comparable to any under the laws of this state other than a felony under subparagraph (A).
- (2) The board may grant an original registration pursuant to subsection (c) if the applicant's or registrant's application is received at least:
- (A) Fifteen years after the date of the applicant's or registrant's discharge from postrelease supervision, completion of any nonprison sanction or suspension of the imposition of the sentence resulting from any plea of guilty or nolo contendere to or conviction of any offense specified in subparagraph (A) of paragraph (1); or
 - (B) five years after the date of the applicant's discharge from postrelease supervision, completion of any nonprison sanction or suspension of the imposition of the sentence resulting from any plea of guilty or nolo contendere to or conviction of any offense specified in subparagraph (B) of paragraph (1), whichever is applicable.
- (3) For the purposes of this subsection, "postrelease supervision" and "nonprison sanction" shall have the meaning ascribed to them in K.S.A. 2012 Supp. 21-6803, and amendments thereto.
- (c) (1) The board may renew or grant an original registration to an applicant or registrant who has entered a plea of guilty or nolo contendere to, or has been convicted of any misdemeanor or any crime listed in paragraph (1) of subsection (b) if the applicant or registrant presents to the board satisfactory proof that the applicant or registrant now bears a good reputation for honesty, trustworthiness, integrity and competence to transact the business of registered home inspector in such a manner as to safeguard the interest of the public. The burden of proof shall be on the applicator or registrant to present such evidence to the board.
- (2) In determining whether or not the applicant or registrant presently has a good reputation as required in this subsection, the board shall consider the following additional factors:
- (A) The extent and nature of the applicant's or registrant's past criminal activity;
 - (B) the age of the applicant or registrant at the time of the commission of the crime or crimes;
 - (C) the amount of time elapsed since the applicant's or registrant's last criminal activity;
 - (D) the conduct and work activity of the applicant or registrant prior to and following the criminal activity; and
 - (E) evidence of the applicant's or registrant's rehabilitation or rehabilitative effort; and
 - (F) all other evidence of the applicant's or registrant's present fitness for a registration.
- (d) In addition to or in lieu of any other administrative, civil or criminal remedy provided by law, if the board determines after notice and an opportunity for a hearing in accordance with the Kansas administrative procedures act that a registrant has violated any provision of this act or any rule and regulation adopted hereunder, the board may impose on such registrant a civil fine not to exceed \$500 for each violation.
- (e) All proceedings pursuant to this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

History: L. 2008, ch. 171, § 6; L. 2009, ch. 118, § 4; L. 2011, ch. 30, § 207; July 1.