



# Best Practices Guide: Applying for an Occupational License After Conviction or Deferred Adjudication

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# Applying for an Occupational License After Conviction or Deferred Adjudication

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## Introduction

As required by Texas Occupations Code, Section 53.026, the State Auditor's Office, in collaboration with occupational licensing authorities, developed this guide to provide an overview of the occupational licensing application process for a person with a criminal conviction or deferred adjudication for a felony or misdemeanor offense. The guide presents the process outlined in Texas Occupations Code, Chapter 53, and is not intended to serve as legal advice.

This guide breaks the process into two parts:

- (1) Steps that may be taken [before applying](#) for an occupational license, such as requesting a licensing authority to evaluate a potential applicant's eligibility for a license, and
- (2) Steps that may be taken [after applying](#) for an occupational license, including options if an application for a license is denied.

The guide also includes answers to [frequently asked questions](#), possible [exceptions](#) to the process outlined, and a

list of [occupational licensing authorities](#). The occupational licensing application process described in this guide involves several parties:

- Applicant or potential applicant with a criminal conviction or deferred adjudication.
- Licensing authority.
- State Office of Administrative Hearings (if applicable).
- District Court (if applicable).

Additional resources related to applying for occupational licenses in Texas include the websites of specific licensing authorities; Texas Occupations Code, Chapter 53; and the State Office of Administrative Hearings' website at [www.soah.texas.gov](http://www.soah.texas.gov).

For specific questions about the processes for obtaining a particular occupational license after a criminal conviction or deferred adjudication, contact the applicable licensing authority.<sup>1</sup>

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<sup>1</sup> There are numerous licensing authorities and licenses. This guide offers general guidelines and does not detail the process to apply for a specific license or applicable processes for current licensees.



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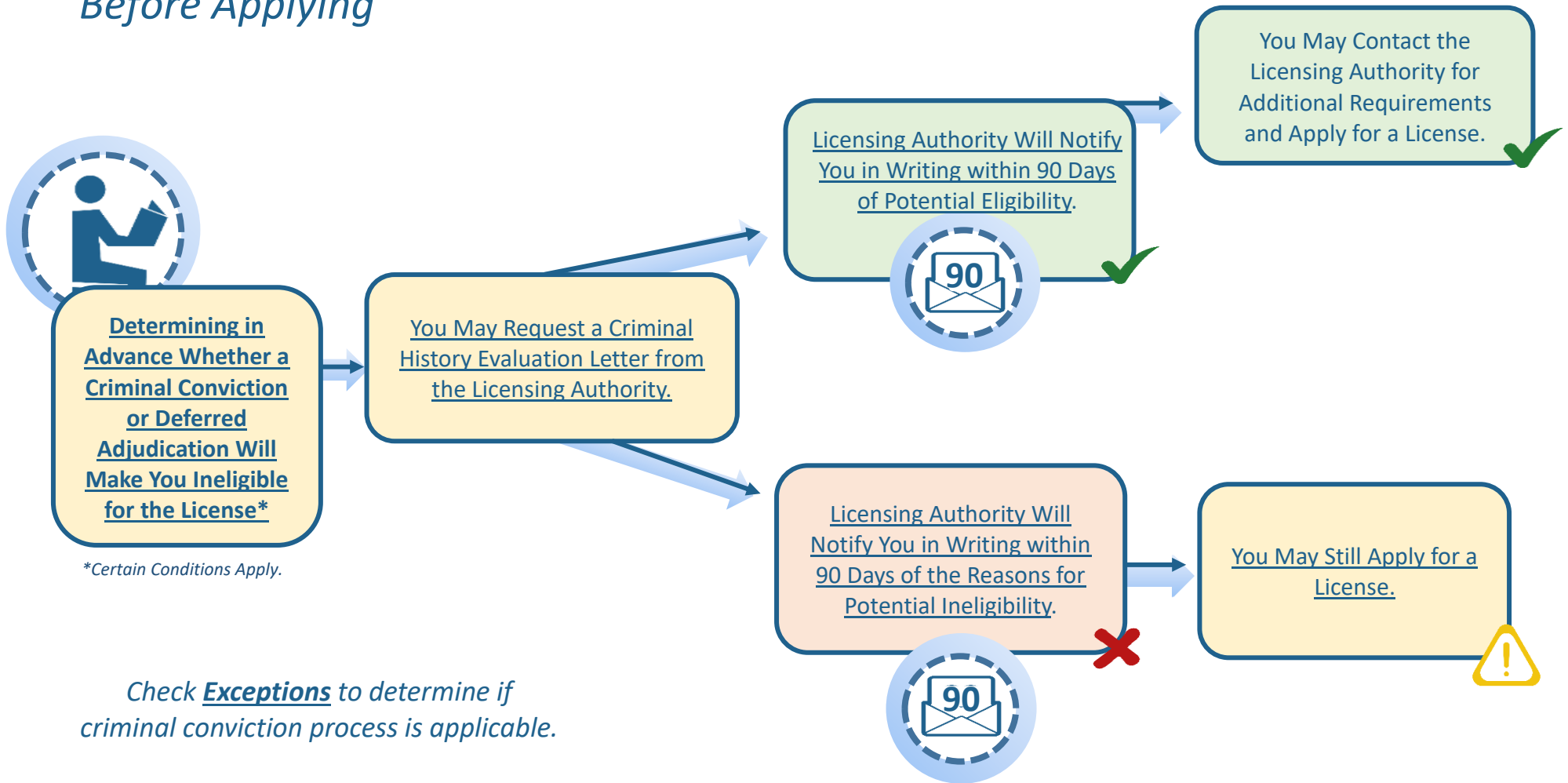
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## Before Applying





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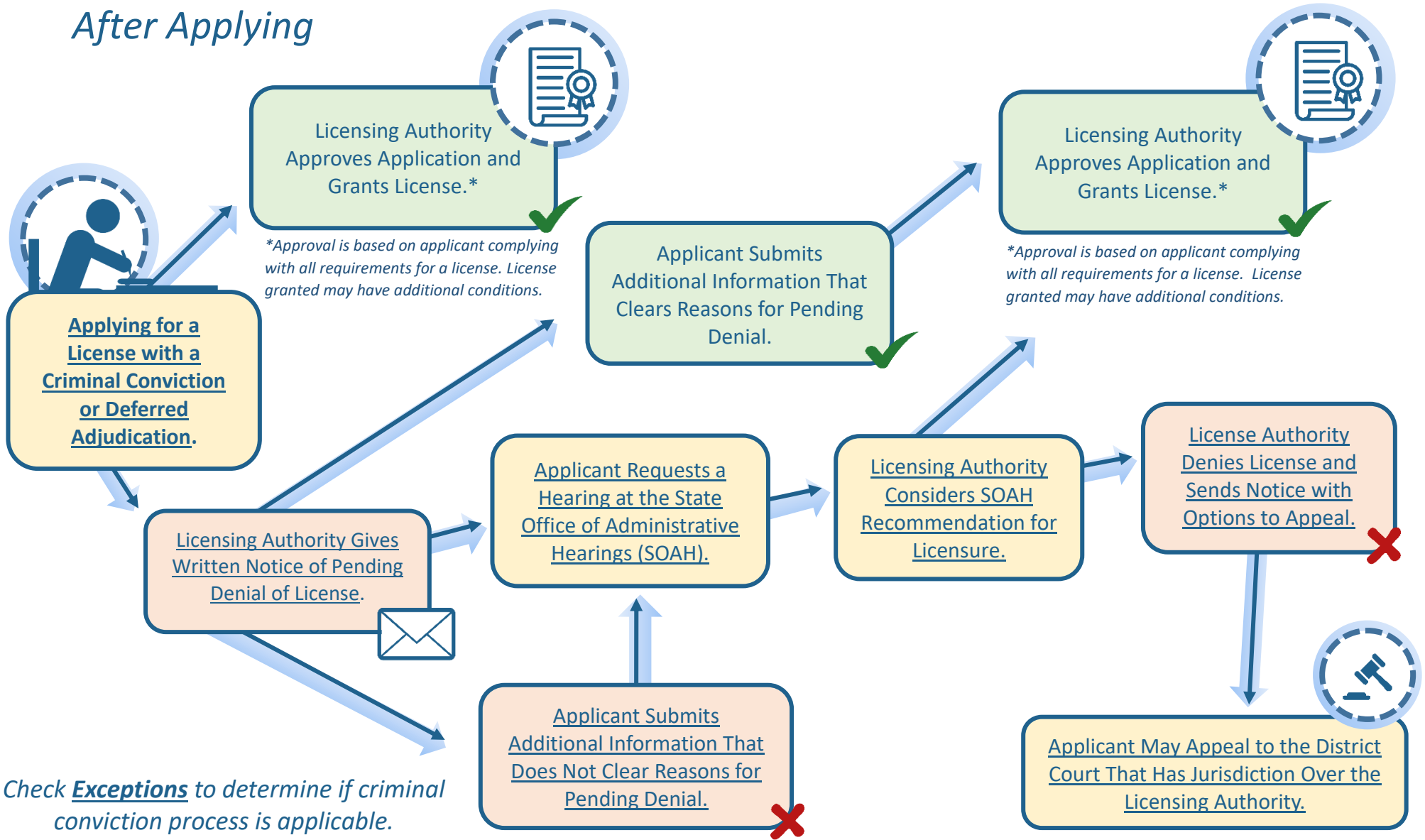
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## After Applying



Check **Exceptions** to determine if criminal conviction process is applicable.



## ***Additional Information - Before Applying***

### **DETERMINE IN ADVANCE WHETHER A CRIMINAL CONVICTION OR DEFERRED ADJUDICATION WILL MAKE YOU INELIGIBLE FOR THE LICENSE**

In most cases, before applying for an occupational license, you may request that a licensing authority evaluate your eligibility for a license if you are (1) enrolled or planning to enroll in an educational program to prepare for a license or planning to take an examination for a license and (2) have reason to believe you are ineligible due to a criminal conviction or deferred adjudication for a felony or misdemeanor offense. Please note that not all licensing authorities have this option; please consult the specific licensing authority for additional information.

In certain cases, a licensing authority may not consider you to be convicted of an offense (see [When a Licensing Authority May Not Consider You Convicted of an Offense](#) for more information.)

### **REQUESTING CRIMINAL HISTORY EVALUATION LETTER**

You may request a criminal history evaluation letter regarding your potential eligibility from the applicable licensing authority. That request **must** state why you think you may be ineligible.

The licensing authority will consider several factors in determining your potential eligibility for a license (see [Factors That Licensing Authorities Shall Consider to Determine Eligibility](#) for more information). You may want to include any relevant information related to those factors in your request for an evaluation letter.

A licensing authority has the same power to investigate a criminal evaluation letter request that it has to investigate a person applying for a license. In addition, a licensing authority may charge a fee to process a criminal history evaluation. Contact the licensing authority responsible for issuing the license for which you are interested in applying for further details regarding the criminal history evaluation request.



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## DETERMINATION OF ELIGIBILITY

A licensing authority has 90 days from the date it receives the request for a criminal history evaluation letter to (1) determine if you (the requestor of the letter) are potentially ineligible for a license and (2) send a determination letter notifying you of the evaluation results.

If the licensing authority determines that you are **potentially eligible** for a license, the licensing authority will notify you in writing of its determination of potential eligibility, including factors considered. You may contact the licensing authority for any additional requirements and apply for a license.

If the licensing authority determines you are **potentially ineligible** for a license, the licensing authority will notify you in writing of its determination of potential ineligibility and explaining any factors that served as a basis for that determination. (See [Factors That Licensing Authorities Shall Consider to Determine Eligibility](#) for more information.)

You may still apply for a license if you get a letter with a determination of a potential ineligibility; however, there is an increased possibility the licensing authority will deny the license. You cannot contest the licensing authority's evaluation of potential ineligibility; you must apply for a license if you wish to contest a denial of a license. (See [After Applying Flowchart](#) for details.)



## ***Additional Information - After Applying***

### **APPLYING FOR AN OCCUPATIONAL LICENSE WITH A CRIMINAL CONVICTION OR DEFERRED ADJUDICATION**

Once you apply for an occupational license, the licensing authority will notify you whether the license is granted or pending denial. Please note that approval of an occupational license is based on satisfying all requirements for that license.

Some licensing authorities' processes may differ from the one outlined in this guide. For example, some licensing authorities:

- Extend the time to submit relevant information after a pending denial of an occupational license.
- Review an applicant's submission of additional information to clear any potential denial issues before responding with a notice containing information for contesting denial issues at the State Office of Administrative Hearings.
- Conduct administrative reviews after an initial application, during which the licensing authority will request further information if a potential denial may occur.

- Offer the opportunity for you to appear before the licensing authority's governing board or commissioner to help determine your eligibility for an occupational license.
- Conduct an informal hearing at the licensing authority to clear any potential issues that could result in a denial of an occupational license.
- Offer the opportunity to withdraw your application and receive a refund.

Contact the applicable licensing authority for detailed information about its processes.



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## WRITTEN NOTICE OF PENDING DENIAL OF OCCUPATIONAL LICENSE

If a licensing authority determines that an application for an occupational license might not be approved, it will send you a written notice of pending denial and give you an opportunity to submit additional, relevant information. The licensing authority must give you at least 30 days to submit additional information.

The written notice of pending denial you will receive from the licensing authority must contain, as applicable:

- A statement that you are disqualified from receiving a license or being examined for the license because of your prior conviction of an offense listed in the notice.

Or, a statement that:

- The final decision of the licensing authority to deny you a license or the opportunity to be examined for the license will be based on the [Factors That Licensing Authorities Shall Consider to Determine Eligibility](#), and
- It is your responsibility to obtain and provide the licensing authority with evidence regarding these factors.

## APPLICANT OPTIONS AFTER RECEIVING A WRITTEN NOTICE OF PENDING DENIAL

Please be aware that license authority notices may differ. You should read all information in any written notice very carefully and adhere to the deadlines and instructions for submitting information or requesting a hearing to contest a licensing authority's intended denial of an application. Generally, you have the following options after receiving a written notice of pending denial:

- You submit additional relevant information that clears the issue(s) for the pending denial and the licensing authority grants the license (provided the applicant complies with all requirements for that license).
- You request a hearing at the State Office of Administrative Hearings (SOAH), or you submit additional information that does not clear the denial issue(s) and then request a hearing at SOAH.
- You submit additional information that does not clear the denial issue(s) and do not request a hearing at SOAH, or you simply do nothing in response to the written notice of pending denial. In absence of a request for a hearing at SOAH or notification from the licensing authority that the license application has been approved, the denial becomes effective in accordance with the timeline indicated in the notice of pending denial. You will then receive a notice of denial.





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## REQUESTING A HEARING TO CONTEST A LICENSING AUTHORITY'S DECISION TO DENY A LICENSE

You have the option to contest a licensing authority's decision to deny an occupational license by filing for a hearing with the State Office of Administrative Hearings (SOAH). (See [Understand What to Expect at a SOAH Hearing](#) for more information.) The administrative law judge or hearing officer will submit a recommendation, or proposed decision, to the licensing authority.

The licensing authority either (1) adopts SOAH's recommendation or proposed decision as its own or with modifications or (2) rejects SOAH's recommendation and issues a different order. For some licensing authorities, a governing board will consider the SOAH recommendation or proposed decision during a public meeting, which the applicant may attend. The applicant also may have an opportunity to address the board. For licensing authorities in which the executive director (or equivalent) makes the final decision based on a SOAH recommendation, the applicant may have an opportunity to meet with the executive director prior to the final decision. In neither case, however, is the applicant allowed to present evidence or arguments not presented to SOAH.

If the licensing authority's decision is to deny the license after the hearing at SOAH, you can appeal by filing in the district court that has jurisdiction over the licensing authority.

## WRITTEN NOTICE OF DENIAL

Once the licensing authority decides to deny you a license or the opportunity to be examined for a license because of a prior conviction or deferred adjudication, it will issue a written notice of denial, which shall provide:

- The reason for the denial, including the [Factors That Licensing Authorities Shall Consider to Determine Eligibility](#) that served as the basis for the denial.
- The earliest date you can appeal the licensing authority's denial of licensure.
- The judicial review procedure to appeal in district court.

## FILING A JUDICIAL REVIEW ACTION IN DISTRICT COURT

A person who has been denied a license or the opportunity to take an examination, and who has exhausted administrative appeals, may file an action in district court. This district court action must be filed in the county where the applicable licensing authority is located. The district court will review the evidence previously presented to the licensing authority and the decision of the licensing authority.

This petition for an action in district court must be filed no later than 30 days after the date the licensing authority's decision is final and appealable. Contact the licensing authority for additional information about when the decision is considered to be final.



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In collaboration with the State Auditor's Office, some of the State's occupational licensing authorities provided the Frequently Asked Questions (FAQs) and helpful hints listed below.

## ***Frequently Asked Questions (FAQs)***

**Q: How can I find out if my criminal history will prevent me from obtaining a particular license?**

**A:** You should review the licensing authorities' criminal conviction guidelines before requesting a criminal history evaluation. After that review, if you believe you may be ineligible, you may apply for a criminal history evaluation letter and receive a determination from the licensing authority about whether your criminal history makes you potentially ineligible for a particular license. Even if the licensing authority determines you are potentially ineligible, you may still apply for the license. Applying for a license will allow you to contest any denial of licensure.

**Q: Will my conviction or deferred adjudication permanently bar me from obtaining a license?**

**A:** While there are a few, specific offenses or types of offense that permanently disqualify a person from seeking a particular license, the vast majority of licenses do not have such restrictions. In most situations, the type or seriousness of the offense is just one factor the licensing authority considers when deciding whether to issue a license. Licenses might be issued despite serious and directly related offenses if, for example, the licensing authority determines that sufficient time has passed since the offense was committed or other information or evidence has established that issuing the license will not create an unacceptable risk to the public.

**Q: When applying for a license, do I have to disclose a deferred adjudication, even if I successfully completed it and was never convicted of that offense?**

**A:** Yes. Under Texas Occupations Code, Chapter 53, deferred adjudications may sometimes be treated as convictions and used as the basis for denying or revoking a license. If you do not disclose the deferred adjudication it may appear as though you are trying to hide the deferred adjudication from the licensing authority and that you falsified your application.

**Q: What types of additional, relevant information or evidence should I provide to justify granting my license?**

**A:** You may provide any evidence you believe might convince the licensing authority to issue the license. Common examples include: letters of recommendation; character reference letters; letters or certificates showing attendance in or completion of rehabilitation/substance abuse programs/anger management programs/relevant classes or programs; letters or reports from therapists, teachers, or medical professionals; evidence of complying with or completing probation or parole conditions; and a letter from the applicant or licensee explaining remorse for, or personal growth/change after, the criminal history. You may present this evidence at any time, but you should strongly consider providing it to the licensing authority with your initial application or as soon as you can gather it, as it may convince the licensing authority to grant your license.



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**Q: Can I submit a letter of recommendation from friends or family members?**

**A:** You may, but keep in mind letters from friends and family might not mean as much because they come from people close to you who would be more likely to say good things about you no matter what. The more meaningful letters of character reference or recommendation come from people who are more neutral or objective, such as business owners, employers, directors or supervisors of volunteer organizations, law enforcement officers, teachers or professors, church pastors, and other prominent people in the community. The most useful letters will describe how the writer knows you and what changes, if any, the writer has seen in your behavior and demeanor since your last criminal offense or release from incarceration. The writer should always sign the letter and provide contact information.

**Q: What are my options after receiving a denial letter or notice that my license will be revoked?**

**A:** You may request a hearing, usually referred to as a contested case hearing, which will ultimately result in a decision about your license by another person or committee, by sending the licensing authority a written request for a hearing. Whether you request the hearing or not, you may still submit information or evidence to the licensing authority to support your license application, because the information or evidence might convince the licensing authority to reverse its initial decision, issue the license, and dismiss the hearing. However, do not let a deadline stated in the denial letter pass. Licensing authorities are not necessarily required to consider the additional information and/or extend any deadline stated in the denial letter.

**Q: How will the hearing process unfold?**

**A:** The hearing process can differ depending on which licensing authority regulates the license you seek. You should consult your denial letter or notice of violation for more information about what to expect in the hearing process. As in any hearing process, you may hire an attorney to represent you.

**Q: How can I request a hearing?**

**A:** Send the licensing authority a written request for a hearing. Make sure the licensing authority receives the request before the deadline, which should be stated in the denial letter or notice of violation.

**Q: If my application is finally denied or my license is finally revoked after going through a contested hearing/appeal, can I apply for the same license again in the future?**

**A:** Yes; however, there could be a waiting period that must end before you may apply again. The waiting period will vary depending on the license type and the rules of the licensing authority that regulates the license you want. When your denial/revocation becomes final, consult the license authority or that licensing authority's statutes and rules to find out if there is waiting period and, if so, how long it will last.

**Q: I am having difficulty obtaining some of the documentation because the incident happened so long ago. What do I do?**

**A:** You need to make every attempt to obtain court documentation related to the incident in question. The appropriate legal jurisdiction should be able to provide something on letterhead stating that no records are found, if that is indeed the case.



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## Helpful Hints

### **Confirm you have actually been convicted or received deferred adjudication.**

A critical first step in determining whether your criminal history is disqualifying is confirming the nature of your final disposition. This means determining whether it was a deferred adjudication or a conviction, and if it was a conviction, whether it was set aside or pardoned. Also, it is important to:

- **Confirm the actual date of conviction.** This is the date of the court's judgment, not the date of arrest, imprisonment, or completion of probation.
- **Confirm the offense for which you were convicted.** The offense for which one is arrested or charged may not be the offense for which you were convicted.
- **Review the licensing authority's administrative rules on disqualifying offenses, and confirm that the offense for which you were convicted or received deferred adjudication is the same offense that is potentially disqualifying.** This may require a careful comparison of your judgment with current law and with the licensing authority's rules on disqualifying offenses.

Applicants may obtain a copy of their Texas criminal record by contacting the Department of Public Safety Crime Records Service in Austin.

### **Provide all available evidence of rehabilitation or mitigation.**

Applicants should review the guidelines that agencies must follow in evaluating an individual, as reflected in Texas Occupations Code, Chapter 53, (see [Factors That Licensing Authorities Shall Consider to Determine Eligibility](#)) and in the licensing authority's administrative rules, to address any potentially disqualifying criminal history. The licensing authority may, for example, consider whether the applicant has maintained a record of steady employment; supported the applicant's dependents; maintained a record of good conduct; and paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted. The licensing authority also may consider the extent and nature of the applicant's past criminal activity; the age of the applicant when the crime was committed; the amount of time that has elapsed since the applicant's last criminal activity; the conduct and work activity of the applicant before and after the criminal activity; evidence of the applicant's rehabilitation or rehabilitative effort while incarcerated or after release; and other evidence of the applicant's fitness, including letters of recommendation.

Applicants should collect all favorable evidence relating to the above factors and include it with the application.



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## Understand what to expect at a SOAH hearing.

Prior to contesting a licensing authority's decision to SOAH, a preliminary hearing may be conducted by the licensing authority, depending on the licensing authority and the specific license. This may be a relatively informal hearing, even one held by telephone. This would be an opportunity to provide any information not previously provided to the licensing authority, and to address the reasons the licensing authority believes you are not eligible for the license.

If there is no preliminary hearing, or if you contest the results of the preliminary hearing, the licensing authority will schedule a hearing at the State Office of Administrative Hearings (SOAH). These hearings are less formal than court hearings; however, you (as the Respondent) should be prompt, respectful, and appropriately dressed. You may represent yourself or be represented by an attorney; you may call witnesses; and you may present evidence. The rules and procedures governing this hearing are available online at <http://www.soah.texas.gov>. This hearing is subject to the Texas Administrative Procedure Act<sup>2</sup>.

Respondents should provide all evidence to the licensing authority and SOAH well in advance of the hearing. Ideally you also should prepare an outline of the reasons you are entitled to the license—a summary of the evidence and what you believe it establishes. This can be filed as an answer to the licensing authority's petition in advance of the hearing, or it can be presented at the hearing.

You should review previous SOAH decisions (Proposals for Decisions, or PFDs), particularly those relating to your specific license. These are invaluable in providing insight into how your case is likely to be evaluated, and how the judges analyze the evidence of rehabilitation and mitigation (i.e., the evidence supporting your license eligibility). You may also find arguments helpful to your case in the judges' conclusions, particularly if there are similarities with your case. Similar cases decided in favor of the licensee may provide compelling reasons for the judge to rule in your favor.

The SOAH judge's ruling (a "Proposal for Decision") is issued within 60 days of the hearing. Exceptions to the decision may be filed by either party. The final Proposal for Decision is ruled on by the licensing authority, which then issues a final order. This order may be appealed by filing suit against the licensing authority in district court.

SOAH's *Guide to Searching Public Case Files* can be found at: [https://cis.soah.texas.gov/dmwebbasic/Guide\\_to\\_Searching\\_Public\\_Case\\_Files.pdf](https://cis.soah.texas.gov/dmwebbasic/Guide_to_Searching_Public_Case_Files.pdf)

SOAH PFDs can be found at: <https://cis.soah.texas.gov/dmwebbasic/tokweb27.asp?WCI=login&WCE=frmlogin&WCU>

SOAH information about representing yourself can be found at: <http://www.soah.texas.gov/Representing-Yourself/index.html>

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<sup>2</sup> See Texas Government Code, Chapter 2001, at <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2001.htm>.



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## **Do not submit false information.**

Falsifying an application, or any documents or information submitted along with an application, can constitute a criminal offense (see Texas Penal Code, Section 37.10). It also can authorize the licensing authority to deny a license application (or suspend or revoke an existing license if the application was submitted to renew a license that has already been issued). Falsification of an application just makes things worse, so it is far better to disclose too much information than too little. You should always disclose the information, even if someone has told you it is not necessary or required.

## **Respond to a licensing authority request for information or documentation.**

When a licensing authority requests information or documentation, do not ignore the request. Make copies of the documents requested or any written response you submit and send those things to the licensing authority as soon as possible. If you do not have the information or documentation and you are unable to get it, respond to the licensing authority in writing and tell them you do not have it and why. If you are unable to get a document from another source, try to get a letter from that other source showing the document is unavailable and submit that to the licensing authority. Texas Government Code, Section 2005.052(a), authorizes a licensing authority to deny a license application when the applicant fails or refuses to provide documents or information requested by the licensing authority.



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## ***Factors That Licensing Authorities Shall Consider to Determine Eligibility***

The licensing authority will determine the **basis** for eligibility/ineligibility by evaluating whether your conviction(s) or deferred adjudication(s) directly relates to the licensed occupation. Factors considered include:

- The nature and seriousness of the crime.
- The relationship of the crime to the purposes for requiring a license to engage in the occupation.
- The extent to which a license might offer an opportunity to engage in further criminal activity of the same type that you previously had been involved.
- The relationship of the crime to the ability or capacity required to perform the duties and discharge the responsibilities of the licensed occupation.
- Any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.

If the licensing authority determines your conviction(s) or deferred adjudication(s) directly related to the licensed occupation, it will then consider:

- The extent and nature of your past criminal activity.
- Your age when the crime was committed.
- The amount of time that has elapsed since your last criminal activity.
- Your conduct and work activity before and after the criminal activity.
- Evidence of your rehabilitation or rehabilitative effort while incarcerated or after release.
- Evidence of your compliance with any conditions of community supervision, parole, or mandatory supervision.
- Other evidence of your fitness, including letters of recommendation.



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## Exceptions

The process outlined in this guide (which is based on the requirements in Texas Occupations Code, Chapter 53) does not apply in certain situations. Some of those situations are described below. Contact the applicable licensing authority if you have questions about specific exceptions to the process described in this guide.

The process outlined in this guide does not apply to the following licenses or licensing authorities:

- The Supreme Court of Texas, a person licensed under the court's authority on behalf of the judicial branch of government, or an applicant for a license issued under the court's authority on behalf of the judicial branch of government.
- Law enforcement officers, specifically a person licensed or an applicant for a license under Texas Occupations Code, Chapter 1701.
- An applicant for certification as emergency medical services personnel under Texas Health and Safety Code, Chapter 773.

- A person who is (1) licensed by the Texas Medical Board, the Texas State Board of Pharmacy, the State Board of Dental Examiners, or the State Board of Veterinary Medical Examiners, and (2) has been convicted of a felony under Texas Health and Safety Code, Chapter 481 (Texas Controlled Substances Act), Chapter 483 (Dangerous Drugs), or Chapter 485.033 (Inhalant Paraphernalia).

Applicants are excluded from obtaining a provisional occupational license<sup>3</sup> for the following services: law enforcement, public health, education, safety services and financial services in an industry regulated by the securities commissioner, the banking commissioner, the savings and mortgage lending commissioner, the consumer credit commissioner, or the credit union commissioner.

There may be additional exceptions that are not listed here. Contact the applicable licensing authority for more information about whether a specific license is exempt from the process described in this guide.

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<sup>3</sup> See Texas Occupations Code, Chapter 53.





## ***When a Licensing Authority May Not Consider You Convicted of an Offense***

A licensing authority may not consider you convicted of an offense if:

- (1) You were convicted of a Class C misdemeanor, unless you are an applicant for or the holder of a license that authorizes you to possess a firearm and the offense for which you were convicted is a misdemeanor crime of domestic violence<sup>4</sup>.
- (2) All of the following three applies:
  - A. You entered a plea of guilty or *nolo contendere*;
  - B. The judge deferred further proceedings without entering an adjudication of guilt and placed you under the supervision of the court or an officer under the supervision of the court; **and**
  - C. At the end of the period of supervision, the judge dismissed the proceedings and discharged you.

**However**, even if these conditions apply to you, a licensing authority may still consider you convicted of an offense if it determines that you may pose a threat to public safety or that granting a license would give you an opportunity to repeat the prohibited conduct; and you were charged with:

- Any offense described by Article 62.001 (5) of the Texas Code of Criminal Procedure (Sexual Offender Registration Program), or
- Any other offense if you have not completed the period of supervision or you completed the period of supervision less than five years before the date you applied for the license; or a conviction for the offense would make you ineligible for the license by operation of law.

For further information about possible exceptions and whether they apply to your situation, please contact the applicable licensing authority.

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<sup>4</sup> See Title 18, United States Code, Section 921, for applicable definitions of misdemeanor crimes of domestic violence.



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## Licensing Agencies

While creating this guide, the State Auditor's Office identified the following Texas state agencies responsible for issuing occupational licenses in Texas. The list may not include all licensing agencies in Texas.

- Executive Council of Physical Therapy and Occupational Therapy Examiners
- Office of the Secretary of State
- Texas Appraiser Licensing and Certification Board
- Texas Behavioral Health Executive Council
- Texas Board of Architectural Examiners
- Texas Board of Chiropractic Examiners
- Texas Board of Examiners of Psychologists
- Texas Board of Nursing
- Texas Board of Professional Engineers and Land Surveyors
- Texas Board of Professional Geoscientists
- Texas Commission on Environmental Quality
- Texas Department of Agriculture
- Texas Department of Banking
- Texas Department of Insurance
- Texas Department of Licensing and Regulation
- Texas Department of Motor Vehicles
- Texas Department of Public Safety
- Texas Department of Savings and Mortgage Lending
- Texas Department of State Health Services
- Texas Education Agency - State Board for Educator Certification
- Texas Funeral Service Commission
- Texas Health and Human Services Commission
- Texas Lottery Commission
- Texas Medical Board
- Texas Office of Consumer Credit Commissioner
- Texas Optometry Board
- Texas Racing Commission
- Texas Real Estate Commission
- Texas State Board of Dental Examiners
- Texas State Board of Examiners of Professional Counselors
- Texas State Board of Pharmacy
- Texas State Board of Plumbing Examiners
- Texas State Board of Public Accountancy
- Texas State Board of Veterinary Medical Examiners
- Texas State Securities Board



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