

Selling Real Estate at Auction

Due to a recent influx of questions relating to the sales of real estate at auction, the Board's May 2004 Newsletter article has been reprinted as follows: Recently, many questions have been asked in reference to auctioning real estate. Because the process of auctioning real estate is regulated by two separate regulatory boards for the State, particular care must be taken knowing, understanding and following both sets of law and administrative rules.

One of the most important issues is whether all of the non-exempt entities that will perform the sale have the proper licenses. The following provides five different licensing scenarios and the licensing requirements:

1. *The owner or the attorney for the owner is selling real property "by owner."*

A licensed auctioneer can be hired by the owner or the attorney for the owner to be the "mere crier of the sale." Unless the auctioneer also holds a currently valid real estate brokers license, an auctioneer cannot solicit or negotiate the listing of the real property for sale, cannot advertise the real property sale, cannot make any representations about or engage in the showing of the real property for sale, cannot complete any sales contract, receive or hold earnest money or other funds, or otherwise engage in acts for which a real estate license would be required.

2. *A person that is a licensed auctioneer and a licensed real estate broker and the business is a sole proprietorship who wants to sell real estate at auction.*

No further licenses are required and this person is legally capable of handling all aspects of the real estate auction under both the Auctioneer law and rules and the Real Estate law and rules.

3. *An entity that is a licensed real estate broker but is not a licensed auctioneer who wants to sell real estate at auction.*

An individual broker acting as a sole proprietor, or a licensed real estate brokerage firm, must also obtain an auction firm license. In doing so, the sole proprietor, or the individual broker employed by the licensed brokerage firm would list themselves as the Designated Real Estate Person for the auction firm and handle all aspects of the firm as it would relate to real estate auctions, except bid calling. Any licensed auctioneer could be hired or contracted, but only to call bids at the real estate auction.

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2007-2008

Board Meeting Dates

The Board has set the following dates and locations for its regularly scheduled meetings for the end of the 2007 calendar year. The January 2008 through March 2008 dates below are tentative.

<u>Date</u>	<u>Location</u>
August 15	Fuquay Varina
September 19	Fuquay Varina
October 17	Fuquay Varina
November 21	Fuquay Varina
December 19	Fuquay Varina
January 18	Greensboro
February 20	Fuquay Varina
March 19	Fuquay Varina

All Board meetings normally begin at 9:00 a.m. and are open for the most part to all licensees and the public. Certain matters, such as discussions of potential disciplinary cases to determine probable cause as well as final sanctions, if appropriate, are discussed in closed sessions. We encourage all interested persons to attend one or more of these meetings.

Although not required, you may wish to notify the staff if you plan to attend a meeting. This will assist in our planning to accommodate visitors.

Real Estate Auction (Continued)

4. *An entity that is a licensed auctioneer but is not a licensed real estate broker who wants to sell real estate at auction.*

This person must also obtain an auction firm license and a real estate firm license. This can poise a problem if this person's business is a sole proprietorship. Unlike the Auctioneer Licensing Board, the Real Estate Commission does not allow sole proprietorships to obtain firm licenses. To be eligible to obtain a real estate firm license the entity must be a corporation, a partnership, a single member LLC, etc. Also, a real estate broker must be hired or contracted to be the Broker-In-Charge for the real estate firm and to be the Designated Real Estate Person for the auction firm. The licensed auctioneer could only call bids at the real estate auction and the Broker-In-Charge/Designated Real Estate Person would handle all other aspects of the real estate auction.

5. *An entity that is neither a licensed auctioneer nor a licensed real estate broker who wants to sell real estate at auction.*

This person must obtain an auction firm license and a real estate firm license. Again as above, this can be a problem if the person's business is a sole proprietorship. The business structure would need to be changed prior to obtaining a real estate firm license. A real estate broker would be hired or contracted to be the Broker-In-Charge for the real estate firm and to be the Designated Real Estate Person for the auction firm. Any licensed auctioneer could be hired or contracted, but only to call bids at the real estate auction and the Broker-In-Charge/Designated Real Estate Person would handle all other aspects of the real estate auction.

The above list of scenarios is provided to assist a person or entity to give an overview and help understand the licensing requirements for a real estate auction. Unfortunately, many licensed auctioneers have the misconception that they can sell real estate by "bringing in a broker." This is wrong and is a common abuse by unlicensed brokers who attempt to avoid the Real Estate License Law. Not only is this unlawful under the Real Estate License Law, but it is also unlawful under the Auctioneer License Law.

Never hesitate to contact the Real Estate Commission and/or the Auctioneer Licensing Board for more information or to answer any questions that you might have.

CURRENT BOARD MEMBERS

Willie A. Johnson
Greensboro, NC
Chairperson

Jean W. Woolard
Plymouth, NC
Vice Chairperson

Lloyd (Mickey) Meekins, Jr.
Lumberton, NC
Board Member

Jesse G. Meeks
Eden, NC
Board Member

William M. O'Neal
Norwood, NC
Board Member

CURRENT STAFF MEMBERS

Robert A. Hamilton, Executive Director

Becky Stewart, Administrative Officer

Teresa L. Watson, Administrative Assistant

Barbara Phillips, Secretary

Bruce E. Marshburn, Investigations Coordinator

Ralph Southerland, Investigator

Ronnie Stewart, Investigator

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Licensing Board Activity Report

This activity report covers the period from November 2006 through July 2007. The Board met nine times; conducted four auctioneer licensing examination sessions and gave six auction firm exams; issued eighty-one auctioneer licenses, seven apprentice auctioneer licenses and twenty-eight auction firm licenses; denied licensing to five auctioneer applicants and four auction firm applicants; conducted two administrative hearings and five settlement conferences; and, attended the AANC conventions in Greensboro and Concord and attended the NAA convention in San Diego, California. The Vice Chairperson of the Board and Executive Director attended the NAA winter seminar in Tucson, Arizona.

Disciplinary Actions

A summary of the disciplinary actions is as follows:

1) **Calvin Zedd, NCAL #349 (Norfolk, VA)** - Calvin Zedd paid a \$1,750.00 fine. This action resulted from violations that included selling or offering to sell, goods or real estate at auction in this State or perform any act for which an auction firm license is required without holding a currently valid license issued under G.S. 85B; making any false statement or giving any false information in connection with an investigation by the Board or the Board's designee; violating any federal or state statute or rule which relates to the auctioneering profession; and permitting his name or license number to appear on any advertisement for an auction without reviewing the contents of the advertisement prior to its publication to ascertain its compliance with applicable law and rules. A Settlement Agreement and Consent Order were entered into between the Board and Calvin Zedd, prior to a scheduled hearing, in which he agreed to the above stipulations. Calvin Zedd admitted to the Board's findings of violations.

2) **Taylor & Martin, Inc., NCFL #2003 (Fremont, NE)** - Taylor & Martin, Inc.'s auction firm license was fined \$1,900.00. This action resulted from violations that included auctioneering at an unlicensed auction firm sale and allowing a non-designated person to transact business for the firm. A Settlement Agreement and Consent Order were entered into between the Board and Taylor & Martin, Inc., prior to a scheduled hearing, in which they agreed to the above stipulations. Taylor & Martin, Inc. did not admit nor deny that it auctioneered at an unlicensed auction firm sale, but admitted to the other Board's findings of violations.

3) **Rick Duffey, NCAL #8089 (Miami, FL)** - Rick Duffey paid a \$6,000.00 fine for four violations of auctioneering at an unlicensed auction firm sale. Rick Duffey waived his right to appeal as allowed by law and agreed to the Board's findings of violations.

4) **Stephen Zedd, NCAL #5852 (Norfolk, VA)** - Stephen Zedd's auctioneer license was suspended for a period of ten years from December 12, 2001, he agreed to report the convictions that he has not previously reported, and his fine of \$2,000.00 that he had paid for a previous Consent Order was not rescinded. This action resulted from violations that included selling or offering to sell, goods or real estate at auction in this State or perform any act for which an auction firm license is required without holding a currently valid license issued under G.S. 85B; making any false statement or giving any false information in connection with an investigation by the Board or the Board's designee; violating any federal or state statute or rule which relates to the auctioneering profession; permitting his name or license number to appear on any advertisement for an auction without reviewing the contents of the advertisement prior to its publication to ascertain its compliance with applicable law and rules; commissions or convictions of a crime that is punishable as a felony offense under the laws of North Carolina or the laws of the jurisdiction where committed or convicted, or the commission of any act involving fraud or moral turpitude; failing to properly make any disclosures or to provide documents or information required by G.S. 85B or by the Commission; violating any order of the Auctioneer Licensing Board requiring a licensee to comply with any provision of the Board's law or administrative rules; failing to properly make disclosures required by 21 NCAC 4B .0405; and failing to notify the Board's office in writing of a felony arrest and charge. A Settlement Agreement and Consent Order were entered into between the Board and Stephen Zedd, prior to a scheduled hearing, in which he agreed to the above stipulations. Stephen Zedd admitted to the Board's findings of violations.

5) **John R. King, NCAL #5327 (Greensboro)** - John R. King paid a \$500.00 fine in lieu of a ninety day suspension of his auctioneer license for engaging in unprofessional conduct. John R. King waived his right to appeal as allowed by law and agreed to the Board's findings of the violations.

6) **George Hoffmeyer, NCAL #2221 (Virginia Beach, VA)** - George Hoffmeyer paid a \$150.00 fine in lieu of a sixty day suspension of his auctioneer license for auctioneering at an unlicensed auction firm sale. George Hoffmeyer waived his right to appeal as allowed by law and agreed to the Board's findings of the violations.

Licensing Board Activity Report (continued)

7) **Earnest Eugene Leviner, NCAL #8126 (West End)** - Earnest Eugene Leviner's auctioneer license was revoked for failing to maintain a trust or escrow account and deposit in the account all funds that are received for the benefit of another person; for failing to maintain, for not less than five years, complete records showing the deposit, maintenance, and withdrawal of trust or escrow funds and the disbursement of funds on auction day; for failure to account for or to pay over within a reasonable time, not to exceed 30 days, funds belonging to another which have come into the licensee's possession through an auction sale; for commingling the funds or property of a client with the licensee's own or failing to maintain and deposit in a trust or escrow account in an insured bank or savings and loan association located in North Carolina funds received for another person through sale at auction; for the commission or conviction of a crime that is punishable as a felony offense under the laws of North Carolina or the laws of the jurisdiction where committed or convicted, or the commission of any act involving fraud or moral turpitude; for failure to completely cooperate with any investigation; for making any false statement or giving any false information in connection with any investigation by the Board or the Board's designee; for committing a crime the circumstances of which substantially relate to the auctioneering profession; for engaging in unprofessional conduct; for obtaining or attempting to obtain compensation by fraud or deceit; and for failure to possess truth, honesty and integrity sufficient to be entitled to the high regard and confidence of the public. Earnest Eugene Leviner waived his right to appeal as allowed by law and agreed to the Board's findings of the violations.

8) **James M. Johnson, NCAL #6287 (Anderson, SC)** - James M. Johnson paid a \$1,000.00 fine. This action resulted from a violation of auctioneering at an unlicensed auction firm sale. A Settlement Agreement and Consent Order were entered into between the Board and James M. Johnson, prior to a scheduled hearing, in which he agreed to the above stipulations. James M. Johnson admitted to the Board's findings of violations.

9) **Raymond E. Taggart, NCAL #152 (Cordova, TN)** - Raymond E. Taggart paid a \$200.00 fine for failing to report a disciplinary action that occurred in another state. Raymond E. Taggart waived his right to appeal as allowed by law and agreed to the Board's findings of violations.

10) **Dean V. Kruse, NCAL #1457 (Auburn, IN)** - Dean V. Kruse paid a \$250.00 fine in lieu of a thirty day suspension of his auctioneer license for allowing an unlicensed person (auctioneer) to call a bid at a sale. Dean V. Kruse waived his right to appeal as allowed by law and agreed to the Board's findings of violations.

11) **Kruse, Inc., NCFL #7675 (Auburn, IN)** - Kruse, Inc. paid a \$500.00 fine in lieu of a sixty day suspension of its auction firm license for failure to account for or to pay over within a reasonable time, not to exceed 30 days, funds belonging to another which have come into the licensee's possession through an auction sale and for allowing a non-designated person to transact business for the firm. Kruse, Inc. waived their right to appeal as allowed by law and agreed to the Board's findings of violations.

12) **Gordon Turnbull, NCAL #7870 (Peachland)** - Gordon Turnbull paid a \$300.00 fine for selling or offering to sell goods or real estate at auction in this State or performing any act for which an auction firm license is required without holding a currently valid license issued under G.S. 85B. An Administrative Hearing was subsequently conducted before the Auctioneer Licensing Board. Upon request by Gordon Turnbull and following deliberation, the Licensing Board adopted the Findings of Fact and Conclusions of Law. The Board Chairman signed a Final Agency Decision.

13) **Robert H. Rankin, Jr., NCAL #6727 (Gastonia)** - Robert H. Rankin, Jr.'s auctioneer license was suspended for a period of one year for failure to report within 30 days any and all administrative proceedings which were commenced against him that involved any potential revocation or suspension of, or other disciplinary action against, his auctioneer license that he held in another state; and after the above suspension of his auctioneer license that his auctioneer license be suspended for a period of an additional one year for his failure to completely cooperate with an investigation. This one year suspension will be stayed upon the following terms of probation: 1. That he agrees to the terms of a one-year probation in lieu of an active subsequent one-year suspension; 2. That he fully cooperate and disclose to the Board all financial records and attendant information in a clear and satisfactory communication and demonstrate financial responsibility as required by rule; 3. That he completely cooperate with the Board's previous investigation and that he not violate any other disciplinary rule of the Board. Mr. Rankin appealed the Notice of Probable Cause and an Administrative Hearing was subsequently conducted before the State Office of Administrative Hearings. Upon recommendation of the Administrative Law Judge, and following deliberation, the Licensing Board adopted the Proposal For Decision filed by the Administrative Law Judge and entered its Final Agency Decision. Mr. Rankin filed a Petition For Judicial Review Of Final Agency Decision. Following a Hearing in Superior Court, the Superior Court issued an Order On Judicial Review that upheld the Board's decision.

Licensing Board Activity Report

14) Kim Hugh Hagen, NCAL #5586 (Carrollton, GA) - Kim Hugh Hagen's auctioneer license was suspended for a period of three hundred and thirty days for selling or offering to sell goods or real estate at auction in this State or performing any act for which an auction firm license is required without holding a currently valid license issued under G.S. 85B; for failure to account for or to pay over within a reasonable time, not to exceed 30 days, funds belonging to another which have come into the licensee's possession through an auction sale; for violating any federal or state statute or rule which relates to the auctioneering profession; and for failure to completely cooperate with any investigation. Kim Hugh Hagen waived his right to appeal as allowed by law and agreed to the Board's findings of violations.

15) Letters of Reprimand - There were no Letters of Reprimand issued.

16) Cautionary Letters - During this reporting period, eleven letters of caution were issued for the following reasons:

- For auctioneering at an unlicensed auction firm sale and failing to provide the Board in writing a change of business address within 10 days;
- For unprofessional conduct;
- For conducting an auction in this State without first having a written agreement with the owner of the property to be sold;
- For permitting the firm name or license number to appear on an advertisement for an auction without reviewing the contents of the advertisement prior to its publication to ascertain its compliance with applicable law and rules;
- For making any false statement or giving any false information in connection with an application for a license;
- For commingling the funds or property of a client with the licensee's own or failing to maintain and deposit in a trust or escrow account in an insured bank or savings and loan association located in North Carolina funds received for another person through sale at auction;
- Per a Settlement Stipulation and Agreement between the Board and an auctioneer, for conducting activities requiring an auction firm license without holding a current auction firm license;
- Per a Settlement Stipulation and Agreement between the Board and an auctioneer, for conducting activities requiring an auction firm license without holding a current auction firm license;
- Per a Settlement Stipulation and Agreement between the Board and an auctioneer, for bidding at an auction without first announcing the intent of such bidding;
- Per a Settlement Stipulation and Agreement between the Board and an auctioneer, for bidding at an auction without first announcing the intent of such bidding; and
- Per a Settlement Stipulation and Agreement between the Board and an auction firm, for bidding at an auction without first announcing the intent of such bidding.

Congratulations to Jesse Meeks, who was reappointed to his second full term as a Board member by Governor Hunt.

Mr. Meeks currently has an auctioneer license in North Carolina and Virginia. Mr. Meeks is a North Carolina Real Estate Broker and a Certified North Carolina Real Estate Appraiser. He is a member of both the National Auctioneers Association and the Auctioneers Association of North Carolina where he serves on the Board of Directors.

He is the owner of Jesse Meeks Real Estate Auction & Appraisal, LLC. He specializes in real estate auctions and has done some unique sales such as selling a train depot, a courthouse, an airport, the home of former NC Governor Reid, and beach property. Mr. Meeks was originally appointed to the North Carolina Licensing Board in July of 2003.