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**Subject:** August 2016 NCALB Newsletter

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Newsletter for Licensed NCALB Auctioneers, Apprentices, and Firms



[www.ncalb.org](http://www.ncalb.org)

## **AUGUST 2016 NEWSLETTER**

### **NEW BOARD MEMBER WILLIAM B. LILLY, JR. APPOINTED BY GOVERNOR**

On August 9, 2016, Governor Pat McCrory appointed a new member to the North Carolina Auctioneer Licensing Board. Congratulations to William B. Lilly, Jr. of Charlotte, who fills the seat previously held by Moses T. Gallion.

Mr. Lilly is a third generation auctioneer who has been actively involved in the family business since the mid 1990's. As a seasoned professional within the auction industry, he has been instrumental in establishing Iron Horse Auction Company's online presence and internet auction capability in offering small and large assets to an internationally diverse bidder pool. He has been called upon to perform asset verification, recovery, valuations and liquidations on numerous occasions by the U.S.

District Court and U.S. Bankruptcy Court in multiple districts, and has also been retained by many of the national, regional and local financial institutions for his valuation and liquidation experience. Lilly holds Auctioneer licenses in NC, SC, VA, and AL, as well as Real Estate Licenses in NC and SC. He and his family reside in Charlotte, NC.

Lilly joins current members Daniel H. DeVane – Chairman, Gary Boyd – Vice Chairman, and Members Susan Rogers Holder and Lisa L. Brown on the Board.

Much gratitude goes to Moses Gallion for his commitment and dedication to the Board and service to the State through his role as a Board member.

## **CHAIRMAN'S NOTE**

Dear licensed Auctioneers,

It is well-known among licensees that the North Carolina Auctioneer Licensing Board was created by the General Assembly in 1973 to protect the general public and to ensure legal and ethical activity within the auctioneering profession. The first licenses were issued later in 1973 with the sequential license numbers of 1, 2, 3, etc.

There have been thousands of auctioneer, apprentice, and auction firm licenses issued over the past 43 years, and for a number of reasons many of those licenses are no longer in Active status. One of the over 2,000 licenses in Active status is license #4, which belongs to Larry Hedrick of Statesville!

A milestone of sorts was reached during the August 2016 Board meeting. In this newsletter you will see the most recently approved license applicants (*Welcome, and Congratulations!*). With this group, NCALB's list of license numbers surpassed the 5-digit mark.

While the issuance of over 10,000 licenses in and of itself is not necessarily a special achievement, the general level of professionalism exhibited by these licensed auctioneers certainly is. I believe that the collective auction industry and this licensing Board have both been very successful in protecting the public and upholding professional standards over the past four plus decades. Let's all work together to continue this momentum!

On behalf of the Board, we hope you have a successful and profitable remainder of 2016!

Daniel H. DeVane  
Chairman

## **MLS AUCTION LISTINGS ARE ADVERTISEMENTS**

The Board has recently been presented with several examples of Multiple Service Listing (MLS) posts for real estate auctions where the Auctioneer or Auction Firm's name and/or number were not included anywhere in the listing.

Please be aware that MLS Listings for real estate auctions are advertisements subject to **21 NCAC 4B .0602**. The required information can be anywhere on the listing, and the name and number do not need to be together. In many cases, compliance can be achieved by simply adding a few characters at the end of the description (e.g. NCAL\*\*\*\*\* or NCFL\*\*\*\*\*).

Please contact the NCALB office at (919) 567-2844 if you have any questions.

## **PRACTICE TIP**

### **by Garris Neil Yarborough, NCALB Counsel**

The majority of the complaints that the North Carolina Auctioneer Licensing Board receives against its licensees usually relates to personal property matters. As an auctioneer, you often times come into possession of other people's personal property for sale by auction or some other reason. An auctioneer's regulatory responsibilities as to other people's personal property when he or she is auctioneering is fairly straightforward. However, sometimes the reason an auctioneer is holding a person's property is unclear.

In recent months, the Board has received complaints that, on careful review, do not clearly relate to auctioneering functions. However, if you are a licensed auctioneer and you are holding someone else's property for any reason, you need to be very careful to identify, in writing signed by the owner, the reason for which you are holding that property. If something goes wrong with any transaction that relates to this personal property and you are a licensed auctioneer, the owner of the property can, and probably will, file a complaint against you with the NCALB and the Board will investigate it. You may then become subject to some form of disciplinary action regardless of the reason that you say or thought you were holding the property. In any event, you will have the burden of proof to show it was not for a regulated purpose.

This concept may appear bizarre to you, but it happens when you hold yourself out as an auctioneer and some other type of service provider (either formally or informally). For example, you may conduct your auction business at a facility that also provides long-term storage (e.g. a warehouse or salvage yard) or you may conduct your auction business out of the same building where you hold consignment sales. Taking somebody's property for simple storage may have nothing to do with you being an auctioneer, but unless there is a clear bailment agreement, if something happens to the property, a complaint could be filed against you with the complainant alleging that you were holding it for auction and did something wrong. This type of complaint, either well-founded or frivolous, can be made both with the Board and the court system.

Therefore, if you, as a licensed auctioneer, are taking possession of somebody's property, regardless of the reason, you need to have the nature of this bailment properly documented. By way of illustration, there are at least seven reasons that I can think of that an auctioneer would be holding the property of another:

1. To sell it by auction
2. To sell it by consignment or tag sale

3. To repair it
4. To store it
5. To appraise it
6. To accept it for collateral of a loan
7. To use it (rental, gratis, etc.)

Under North Carolina Law, you hold a special privilege by way of your auctioneer's license. With that privilege, comes certain responsibilities and liabilities that may not have anything to do with your (undocumented) intentions. Therefore, to avoid being sued or to avoid being investigated by the NCALB, you should be particularly careful when you are accepting someone else's property to articulate clearly under what auspices you are doing so and your responsibilities to that property and its owner.

Following this advice may not immunize you from being the subject of an unfounded complaint, but good documentation will help the investigation go a lot smoother. On this issue, as with most other licensing issues, good paperwork by the licensed professional is the key to good results.

## ESTATE AUCTION RULES

In addition to the "living or deceased" issue mentioned in the previous article, there is sometimes confusion (and a resulting violation) about advertising an auction as an "Estate Sale" or Estate Auction." Even though the living or deceased person that is the subject of the estate auction does not have to be identified by name in the advertisement, there must actually be such an identifiable person. The ad doesn't have to prove the point, but if a formal complaint is filed for some reason an investigation by Board staff would include review of documentation (contracts, consignment lists, settlement sheets, etc.) that would reveal whether the requirements were met to call the auction an "estate sale." This would be true regardless of the nature of the filed complaint, and whether or not the complaint's specific allegations themselves actually had merit. It is not uncommon for an investigation into what proves to be an unfounded complaint to reveal other problems that lead to potential disciplinary action against a licensee.

An additional potential problem with "estate auctions" is the requirement that the majority of the items in the sale must come from the estate of the living or deceased person(s). There are also disclosure requirements for sales where items not part of or related to the estate are included.

**21 NCAC 4B .0602(b)** reads as follows: *Any licensee who advertises an "Estate Sale" shall specifically disclose, in all advertisement materials, whether it is the estate of a living or deceased person. Before conducting an auction as an "estate sale," the majority of items in the sale shall come from the estate of the living or deceased person(s). Other items not related to or in an estate may be sold with an estate if specifically disclosed at or before the time of the auction.*

# **WELCOME NEW LICENSEES!**

*(March 1, 2016 - August 8, 2016)*

## **AUCTIONEERS**

**Barker**, Betty Reichard – Asheville NC  
**Lee**, Kenneth Brian – Newton Grove NC  
**Bartlett**, Kathy Jo – Charlotte NC  
**Baysek**, Marcus David – Rockingham NC  
**Beasley**, Megan Peele – Pikesville NC  
**Best**, Michael Eric – New Bern NC  
**Bryant, II**, Ebert Leroy – Robersonville NC  
**Buck**, John Ray – Greenville NC  
**Burrell**, James Adam – Clayton GA  
**Capps**, Christopher Wade – Jeffersonton VA  
**Cavanaugh, Jr.**, Arthur Ross – Rose Hill NC  
**Clark**, James Butler – Bolivia NC  
**Crowder**, Randell Williams – Greenville SC  
**Daniel**, Donna Puckett – Kernersville NC  
**Elkaza**, Usama (Sam) – Monroe NC  
**Flack**, Ernie Lee – Burlington NC  
**Foltz**, Jonathan Walter – Edinburg VA  
**Gathings**, Ronald L. – Morven NC  
**Griffin**, Rodney Dean – Wilkesboro NC  
**Hermanson**, Christopher Frank – Mooresville NC  
**Hood**, Brent Curtis – Elizabethtown NC  
**Huff**, James Joseph – Lexington NC  
**Jefferson**, Meredith Franklin – Greenville NC  
**Klein**, Stephen Charles – Fountain CO  
**Little**, Jason Taylor – Lewisville TX  
**MacGregor**, Cynthia Catherine – Brevard NC  
**Mack**, Samantha Jo – Charlotte NC  
**Marshall**, Asa M. – Bolingbroke GA  
**Mizrahi**, Jared – Manheim PA  
**Nelson**, John Jay – Salmon ID  
**Nye, Jr.**, Kemp Battle – Siloam NC  
**Pardue**, Danny Lee – Mountain TN  
**Phifer**, Coleman Trent – Cleveland NC  
**Raynor**, Robert Joseph – Burlington NC  
**Stampler**, Harry Paul – Davie FL  
**Street**, Philip Todd – Stanfield NC  
**Strickland**, Ronda Stallings – Burgaw NC  
**Taylor-Moore**, Mary – Wadesboro NC  
**Toler**, Rebecca N. – Trinity NC  
**Weiss**, Warren Irving "Buddy" – Kernersville NC  
**Williams**, Susan Kirsh – Charlotte NC  
**Wilson**, John Travis – Weaverville NC  
**Womble**, Ray Wendell – Clover SC  
**Worley**, Michael Scott – Thomasville NC  
**Wrenn**, Christopher Webster – Burlington NC

## **APPRENTICE AUCTIONEER**

Lee, Kenneth Brian – Newton Grove NC

#### **AUCTION FIRMS**

**Cape Fear Restaurants Equipment, Inc.** – Wilmington NC

**CTC Real Estate Co., LLC** – Germantown NC

**Fancy Flea 2 Antiques, Estates & Consignments** – Shallotte NC

**Franklin Auction Company** – New Bern NC

**G & R Auctions LLC** – Shelby NC

**Gavel Time Auction, LLC** – Germantown NC

**Greater Triangle Realty, Inc.** – Raleigh NC

**Harry P. Stampler dba Stampler Auctions** – Hollywood FL

**Mordin Investments, LLC** – Bolivia NC

**Mountain Dreams Realty** – Sparta NC

**PCI Auctions Carolinas LLC** – Manheim PA

**Robertson Realty, Inc.** – Winston-Salem NC

**S & L Bargain Depot** – Lillington NC

**Sanford Supermarket Equipment LLC** – Emerson GA

**Street's Auction Company** – Stanfield NC

**Sterling Transitions Inc.** – Asheville NC

**Square Deal Coins, LLC** – Burlington NC

**Village Square Auctions, LLC** – Burlington NC

**Your Equipment Guys, LLC** – Charlotte NC

## **OUTSIDE "HELP" WITH AUCTION ADVERTISEMENTS**

Occasionally an auctioneer receives notice of an advertising violation from NCALB and they had not even known that the particular ad had been placed. Sometimes the auctioneer's seller is trying to be helpful by posting signage or free on-line advertising such as Craigslist, but they don't know that the auctioneer is responsible for reviewing and approving all advertising. They also don't know about the advertising rules that auctioneers must abide by, such as when certain words can be used (e.g. Absolute), when it is permissible to advertise an auction as an estate auction, that an estate auction advertisement must indicate whether the specific person who's estate is being auctioned is living or deceased, and that the auctioneer's name and license number must be included in the auction advertisement.

This potential problem can be addressed through effective communication from the auctioneer that marketing a scheduled auction is solely the auctioneer's responsibility. It can also be addressed in the auction contract, explained, and agreed to by the seller's signature. If the auctioneer chooses to allow a seller or anyone else to assist with marketing an auction, the auctioneer should insist that a condition of that permission be that all marketing efforts by anyone else be subject to prior review and approval by the auctioneer to ensure that no violations of **N.C.G.S. 85B** or **21 NCAC 4B** occur as a result of that outside "help."



NC Auctioneer Licensing Board | 108 Ber Creek Drive, Fuquay-Varina, NC 27526

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