

# NORTH CAROLINA AUCTIONEERS LAW

## Chapter 85B of the General Statutes

**SECTION 85B-1. DEFINITIONS.**--For the purposes of this Chapter the following definitions shall apply:

- (1) "Auction" means the sale of goods or real estate by means of exchanges between an auctioneer and members of an audience, the exchanges consisting of a series of invitations for offers made by the auctioneer, offers by members of the audience, and the acceptance by the auctioneer of the highest or most favorable offer.
- (2) "Auctioneer" means any person who conducts or offers to conduct auctions and includes apprentice auctioneers except as stricter standards are specified by this Chapter for apprentice auctioneers.
- (3) "Owner" means the bona fide owner of the property being offered for sale; in the case of partnerships, "owner" means a general partner in a partnership that owns the property being offered for sale, provided that in the case of a limited partnership it has filed a certificate of limited partnership as required by Chapter 59 of the General Statutes; in the case of corporations, "owner" means an officer or director or employee or someone acting on behalf of the employee of a corporation that owns the property being offered for sale provided that the corporation is registered to do business in the State.
- (4) "Absolute Auction" means the sale of real or personal property at auction in which the item offered for auction is sold to the highest bidder without reserve, without the requirement of any minimum bid, and without competing bids of any type by the owner, or agent of the owner, of the property.
- (5) "Estate Sale" means the liquidation by sale at auction of real or personal property of a specified person.
- (6) "Auction Firm" means a sole proprietorship of which the owner is not a licensed auctioneer, or any partnership, association, or corporation, not otherwise exempt from this Chapter, that sells either directly or through agents, real or personal property at auction, or that arranges, sponsors, manages, conducts or advertises auctions, or that in the regular course of business uses or allows the use of its facilities for auctions. This definition applies whether or not an owner or officer of the business acts as an auctioneer.
- (7) "Fund" means Auctioneer Recovery Fund.
- (8) "Auctioneering", "conduct of auction", or "conduct of business" means, in addition to the actual calling of bids, any of the following:
  - (a) Contracting for auction.
  - (b) Accepting consignments of items for sale at auction.
  - (c) Advertising an auction.
  - (d) Offering items for sale at auction.
  - (e) Accepting payment or disbursing monies for items sold at auction.
  - (f) Otherwise soliciting, arranging, sponsoring, or managing an auction or holding oneself out as an auctioneer or auction firm.
- (9) "Consignment" means, unless otherwise modified by written agreement, the act of delivering or transferring goods or real estate in fact or constructively to an auctioneer or the auctioneer's agent in trust for the purpose of resale at auction whereby title does not pass to the buyer until there is an action indicating a sale. For purposes of this section, consignment may also mean a bailment for sale.
- (10) "Designated person" means any person approved by the Board to have the authority to transact business for a licensed auction firm.

**SECTION 85B-2. ACTIVITIES GOVERNED BY CHAPTER.**

- (a) This Chapter shall apply to all auctions held in this State except the following:
- (1) Sales at auction conducted by the owner of all of the goods or real estate being offered, or an attorney representing the owner, unless the owner's regular course of business includes engaging in the sale of goods or real estate by means of auction, or unless the owner originally acquired the goods for the purposes of resale at auction;
  - (2) Sales at auction conducted by or under the direction of any public authority;
  - (3) Sales conducted by a receiver, trustee, guardian, administrator or executor or any similarly appointed person under order of any court or any person conducting a sale pursuant to an order of a United States Bankruptcy Court or the agent or attorney of such person, receiver, trustee, guardian, administrator or executor;
  - (4) Any sale required by law to be at auction;
  - (5) Sale of livestock at a public livestock market authorized and regulated by the Commissioner of Agriculture;
  - (6) Leaf tobacco sales conducted in accordance with the provisions of Chapter 106 of the General Statutes;
  - (7) Sale at auction of automobiles conducted under the provisions of G.S. 20-77, or sale at auction of motor vehicles by a motor vehicle dealer licensed under Article 12, Chapter 20 of the General Statutes;
  - (8) Sale at auction of a particular breed of livestock conducted by an auctioneer who specializes in the sale of that breed when such sale is conducted under the auspices of a livestock trade association, provided that the sale is regulated by the Packers and Stockyards Act and the auctioneer is required to be bonded by the United States Department of Agriculture;
  - (9) Sales conducted by and on behalf of any charitable or religious organization;
  - (9a) Sales conducted by and on behalf of a civic club, not exceeding one sale per year;
  - (10) Sales conducted by a trustee pursuant to a power of sale contained in a deed of trust on real property;
  - (11) Sales of collateral, sales conducted to enforce carriers' or warehousemen's liens, bulk sales, sales of goods by a presenting bank following dishonor of a documentary draft, resales of rightfully rejected goods, resales of goods by an aggrieved seller, or other resales conducted pursuant to authority in Articles 2, 4, 6, 7 and 9 of Chapter 25 of the General Statutes (the Uniform Commercial Code).
- (b) The exceptions provided in subdivisions (2), (4), (9), (9a) and (11) of subsection (a) of this section shall not apply to any person or entity engaged in the business of organizing, arranging, or conducting auction sales for compensation or any person who or entity that accepts consignments to be sold at auction where the consignor receives any proceeds from the sale.
- (c) The exceptions provided in subdivision (7) of subsection (a) of this section shall not apply to any auctioneer licensed pursuant to this Chapter employed to be an auctioneer of motor vehicles for a licensed motor vehicle dealer, while conducting an auction for that dealer.

**SECTION 85B-3. AUCTIONEERS COMMISSION**

- (a) There shall be a five-member North Carolina Auctioneers Commission having the powers and responsibilities set out in this Chapter. The Governor shall appoint the members of the Commission, at least three of whom, and their successors, may be from nominations submitted by the Auctioneers Association of North Carolina. The Auctioneers Association shall submit, within 45 days of when the vacancy occurs, at least three names for each position for which it is entitled to make a nomination. Of the initial five members of the Commission one shall be appointed for a one year term, two shall be appointed for two-year terms and two for three-year terms; thereafter, each new member shall be appointed for a term of three years. Any vacancy shall be filled for the remainder of the unexpired term only. Each member shall continue in office until his successor is appointed and qualified. No member shall serve more than two complete consecutive terms.
- (b) At least three members of the Commission shall be experienced auctioneers who are licensed under this Chapter. One member shall be a person who shall represent the public at large and shall not be licensed under this Chapter.
- (c) The Commission shall employ an executive director and other employees as needed to carry out the duties of this Chapter. All employees shall serve at the pleasure of the Commission.

- (d) Any action that may be taken by the Commission may be taken by vote of any three of its members.
- (e) The members of the Commission shall elect from among themselves a chairman to serve a one year term. No person shall serve more than two consecutive terms as chairman.
- (f) Repealed.
- (g) Members of the Commission shall receive the compensation set for members of occupational licensing boards by G.S. 93B-5.

**SECTION 85B-3.1. AUCTIONEERS COMMISSION; POWERS AND DUTIES.**

- (a) The Commission shall have the following powers and duties:
  - (1) To receive and act upon applications for licenses.
  - (2) To issue licenses.
  - (3) To deny, suspend, and revoke licenses pursuant to G.S. 85B-8.
  - (4) To issue declaratory rulings.
  - (5) To adopt rules for auctioneers and auctions that are consistent with the provisions of this Chapter and the General Statutes.
- (b) The Commission may assess a civil penalty not in excess of two thousand dollars (\$2,000) for acts prohibited in G.S. 85B-8. All civil penalties collected by the Commission shall be remitted to the school fund of the county in which the violation occurred. Before imposing and assessing a civil penalty and fixing the amount thereof, the Commission shall, as a part of its deliberations, take into consideration the following factors:
  - (1) The nature, gravity, and persistence of the particular violation.
  - (2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment.
  - (3) Whether the violation was willful.
  - (4) Any other factors that would tend to mitigate or aggravate the violations found to exist.
- (c) The Commission shall have the power to acquire, hold, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation, subject only to approval of the Governor and the Council of State. Collateral pledged by the Commission for an encumbrance is limited to the assets, income, and revenues of the Commission.
- (d) The Commission may purchase, rent, or lease equipment and supplies and purchase liability insurance or other insurance to cover the activities of the Commission, its operations, or its employees.

**SECTION 85B-3.2. CRIMINAL HISTORY RECORD CHECKS OF APPLICANTS FOR LICENSURE.**

- (a) Definitions. -- The following definitions shall apply in this section:
  - (1) Applicant -- An applicant for initial licensure as an auctioneer, apprentice auctioneer, or auction firm.
  - (2) Criminal history -- A State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon an applicant's fitness to be licensed as an auctioneer, apprentice auctioneer, or auction firm.
- (b) The Commission shall ensure that the State criminal history of an applicant is checked. National criminal history checks are authorized for an applicant who has not resided in the State of North Carolina during the past five years. The Commission shall provide to the North Carolina Department of Justice the fingerprints of the applicant to be checked, a form signed by the applicant to be checked consenting to the check of the criminal history and to the use of fingerprints and other identifying information required by the State or National Repositories, and any additional information required by the Department of Justice.
- (c) All releases of criminal history information to the Commission shall be subject to, and in compliance with, rules governing the dissemination of criminal history record checks as adopted by the North Carolina Division of Criminal Information. All of the information the Commission receives through the checking of the criminal history is for the exclusive use of the Commission and shall be kept confidential.
- (d) If the applicant's verified criminal history record check reveals one or more convictions of a crime that is punishable as a felony offense, or the conviction of any crime involving fraud or moral turpitude, the Commission may deny the applicant's license. However, the conviction shall not automatically prohibit licensure, and the following factors shall be considered by the Commission in determining whether

licensure shall be denied:

- (1) The level and seriousness of the crime.
  - (2) The date of the crime.
  - (3) The age of the person at the time of the crime.
  - (4) The circumstances surrounding the commission of the crime, if known.
  - (5) The nexus between the criminal conduct of the applicant and the applicant's duties as an auctioneer, apprentice auctioneer, or auction firm.
  - (6) The prison, jail, probation, parole, rehabilitation, and employment records of the applicant since the date the crime was committed.
  - (7) The subsequent commission by the person of a crime.
- (e) The Commission may deny licensure to an applicant who refuses to consent to a criminal history record check or use of fingerprints or other identifying information required by the State or National Repositories of Criminal Histories.
- (f) The Commission shall notify the applicant of the applicant's right to review the criminal history information, the procedure for challenging the accuracy of the criminal history, and the applicant's right to contest the Commission's denial of licensure.
- (g) The Commission shall collect any fees required by the Department of Justice and shall remit the fees to the Department of Justice for expenses associated with conducting the criminal history record check.

#### **SECTION 85B-4. LICENSES REQUIRED.**

(a) No person who is not exempt under G.S. 85B-2, shall sell, or offer to sell, goods or real estate at auction in this State or perform any act for which an auction firm license is required unless the person holds a currently valid license issued under this Chapter.

(b) No person shall be licensed as an apprentice auctioneer, auctioneer, or receive an auction firm license if the person:

- (1) Is under 18 years of age.
- (1a) Is not a high school graduate or the equivalent. However, a person licensed under this Chapter prior to July 1, 1999, does not need to meet this requirement.
- (2) Repealed.
- (3) Has within the preceding five years pleaded guilty to, entered a plea of **nolo contendere** or been convicted of any felony, or committed or been convicted of any act involving fraud or moral turpitude.
- (4) Has had an auctioneer or apprentice auctioneer or auction firm license revoked.
- (5) Has, within the preceding five years, committed any act that constitutes grounds for license suspension or revocation under this Chapter or a Commission rule.

(c) Each applicant for an apprentice auctioneer license shall submit a written application in a form approved by the Commission and containing at least two statements by residents of the community in which the applicant resides attesting to the applicant's good moral character.

(c1) Each apprentice auctioneer application and license shall name a licensed auctioneer to serve as the supervisor of the apprentice. No apprentice auctioneer may enter into an agreement to conduct an auction, or conduct an auction, without the express approval of his supervisor. The supervisor shall review all contracts before approving them and shall regularly review the records his apprentice is required to maintain under G.S. 85B-7 to see that they are accurate and current, and shall perform such other supervisory duties as may be required by the Commission.

(d) No person shall be licensed as an auctioneer unless the person has held an apprentice auctioneer license and served as an apprentice auctioneer for the two preceding years, accumulated sufficient knowledge and experience in such areas of the auctioneer profession as the Commission may deem appropriate, and has taken an examination approved by the Commission and performed on it to the satisfaction of the Commission. The examination shall test the applicant's understanding of the law relating to auctioneers and auctions, ethical practices for auctioneers, the mathematics applicable to the auctioneer business, and such other matters relating to the auctions as the Commission considers appropriate. The examination shall be given at least twice each year in North Carolina, and at other times and places the Commission designates, but no person shall be allowed to take the examination within six months after having failed it a second time.

Any person who has successfully completed the equivalent of at least 80 hours of classroom

instruction in a course in auctioneering at an institution whose curriculum and instructors meet the qualifications approved or established by the Commission may be licensed as an auctioneer without holding an apprentice license and serving as an apprentice for two years, but shall take the examination required by this subsection and perform on it to the satisfaction of the Commission.

Each applicant for an auctioneer license shall submit a written application in a form approved by the Commission, pay all applicable fees, and consent in writing to a criminal history check as required by G.S. 85B-3.2. If the applicant has been previously licensed as an apprentice auctioneer, the application shall contain an evaluation by the applicant's supervisor of the applicant's performance as an apprentice auctioneer and the applicant's performance in specific areas as required by the Commission. If the applicant is exempted from apprenticeship after completion of the equivalent of at least 80 hours of classroom instruction in auctioneering, the application shall contain a transcript of the applicant's course work in auctioneering. Each application shall be accompanied by statements of at least two residents of the community in which the applicant resides attesting to the applicant's good moral character. The Commission may require verification of any information included in an application for an auctioneer license and may request other information or verification of information provided to determine whether the applicant possesses the good moral character or other qualifications for licensure.

(e) Each license issued under this Chapter shall be valid from July 1 of the year issued, or from the date issued, whichever is later, to the following June 30 unless sooner revoked or suspended pursuant to this Chapter or a rule of the Commission. A license may be renewed for one year at a time, except an apprentice auctioneer license may not be renewed for more than three times. No examination shall be required for renewal of an auctioneer license if the application for renewal is made within 24 months of the expiration of the previous license.

(e1) The Commission may require licensees to complete annually not more than six hours of Commission-approved continuing education courses prior to license renewal. The Commission may impose different continuing education requirements, including no such requirements, upon the classes of licensees under this Chapter. The Commission may waive any or all continuing education requirements in cases of hardship, disability, or illness, or under other circumstances as the Commission deems appropriate. The Commission may adopt rules not inconsistent with the provisions of this Chapter to establish continuing education requirements, including rules that govern any of the following:

- (1) The content and subject matter of continuing education courses.
- (2) The curriculum of required continuing education courses.
- (3) The criteria, standards, and procedures for the approval of courses, course sponsors, and course instructors.
- (4) The methods of instruction for continuing education courses.
- (5) The computation of course credit.
- (6) The number of credit hours needed annually.
- (7) The ability to carry forward course credit from one year to another.
- (8) The waiver of the continuing education requirement for hardship or other reasons to be determined by the Commission.
- (9) The procedures for compliance and noncompliance with continuing education requirements.

(f) No person shall be issued an auctioneer or apprentice auctioneer license until the person has made the contribution to the Fund as required by G.S. 85B-4.1.

(g) An auction firm must be licensed by the Board even though no owner or officer of the firm acts as an auctioneer. To be licensed an auction firm must make the contribution to the Fund as required by G.S. 85B-4.1 and must pay the proper fees as set out in G.S. 85B-6. Auction firms are covered by the provisions of G.S. 85B-8.

An auction firm license issued by the Commission is restricted to the persons named in the license and does not inure to the benefit of any other person. Where a license is issued to an auction firm, authority to transact business under the license is limited to the person or persons designated in the application and named in the license.

The designated person or persons, prior to being licensed, shall be required to take a written examination, approved by the Commission, and demonstrate to the satisfaction of the Commission a thorough understanding of the law relating to the conduct of the auction business and other matters the Commission deems appropriate. An individual who is licensed as an auctioneer and who is the designated person applying for an auction firm license is not required to take the auction firm examination. Licensed real estate brokers and real estate firms may be exempt from the auction firm examination provided they

employ or associate themselves with a licensed auctioneer to handle those aspects of the transactions peculiar to the auctioneer profession. Any person or entity, on the effective date of this Chapter, duly licensed as an auction firm in good standing is not required to take any examination in order to maintain or to renew an auction firm license provided that the license does not otherwise expire or lapse and is not suspended or revoked by the Commission.

(h) The Commission shall publish at least once a year a list of names and addresses of all persons, sole proprietorships, partnerships and corporations holding valid apprentice auctioneer, auctioneer, or auction firm licenses.

(i) The Commission may investigate as it deems necessary the ethical background of any applicant for licensure under this Chapter.

#### **SECTION 85B-4.1. AUCTIONEER RECOVERY FUND.**

(a) In addition to license fees, upon application for a license or renewal of a license, the Commission may charge the applicant or licensee up to fifty dollars (\$50.00) per year to be included in the Fund.

(b) The Commission shall maintain at least two hundred thousand dollars (\$200,000) in the Fund for use as provided in this Chapter. The Fund may be invested by the State Treasurer in interest bearing accounts, and any interest accrued shall be added to the Fund. Sufficient liquidity shall be maintained to ensure that funds will be available to satisfy claims processed through the Board. The Fund may be disbursed by a warrant drawn against the State Treasurer or by other method at the discretion of the State Treasurer.

(c) The Commission, in its discretion, may use contents of the Fund in excess of two hundred thousand dollars (\$200,000) for the following purposes:

- (1) To promote education and research in the auctioneer profession, in order to benefit persons licensed under this Chapter and to improve the efficiency of the profession.
- (2) To underwrite educational seminars, training centers, and other forms of educational projects for the use and benefit of licensees.
- (3) To sponsor, contract for, or underwrite education and research projects in order to advance the auctioneer profession in North Carolina.
- (4) To cooperate with associations of auctioneers, or other groups, in order to promote the enlightenment and advancement of the auctioneer profession in North Carolina.

#### **SECTION 85B-4.2. GROUNDS FOR PAYMENT; NOTICE AND APPLICATION TO COMMISSION.**

An aggrieved person who has suffered a monetary loss as a direct result of the conversion of funds or property or other fraudulent act or conduct by a licensed auctioneer, apprentice auctioneer, or auction firm shall be eligible to seek compensation from the Fund subject to the limitations of this Chapter and the amount of loss which is otherwise unrecoverable provided that:

- (1) The aggrieved person has sued the licensee in a court of competent jurisdiction and has filed with the Commission written notice of such lawsuit within 60 days after its commencement unless the total loss claimed excluding attorneys' fees is less than two thousand five hundred dollars (\$2,500), in which case the notice may be filed within 90 days after the termination of all judicial proceedings, including appeals;
- (2) The aggrieved person has obtained final judgement in a court of competent jurisdiction against the licensee based upon conversion or other fraudulent conduct arising out of a transaction which occurred when the licensee was licensed by the Commission and was acting in a capacity for which a North Carolina license is required, which judgement shall show the amount owed the aggrieved person;
- (3) The aggrieved person was not engaged in any act or conduct for which an auctioneer license is required and was not acting in violation of any of the laws of the State of North Carolina or of the United States; and
- (4) Execution on the judgement has been issued and has been returned unsatisfied in whole or in part.

Upon the termination of all judicial proceedings including appeals, and for a period of one year thereafter, a person eligible for recovery may file a verified application with the Commission for payment out of the Fund of the amount remaining unpaid upon the judgement which represents the actual and direct loss sustained by reason of conversion or other fraudulent conduct. A certified copy of the judgement and return of execution shall be attached to the application and filed with the Commission. The applicant shall

serve upon the judgement debtor a copy of the application and shall file with the Commission an affidavit or certificate of service, in accordance with the procedures specified by rule by the Commission.

**SECTION 85B-4.3. HEARING; REQUIRED SHOWING.**

Upon application by an aggrieved person, the Commission shall conduct a hearing and the aggrieved person shall be required to show that:

- (1) The person is not a spouse of the judgement debtor or a person representing such spouse;
- (2) The person gave notice of the lawsuit as required by G.S. 85B-4.2;
- (3) The person is making application not more than one year after termination of all judicial proceedings, including appeals, in connection with the judgement;
- (4) The person has complied with all requirements of this Article;
- (5) The person has obtained a judgement as described in G.S. 85B-4.2;
- (6) The person has made all reasonable searches and inquiries to ascertain whether the judgement debtor is possessed of real or personal property or other assets subject to be sold or applied in satisfaction of the judgement;
- (7) That by a search the person has discovered no real or personal property or other assets subject to be sold or applied, or has discovered certain of them, describing them, but that the amount realized was insufficient to satisfy the judgement, stating the amount realized and the balance remaining due on the judgement after application of the amount realized; and
- (8) The person has diligently pursued available remedies including attempted execution on the judgement against all the judgement debtors and the execution has been returned unsatisfied. In addition to that, the person knows of no assets of the judgement debtor and has attempted collection from all other persons who may be liable in the transaction for which payment is sought from the Fund if there are any other persons.

**SECTION 85B-4.4. RESPONSE AND DEFENSE BY COMMISSION AND JUDGEMENT DEBTOR; PROOF OF CONVERSION OR OTHER FRAUDULENT ACT.**

(a) When the Commission proceeds upon an application as set forth in this Article, counsel for the Commission may defend action on behalf of the Fund and shall have recourse to all appropriate means of defense, including the examination of witnesses. The judgement debtor may personally defend the action and shall have recourse to all appropriate means of defense, including the examination of witnesses. Within 30 days after service of the application, counsel for the Commission and the judgement debtor may file responses setting forth answers and defenses. Responses shall be filed with the Commission and copies shall be served upon every party by the filing party. If at any time it appears there are no triable issues of fact and the application for payment from the Fund is without merit, the Commission shall dismiss the application. A motion to dismiss may be supported by affidavit of any person having knowledge of the facts and may be made on the basis that the application or the judgement referred to does not form a basis for meritorious recovery under G.S. 85B-4.2, that the applicant has not complied with the provisions of this Article, or that the liability of the Fund with regard to the particular licensee or transaction has been exhausted; provided, however, notice of such motion shall be given at least 10 days prior to the time fixed for hearing.

(b) Whenever the judgement obtained by an applicant is by default, stipulation, or consent, or whenever the action against the licensee was defended by a trustee in bankruptcy, the applicant, for the purposes of this Article, shall have the burden of proving the cause of action for conversion of funds or property or other fraudulent conduct. Otherwise, the judgement shall create a rebuttable presumption of conversion or other fraudulent conduct.

**SECTION 85B-4.5. DETERMINATION OF CERTAIN SMALL CLAIMS WITHOUT A PRIOR JUDICIAL DETERMINATION.**

Notwithstanding any other provisions of this Chapter, the Commission may, in its discretion, order that payment be made from the Fund, without requiring a prior judicial determination in any case where:

- (1) The total loss claimed by the claimant is two thousand five hundred dollars (\$2,500) or less;
- (2) The amount of alleged loss is readily ascertainable rather than speculative in nature;
- (3) The alleged loss is one that is otherwise compensable under this Chapter;
- (4) The claimant filed a properly notarized complaint with the Commission not more than one year following the date of the alleged wrongful act or conduct of the licensee; and

- (5) The Commission, in its discretion, determines that, based upon the evidence presented, justice would be better served by allowing compensation to be paid without first requiring the aggrieved party to obtain a judgement from a court of competent jurisdiction.

**SECTION 85B-4.6. ORDER DIRECTING PAYMENT OUT OF FUND; COMPROMISE OF CLAIMS.**

(a) Applications for payment from the Fund shall be heard and decided by a majority of the members of the Commission. If, after a hearing, the Commission finds that the claims should be paid from the Fund, the Commission shall enter an order requiring payment from the Fund of whatever sum the Commission shall find to be payable upon the claim in accordance with the limitations contained in this Article.

(b) Subject to Commission approval, a claim based upon the application of an aggrieved person may be compromised; however, the Commission shall not be bound in any way by any compromise or stipulation of the judgement debtor.

**SECTION 85B-4.7. LIMITATIONS; PRO RATA DISTRIBUTION; ATTORNEYS' FEES.**

(a) Payments from the Fund shall be subject to the following limitations:

- (1) The right to recovery under this Article shall be forever barred unless timely notice is given as required by G.S. 85B-4.2(a)(1) and application is made within one year after termination of all proceedings, including appeals, in connection with the judgement.
- (2) The Fund shall not be liable for more than ten thousand dollars (\$10,000) per transaction regardless of the number of persons aggrieved.
- (3) The liability of the Fund shall not exceed in the aggregate ten thousand dollars (\$10,000) for any one licensee within a single calendar year, and in no event shall it exceed in the aggregate twenty thousand dollars (\$20,000) for any one licensee.
- (4) The Fund shall not be liable for payment of any judgement awards of consequential damages, multiple or punitive damages, civil penalties, incidental damages, special damages, interest, costs of court or action, or other similar awards.

(b) If the maximum of the Fund is insufficient to pay in full the valid claims of all aggrieved persons whose claims relate to the same transaction or to the same licensee, the amount for which the Fund is liable shall be distributed among the claimants in a ratio that their respective claims bear to the total of such valid claims or in a manner the Commission deems equitable. Upon petition of the Commission, the Commission may require all claimants and prospective claimants to be joined in one proceeding so that the respective rights of all claimants to the Fund may be equitably resolved.

**SECTION 85B-4.8. REPAYMENT TO FUND; AUTOMATIC SUSPENSION OF LICENSE.**

Should the Commission pay from the Fund any amount in settlement of a claim or toward satisfaction of a judgement against a licensee, the license of the licensee shall be automatically suspended upon the effective date of the order authorizing payment from the Fund. The licensee shall not be eligible for consideration for reinstatement until repayment in full, plus interest at the legal rate as provided for in G.S. 24-1, the amount paid from the Fund.

**SECTION 85B-4.9. SUBROGATION OF RIGHTS.**

When the Commission has paid from the Fund any sum to the judgement creditor, the Commission shall be subrogated to all of the rights of the judgement creditor to the extent of the amount paid and the judgement creditor shall assign all his right, title, and interest in the judgement to the extent of the amount paid to the Commission and any amount and interest recovered by the Commission on the judgement shall be deposited in the Fund.

**SECTION 85B-4.10. WAIVER OF RIGHTS.**

The failure of an aggrieved person to comply with this Chapter shall constitute a waiver of any rights hereunder.

**SECTION 85B-4.11. PERSONS INELIGIBLE TO RECOVER FROM FUND.**

No licensee who suffers the loss of any commission from any transaction in which the licensee was acting in the capacity of an auctioneer, apprentice auctioneer, or auction firm shall be entitled to make application for payment from the Fund for the loss. Likewise, any person who suffers any monetary loss as a result of a joint business venture of any sort with a licensee shall not be entitled to be compensated from the Fund for the loss.

**SECTION 85B-4.12. DISCIPLINARY ACTION AGAINST LICENSEE.**

Nothing contained in this Article shall limit the authority of the Commission to take disciplinary action against any licensee under this Chapter, nor shall the repayment in full of all obligations to the Fund by any licensee nullify or modify the effect of any other disciplinary proceeding brought under this Chapter.

**SECTION 85B-5. LICENSING OF NONRESIDENTS.**

(a) Any person who holds a valid auctioneer license in another state may apply for and be granted a reciprocal North Carolina license if the resident state in which the person is licensed has minimum training or experience standards which are acceptable to the Commission but are not more lenient than those required by this Chapter, if the resident state extends similar reciprocal privileges to auctioneers who are residents of and licensed by the State of North Carolina.

(b) An applicant under this section shall submit an application and other documentation and proof of eligibility for licensure as may be required by the Commission, but shall not be required to take the examination required under G.S. 85B-4. Applicants shall pay the appropriate fee under G.S. 85B-6 and shall file with the Commission an irrevocable consent that service on the Executive Director of the Commission shall be sufficient service of process for actions against the applicant by a resident of this State arising out of his auctioneering activities.

(c) An applicant under this section shall make the contribution to the Fund as required by G.S. 85B-4.1. Any license issued under this section shall be marked to indicate that its holder is a nonresident reciprocal licensee.

(d) A license issued pursuant to this section shall be valid from the date of issuance to the following June 30 and may be renewed from year to year unless suspended or revoked pursuant to the provisions of this Chapter or rule of the Commission, provided that the licensee continues to be a resident of and duly licensed in good standing in the licensee’s resident state.

(e) Any person licensed under this section shall notify the Commission of the lapse, surrender, suspension, revocation, or any other act amounting to a loss of license in the person’s resident state. The notice must be sent to the Commission, by certified mail, return receipt requested, within 10 days of the occurrence.

(f) Any person licensed under this section shall provide the Commission with written notice of any change of business address or residence within 10 days of the occurrence.

(g) Any license issued under this section shall be immediately suspended or revoked based upon the occurrence of any of the events set out in subsection (e) of this section or based upon a change of principal state residence of the reciprocal licensee.

(h) Any person whose license is terminated as a result of a change of principal state residence may reapply for reciprocal status provided the person is otherwise eligible for a license based upon the new state residence, and submits with the application the fees required by the Commission.

(i) Notwithstanding any other provision of this section, a reciprocal licensee who subsequently becomes a domiciliary of the State of North Carolina may request, by application, that the reciprocal license be converted to that of an in-State licensee without having to take the State exam required by G.S. 85B-4. The Commission may, however, require an applicant to pay processing and application fees it deems appropriate.

**SECTION 85B-6. FEES; LOCAL GOVERNMENTS NOT TO CHARGE FEES OR REQUIRE LICENSES.**

(a) The Commission shall collect and remit to the State Treasurer fees in an amount not to exceed the following:

<u>Item</u>	<u>Maximum Fee</u>
Apprentice Auctioneers:	
Application for license.....	\$125.00
Issuance or renewal of license .....	\$125.00
Auctioneers:	
Application for license.....	\$125.00
Examination.....	\$75.00
Issuance or renewal of license .....	\$250.00
Auction Firms:	

Application for license.....	\$125.00
Examination.....	\$75.00
Issuance or renewal of license .....	\$250.00
Reinstatement of License .....	\$75.00

An application fee for a license and an examination fee are nonrefundable. The amount payable by a nonresident under G.S. 85B-5 to obtain a nonresident reciprocal auctioneer license is the greater of the amount set in the above table for an examination for and the issuance of an auctioneer’s license and the amount the nonresident’s state would charge a resident auctioneer of this State to obtain a comparable license from that state.

A reinstatement fee is payable when a person applies for renewal of a license after the license has lapsed for failure to renew it before it expired. The reinstatement of a lapsed license is not retroactive in effect and does not limit the authority of the courts or of the Commission to take disciplinary action against a person who engages in the auctioneer profession with a lapsed license.

(b) No local government or agency of local government may charge any fees or require any licenses for auctioneers, apprentice auctioneers, or auction firms in addition to those set out in this Chapter.

**SECTION 85B-7. CONDUCT OF AUCTION; RECORDS.**

(a) No licensee shall conduct an auction in this State without first having a written agreement with the owner of any property to be sold. The agreement must contain the terms and conditions upon which the auctioneer received the goods for sale. The licensee shall provide the owner with a signed copy of the agreement and shall keep at least one copy for his own records for two years from the date of the agreement. Copies of all contracts shall be made available to the Commission or its designated agent upon request.

(b) Each licensee shall maintain consignment records and enter in them, upon receipt of goods for auction and before sale, the name and addresses of the person who employed the licensee to sell the goods at auction and the name and address of the owner of the goods to be sold. The consignment record shall contain an adequate description of the goods to be sold and shall be sufficient to positively identify each item. Consignment records shall be open for inspection by the Commission or its designated agent at reasonable times.

(c) All licensees shall have their licenses available at each auction they conduct.

(d) Each licensee shall maintain sales records, which identify the purchaser of all goods sold by name, address, and when possible, telephone number. The sales records shall contain an adequate description of the items sold and must be sufficient to positively identify the owner of the property. Sales records shall be maintained for a period of not less than two years from the date of sale. Sales records shall be open for inspection by the Commission or its designated agent at reasonable times.

**SECTION 85B-7.1. HANDLING CLIENTS’ FUNDS.**

(a) Each licensee who does not disburse all funds to the seller on auction day shall maintain a trust or escrow account and shall deposit in the account all funds that are received for the benefit of another person and are not disbursed to the seller on auction day. The licensee shall deposit funds that are not disbursed on auction day with an insured bank or savings and loan association located in North Carolina. At or before the time of all final settlements, the auctioneer shall provide the seller or consignor with a settlement statement, which includes a description of all goods sold, the selling price of the goods sold, the net proceeds due to the seller or consignor, the name and address of the person receiving the disbursement, and the amount of the disbursement. All settlement statements shall be signed by the licensee or the licensee’s agent and by the person receiving the disbursement.

(b) Each licensee shall 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. Records of the disbursement of funds on auction day shall include a copy of each receipt or settlement statement issued when the funds were disbursed. The Commission or its designated agent may inspect these records periodically, without prior notice, and may also inspect these records whenever the Commission determines that they are pertinent to an investigation of any specific complaint against a licensee.

**SECTION 85B-8. PROHIBITED ACTS; ASSESSMENT OF CIVIL PENALTY; DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.**

(a) The following shall be grounds for the assessment of a civil penalty in accordance with G.S. 85B-3.1(b) or the denial, suspension, or revocation of an auctioneer, auctioneer apprentice or auction firm license:

- (1) Any violation of this Chapter or any violation of a rule or regulation duly adopted by the Commission.
- (2) A continued and flagrant course of misrepresentation or making false promises, either by the licensee, an employee of the licensee, or by someone acting on behalf of and with the licensee's consent.
- (3) Any 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.
- (4) Any false, misleading, or untruthful advertising.
- (5) Any act of conduct in connection with a sales transaction which demonstrates bad faith or dishonesty.
- (6) Knowingly using false bidders, cappers, or pullers, or knowingly making a material false statement or representation.
- (7) 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.
- (8) Failure to make the required contribution to the Fund.
- (9) 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.
- (10) Failure to properly make any disclosures or to provide documents or information required by this Chapter or by the Commission.
- (11) A demonstrated lack of financial responsibility.

(b) through (d) Repealed.

(e) The Commission may investigate complaints and conduct hearings as follows:

(1) The Commission may upon its own motion or upon the complaint in writing of any person, provided the complaint and any evidence presented with it establishes a **prima facie** case, hold a hearing and investigate the actions of any auctioneer, apprentice auctioneer, or auction firm, or any person who holds himself or herself out as an auctioneer or apprentice auctioneer, and shall have the power to impose a civil penalty on any licensee, suspend or revoke any license issued under the provisions of this Chapter, or to reprimand or censure any licensee. In all proceedings for the imposition of a civil penalty or the denial, suspension, or revocation of licenses, the provisions of Chapter 150B of the General Statutes including provisions relating to summary suspension shall be applicable. Any person who desires to appeal the denial of an application for any license authorized to be issued under this Chapter shall file a written appeal with the Commission not later than 30 days following notice of denial.

(2) The Commission may, upon its own motion, summarily suspend a license when the health, safety, or welfare of the public is at risk, such as in the event of a potential loss of consigned items or potential loss of funds.

(f) A person whose license has been denied, suspended, or revoked may not apply in that person's name or in any other manner within the period during which the order of denial, suspension, or revocation is in effect, and no firm, partnership, or corporation in which any person has a substantial interest or exercises management responsibility or control may be licensed during the period.

**SECTION 85B-9. PENALTIES AND ENFORCEMENT.**

(a) Any person, corporation or association of persons violating the provisions of G.S. 85B-4(a) shall be guilty of a Class 1 misdemeanor. The Attorney General of North Carolina, or the Attorney General's designee, shall have concurrent jurisdiction with the district attorneys of this State to prosecute violations of this Chapter.

(b) The Commission may in its own name seek injunctive relief in the General Court of Justice to restrain any violation or anticipated violation of the provisions of G.S. 85B-4(a) or any violation of this Chapter.

(c) The Commission shall be entitled to the services of the Attorney General of North Carolina in enforcing the provisions of this Chapter or may employ an attorney to assist and represent it in enforcement of specific matters.

RULES & REGULATIONS  
NORTH CAROLINA AUCTIONEER LICENSING BOARD  
NORTH CAROLINA ADMINISTRATIVE CODE

TITLE 21  
OCCUPATIONAL LICENSING BOARDS

**CHAPTER 4  
COMMISSION FOR AUCTIONEERS**

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SUBCHAPTER 4B - AUCTIONEER  
LICENSING BOARD

**SECTION .0100 - ORGANIZATION AND GENERAL PROVISIONS**

.0101 PURPOSE

It is the responsibility of the Board to license auctioneers, apprentice auctioneers, and auction firms and to see that the qualifications and activities of those engaged in auctioneering activities are in accord with law and in the best interests of the public.

The Board is not a board of arbitration and has no jurisdiction to settle disputes between parties concerning such matters of contract as the rate of commissions, the division of commissions, pay of assistants, and similar matters.

.0102 BOARD OFFICE

The administrative offices of the Board are located at:  
108 Ber Creek Drive  
Fuquay-Varina, North Carolina 27526  
Telephone: (919) 567-2844

Office hours are 8:30 a.m. until 5:00 p.m., Monday through Friday, except holidays.

.0103 DEFINITIONS

Whenever used in this Chapter:

- (1) "Auctioneers Law" or "licensing law" shall refer to G.S. 85B;
- (2) "Buyer's Premium" shall mean any additional charge owed by a buyer to the auctioneer, auction firm, or directly to the seller above and beyond the highest accepted bid amount;
- (3) "Board" shall mean the North Carolina Auctioneers Commission;
- (4) "Minimum Bid" as used in auctions shall mean minimum opening bids;
- (5) "Principal(s)" as it pertains to auction firms shall mean director(s), officer(s) and partner(s);
- (6) "Non-Auction Firm Business" shall mean a sole licensed auctioneer whose business is not defined as an "Auction Firm" as set forth in G.S. 85B-1(6);
- (7) "Auction house," "auction barn," or "auction gallery" shall mean an auction business that conducts auctions at a single location and where consignments are brought to the location by either the auctioneer/auction firm or the public to be sold at auction.

.0104 ADMINISTRATIVE LAW PROCEDURES

(a) Contested Cases. Administrative hearings in contested cases conducted by the Board or an administrative law judge (as authorized in G.S. 150B-40) shall be governed by:

- (1) procedures set out in Article 3A of G.S. 150B;
- (2) insofar as relevant, the Rules of Civil Procedure as contained in G.S. 1A-1;
- (3) insofar as relevant, the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes.

The rules of Civil Procedure and the General Rules of Practice for the Superior and District Courts are hereby incorporated by reference for contested cases for which the Board has authority to adopt rules under G.S. 150B-38(h). Such incorporations by reference shall automatically include any later amendments and editions of the incorporated matter.

(b) Declaratory Rulings. In addition to the procedures set out in G.S. 150B-4, petitions for declaratory rulings shall be submitted to the Board and shall contain:

- (1) petitioner's name, address and telephone number;
- (2) the statute, rule, or both to which the request relates;
- (3) all facts and information which are relevant to the request;
- (4) a concise statement of the manner in which petitioner has been aggrieved;
- (5) a draft of the declaratory ruling sought by petitioner, if a specified outcome is sought by petitioner;
- (6) practices likely to be affected by the declaratory ruling;
- (7) a list or description of persons likely to be affected by the declaratory ruling; and
- (8) a statement as to whether the petitioner desires to present oral argument, not to exceed 30 minutes, to the Board prior to its decision.

The Board shall ordinarily refuse to issue a declaratory ruling when:

- (A) the petition does not comply with this subdivision;
- (B) the Board has previously issued a declaratory ruling on substantially similar facts;
- (C) the Board has previously issued a final agency decision in a contested case on substantially similar facts;
- (D) the facts underlying the request for a declaratory ruling were specifically considered at the time of the adoption of the rule in question; or
- (E) the subject matter of the request is involved in pending litigation.

(c) Petitions For Rule-Making. In addition to the procedures set out in G.S. 150B-20, petitions for rule-making shall be submitted to the Board and shall contain:

- (1) petitioner's name, address and telephone number;
- (2) a draft of the proposed rule or rule change;
- (3) the reason for its proposal;
- (4) the effect of the proposal on existing rules or decisions;
- (5) data supporting the proposal;
- (6) practices likely to be affected by the proposal; and
- (7) a list or description of persons likely to be affected by the proposal.

**SECTION .0200 - APPLICATION FOR LICENSE**

.0201 APPLICATION FORMS

(a) Auctioneer. Each applicant for an auctioneer license shall complete an application form provided by the Board. This form shall be submitted to the Executive Director and shall be accompanied by:

- (1) one passport-type photograph for identification;
- (2) statements of the results of a local criminal history records search by the clerk of superior court (or equivalent official in other states) in each county where the applicant has resided and maintained a business within the immediate preceding 60 months (five years);
- (3) the completed fingerprint cards provided by the Board and the form signed by the applicant consenting to the check of the criminal history and to the use of fingerprints and other identifying information;
- (4) a copy of the applicant's high school diploma or proof of equivalency;
- (5) the proper fees, as required by 21 NCAC 4B .0202;
- (6) documentation of required auctioneer schooling or auctioneer experience, as follows:

- (A) Applicants who base their application upon their successful completion of an approved school of auctioneering shall submit a photostatic copy of their diploma or certificate of successful

completion. An applicant shall have successfully completed this school within the five years preceding the date of application or if the applicant has successfully completed this school more than five years preceding the date of his or her application, shall submit documentation verifying the applicant's active lawful participation in auctions within the two years preceding the date of application. The above referenced participation in auctions is defined as "Auctioneering" as set forth in N.C.G.S. 85B-1(8).

- (B) Applicants who base their application upon their successful completion of an apprenticeship shall submit a log which was maintained and completed during the apprenticeship period which details the exact hours and dates on which they obtained apprenticeship experience, with each entry being verified and signed by their supervising auctioneer. A minimum of 100 hours of experience during the apprenticeship two-year period shall be obtained. Not less than 25 of the total hours accumulated must be attributable to bid calling and not less than 50 hours shall be attributable to working as a ring person, drafting and negotiating contracts, appraising merchandise, advertising, clerking and cashiering, with not less than five hours of accumulated experience documented for each category. An apprentice who applies for an auctioneer license under this Part shall submit his application and supporting documentation and obtain a passing score on the auctioneer exam prior to the expiration of his apprentice auctioneer license; and
- (7) Non-resident applicants shall also submit a properly completed "Designation of Agent for Service of Process Form" with notarized signature and notarial seal affixed.
- (b) Non-Resident Reciprocal Auctioneer. Each non-resident applicant for auctioneer license, who applies for a North Carolina license pursuant to G.S. 85B-5 shall complete an application form provided by the Board. This form shall be submitted to the Executive Director and shall be accompanied by:
- (1) one passport-type photograph for identification;
  - (2) statements of the results of a local criminal history records search by the clerk of superior court (or equivalent official) in each county where the applicant has resided and maintained a business within the immediate preceding 60 months (five years);
  - (3) the completed fingerprint cards provided by the Board and the form signed by the applicant consenting to the check of the criminal history and to the use of fingerprints and other identifying information;
  - (4) a copy of the applicant's high school diploma or proof of equivalency;
  - (5) the proper fees, as required by 21 NCAC 4B .0202;
  - (6) a statement of good standing from the licensing board or Commission of each jurisdiction where the applicant holds an auctioneer, apprentice auctioneer or auction firm license; and
  - (7) a properly completed "Designation of Agent for Service of Process Form" with notarized signature and notarial seal affixed.
- (c) Apprentice Auctioneer. Each applicant for an apprentice auctioneer license shall complete an application form provided by the Board. This form shall be submitted to the Executive Director and shall be accompanied by:
- (1) one passport-type photograph for identification;
  - (2) statements of the results of a local criminal history records search by the clerk of superior court (or equivalent official) in each county where the applicant has resided and maintained a business within the immediate preceding 60 months (five years);
  - (3) the completed fingerprint cards provided by the Board and the form signed by the applicant consenting to the check of the criminal history and to the use of fingerprints and other identifying information;
  - (4) a copy of the applicant's high school diploma or proof of equivalency;
  - (5) the proper fees, as required by 21 NCAC 4B .0202;
  - (6) the signature, as designated on the applicant form, of the licensed auctioneer who will be supervising the apprentice auctioneer;
  - (7) a written statement of the proposed supervisor's background and experience in the auction profession to include the number and types of auctions conducted or participated in annually; and
  - (8) if applicant is a non-resident, a properly completed "Designation of Agent for Service of Process Form" with notarized signature and notarial seal affixed.
- (d) Auction Firms. An applicant for an auction firm shall be a principal within the firm. Each applicant for an auction firm license shall complete an application form provided by the Board. This form shall be submitted to the Executive Director and shall be accompanied by:

- (1) statements of the results of a local criminal history records search by the clerk of superior court (or equivalent official) in each county where any principal and designated person of the auction firm has resided and maintained a business within the immediate preceding 60 months (five years);
- (2) each of the principal's and designated person's of the auction firm completed fingerprint cards provided by the Board and the form signed by each consenting to the check of the criminal history and to the use of fingerprints and other identifying information;
- (3) a copy of each principal's and designated person's high school diploma or proof of equivalency;
- (4) the proper fees, as required by 21 NCAC 4B .0202;
- (5) a certified copy of any applicable Articles of Incorporation or Partnership Agreement;
- (6) a statement of good standing from the licensing board or Commission of each jurisdiction where the applicant firm and any principal and designated person of such firm holds an auctioneer license of any type; and
- (7) if applicant firm is a non-resident, a properly completed "Designation of Agent for Service of Process Form" (one each for the auction firm and for each principal and designated person of the firm) with notarized signature and notarial seal affixed and, if a corporation, the corporate seal and corporate secretary's signature affixed.

0202 FILING AND FEES

(a) Properly completed applications must be filed (received, not postmarked) in the Board office at least seven days prior to an established Board meeting date, or in the case of an application for auctioneer examination, at least 10 days prior to a scheduled examination and must be accompanied by all required documents.

(b) License fees are as follows:

- (1) New auctioneer license for an applicant who did not serve an apprenticeship.....\$250.00  
This includes a \$150.00 annual license fee; \$50.00 application fee; and \$50.00 examination fee.
- (2) New auctioneer license for an apprentice auctioneer .....\$200.00  
This includes a \$150.00 annual license fee; and \$50.00 examination fee.
- (3) Renewal of auctioneer license .....\$150.00
- (4) New apprentice auctioneer license .....\$150.00  
This includes a \$100.00 license fee and a \$50.00 application fee.
- (5) Renewal of apprentice auctioneer license.....\$100.00
- (6) New auction firm license.....\$200.00  
(no examination) This includes a \$150.00 annual license fee; and \$50.00 application fee.
- (7) New auction firm license.....\$250.00  
(examination) This includes a \$150.00 annual license fee; \$50.00 application fee; and \$50.00 examination fee.
- (8) Renewal of an auction firm license .....\$150.00
- (9) Application and processing fee for conversion of non-resident reciprocal license to in-state license .....\$50.00
- (10) Reinstatement of lapsed license or late fee.....\$50.00
- (11) Resident fingerprint card background check fee .....\$14.00  
Applicants who have been continuous residents of North Carolina for the five years preceding the date of application shall be required to have only a State background check.
- (12) Non-resident fingerprint card background check fee .....\$38.00  
Applicants who have not been continuous residents of North Carolina for the five years preceding the date of applications shall be required to have both a State and Federal background check.

(c) The renewal fee for a non-resident reciprocal licensee under G.S. 85B-5 shall be calculated in the same manner as the initial application fee pursuant to G.S. 85B-6.

(d) Fees may be paid in the form of a cashier's check, certified check or money order made payable to the North Carolina Auctioneer Licensing Board. Checks drawn on escrow or trust accounts shall not be accepted. Personal checks may be accepted for payment of renewal fees.

## **SECTION .0300 - EXAMINATIONS**

### **.0301 SUBJECT MATTER**

(a) The auctioneer license examination shall test the applicant's knowledge of the following required subjects:

(1) A practical and working knowledge of the auction business including fundamentals of auctioneering, contract drafting, bid calling, basic mathematical computations and percentages, advertising, settlement statements, and laws, regulations, and rules that relate to the auctioneering profession;

(2) The provisions of the licensing law;

(3) The Rules of the Board.

(b) The auction firm license examinations shall test the applicants knowledge of the following:

(1) the provisions of the licensing law; and

(2) the Rules of the Board.

### **.0302 RE-EXAMINATION/REFUND OF FEES**

If the applicant does not appear at the initial examination for which he has been scheduled or fails to pass such examination, he will be re-scheduled for the next scheduled examination. If the applicant again does not appear or fails to pass this examination, a refund of the annual auctioneer or apprentice license fee will be made. No refund of the application or examination fee is allowed. A complete new application and proper fees are required if the person wishes to reapply.

### **.0303 EXAM: REVIEW: PAPERS AND CONTENTS**

(a) Any applicant who fails to obtain a passing score (75 percent or better) on an examination may request and receive an appointment with the Executive Director to review their examination.

(b) All examination papers shall remain the property of the Board. The contents thereof shall not be divulged, except by express written authorization of the Board.

## **SECTION .0400 - LICENSING**

### **.0401 LICENSE NUMBER: DISPLAY OF LICENSE AND POCKET CARD**

(a) When being licensed each individual or firm shall be issued a license number which remains solely his. Should that number be retired for any reason (such as death, failure to continue in the auction business, failure to renew his license, or any other reason) that number shall not be reissued back to the individual or the firm or to any other individual or firm.

(b) A pocket card shall be issued by the Executive Director giving the auctioneer, apprentice auctioneer or auction firm's name, license number and date of expiration. The pocket card must be carried by the licensee, and in the case of auction firms each of the designated person(s), at all times when auctioneering activities are being conducted and shall be available for inspection by the Executive Director or designated agent of the Board. An auction firm shall display its license in a prominent place upon its premises, so as to be visible for inspection by patrons of the firm.

### **.0402 LICENSE RENEWAL**

(a) Any licensee desiring the renewal of a license which is in good standing shall apply for same and shall submit the required fees and such records or documentation requested by the Executive Director to verify the licensee's compliance with G.S. 85B and the rules promulgated in this Chapter. All licenses expire on June 30 each year.

(b) Applications for renewal of licenses will only be processed by the Board upon receipt of the required fee and any records, documents, or information, requested pursuant to Paragraph (a) of this Rule.

(c) Any person or entity who engages in any auctioneering activities governed by the auctioneers law while the license is lapsed will be subject to the penalties pursuant to G.S. 85B-9.

(d) Licenses lapsed or suspended in excess of 24 months shall not be renewable. Persons or firms whose license has been lapsed or suspended in excess of 24 months and who desire to be licensed shall apply for a new license and shall meet all the requirements then existing. Persons or firms whose license has been lapsed or suspended in excess of 24 months and who desire to be licensed are exempt from the auctioneer school or the apprenticeship requirements should the continuing education requirements be met for all lapsed, suspended and inactive years.

### **.0403 APPRENTICE AUCTIONEER LICENSE**

(a) An apprentice auctioneer's license is valid only while he is associated with and supervised by a licensed auctioneer assigned by the Board. In order to be assigned by the Board as a supervisor, the Board

must receive a written notice, signed by the prospective supervisor and the apprentice, requesting that the licensed auctioneer be assigned as a supervisor for the apprentice. Upon receipt of such a request, the Board shall evaluate the requested assignment and such requested assignment may be denied by the Board if the prospective supervisor fails to possess a minimum of five years of active experience in the auctioneering profession or an equivalent combination of training and experience or has committed any act which constitutes grounds for license suspension or revocation under the rules of this Subchapter or under G.S. 85B. Upon termination of the association between the supervisor and the apprentice, the supervisor shall immediately notify the Board in writing, showing the date and cause of termination.

(b) The supervising auctioneer shall be on the premises of the sale location and supervise the apprentice auctioneer at any and all times that an apprentice auctioneer is engaged in bid calling. Additionally, the supervising auctioneer shall supervise the apprentice on a regular basis and ensure that the apprentice auctioneer conforms with the auctioneer law and Rules adopted by the Board.

(c) Any licensed auctioneer who undertakes the sponsorship of an apprentice auctioneer shall ensure that the apprentice receives training, supervision, and guidance in the following:

- (1) A practical and working knowledge of the auction business including fundamentals of auctioneering, contract drafting, bid calling, basic mathematical computations, advertising, and settlement statements;
- (2) The provisions of the licensing law;
- (3) The Rules of the Board; and
- (4) The preparation and maintenance of written agreements, record books, and other sales records as required by law.

(d) Apprentices are prohibited from conducting or contracting to conduct any auction without the prior express written consent of the sponsor. No sponsor shall authorize an apprentice to conduct or contract to conduct an auction, to act as principal auctioneer or handle any funds related to an auction unless the sponsor has determined that the apprentice has received adequate training to do so. An apprentice auctioneer may work under more than one Board approved licensed auctioneer at any given time.

(e) The sponsor shall ensure that the apprentice complies with all of the laws and Rules as they apply to any auction related transaction approved by the sponsor.

(f) An apprentice auctioneer shall notify the Board, in writing, immediately upon termination of his association with his supervising auctioneer, at which time his license shall be immediately held in an invalid status. If an apprentice auctioneer's supervising auctioneer's license has been suspended, revoked, or placed on probation the apprentice auctioneer's license shall be immediately held in an invalid status. Once in an invalid status, an apprentice auctioneer shall not conduct or contract to conduct any auction. If an apprentice's license is invalid greater than 90 days due to a lack of an approved sponsor, the apprentice upon securing an approved sponsor shall be required to submit a late fee set forth in 21 NCAC 4B .0202(b)(10).

#### .0404 GROUNDS FOR LICENSE DENIAL OR DISCIPLINE

(a) The Board may assess a civil penalty in accordance with G.S. 85B-3.1(b) or deny, suspend, or revoke a license, or issue a letter of reprimand to a licensee, upon any of the following grounds:

- (1) violation of any provision of G.S. 85B;
- (2) violation of any provision of the Rules under 21 NCAC, Subchapter 4B;
- (3) a check given to the Board in payment of required fees which is returned unpaid;
- (4) allowing an unlicensed person (auctioneer) to call a bid at a sale;
- (5) auctioneering at an unlicensed auction firm sale;
- (6) failure to properly, completely and fully complete an application or making any false statement or giving any false information in connection with an application for a license, renewal or reinstatement of a license including:
  - (A) failure to completely cooperate with any investigation; or
  - (B) making any false statement or giving any false information in connection with any investigation by the Board or the Board's designee;
- (7) been adjudicated mentally incompetent by a court;
- (8) committing a crime the circumstances of which substantially relate to the auctioneering profession;
- (9) violated any federal or state statute or rule which relates to the auctioneering profession;

- (10) practicing the profession for which the holder has a license while the holder's ability to practice was impaired by alcohol or other drugs or physical or mental disability or disease;
  - (11) being incompetent in practice. A licensee has been incompetent in practice if the licensee engaged in conduct which evidences a lack of ability, fitness or knowledge to apply principles or skills of the auctioneering profession;
  - (12) engaging in unprofessional conduct. In this Paragraph "unprofessional conduct" means the violation of any standard of professional behavior which through professional experience has become established in the auctioneering profession;
  - (13) obtaining or attempting to obtain compensation by fraud or deceit;
  - (14) violating any order of the Auctioneer Licensing Board requiring a licensee to comply with any provision of the Board's law or administrative rules;
  - (15) failure to possess truth, honesty and integrity sufficient to be entitled to the high regard and confidence of the public. In this paragraph a lack of truth, honesty and integrity shall be evidenced by proof that the applicant or licensee is in violation of other provisions of the Board's law and administrative rules which demonstrate that the applicant or licensee fails to meet this standard; or
  - (16) failure to properly make the disclosures required by 21 NCAC 4B .0405.
- (b) When applying the requirements of Rule .0404(a) to auction firms or their applications, the requirements shall apply to the firm, all the principals, and all of the designated persons of the firm.

**.0405 INVOLVEMENT IN COURT ACTION OR ADMINISTRATIVE HEARING**

- (a) All auctioneers, apprentice auctioneers and auction firms, including their principals and designated person(s), shall report to the Board any and all criminal arrests for, charges of or convictions of a misdemeanor that has as an essential element dishonesty, deceit, fraud or misrepresentations, or any arrests, charges or convictions of any felony. Convictions include findings of guilt, guilty pleas, and pleas of nolo contendere. The Board must receive written notice of any such arrest, charge or criminal conviction within 30 days of the occurrence of any or all of these events.
- (b) All auctioneers, apprentice auctioneers and auction firms, including their principals and designated person(s), shall report to the Board any and all civil suits involving them that are based upon any allegation of gross negligence, dishonesty, fraud, misrepresentation or incompetency, or that in any way involve an auction sale or a transaction related to an auction matter or auctioneering. The Board must receive written notice of any such civil suit within 30 days of the date the complaint in the suit is served on the defendant in the action, or the date a pleading containing one or more of these allegations is served on a party.
- (c) All auctioneers, apprentice auctioneers and auction firms, including their principals and designated person(s), shall report to the Board any and all administrative proceedings which are commenced against them which involve any potential revocation or suspension of, or other disciplinary action against, any auction license or auctioneer license that they hold in another state. The Board must receive written notice of any such administrative proceeding within 30 days of the date the auctioneer, apprentice auctioneer or auction firm, including its principals and designated person(s), is notified of the administrative proceeding.

**SECTION .0500 - SCHOOLS OF AUCTIONEERING**

**.0501 APPLICATION FOR COURSE APPROVAL**

- (a) Schools of auctioneering seeking accreditation by the Board shall complete a Board approved application form.
- (b) The school shall notify the Board within 30 days of any change in the information required by the above application form. This requirement shall continue as long as the school remains approved by the Board.

.0502 REQUIREMENTS FOR APPROVAL/MINIMUM STANDARDS

(a) In order to be accepted as an approved school, and in order to remain approved, the course curriculum must contain classroom instruction in the following subjects for the minimum number of hours shown:

- (1) Essential Core Curriculum (minimum 50 hours):
  - 16 Hours - Bid Calling, Voice Control, Proper Breathing Techniques, and Use and Sequence of Numbers;
  - 4 Hours - Advertising;
  - 8 Hours - Auctioneers Law and Rules and Regulations;
  - 2 Hours - Uniform Commercial Code and Bulk Transfers;
  - 2 Hours - Drafting and Negotiating Contracts;
  - 2 Hours - Closing Statements and Settlements;
  - 8 Hours - Accounting and Mathematics;
  - 1 Hour - Auctioneering Ethics;
  - 2 Hours - Handling Sale Proceeds and Escrow Accounts;
  - 2 Hours - Auction Preparation and Setup;
  - 3 Hours - Review and Testing (End of Course).

- (2) Supplemental Instruction Areas (minimum 30 hours):

Antiques	Heavy Equipment
Real Estate	Automobiles
Technology	Cattle and Livestock
Environmental Issues	Public Speaking
Computers	Estate Sales
Firearms	Appraising
Foreclosure and Bankruptcy Sales	Sales Tax Requirements
Art, Rugs, Jewelry	Hygiene and Personal Appearance
Body Language	Ring Work
Farm Machinery	Consignment Auctions

Minimum hours are not required in individual supplemental subjects, however, all topics must be addressed in the school.

- (3) Courses that include students that will become North Carolina applicants must provide a minimum of 2 hours of instruction on the North Carolina Auctioneers Law and Rules, G.S. 85B and 21 NCAC 4B. This instruction shall be included within the minimum required 8 hours instruction of Auctioneers Law and Rules and Regulations.

(b) Students attending an approved course must attend and successfully complete a minimum of 80 hours of classroom instruction according to the list of subjects and minimum hours of instruction in each subject specified in Paragraph (a) of this Rule. An hour of creditable instruction is defined as 50 minutes of classroom instruction or practical exercise accompanied by a 10 minute break.

(c) Each course offered must include instruction by a minimum of five different instructors, at least two of whom must be professional auctioneers. Regardless of the total number of hours taught by any given instructor, no more than 20 hours of an individual's instruction may be counted to satisfy the requirements of Paragraph (a) of this Rule.

(d) The school shall establish standards for all persons who instruct in an approved school with minimum training or experience, or a combination thereof, in the particular field in which they are instructing.

(e) The school shall provide or make available suitable facilities, equipment, materials and supplies necessary for the course, specifically including:

- (1) a comfortable, well-lighted and ventilated classroom with a seating capacity sufficient to accommodate all students; and
- (2) audio-visual equipment and other instructional devices and aids necessary and beneficial to the delivery of effective training.

**.0503 CERTIFICATION OF COURSE COMPLETION**

Schools shall furnish each student who successfully completes their course an official certification of graduation or diploma containing the student's name, the date the course was completed and the total number of hours attended and successfully completed by that student. For successful completion of a course, students must successfully complete a written final examination administered by the school.

**.0504 RECORDS MUST BE MAINTAINED**

Each school shall maintain, and make available upon request of the Board, or its designee, records containing the following information:

- (1) dates, times of instruction, and location of every course offered;
- (2) names and addresses, number of hours attended and successfully completed, and grade on the final written examination of each student;
- (3) a list of all instructors used by the school, the qualifications of each, and their addresses;
- (4) for each course offered, the names of all instructors used, the subject(s) taught, the number of hours that each instructor devoted to each subject, and the dates and times of such instruction.

**.0505 GROUNDS FOR APPROVAL: SUSPENSION OR REVOCATION**

(a) The approval of a school by the Board shall be valid for a period of two years. Each approved school shall be evaluated for reapproval prior to the expiration of the two year period.

(b) The Board may deny, suspend or revoke the approval of any school when it finds that the school has failed to meet or to continuously maintain any requirement, standard or procedure of this Section. Additionally, the Board may deny, suspend or revoke the approval of any school upon a finding that any information required under this Section was knowingly falsified or misrepresented.

**.0506 ALLOWING UNLICENSED BID CALLERS: EXCEPTION**

The only exception to allowing an unlicensed bid caller in the State of North Carolina will be in the case of a person enrolled in a class at an approved school of auctioneering who, for the purpose of training and receiving instruction, may do so under the direct supervision of a licensed auctioneer who is also an instructor in the school and who further assumes full and complete responsibility for the activities of the student in the matter involving bid calling.

**SECTION .0600 - GENERAL AUCTIONEERING**

**.0601 CHANGE OF ADDRESS OR BUSINESS NAME OR OWNERSHIP**

(a) All licensees shall notify the Board in writing of each change or addition of residence or business address (including mailing address) and change of trade name, assumed name, or combination of names under which the licensee conducts business related to auctions.

(b) In the case of a corporate license, said licensee shall immediately notify the Executive Director of any change in the directors or officers of the corporation and such new director(s) or officer(s) shall comply with the provisions of 21 NCAC 4B .0201(d)(1), (2), (3), (5), (6) and (7). If the new directors or officers have a 51% or greater controlling interest in the corporation, the firm license shall be retired and the firm shall apply for a new license.

(c) In the case of a partnership license, said licensee shall immediately notify the Executive Director of any change in partners and such new partners shall comply with the provisions of 21 NCAC 4B .0201(d)(1), (2), (3), (5), (6) and (7).

(d) In the case of an auction firm license, the licensee shall immediately notify the Executive Director of any change in a designated person(s). If the designated person is a currently licensed auctioneer under G.S. 85B, the designated person shall be required to comply with the provisions of 21 NCAC 4B .0201(d)(1), (6) and (7). If the designated person is not a currently licensed auctioneer under G.S. 85B, the designated person shall be required to comply with the provisions of 21 NCAC 4B .0201(d)(1), (2), (3), (6) and (7).

(e) Any change in address, business name or ownership required by these Rules shall be reported within 10 days of the occurrence of such change.

**.0602 ADVERTISING**

(a) In all advertisements relating to an auction, the auctioneer's, apprentice auctioneer's or auction firm's name and license number shall be conspicuously given. If an auctioneer is working for or in conjunction with an auction firm, such relationships shall be disclosed and both license numbers shall be conspicuously given. A general advertisement which does not concern a specific sale(s) and which does

not list sale dates, times or locations, generally referred to as trolling or holding advertisements, shall not be subject to any identification requirement. A licensee may advertise under a name, assumed name, trade name, or combination of names, only if written notice has been previously filed with the Board.

(b) 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.

(c) It shall be a violation of these Rules to advertise a "Bankruptcy Sale" unless the item(s) offered for sale, whether real or personal, are from an active bankruptcy action. Before conducting an auction as a "bankruptcy sale," the majority of the items in the sale shall come from the bankruptcy of one or more parties. Other items not related to or from a bankruptcy action may be sold with items from a bankruptcy action if specifically disclosed at or before the time of the auction.

(d) It shall be a violation of these Rules to advertise an item, either real or personal, as "Absolute" or "Without Reserve" if the item is subject to confirmation, minimum bid, or any other condition of sale. Before advertising an auction as absolute or without reserve, the majority of items in the sale shall be offered for sale absolute or without reserve. Items that are not absolute may be included in the auction provided they are specifically designated as such in all announcements or advertisements.

(e) It shall be a violation of these Rules to advertise any auction using such descriptive words as "Urgent," "Emergency," "Distress" or any other word which connotes liquidation of assets or that the buyers will, for some extraordinary reason, be in a position to reap some unusual bargain without specifically disclosing, in the written advertisement in a print size equal to the descriptive word, the reason that the sale is "urgent," the nature of the "emergency" or the cause of the "distress," etc.

(f) It shall be a violation of these Rules to advertise any auction using such descriptive words as "Seized," "Confiscated," "Forfeited" or any other word which connotes a governmental action whereby items are seized or taken by a government department, agency or commission and released or sold or that the buyers will, for some governmental reason, be in a position to reap some unusual bargain without specifically disclosing, in the written advertisement in a print size equal to the descriptive word, the exact nature of the government action.

(g) It shall be a violation of these Rules to advertise any items as being from an "estate" or a "bankruptcy," or from an "urgent," "emergency," "distress," "seized," "confiscated," "forfeited" or similar sale, unless the consignor of the item(s) to be sold is the original owner of the item(s), the designated representative of the owner, or a federal, state or local department, agency or commission charged with disposing of the item(s), and consigned the item(s) directly to the advertised sale.

(h) It shall be a violation of these Rules to:

- (1) Reference the U.C.C. or any other uniform act or federal or state law in any advertisement unless such act or law is required, by law, to be referenced;
- (2) Reference or mention any federal, state or local department, agency or commission in any advertisement unless specifically required by law to do so or unless prior written approval is received from such department, agency or commission; or
- (3) Otherwise connote in any advertisement that the auction is under the auspices of, at the direction of or required by federal or state law or act or a federal, state or local agency or commission and that the buyers will, for some legal or governmental reason, be in a position to reap some unusual bargain.

(i) It shall be a violation of these Rules to advertise for sale items which the auctioneer/firm does not intend to offer for sale at the advertised auction.

(j) It shall be a violation of these Rules for an auctioneer or auction firm to permit its 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.

(k) It shall be a violation of these Rules to advertise any auction using such descriptive words as "Contents," "Stock," "Inventory," "Liquidation" or any other word which connotes that the items to be auctioned are present on the premises of a residence, business, building or establishment unless the items were physically present continuously for 30 days prior to the signing of the contract or written agreement. Before conducting an auction using any of the descriptive words, the majority of the items in the sale shall be from the premises. Other items not related to or from the contents of the residence or business may be included in the auction provided they are specifically designated as such in all advertisements previous to

the sale. The 30 day requirement shall not apply to items used in direct conjunction with the residence or business and brought to the site solely for the purpose of sale at auction.

(1) At all auctions that include a buyer's premium, the amount of the buyer's premium shall be announced at the beginning of the auction and a written notice of this information shall be conspicuously displayed or distributed to the public at the auction site.

#### .0603 SALE PROCEEDS, ACCOUNTING AND ESCROW ACCOUNTS

(a) Each payment made payable to the auctioneer/firm in which any portion belongs to others, and which are not disbursed to the seller on auction day, must be deposited in an escrow account for the benefit of the owner or seller of such property within three business days after receipt of same.

(b) Any licensee who disburses any funds on auction day shall prepare a receipt or settlement statement in compliance with G.S. 85B-7.1(a) and maintain records in compliance with G.S. 85B-7.1(b).

(c) Every auctioneer/firm that does not disburse all funds to the seller on auction day shall establish and maintain a separate bank account designated as "Custodial Account for Sellers Proceeds" or some similar identifying designation, to disclose that the depositor is acting as a fiduciary and that the funds in the account are trust funds.

(d) Such custodial accounts for sellers proceeds must be established and maintained in banks or savings and loan associations located in the State of North Carolina whose deposits are insured by the Federal Deposit Insurance Corporation, or comparable state recognized insurance agency or program.

(e) The Custodial Account for Sellers shall be drawn on only for payment of:

- (1) the net proceeds to the seller, or to any person that the auctioneer/firm knows is entitled to payment;
- (2) to pay lawful charges against the property which the auctioneer/firm shall in its capacity as agent, be required to pay; and
- (3) to obtain any sums due the auctioneer/firm as compensation for its services.

(f) In the event of a dispute between the seller and buyer of goods or property or between the licensee and any person in whose name trust or escrow funds are held, the licensee shall retain said monies in his trust or escrow account until he has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction.

(g) Each auctioneer/firm shall keep such accounts and records as will disclose at all times the handling of funds in such Custodial Accounts for Sellers Proceeds. Accounts and records must at all times disclose the names of buyers and the amount of purchase and payment from each, also, the names of the sellers and the amount due and payable to each from funds in the Custodial Account for Sellers Proceeds. The names of the buyers and amount of purchase and payment from each related to an individual seller shall be delivered to the seller within 14 days of a written request made within 90 days of settlement of a specific auction.

(h) All trust or escrow account records and records of disbursement shall be available for inspection by the Commission or its designated agent, without advance notice, and copies shall be provided to the Commission upon request.

#### .0604 CONTRACTS, CONSIGNMENT RECORDS, SALES RECORDS, AND BIDDER REGISTRATION RECORDS

(a) All written agreements for auctions and registration, sales and accounting records will be maintained at the site during the conduct of the auction and, upon request, will be made available to the Commission or its designated agent.

(b) An auction house, auction barn, or auction gallery business may enter into a written agreement with regular dealers or sellers for an extended period of time, not to exceed one year.

(c) The consignment records shall be kept by the licensee for a period of two years from the date of the auction.

(d) At an auction house, auction barn, or auction gallery, when consignments are brought to the location by the public during that specific auction sale, the sales records and the consignment records may be the same.

(e) The sales records shall be kept by the licensee for a period of two years from the date of the auction.

(f) The bidder registration records shall contain the bidders' names, addresses, telephone numbers, and when possible e-mail addresses. The bidder registration records shall be kept by the licensee for a period of two years from the date of the auction.

(g) All required records shall be open for inspection by the Commission or its designated agent at reasonable times, or copies of the same shall be provided to the Commission or its designated agent upon written request.

**.0605 BIDDING**

(a) No auctioneer/firm shall bid on items in a sale he is conducting or procure such a bid without the intent to purchase the item. However, in a sale with reserve, the auctioneer/firm may bid on the reserve item up to, and including, the amount of the reserve price without the intent to purchase the item. In any auction where the auctioneer/firm bids or such auctioneer/firm procures such a bid, the auctioneer shall announce such bidding in advance of the auction.

(b) A minimum opening bid shall not be required in an absolute auction. Following an opening bid, the auctioneer may set reasonable minimum bid increments. Such a policy shall be stated and, if possible, posted or included in the auctioneer's/auction firm's written terms and conditions of the sale. In this paragraph "reasonable minimum bid increments" are determined by the type and value of the property being offered at an auction.

**.0606 AUCTION FIRMS**

(a) All licensed auction firms shall have at least one Board approved designated person. If a licensed auction firm does not have at least one designated person in good standing, the status of the auction firm license shall be changed to invalid.

(b) Only designated person(s) for an auction firm have the authority to transact business under the firm license. This includes arranging, managing, soliciting, and contracting auctions; the supervision of the auction staff; the supervision of the acceptance of consignments of items for sale at auction; the supervision of the advertising of an auction; and the supervision of the acceptance of payment and disbursement of monies for items sold at auction.

(c) At least one designated person shall be on the premises of an auction firm's auction sale location while the auction sale is conducted.

(d) Any auctioneer licensed under G.S. 85B may call bids for a licensed auction firm without being a designated person.

(e) Any apprentice auctioneer licensed under G.S. 85B and supervised by the sponsor auctioneer may call bids for a licensed auction firm without being a designated person.

(f) Individuals that hold a currently valid real estate broker license are exempt from the auction firm examination if their authority to transact business under the auction firm license is only related to real estate sales at auction.

**.0607 NON-AUCTION FIRM BUSINESSES**

(a) A licensed auctioneer who owns and operates a non-auction firm business has the sole responsibility for arranging, managing, soliciting, and contracting auctions; the supervision of the auction staff; the supervision of the acceptance of consignments of items for sale at auction; the supervision of the advertising of an auction; and the supervision of the acceptance of payment and disbursement of monies for items sold at auction.

(b) A licensed auctioneer or an apprentice auctioneer who is employed or contracted by another licensed auctioneer who owns and operates a non-auction firm business shall only be responsible for calling bids and performing duties that a non-auctioneer is allowed to perform.

(c) A licensed auctioneer who owns and operates a non-auction firm business shall be on the premises of his businesses' auction sale location while the auction sale is conducted.

**SECTION .0700 - RECOVERY FUND**

**.0701 APPLICATIONS**

All verified applications will be served upon the Commission in accordance with the procedures set forth in G.S. 1A-1, Rule 4(J).

**SECTION .0800 - CONTINUING EDUCATION**

**.0801 CONTINUING EDUCATION COURSE**

(a) To renew a license on active status, an auctioneer, apprentice auctioneer, or designated person(s) in an auction firm shall complete a Board approved course(s) consisting of the hours of instruction as established as in Paragraph (d) of this Rule and shall provide documentation of completion of the above

Board approved course(s) within one year preceding license expiration.

- (1) "Within one year preceding license expiration time period" shall be defined as from May 16 to the following May 15 in the year that the license expires.
  - (2) An auctioneer, apprentice auctioneer, or designated person(s) in an auction firm shall provide documentation on required continuing education courses to the Board by the May 15 deadline of the current renewal period.
  - (3) If the required documentation is not received by the Board by the deadline as set forth in Subparagraph (a)(2) of this Rule, the licensee shall be assessed a late fee as set forth in Subparagraph .0202(b)(10) of this Subchapter.
  - (4) The renewal shall not be processed until compliance is achieved and the required fees are received as set forth in Subparagraph .0402(b) of this Subchapter.
- (b) The Board shall approve courses that shall be conducted by sponsors approved by the Board under this Section. The subject matter of this course shall be determined by the course sponsor subject to Paragraph (h) of this Rule. The course sponsor shall produce or acquire instructor and student materials. The course must be conducted as prescribed by the rules in this Section. At the beginning of the course, sponsors must provide licensees participating in their classes a copy of the student materials developed or acquired by the sponsor.
- (c) The sponsor may conduct the course at any location as frequently as is desired during the approval period. Approval of a sponsor to conduct a course authorizes the sponsor to conduct the course using an instructor who has been approved by the Board as a course instructor under Rule .0804 of this Section.
- (d) The minimum classroom hours of instruction for each year shall be six unless the Board establishes at its April monthly Board meeting fewer hours for the upcoming year pursuant to G.S. 85B-4(e1). In determining whether fewer hours may be established, the Board shall analyze the disciplinary actions and complaints against its licensees and base its decision on whether the analysis shows that a reduction in hours is justified.
- (e) An auctioneer, an apprentice auctioneer, or a designated person(s) in an auction firm shall complete the continuing education requirements for each renewal period that their license was lapsed or suspended.
- (f) Credit hours applied to the current renewal of a license shall not be used for future renewals.
- (g) Excess continuing education hours may be carried forward as credits for a maximum of one renewal year.
- (h) The Board may mandate the topic(s) for all or part of an approved course as a continuing education requirement pursuant to G.S. 85B-4(e1). In determining whether to mandate the topic for all or part of an approved course as a continuing education requirement, the Board shall analyze the disciplinary actions and complaints against its licensees and base its decision on whether the analysis shows that mandating the topic for all or part of a course is justified.
- (i) No part of any preclicensing course curriculum shall count as continuing education credit hours.
- (j) Continuing education shall not be required until the second renewal after initial licensing pursuant to G.S. 85B-4(e).

#### .0802 APPLICATION FOR ORIGINAL APPROVAL

- (a) An entity seeking original approval to sponsor a course must make application on a form prescribed by the Board. An applying entity that is not a resident of North Carolina shall also file with the application a consent to service of process and pleadings.
- (b) Approval to sponsor a course shall be granted to an applicant upon showing to the satisfaction of the Board that:
- (1) The applicant has submitted all information required by the Board;
  - (2) The applicant satisfies all of the requirements of Rule .0805 of this Section relating to qualifications or eligibility of course sponsors;
  - (3) The applicant required by Rule .0805(e) must be truthful, honest and of high integrity as referenced in 21 NCAC 4B .0404(a)(15). In this regard, the Board may consider the reputation and character of any owner, officer or director of any corporation, association or organization applying for sponsor approval; and
  - (4) The applicant has at least one proposed instructor who has been approved by the Board as a course instructor under Rule .0804 of this Section.

.0803 STUDENT FEE FOR COURSES

Sponsors of a course may establish the amount of the fee to be charged to students taking this course; provided, however, that the established fee must be an all-inclusive fee and no separate or additional fee may be charged to students for providing course materials, providing course completion certificates, reporting course completion to the Board, or for recouping similar routine administrative expenses.

.0804 APPROVAL OF CONTINUING EDUCATION INSTRUCTORS

(a) Approval of course instructors shall be accomplished at the time of the approval of the course sponsor. Approval of a course instructor authorizes the instructor to teach the course only for the approved course sponsor. An approved course instructor may not independently conduct a course unless the instructor has also obtained approval as a course sponsor.

(b) An entity seeking original approval as a course sponsor must provide the name, address, and qualifications of the instructors for the course on the application form prescribed by the Board. No additional application fee is required. All required information regarding the instructor's qualifications must be submitted.

(c) The instructor(s) must be truthful, honest and of high integrity as referenced in 21 NCAC 4B .0404(a)(15).

(d) The instructor(s) must be qualified under one or more of the following standards:

- (1) Possession of a baccalaureate or higher degree with a major in the field of marketing, finance, or business administration.
- (2) Possession of a current North Carolina auctioneer or auction firm license, three years active full-time experience in auctioneering within the previous ten years, and 30 classroom hours of auction education, excluding prelicensing education, within the past three years, such education covering topics which are acceptable under Board rules for continuing education credit.
- (3) Possession of a current North Carolina real estate broker license, three years active full-time experience in the real estate business within the previous ten years, and experience teaching real estate prelicensing and continuing education courses.
- (4) Possession of a license to practice law in North Carolina and three years experience in law practice within the previous ten years.
- (5) Possession of qualifications found by the Board to be equivalent to one or more of the standards set forth in this Rule.

(e) The Board may deny or withdraw approval of any course instructor upon finding that:

- (1) The course sponsor or the instructor has made any false statements or presented false information in connection with an application for approval;
- (2) The instructor has failed to meet the criteria for approval described in Paragraph (d) of this Rule or has refused or failed to comply with any other provisions of this Subchapter;
- (3) The instructor has failed to demonstrate, during the teaching of courses, those effective teaching skills described in Rule .0815 of this Section; or
- (4) The instructor has provided false or incorrect information in connection with any reports a course sponsor is required to submit to the Board.

(f) If a licensee who is an approved course instructor engages in any dishonest, fraudulent or improper conduct in connection with the licensee's activities as an instructor, the licensee shall be subject to disciplinary action pursuant to G.S. 85B-8 and G.S. 85B-9.

(g) Upon the written request of the Board, an approved course instructor must submit to the Board a videotape depicting the instructor teaching the course. The videotape must have been made within 12 months of the date of submission, must be in VHS format, must include a label which clearly identifies the instructor and the date of the videotaped presentation.

(h) An approved instructor who is a licensee of the Board shall receive continuing education credit hours for instruction at a rate of one hour for every one-half hour of approved course taught.

.0805 SPONSOR REQUIREMENTS

(a) Any legal entity is eligible to seek approval as a sponsor of continuing education courses, provided that the entity seeking approval is either the owner of the proprietary rights to the course or has lawfully acquired from the course owner the right to seek course approval from the Board and to conduct such course.

(b) The official name to be used by any course sponsor in connection with the offering of an approved

continuing education course must clearly distinguish the sponsor from any other previously approved continuing education course sponsor. Unless the sponsor is an auction school approved pursuant to G.S. 85B-4(d) proposing to operate continuing education courses in its own name, the official name also must clearly distinguish the sponsor from any approved auction school. Sponsor applicants proposing to use a sponsor name which does not comply with this standard may be required to adopt a different name as a condition of approval.

(c) Any advertisement or promotional material utilized by an approved course sponsor must include the course sponsor's official name and shall not include any other name for the sponsor.

(d) Prospective sponsors of a course must obtain written approval from the Board to conduct such course prior to conducting the course and prior to advertising or otherwise representing that the course is or may be approved for continuing education credit in North Carolina. No retroactive approval to conduct a course will be granted for any reason.

(e) A sponsor of a course must designate one person to serve as the continuing education coordinator for all Board-approved continuing education courses offered by the sponsor. The designated coordinator shall serve as the official contact person for the sponsor and shall be responsible for the following:

- (1) Supervising the conduct of all the sponsor's Board-approved continuing education courses;
- (2) Signing the course completion certificates provided by the sponsor to licensees completing courses; and
- (3) Submitting to the Board all required rosters, reports and other information.

#### .0806 COURSE COMPLETION REPORTING

(a) Course sponsors must prepare and submit to the Board reports verifying completion of each continuing education course conducted. Sponsors must submit these reports to the Board in a manner that will assure receipt by the Board within thirty calendar days following the course, but in no case later than May 15 for courses conducted prior to that date. Reports shall include the following:

- (1) Official course name;
- (2) Sponsor or coordinator name, mailing address, and telephone number;
- (3) Coordinator signature certifying that the information is correct;
- (4) Name, address, and North Carolina license number of each licensee who satisfactorily completes the course and who desires continuing education credit for the course;
- (5) Physical location where course was conducted;
- (6) Date(s), starting and ending times of course; and
- (7) Number of credit hours.

(b) At the request of the Board, course sponsors must provide licensees enrolled in each continuing education course an opportunity to complete an evaluation of the course upon completion of the course.

(c) Course sponsors shall provide each licensee who satisfactorily completes an approved continuing education course a course completion certificate. Sponsors must provide the certificates to licensees within thirty calendar days following the course, but in no case later than May 15 for any course completed prior to that date. The certificate shall be retained by the licensee as secondary proof of having completed the course. Course completion certificates shall include the following:

- (1) Official course name;
- (2) Name of licensee who satisfactorily completes the course;
- (3) Date(s) of attendance;
- (4) Number of credit hours; and
- (5) Coordinator signature certifying that the information is correct.

(d) When a licensee in attendance at a continuing education course does not comply with the student participation standards, the course sponsor shall advise the Board of this matter in writing at the time reports verifying completion of continuing education for the course are submitted. A sponsor who determines that a licensee failed to comply with either the Board's attendance or student participation standards shall not provide the licensee with a course completion certificate nor shall the sponsor include the licensee's name on the reports verifying completion of continuing education.

#### .0807 CHANGE IN SPONSOR OWNERSHIP AND OTHER INFORMATION

(a) The approval granted to a course sponsor may be transferred to a new or different entity only with the advance approval of the Board.

(b) Course sponsors must notify the Board in writing prior to any change in business name, continuing education coordinator, address or business telephone number.

(c) Course sponsors must obtain advance approval from the Board for any changes to be made in the content or number of hours for courses; provided that changes in course content which are solely for the purpose of assuring that information provided in a course is current and accurate do not require approval during the approval period, but shall be reported at the time the sponsor requests renewal of course approval. Requests for approval of changes shall be in writing.

**.0808 COURSE RECORDS**

All course sponsors must retain on file for two years records of student registration and attendance for each session of a continuing education course that is conducted and shall make such records available to the Board, or its designee, upon request.

**.0809 RENEWAL OF COURSE AND SPONSOR APPROVAL**

Board approval of all continuing education course sponsors expires on the next June 30 following the date of issuance. In order to assure continuous approval, a completed renewal application prescribed by the Board, must be submitted to the Board annually on or before April 30. Any continuing education course sponsor's renewal applications that are not received or that are not complete on or before April 30 shall not have met the guidelines for renewal and must meet the criteria for original approval as set forth in Rule .0802.

**.0810 DENIAL OR WITHDRAWAL OF APPROVAL**

(a) The Board may deny or withdraw approval of any course or course sponsor upon finding that:

- (1) The course sponsor has made any false statements or presented any false information in connection with an application for course or sponsor approval or renewal of such approval;
- (2) The course sponsor or any official or instructor in the employ of the course sponsor has refused or failed to comply with any of the provisions of this Rule;
- (3) The course sponsor or any official or instructor in the employ of the course sponsor has provided false or incorrect information in connection with any reports the course sponsor is required to submit to the Board;
- (4) An instructor in the employ of the course sponsor fails to conduct approved courses in a manner that demonstrates possession of the teaching skills described in Rule .0815 of this Section; or
- (5) Any court of competent jurisdiction has found the course sponsor or any official or instructor in the employ of the course sponsor to have violated, in connection with the offering of continuing education courses, any applicable federal or state law or regulation prohibiting discrimination on the basis of disability, requiring places of public accommodation to be in compliance with prescribed accessibility standards, or requiring that courses related to licensing or certification for professional or trade purposes be offered in a place and manner accessible to persons with disabilities.

(b) If a licensee who is an approved course sponsor or an instructor in the employ of an approved course sponsor engages in any dishonest, fraudulent or unlawful conduct in connection with the licensee's activities as a course sponsor or instructor, the licensee shall be subject to disciplinary action pursuant to G.S. 85B-8 and G.S. 85B-9.

**.0811 MINIMUM CLASS SIZE**

The minimum class size for any session of an approved continuing education course shall be five students, as determined by the sponsor's preregistration records. The minimum class size requirement shall not apply to class sessions when the sponsor notifies the Board in writing of the scheduled class session and advertises in advance the scheduled class session in the general auction community where the class session is to be held. A sponsor who conducts a class session for fewer than five students shall submit with the reports verifying completion of the course a copy of the advertisement for the class session plus a statement or other documentation indicating the date of the advertisement and the advertising method.

**.0812 SCHEDULING AND NOTICE OF SCHEDULED COURSES**

(a) An hour of creditable instruction is defined as 50 minutes of instruction or practical exercise accompanied by a 10 minute break.

(b) Sponsors must provide the Board written notice of all scheduled course offerings not later than 10 days prior to a scheduled course date. The notice shall include the name of the sponsor and, for each scheduled course, the name of the course, the scheduled date and time, specific location, and name of the instructor(s).

(c) Sponsors must notify the Board of any schedule changes or course cancellations at least five days prior to the original scheduled course date. If a last minute change or cancellation is necessary due to some unforeseen circumstance, then notice shall be provided to the Board as soon as possible.

#### .0813 ADVERTISING; PROVIDING COURSE INFORMATION

(a) Course sponsors must not utilize advertising of any type that is false or misleading in any respect. If the number of continuing education credit hours awarded by the Board for an approved course is less than the number of scheduled hours for the course, any course advertisement or promotional materials which indicate that the course is approved for mandatory auctioneer continuing education credit in North Carolina must specify the number of continuing education credit hours awarded by the Board for the course.

(b) Any flyers, brochures or similar materials utilized to promote a continuing education course must clearly describe the fee to be charged and the sponsor's cancellation and fee refund policies.

(c) Upon course approval, course sponsors may include in course descriptions and promotional materials the information contained in the following illustration: This course [seminar or program] has been approved by the Auctioneer Licensing Board for continuing education credit in the amount of \_\_\_ hours. This course is not sponsored by the Board.

(d) Course sponsors of any course must, upon request, provide any prospective student a description of the course content sufficient to give the prospective student a general understanding of the instruction to be provided in the course.

#### .0814 CONDUCT OF CLASSES

(a) All class sessions of approved continuing education courses must be open to all licensees on a first-come/first-served basis; provided that the sponsor of a course which has a bona fide education or experience prerequisite, such as an advanced course leading to a special auctioneer designation, may refuse admission to a licensee not satisfying such prerequisite.

(b) Courses not conducted electronically must be conducted in a facility that provides an appropriate learning environment as set forth in 21 NCAC 4B .0502(e).

#### .0815 INSTRUCTOR CONDUCT AND PERFORMANCE

(a) Instructors must assure that class sessions are commenced in a timely manner and are conducted for the full amount of time that is scheduled. Instructors must also assure that each student is furnished student materials that directly support the topic matter being taught.

(b) Instructors must conduct themselves in a professional and courteous manner when performing their instructional duties and must conduct classes in a manner that demonstrates a mastery of the following basic teaching skills:

- (1) The ability to communicate effectively through speech, including the ability to speak clearly using generally accepted grammar and vocabulary.
- (2) The ability to present an effective visual image to a class by appearance and physical mannerisms.
- (3) The ability to present instruction in a thorough, accurate, logical, orderly and understandable manner, to utilize illustrative examples and to respond to questions from students.
- (4) The ability to effectively utilize varied instructional techniques in addition to straight lecture, such as class discussion, role playing or other techniques.
- (5) The ability to effectively utilize instructional aids to enhance learning.
- (6) The ability to maintain a learning environment conducive to learning and effective control of a class.
- (7) The ability to interact with adult students in a positive manner that encourages students to learn, that demonstrates an understanding of varied student backgrounds, that avoids offending the sensibilities of students, and that avoids personal criticism of any other person, agency or organization.

#### .0816 MONITORING ATTENDANCE

(a) Sponsors and instructors must strictly monitor attendance for the duration of each class session to assure that all students reported as satisfactorily completing a course according to these Rules have attended at least 90 percent of the scheduled classroom hours. Students shall not be admitted to a class session after 10 percent of the scheduled classroom hours have been conducted. Students shall not be allowed to sign a course completion card, shall not be issued a course completion certificate, and shall not

be reported to the Board as having completed a course unless the student fully satisfies the attendance requirement. Sponsors and instructors may not make any exceptions to the attendance requirement for any reason.

(b) Sponsors must assure that adequate personnel, in addition to the instructor, are present during all class sessions to assist the instructor in monitoring attendance and performing the necessary administrative tasks associated with conducting a course.

#### .0817 STUDENT PARTICIPATION STANDARDS

(a) In addition to requiring student compliance with the attendance requirement, sponsors and instructors shall require that students comply with the following student participation standards:

- (1) A student shall direct his attention to the instruction being provided and refrain from engaging in activities unrelated to the instruction.
- (2) A student shall refrain from engaging in any activities which are distracting to other students or the instructor, or which otherwise disrupt the orderly conduct of a class.
- (3) A student shall comply with all instructions provided by the sponsor or instructor related to providing information needed to properly report completion of a course by the student.

(b) Instructors and sponsors may dismiss from a class session any student who fails to comply with the student participation standards prescribed in Paragraph (a) of this Rule.

(c) Sponsors shall not issue a course completion certificate to any student who fails to comply with the student participation standards set forth in Paragraph (a) of this Rule, nor shall sponsors include the name of such student on their reports verifying completion of a continuing education course. Sponsors shall submit to the Board with their reports for the class session a written statement which includes the name and license number of the student for whom the sponsor does not report course credit, details concerning the student's failure to comply with the student participation standards, and names of other persons in attendance at the class who witnessed the student's conduct.

#### .0818 ADDITIONAL SPONSOR REQUIREMENTS

(a) Sponsors and instructors may make available for purchase by continuing education students materials that belong to the sponsor, instructor, or some other party; however, class time may not be used to promote or sell any materials or to solicit affiliation or membership in any business, organization, or association.

(b) Course sponsors must administer course cancellation and fee refund policies in a non-discriminatory manner. In the event a scheduled course is canceled, reasonable efforts must be made to notify preregistered students of the cancellation and all prepaid fees received from such preregistered students must be refunded within 30 days of the date of cancellation or, with the student's permission, applied toward the fees for another course.

(c) Course sponsors shall admit the Board's authorized representative to monitor any continuing education class without prior notice. Such representative shall not be required to register or pay any fee and shall not be reported as having completed the course.

(d) Course sponsors may deviate from these Rules concerning the conduct of continuing education courses, such as rules addressing classroom facilities, minimum class size and instructional methods, as may be necessary in order for the sponsor to comply with the Americans with Disabilities Act or other laws requiring such sponsors to accommodate persons with disabilities. A sponsor providing a special accommodation for a licensee with a disability that requires the sponsor to deviate from these Rules shall notify the Board in writing of the accommodation at the time reports are submitted for the class session attended by the licensee.

#### .0819 ALTERNATIVE COMPLIANCE

(a) An auctioneer, apprentice auctioneer, or designated person of an auction firm who is unable to attend a Board-approved course and obtain the requisite hours of instruction established by the Board may apply to the Board for alternative compliance.

(b) A written request for alternative compliance shall be received by the Board by May 15 of the year in which the requisite hours of instruction are to be completed.

(c) If approved, the course of instruction shall be completed prior to license renewal and shall be exempt from the late fee.

(d) Alternative compliance shall include:

- (1) Academic courses at a community college, junior college, or college or university located in this

State and accredited by the Southern Association of Colleges and Schools in any of the following topics:

- (A) Accounting;
  - (B) Finance;
  - (C) Business Management;
  - (D) Business Law;
  - (E) Economics;
  - (F) Marketing;
  - (G) Computer Science;
  - (H) Sales; or
  - (I) Enhancing Personal or Professional Skills.
- (2) Completion of any non-real estate appraisal course with evidence of successful completion; and
  - (3) Publication of an article in professional journal of general circulation among the membership of the profession.