

Newsletter

New Auctioneer Rules

On April 20, 2006, the North Carolina Rules Review Commission approved several amended and adopted rules for the North Carolina Auctioneer Licensing Board. These rules become effective on May 1, 2006.

The process began last year with the Board considering changes that would be advantageous to buyers, sellers, auctioneers, apprentice auctioneers, and auction firms of this State. The proposed rule changes were then published in the North Carolina Register. A public comment period followed along with a public hearing that was held at the Auctioneers Association of North Carolina's convention in January, 2006. The final step was the Rules Review Commission's approval.

In an effort to assist licensees to understand the changes to the Rules, the additions and deletions appear below. Underlined text are additions to the Rules and ~~bold dashed text~~ are deletions to the Rules. Also, for lack of space, only the changes will follow.

.0103 DEFINITIONS

~~(2) "Auctioneering" or "conduct of auction" or "conduct of business" shall mean, in addition to the actual calling of bids, any of the following:~~

- ~~(a) contracting for an auction or auctions;~~
- ~~(b) accepting consignments of items for sale at auction;~~
- ~~(c) advertising an auction;~~
- ~~(d) offering items for sale at auction;~~
- ~~(e) accepting payment and disbursing monies for items sold at auction; or~~
- ~~(f) otherwise soliciting, arranging, sponsoring, or managing an auction or auctions or holding oneself out as an auctioneer;~~

(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;

(5) "Principal(s)" as it pertains to auction firms shall mean director (s), officer(s) and partner(s), 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.

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2006

Board Meeting Dates

The Board has set the following dates and locations for its regularly scheduled meetings for the end of the 2005/2006 fiscal year. The July 2006 through December 2006 dates below are tentative.

<u>Date</u>	<u>Location</u>
May 17	Fuquay Varina, NC
June 16	RTP, NC
July 14	Orlando, FL
August 16	Fuquay Varina, NC
September 20	Fuquay Varina, NC
October 18	Fuquay Varina, NC
November 15	Fuquay Varina, NC
December 20	Fuquay Varina, NC

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

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

New Auctioneer Rules (Continued)

.0201 APPLICATION FORMS

(a)(1) one recent passport-type photograph for identification;...

(a)(6)(A) ...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 within the five years preceding the date of their 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 21 NCAC 4B .0103(2), N.C.G.S. 85B-1(8)...

(b)(1) one recent passport-type photograph for identification;...

(b)(6) a statement of good standing from the licensing board or Commission of each and every jurisdiction where the applicant holds an auctioneer, apprentice auctioneer or auction firm license; and...

(c)(1) one recent passport-type photograph for identification;...

.0301 SUBJECT MATTER

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

.0401 LICENSE NUMBER: DISPLAY OF LICENSE AND POCKET CARD

(a) ...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 will shall not be reissued back to the individual or the firm or to any other individual or firm.

(b) A pocket card will 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...

CURRENT BOARD MEMBERS

William M. O'Neal
Norwood, NC
Chairman

Jesse G. Meeks
Eden, NC
Vice Chairman

James W. Johnson, III
Angier, NC
Board Member

Willie A. Johnson
Greensboro, NC
Board Member

Jean W. Woolard
Plymouth, NC
Board Member

CURRENT STAFF MEMBERS

Robert A. Hamilton, Executive Director

Becky J. Stewart, Administrative Officer

Teresa L. Watson, Administrative Assistant

Barbara Phillips, Secretary

Bruce E. Marshburn, Investigations Coordinator

Ralph Southerland, Investigator

Ronnie Stewart, Investigator

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New Auctioneer Rules (Continued)

.0502 REQUIREMENTS FOR APPROVAL/MINIMUM STANDARDS

(a)(2) Supplemental Instruction Areas min., (minimum 30 hours):...

Tobacco Technology...

Foreclosure & and Bankruptcy Sales...

Hygiene & and Personal Appearance...

.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 clearly 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 clearly conspicuously given... The licensee shall also notify the Board of all certificates filed with any county register of deeds in compliance with G.S. 66-68.

(b) ...Before conducting an auction as an "estate sale", "estate sale," the majority of items in the sale shall come from the estate of the living or deceased person(s)...

(c) ...Before conducting an auction as a "bankruptcy sale", "bankruptcy sale," the majority of the items in the sale shall come from the bankruptcy of one or more parties...

(e) It shall be a violation of these Rules to advertise any auction using such descriptive words as "Urgent", "Emergency", "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", "urgent," the nature of the "emergency" or the cause of the "distress", "distress," etc.

(f) It shall be a violation of these Rules to advertise any auction using such descriptive words as "Seized", "Confiscated", "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", "bankruptcy," or from an "urgent", "emergency", "distress", "seized", "confiscated", "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...

(k) It shall be a violation of these Rules to advertise any auction using such descriptive words as "Contents", "Stock", "Inventory", "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 thirty (30) days prior to the signing of the contract or written agreement...

(l) 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.

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

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.

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New Auctioneer Rules (Continued)

.0604 CONTRACTS CONTRACTS, CONSIGNMENT RECORDS, SALES RECORDS, AND BIDDER REGISTRATION RECORDS (continued)

(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

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 on an item in a sale being conducted by such auctioneer/firm or such auctioneer/firm procures such a bid, the auctioneer shall announce such bidding in advance of the auction.

(a) No auctioneer/auction 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/auction 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/auction firm bids or such auctioneer/auction 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

New Auctioneer Rules (Continued)

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.

.0806 COURSE COMPLETION REPORTING

(a)(4) Name, address, and North Carolina license number, and social security number of each licensee who satisfactorily completes the course and who desires continuing education credit for the course;

.0819 ALTERNATIVE COMPLIANCE

(b) An application for alternative compliance shall be on a form provided by the Board. 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) An application 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. If approved, the course of instruction shall be

Licensing Board Activity Report

This activity report covers the period from February 2005 through April 2006. The Board met fifteen times; conducted fourteen auctioneer licensing examination sessions and gave thirty-three auction firm exams; issued one hundred and eighty auctioneer licenses, twelve apprentice auctioneer licenses and fifty-three auction firm licenses; denied licensing to fourteen auctioneer applicants; conducted five settlement hearings; conducted four administrative hearings; attended the AANC conventions in New Bern and Greensboro; and attended the NAA convention in Pittsburgh, Pennsylvania. The Chairman and the Executive Director attended the NAA Winter Seminar in Anchorage, Alaska.

Disciplinary Actions

A summary of the disciplinary actions is as follows:

1) Meredith Auctions, NCAFL #7753 (Charlotte) - Meredith Auctions' auction firm license was suspended for a period of one year for failing to completely cooperate with an investigation. Meredith Holmes waived her right to appeal as allowed by law and agreed to the Board's findings of violations.

2) Howard Treadway, NCAL #3495 (Asheville) - Howard Treadway's auctioneer license was suspended for a period of ninety days for failure to properly make the disclosures as required by 21 NCAC 4B .0405(a). Howard Treadway waived his right to appeal as allowed by law and agreed to the Board's findings of violations.

3) Eric Heath Smith, NCAL #7565 (Reidsville) - Eric Heath Smith's auctioneer license was revoked for failure to properly make any disclosures or to provide documents or information required by this Chapter or by the Commission; for failure to completely cooperate with any investigation; and for engaging in unprofessional conduct. Eric Heath Smith waived his right to appeal as allowed by law and agreed to the Board's findings of violations.

4) Cynthia Kaye Smith, NCAL #7208 (Chapel Hill) - Cynthia Kaye Smith paid a \$500.00 fine for failure to maintain records which contain an adequate description of the items sold and sufficient to positively identify the owner of the property and for failure to account for or to pay over within a reasonable time, not to exceed thirty days, funds belonging to another which had come into her possession. A Settlement Agreement and Consent Order were entered into between the Board and Ms. Smith, prior to a scheduled hearing, in which she agreed to the above stipulations. Ms. Smith admitted to the Board's findings of violations.

Licensing Board Activity Report (continued)

5) **Alan D. Loeser, Jr., NCAL #7185 (Stevensville, MD)** - Alan D. Loeser, Jr.'s auctioneer license was revoked for 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; for failure to properly make the disclosures required by 21 NCAC 4B .0405(b); for failing to notify the Board in writing within ten days 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. Alan D. Loeser, Jr. waived his right to appeal as allowed by law and agreed to the Board's findings of violations.

6) **Auctions Worldwide, Inc., NCAFL #7672 (Milford, CT)** - Auctions Worldwide, Inc.'s auction firm license was revoked for 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; for failure to properly make the disclosures required by 21 NCAC 4B .0405(b); for failing to notify the Board in writing within ten days 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. Alan D. Loeser, Jr., principal, waived his right to appeal as allowed by law and agreed to the Board's findings of violations.

7) **Quality Salvage Industries, NCAFL #6578 (Archdale)** - Quality Salvage Industries paid a \$1,000.00 fine for failure to have a written agreement with the owner of property to be sold; for failure to maintain accounting records and a failure to maintain records which identify the purchaser of all goods sold; and for failure to provide documents or information required by Chapter 85B or the Board. A Settlement Agreement and Consent Order were entered into between the Board and Mr. Payne, principal, prior to a scheduled hearing, in which he agreed to the above stipulations. Mr. Payne admitted to the Board's findings of violations.

8) **Rande Banks, NCAL #8028 (Kill Devil Hills)** - Rande Banks paid a \$500.00 fine for selling or offering to sell, goods or real estate at auction in this State or performing any act for which an auction firm license is required without holding a currently valid license issued under N.C.G.S. 85B and for permitting his name or license number to appear on any advertisement for an auction without reviewing the contents of the advertisement prior to its publication to ascertain its compliance with applicable Law and Rules. Rande Banks waived his right to appeal as allowed by law and agreed to the Board's findings of violations.

9) **Wendy Shuler McLean, NCAL #7905 (Gastonia)** - Wendy Shuler McLean paid a \$450.00 fine in lieu of a 150 day suspension of her auctioneer license for allowing an unlicensed person (auctioneer) to call a bid at a sale; for allowing a person to transact business under the firm license without approval of the Board; and for making any false statement or giving any false information in connection with any investigation by the Board or the Board's designee. Wendy Shuler McLean waived her right to appeal as allowed by law and agreed to the Board's findings of violations.

10) **Darrel Gene Watkins, NCAL #7074 (Stoneville)** - Darrel Gene Watkins paid a \$250.00 fine in lieu of a 90 day suspension of his auctioneer license for commingling the funds or property of a client with the licensee's own or failing to maintain and deposit in a trust or escrow account in an insured bank or savings and loan association located in North Carolina funds received for another person through sale at auction. Darrel Gene Watkins waived his right to appeal as allowed by law and agreed to the Board's findings of violations.

11) **Michael L. Rogers, NCAL #5726 (Pittsboro)** - Michael L. Rogers paid a \$550.00 fine for failure to maintain records which identify the purchaser of all goods sold by name, address, and when possible, telephone number; for advertising an auction using words which connote liquidation of assets without disclosing, in the written advertisement in a print size equal to the descriptive word, the reason for the sale; for advertising an auction using the word "Liquidation" where the items were physically present on the premises of the residence or business continuously for thirty days prior to the signing of the contract or written agreement and the items unrelated to the liquidation were not specifically designated as such in all advertisements prior to the sale; and for engaging in unprofessional conduct. An Administrative Hearing was subsequently conducted before the Auctioneer Licensing Board. Following deliberation, the Licensing Board adopted the Proposed Findings of Fact and Conclusions of Law filed by the Counsel to the Board and entered a Final Agency Decision.

12) **Stephen C. Stabiner, NCAL #4334 (Prospect Heights, IL)** - Stephen C. Stabiner paid a \$250.00 fine for auctioneering at an unlicensed auction firm sale. Stephen C. Stabiner waived his right to appeal as allowed by law and agreed to the Board's findings of violations.

Licensing Board Activity Report (continued)

13) Walnut Grove Auction & Realty, NCAFL #223 (Roebuck, SC) - Walnut Grove Auction & Realty paid a \$1,000.00 fine in lieu of a one year suspension of its auction firm license for making any false statement or giving any false information in connection with an application for renewal of a license; for failing to report in writing 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 transaction related to an auction matter or auctioneering 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; and for failure to properly make the disclosures required by 21 NCAC 4B .0405. Lewis Harrison, principal, waived his right to appeal as allowed by law and agreed to the Board's findings of violations.

14) John F. Lowder, NCAL #6220 (Wilmington) - John F. Lowder paid a \$2,400.00 fine, he was required to view a 2 hour video on the North Carolina Law and Rules, and review the contents with the Executive Director. This action resulted from violations that included auctioneering at an unlicensed auction firm sale; for conducting an auction without having a contract with the owner of the goods; and for violating the terms of a previous settlement agreement and consent order. A Settlement Agreement and Consent Order were entered into between the Board and Mr. Lowder, prior to a scheduled hearing, in which he agreed to the above stipulations. Mr. Lowder admitted to the Board's findings of violations.

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

- Five letters for selling or offering to sell, goods or real estate at auction in this State or performing an act which an auction firm license is required without holding a currently valid license;
- For making a false statement or giving any false information in connection with an application for a license;
- For selling goods at auction at a different location than provided for in an auction contract and for failure to maintain accounting records that accurately identify the receipt of goods for auction;
- For the way the auctioneer and staff described the goods to be sold at auction;
- For failing to provide written notice of a civil suit filed against the auction firm;
- Per a Settlement Stipulation and Agreement between the Board and an auctioneer, selling or offering to sell, goods or real estate at auction in this State or performing an act for which an auction firm license is required without holding a currently valid license; for providing false, misleading or untruthful advertising; and for advertising real property as "Absolute" or "Without Reserve" when the property was subject to confirmation, minimum bid or another condition of sale; and
- Per a Settlement Stipulation and Agreement between the Board and an auctioneer, for failing to have a written agreement with the owner of all goods sold at auction; for failing to maintain accounting records and failing to maintain records which identify the purchaser of all goods sold; and for failing to provide documents or information required by N.C.G.S. 85B or the Board.