

# Newsletter

## Selling Real Estate at Auction

Recently, many questions have been asked in reference to auctioning real estate. Because the process of auctioning real estate is regulated by two separate regulatory boards for the State, particular care must be taken knowing, understanding and following both sets of law and administrative rules.

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

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

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

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

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

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

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

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### 2004

#### Board Meeting Dates

The Board has set the following dates and locations for its regularly scheduled meetings for the end of the 2004 fiscal year. The July 2004 through December 2004 dates below are tentative.

<u>Date</u>	<u>Location</u>
May 19	Fuquay-Varina, NC
June 18	Asheville, NC
July 16	Madison, WI
August 18	Fuquay-Varina, NC
September 15	Fuquay-Varina, NC
October 20	Fuquay-Varina, NC
November 17	Fuquay-Varina, NC
December 15	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.**

## Real Estate Auction (Continued)

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

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

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

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

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

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

## CURRENT BOARD MEMBERS

James W. Johnson, III  
Angier, NC  
Chairman

Patricia D. Worley  
Princeton, NC  
Vice Chairman

Jesse G. Meeks  
Eden, NC  
Board Member

William M. O'Neal  
Norwood, NC  
Board Member

Keith J. Pierce  
Winston-Salem, NC  
Board Member

## CURRENT STAFF MEMBERS

Robert A. Hamilton, Executive Director

Connie M. Crisman, Administrative Officer

Teresa L. Watson, Administrative Assistant

Robin Rowell, Secretary

Bruce E. Marshburn, Investigations Coordinator

Ralph Southerland, Investigator

Ronnie Stewart, Investigator

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## Licensing Board Activity Report

This activity report covers the period from August 2003 through March 2004. The Board met eight times; conducted four auctioneer licensing examination sessions and gave fifteen auction firm exams; issued seventy-seven auctioneer licenses, seven apprentice auctioneer licenses and thirty-six auction firm licenses; denied licensing to twelve auctioneer, one apprentice auctioneer and seven auction firm applicants; conducted one administrative hearing and three settlement hearings; and, attended the AANC convention in Southern Pines. The Chairman of the Board and Executive Director attended the CLEAR Annual Conference in Toronto, Canada and the NAA winter seminar on the Fantasy cruise ship.

### Disciplinary Actions

A summary of the disciplinary actions is as follows:

- 1) **Robert J. Hill, NCAL #5102 (Vanceboro)** - Robert J. Hill paid a \$100.00 fine in lieu of a sixty day suspension of his auctioneer license for failing to transact the business of an auction firm as the designated person and for allowing a person not designated in the auction firm license the authority to transact business for the firm. Robert J. Hill waived his right to appeal as allowed by law and agreed to the Board's findings of violations.
- 2) **Buck's Auction House, NCFL #1935 (Ayden)** - Buck's Auction House's auction firm license was suspended for a period of one hundred and eighty days for conducting auctions in this State without first having a written agreement with the owner of any property to be sold; for failing to maintain records which were sufficient to positively identify the owner of the property sold at auction; for failing to prepare a receipt or settlement statement for funds disbursed on the date of the auction which contained the amount of the disbursement and the name, address and signature of the person receiving the disbursement; and for failing to allow the designated person the authority to transact business under the license. Linwood Earl Buck waived his right to appeal as allowed by law and agreed to the Board's findings of violations.
- 3) **Nicole C. Wingfield, NCAL #7392 (Raleigh)** - Nicole C. Wingfield's auctioneer license was suspended for a period of thirty days for auctioneering at an unlicensed auction firm sale and for permitting her name and license number to appear on an advertisement for an auction without reviewing the contents of the advertisement prior to its publication to ascertain its compliance with applicable law and rules. Nicole C. Wingfield waived her right to appeal as allowed by law and agreed to the Board's findings of violations.

4) **Mark S. Henderson, NCAL #6665 (Brandenton, FL)** - Mark S. Henderson's auctioneer license was suspended for a period of one year for selling or offering to sell real estate at auction in this State or perform any act for which an auction firm license is required without holding a currently valid license issued under N.C.G.S. 85B and for violating any federal or state statute or rule which relates to the auctioneering profession. Mark S. Henderson waived his right to appeal as allowed by law and agreed to the Board's findings of the violations.

5) **Danny Rae Lane, NCAAL #6735 (North Wilkesboro)** - Danny Rae Lane's probable cause to fine his apprentice auctioneer license \$1,000.00 was rescinded and his apprentice auctioneer license was indefinitely suspended for three violations of auctioneering at an unlicensed auction firm sale; for three violations of conducting an auction in this State without first having a written agreement with the owner of any property to be sold; for three violations of failing to maintain accounting records and failing to maintain records which identify the purchaser of all goods; for three violations of conducting an auction without the express approval of his supervisor; and one violation of permitting his name or license number to appear in an advertisement for an auction without reviewing the contents of the advertisement prior to its publication to ascertain its compliance with applicable law and rules. Danny Rae Lane waived his right to appeal as allowed by law and agreed to the Board's findings of violations.

6) **Steven R. Mattes, NCAL #5568 (Studio City, CA)** - Steven R. Mattes paid a \$2,000.00 fine in lieu of a one year suspension of his auctioneer license for selling or offering to sell, goods or real estate at auction in this State or perform any act for which an auction firm license is required unless the person holds a currently valid license issued under N.C.G.S. 85B. Steven R. Mattes waived his right to appeal as allowed by law and agreed to the Board's findings of violations.

7) **Asa M. Marshall, IV, NCAL #4564 (Bolingbroke, GA)** - Asa M. Marshall, IV paid a \$750.00 fine in lieu of a one hundred and twenty day suspension of his auctioneer license for auctioneering at an unlicensed auction firm sale and for permitting his name and license number to appear on an advertisement for an auction without reviewing the contents of the advertisement prior to its publication to ascertain its compliance with applicable law and rules. Asa M. Marshall, IV waived his right to appeal as allowed by law and agreed to the Board's findings of violations.

## Licensing Board Activity Report (continued)

8) **Oscar Leon Moss, NCAL #7078 (Mount Airy)** - Oscar Leon Moss paid a \$200.00 fine in lieu of a two hundred and seventy day suspension of his auctioneer license for auctioneering at an unlicensed auction firm sale and for making any false statement or giving any false information in connection with any investigation by the Board or the Board's designee. Oscar Leon Moss waived his right to appeal as allowed by law and agreed to the Board's findings of violations.

9) **William Thomas Bradley, NCAL #5443 (Roseboro)** - William Thomas Bradley paid a \$1,500.00 fine; he was required to attend an additional four hour continuing education course by December 31, 2003; he was required to attend a sixty hour Real Estate course; he was required to submit a copy of all auction contracts, brochures and flyers, and/or advertisements two days prior to the distribution of the brochures or flyers or the placing of any advertisement until February 28, 2004; and he was required to view the two hour instructional video on the Board's law and administrative rules and review its contents with the Board's staff. This action resulted violation of conducting an auction in this State without first having a written agreement with the owner of any property sold; violation of conducting an auction that was advertised as an "Estate Sale" without the majority of the items in the sale coming from the estate of the deceased person; and violation of advertising a real estate auction without being a licensed real estate broker, which is a violation of any federal or state statute or rule which relates to the auctioneering profession. A Settlement Agreement and Consent Order were entered into between the Board and Mr. Bradley, prior to a scheduled hearing, in which he agreed to the above stipulations. Mr. Bradley admitted to the Board's findings of violations.

10) **Henry Carlton Hill, NCAL #6917 (Clemmons)** - Henry Carlton Hill paid a \$575.00 fine for three violations of auctioneering at an unlicensed auction firm sale. An Administrative Hearing was subsequently conducted before the Auctioneer Licensing Board. Upon recommendation of the Counsel to the Board, and following deliberation, the Licensing Board adopted the Proposed Findings of Fact and Conclusions of Law filed by the Counsel to the Board and signed a Final Agency Decision.

11) **Quality Salvage Industries, Inc., NCFL #6578 (Archdale)** - Quality Salvage Industries, Inc. paid a \$750.00 fine in lieu of a one hundred and thirty-five day suspension of their auction firm license for failing to allow the designated person the authority to transact business under the license; for making any false statement or giving any false information in connection with an application for renewal of a license; and for failure to provide a written notice within 30 days of a principals arrest or charge of any felony. David G. Payne waived his right to appeal as allowed by law and agreed to the Board's findings of violations.

12) **James Marvin Winstead, NCAL #5931 (Leasburg)** - James Marvin Winstead's auctioneer license was suspended for a period of eight years and thirty days for the commission or conviction of a crime that is punishable as a felony offense under the laws of North Carolina or the laws of the jurisdiction where committed or convicted, or the commission of any act involving fraud or moral turpitude. James Marvin Winstead waived his right to appeal as allowed by law and agreed to the Board's findings of violations.

13) **Frank N. Crain, NCAL #4937 (Orange Beach, AL)** - Frank N. Crain's auctioneer license was revoked for failing to 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; for failure to properly, completely and fully complete an application or make any false statement or giving any false information in connection with an application for a license, renewal or reinstatement of a license; and for failing to 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. Frank N. Crain waived his right to appeal as allowed by law and agreed to the Board's findings of violations.

14) **Letters of Reprimand** - There were no Letters of Reprimand issued.

15) **Cautionary Letters** - During this reporting period, six letters of caution were issued for the following reasons:

- Per a Final Agency Decision, for being incompetent in practice;
- For not receipting for goods for auction and for not accounting for the goods after receipting for them;
- For associating with a real estate broker to advertise and sell real estate at auction without being licensed as an auction firm;
- Per a Final Agency Decision, for auctioneering at an unlicensed auction firm sale;
- Per a Settlement Stipulation and Agreement between the Board and an auctioneer, for auctioneering at an unlicensed auction firm sale;
- For changing the sale date from the original contracted sale date without prior approval from the contracted seller.