

## Ethics - Auctioneers

### **Ethics in Auctioneering**

Now that you have a good feel for ethics in general, let's look at how ethics applies to auctioneering. Like many professionals, auctioneers must follow a code of professional ethics.

The National Auctioneers Association *code of ethics* is listed after the examples for quick perusal. In addition, there may be a state code of ethics for auctioneers in your state.

### **Examples – Auctioneering Ethical Dilemmas**

Take a look at some of these situations and examine the ethics behind the situation (and in some cases the legality).

#### **Seller (the client) tells an auctioneer not to accept a bid and wants a higher price.**

Jack bids on an item at a live auction for a store that's going out of business. After numerous bids, Jack is the highest bidder. As the auctioneer is about to bring down the hammer the storeowner tells the auctioneer that he thinks that the item will bring a higher price at another local dealer's place of business. The storeowner then tells the auctioneer to only accept a bid that is much higher than Jack's bid. Jack stops bidding. The bidding had already passed the reserve price. The item ultimately does not sell. Was this ethical and/or legal?

Points to ponder:

*The dilemma does not indicate that the auction was advertised as "Absolute", but does indicate that the auction was "With Reserve."*

*There is no indication that the auctioneer announced the reserve price, did the auctioneer state that the reserve was met? Do these questions matter? **No.***

*The auctioneer has no duty to the buyer to sell an item at any price. There is no guarantee that if an item is bid on, that the bid will win the item. If you are outbid, you lose the desired item. You also lose the item if the seller decides to withdraw it. Technically, there is no contract between you and the seller, until the auctioneer announces a completed sale.*

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*The only time that you are not being treated fairly is if the seller favors another offer over yours and this is based on factors other than receiving the highest price. Technically, as the seller's agent, the auctioneer, was most likely treating you ethically. The auctioneer was simply following the wishes of his fiduciary (the seller). **For the "final word" on an issue, it is essential that you be familiar with the state auctioneering laws and state auctioneering code of ethics in your state.***

### **Auctioneer Bidding**

Is it ethical/legal for an auctioneer to bid on his/her own behalf? Is it ethical/legal for an auctioneer to bid on the seller's behalf?

Points to ponder:

*Many states allow an auctioneer to bid on behalf of the seller, but only if this information has been disclosed to the buyer(s). Technically, in most states, the auctioneer may legally bid on his/her own behalf without pre-disclosure. Whether this is ethical or in line with good business sense is another story. **For the "final word" on an issue, it is essential that you be familiar with the state auctioneering laws and state auctioneering code of ethics in your state.***

### **Item Authenticity**

A buyer buys an expensive painting supposedly created by a popular artist, but later discovers it is not legitimate. The auctioneer's webpage posted the items for sale and also listed the artist's name and the year of the painting. The auctioneer says he was told by a colleague that it was probably the work of the artist. What ethical responsibility does the auctioneer have?

Points to ponder:

*Most auctions have terms and conditions that state that items are sold "As-Is, Where-Is, with No Warranties or Guarantees Expressed or Implied." However, if the auctioneer makes a specific statement regarding the condition, authenticity, or value of the item there is an ethical (and legal) reason to expect that the item be legitimate. **For the "final word" on an issue, it is essential that you be familiar with the state auctioneering laws and state auctioneering code of ethics in your state.***

### **Internet auctions/live auctions - betting by auction house**

Is it ethical for the principals in an auction house to bid in their own live or Internet auction?

*Generally, this is legal in many states if it is disclosed, but from an ethical standpoint what do you think about auctioneers and auction houses bidding on their own items to*

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*get higher bids? What would you think as a bidder? **For the “final word” on an issue, it is essential that you be familiar with the state auctioneering laws and state auctioneering code of ethics in your state.***

### **Third party interests**

If an auctioneer is offered compensation by a third party (an action which will benefit the seller – the auctioneer’s client), should he accept it if this is legal in that state?

Points to ponder:

*This is purely an ethical question, as clearly in this circumstance it is legal. **For the “final word” on an issue, it is essential that you be familiar with the state auctioneering laws and state auctioneering code of ethics in your state.***

### **Unstated information and buyer misinformation**

Consider a situation where an auctioneer is aware that a painting is a copy (or print) and not an original. This information isn’t explicitly posted or stated. If an auctioneer is aware that a potential buyer undoubtedly (and incorrectly) thinks the painting is an original, but is not specifically asked, is the auctioneer ethically obligated to inform the buyer.

Points to ponder:

*Clearly the auctioneer is not legally bound to do so, this is a matter of both personal and professional ethics. **For the “final word” on an issue, it is essential that you be familiar with the state auctioneering laws and state auctioneering code of ethics in your state.***

## **Auctioneers – Code of Ethics**

The National Auctioneers Associates code of ethics is as follows:

### **PREAMBLE**

The National Auctioneers Association is the professional organization for practicing auctioneers, their associates, affiliated businesses and other related professionals. Membership in the NAA although voluntary, carries with it a requirement of professional commitment to other professionals, Clients, customers and the public at large that extends beyond that of laws and professional regulations. Members of the NAA accept this obligation to conduct themselves and their businesses in a manner that

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serves the public interest, protects the public trust and furthers the goals of their profession.

This Code of Ethics of the National Auctioneers Association and the accompanying Standards of Practice guides the Members in the performance of their professional responsibilities and duties. Complaints can be filed against NAA Members who do not adhere to the Code of Ethics and shall be handled in accordance with the procedures established by the Board of Directors.

## ARTICLE 1.

Members pledge to lawfully and ethically protect and promote the interests of the seller (from now on referred to as the Client).

## ARTICLE 2.

Members owe the buyer (from now on referred to as the Customer) the duties of honesty, integrity and fair dealing at all times.

## ARTICLE 3.

Members shall not accept compensation related to a Client's matter from any third party, even if permitted by law, without the full knowledge of all the parties to the transaction.

## ARTICLE 4.

Members shall disclose any potential conflict of interest to a current or potential Client.

## ARTICLE 5.

Members shall not make a profit on expenditures made for a Client without the Client's prior and expressed consent.

## ARTICLE 6.

Members shall not engage in activities that constitute the unauthorized practice of law.

## ARTICLE 7.

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Members shall maintain a separate and designated account in an appropriate financial institution to maintain monies coming into their possession in trust for other persons such as escrows or trust funds.

## ARTICLE 8.

Members shall not disclose any confidential Client information without the Client's prior, expressed consent, unless required by law.

## ARTICLE 9.

Members shall not misrepresent or conceal material facts.

## ARTICLE 10.

Members are duty bound at all times to abide by the laws and regulations which govern them.

## ARTICLE 11.

Members shall report violations of the Code of Ethics and participate in all investigations and disciplinary proceedings when requested.

## ARTICLE 12.

A Member's conviction of a felony involving the Member acting as an auctioneer, or otherwise participating in an auction, shall be deemed a violation of the Code of Ethics and result in discipline determined by the Board of Directors.

## ARTICLE 13.

During the period that a Member owes an unpaid and unsatisfied civil, criminal, or regulatory cost, damage, fine, judgment, penalty, sanction, or other amount which was awarded, entered, levied, or ordered against the Member by an agency, authority, board, bureau, commission, court, department, or other arm of government shall result in the Member being in violation of the Code of Ethics and subject to discipline determined by the Board of Directors.

## ARTICLE 14.

A Member's auctioneer license is revoked by a licensing authority in any jurisdiction within the United States, for misconduct, wrongdoing, or another violation that

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occurred in connection with the Member acting as an auctioneer, or otherwise participating in an auction shall result in a Member being deemed in violation of the Code of Ethics and subject to discipline as determined by the Board of Directors.

## PROCEDURE FOR COMPLAINT OF THE CODE OF ETHICS

Upon receipt of a written complaint alleging that a Member has violated the Code of Ethics, the Chief Executive Officer shall forward a copy of such written complaint to the accused Member and request that the accused Member provide a response in writing to such charges. The complainant and the written response shall be forwarded by the CEO to the Grievance Committee with the names of the complainant and accused Member redacted. The Grievance Committee shall thereafter undertake an investigation of the complaint and make a written report to the Board of Directors concerning said complaint. If there is a finding of no violation, the Member shall be notified.

If the finding includes a recommendation to the Board of Directors stating that there is a reasonable cause to believe that such Member has engaged in conduct in violation of the Code of Ethics, the Member against whom the complaint has been made will be notified of that decision and afforded an opportunity to respond to the complaint including allowing the accused to appear before the Board of Directors and present evidence in support of the Member position with the right of the Member to hire and be represented by counsel at such or hearing.

The parties may introduce such documentary evidence and present such testimony of witnesses, sworn by the Past President, as the Board of Directors shall reasonably deem relevant to the issues and both sides of the controversy shall be accorded a full opportunity to be heard. At the conclusion of the hearing, the Board of Directors, as soon as it is practically possible, but not later than two (2) weeks thereafter, shall consider the evidence and render a written opinion and decision.

Should the Board of Directors find a violation of the Code of Ethics, the Board of Directors shall also determine the discipline to be assessed which may include private censure, public censure, suspension and/or revocation from Membership. The decision shall be conveyed to the Member by certified mail.

## STANDARDS OF PRACTICE

The following Standards of Practice are provided to encourage the highest standards of conduct among the Membership of National Auctioneers Association. These guidelines are a companion document to the Code of Ethics for the NAA. While the Standards of Practice may not be enforced with Membership sanctions, these guidelines should

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nonetheless be promoted, practiced and encouraged by NAA Members. Non-compliance of these guidelines should be self-policed by fellow NAA Members.

- Members must not build unreasonable expectations about the outcome of an auction in the mind of a potential Client in order to secure the Client's business.
- Members should conduct their business affairs so as to promote a positive image of their business and therefore the auction profession.
- Members shall provide customers with a clear understanding of all the terms and conditions of the auction. Prior to the auction, customers for real estate auctions should be provided a copy of the contract to be signed. Following the auction, customers for personal property auctions should be provided a written bill of sale.
- It is highly recommended that Members communicate terms and conditions of the sale in written form prior to the commencement of the bidding.
- Members should, to assure better service to the seller and to prevent misunderstandings, enter into written agreements or, at a minimum, clear oral agreements that set forth the specific terms and conditions of the engagement.
- Members have an obligation to conduct their business affairs in a professional manner, developing their contract forms with this Article in mind.
- Members should discuss all aspects of the services to be provided and include them in written form where appropriate including: duties and obligations of the parties; services provided by the Member; insurance coverage relating to liability, theft and casualty loss; use of a buyer's premium, if applicable; handling of funds received and controlled by the Member; sales tax, if applicable; and form of payment by buyers. Additionally, Members must provide the Client with a timely, detailed written accounting of the sale, which must include information concerning the handling and timely disposition of all funds received or controlled by the Member.
- Members shall provide the highest level of competent service in those fields in which Members are customarily engaged. This competency is attained by education, training, study, practice and experience. Competence also includes the wisdom to recognize the limitations of that knowledge and when to seek the counsel, assistance or Client referral appropriate for the circumstances.
- The concept of competency also extends to Members who are requested or required to travel to geographic areas where they do not have recent auction experience. Members not in a position to spend the necessary time in a market area to obtain the appropriate understanding of market conditions, may find affiliating with a qualified local auctioneer the appropriate response to ensure a competently conducted auction.

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- Members must ascertain all pertinent facts necessary to implement a professional marketing campaign.
- Members should never publicly criticize a competitor using false or deceptive information. Where an opinion of a competitor's transaction is especially requested, it should be rendered in conformity with strict professional courtesy and dignity.
- Members shall not directly or indirectly solicit the affiliation of an employee or independent contractor in the organization of other Members without the prior notice to said Member.
- Members should willingly share with other Members the lessons learned through experience and study to better the profession, Members' business practices and how the profession is perceived by society. Members shall be loyal to the NAA; this includes active participation in educational, civic and charitable endeavors.
- In order for any professional organization to earn and maintain the confidence of the constituencies it serves, it must demonstrate to them the ability to "police" its own. Members have the unique ability to observe and therefore assist in the stewardship of this trust. Members have an obligation to assist the NAA and its officers in all matters, including the investigation, censure, discipline, or dismissal of Members who engage in violations of the Code of Ethics.