

Study Guide for Auctioneer/Auction House Owner Exam and Licensure



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INDEX

A. STUDY GUIDE

B. ARKANSAS CODE ANNOTED – CHAPTER 17
§ 17-17-101 – 17-17-404

C. RULES AND REGULATIONS

A. STUDY GUIDE

OVERVIEW

Pursuant to the Arkansas Auctioneers License Act of 1989, the Arkansas Auctioneers Licensing Board offers licensing examinations four times a year for those desiring to become auctioneers. The examinations are generally scheduled 4 times a year. The examinations are designed to protect the public by ensuring a minimum level of competence among those allowed to conduct auctions in the State of Arkansas.

You must have completed your initial application and background check AT LEAST 30 days prior to the next scheduled testing date.

A license will not be issued until your criminal background check has been received and you are approved.

Qualified applicants with disabilities, as defined in the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, may request in writing thirty (30) days prior to any examination any needed accommodations to participate in the examination process.

The material in this guide provides a useful, though necessarily incomplete, overview of the knowledge required for successful completion of the examinations. Where possible, other sources of information are suggested for study material. However, final responsibility for the comprehensive understanding of each of the subject areas rests with the applicant.

As a practicing auctioneer, you must be familiar with the laws and regulations that most clearly relate to auction practice in the State of Arkansas. They are the Auctioneers License Act of 1989, appropriate sections of the Uniform Commercial Code and all regulations of the Arkansas Auctioneers Licensing Board.

The above mentioned statutes, regulations, excerpts, and Board regulations are included with the study material. You should study them thoroughly since the test questions relate to them.

SAMPLE QUESTIONS

Questions in this section test both your memory of the provisions of the laws and your ability to apply those provisions in actual situations. Like other questions in the examination, these are either true-false or multiple choice in format. In every case you should give the most correct and complete answer from among the choices given.

The following questions reflect the kinds of questions included on the examination. For each question, circle the most correct and complete response.

1. The Arkansas Auctioneers Licensing Board is appointed by vote of the Arkansas General Assembly.

True False

Discussion – The correct response is false. §17-17-201(a) states that the governor shall appoint the members of the Board.

2. All auctioneer licenses expire:

- A) On January 1
- B) On June 30
- C) On July 30
- D) Each year on the date the auctioneer was originally licensed
- E) None of the above

Discussion – The correct response is B (On June 30). The date of expiration is specified in § 17-17-302 (b) (C) of the Auctioneers License Law.

3. The Arkansas Auctioneers Licensing Board has the final decision in the suspension or revocation of an auctioneer's license.

True False

Discussion – The correct answer is false. §17-17-208 of the Auctioneers License Act indicates the “Board shall be subject to the Arkansas Administrative Procedure Act.”

SPELLING AND DEFINITIONS

The General Information Section of the auctioneer examinations may include questions about the spelling and definition of key legal terms you will use as an auctioneer. The following materials will help prepare you for these questions. You should also consult additional reference materials, as appropriate.

Prior to the examination, familiarize yourself with the following terms:

DEFINITIONS

AUCTIONEER – An auctioneer is any person who offers, negotiates or attempts to negotiate a listing contract, sale, purchase or exchange of goods, chattels, merchandise, real or personal property, or of any other commodity which may lawfully be kept or offered for sale by or at public auction, or who sells the same at auction.

BONA FIDE – The term bona fide means that a person or agency is acting in good faith, without dishonesty, fraud or deceit. In relation to an auction, the term is normally used to refer to a bona fide purchaser.

BULK SALE – A bulk sale is any transfer that is in bulk and not in the ordinary course of the transferor’s business, or a major part of the materials, supplies, merchandise or other inventory of any business subject to the Bulk Sale Law.

CONSIGNEE – The consignee is a person or agent to whom something, usually goods, is entrusted by others for a purpose. The auctioneer is referred to as the consignee for such goods to be sold at auction. He or she is the person in whose care goods are placed for sale.

CONSIGNOR – The consignor is the person or entity that consigns goods to an auctioneer. In an auction, the consignor usually is the seller.

CONTRACT – A voluntary, legally enforceable agreement between two or more people.

LIENS – Liens are adverse claims against property which may occur when the property has been used as collateral for a debt by the property owner or when a legal interest is created upon nonpayment of a debt such as taxes or contractors bills.

ESTATES – The auctioneer often deals with the sale of both real and personal property in the settlement of an estate. In working with estate auctions, certain terms are important:

ADMINISTRATOR (Male), **ADMINISTRATRIX** (Female) – The administrator or administratrix of an estate is the person appointed by the court to oversee the settling of an estate when there is no will or when the person named in a will cannot or will not serve, or when the will names no executor or executrix.

EXECUTOR (Male), **EXECUTRIX** (Female) – The executor or executrix of an estate is the person named in the will to carry out its provisions. The executor or executrix then, is a person specified by the person making the will.

GOODS – §17-17-103 (3) defines goods to include chattels, merchandise, personal property, or commodities of any form or type, which may lawfully be kept or offered for sale.

CHATTELS – Chattels are moveable personal property such as furniture, automobiles and livestock. This excludes real estate.

COMMODITIES – Commodities may or may not be chattels and include valuable interest in agricultural products, silver, gold and other products customarily sold or traded in commercial markets.

MARKET VALUE – The market value is the price that a willing seller will take for goods and a willing buyer will give if neither buyer nor seller is under any compulsion or undue influence to buy or sell.

MORAL TURPITUDE – Intentional acts or behavior involving dishonest, wickedness, depravity or grave infringement of the good moral sentiment of the community.

RECIPROCITY – In the professional auctioneering context, reciprocity is the mutual recognition by two or more licensing agencies of the validity of the licenses issued by any of them. An auctioneer licensed in Arkansas, for example, will be granted a license in any state with which it has reciprocity simply by requesting the licensing and paying any necessary fees.

SPOUSE – A spouse is a husband or wife.

SAMPLE QUESTIONS

1. Mr. Sam Turner died last year leaving a will written by attorney John Grice and witnessed by Tom Turner and Mary Snelling. The will divided Sam's property equally among his three children and named the oldest child, Brenda Mahoney, to see that its provisions were carried out and the necessary business and legal arrangements completed. Who was (were) the executor/executrix of the estate?

- A) Sam Turner
- B) John Grice
- C) Tom Turner and Mary Snelling
- D) Brenda Mahoney
- E) All of the above

Discussion – The correct response is D. The definition of executor/executrix is the individual named in the will to administer the estate. If Brenda had died prior to the settlement of the estate, an administrator/administratrix would have been named by the court.

AUCTION PRACTICE AND PROFESSIONAL ETHICS

Perhaps the most important knowledge of a licensed auctioneer relates to professional ethics and general auction practice. As a result, the examination tests your basic knowledge in these areas. The following discussion does not cover every question that is asked on the examination, but it does give a brief explanation of the topics that are particularly confusing or that are particularly important.

ABSOLUTE AUCTIONS AND PROFESSIONAL ETHICS

- A) In normal auction practice, an auction is assumed to be “with reserve” unless otherwise stated.
- B) An auction can only be advertised as “absolute” when items are to be sold to the highest bona fide bidder – whatever the price may be. An auction advertised as “absolute” can have no reserve prices.
- C) Auction is without reserve. This means that after the auctioneer calls for bids on an article or lot, the article or lot cannot be withdrawn unless no bid is made within a reasonable time.
- D) In an auction “with reserve”, the owner or auctioneer may set a minimum price that will be accepted for an item. If the bidding does not go that high, then the item may be withdrawn at any point before the hammer falls.
- E) No auction shall be advertised as “absolute: nor shall any advertising contain the words “absolute auction” or the word “absolute: or words with similar meaning nor shall any licensee offer or sell any “goods” at “absolute auction” unless:
 - 1) There are no liens or encumbrances on the goods (excepting current tax obligations, easements or restrictions of record) in favor of any person, firm or corporation other than the seller, or unless each and every such holder of each and every such lien and encumbrance, by execution of the auction listing contract, or otherwise furnishing to the auctioneer written evidence of a binding commitment therefor, shall have agreed to the unqualified acceptance of the highest bid for the property, without regard to the amount of the highest bid or the identity of the high bidder; or, alternatively, that a financially responsible person, firm or corporation, by execution of the auction listing contract or by otherwise furnishing to the auctioneer written evidence of a binding commitment therefor, shall have absolutely guaranteed the forthwith and complete discharge and satisfaction of any and all such liens and encumbrances immediately after the sale, without regard to the amount of the highest bid received, or the identity of the high bidder.

- 2) There is the bona fide intent at the time of the advertising and at the time of the auction sale to transfer ownership of the goods, regardless of the amount of the highest and last bid, to the high bidder, such intent existing without reliance on any agreement that any particular bid or bid level must be made or be reached, below which level the goods would not be transferred to the high bidder.
- 3) The auction listing contract contains a binding requirement that the sale be conducted without reserve by specific inclusion of an acknowledgement by the seller that the seller, or anyone acting upon behalf of the seller, may not and shall not bid at the auction, or otherwise participate in the bidding process.

Compliance with this regulation shall not prohibit:

- 1) A secured party or other lien holder not the seller from bidding at the auction sale, providing that such bidding does not constitute, nor is it tantamount to the direct or indirect establishment or agreement to the establishment of a reserve price on the goods by the seller or by the auctioneer, or by anyone aiding or assisting, or acting upon behalf of, the seller or the auctioneer.
- 2) Any individual party to the dissolution of any marriage, partnership or corporation from bidding as an individual entity apart from the selling entity, on goods being sold at auction pursuant to such dissolution.
- 3) The inclusion of non-misleading advertising of certain goods to be sold at “absolute auction” and the non-misleading advertising of certain goods to be sold at auction with reserve, within the same advertisement, or for sale at the same date and place, providing said advertisement shall make clearly apparent, through equal or appropriate emphasis, which goods are being sold by each method.

ADVERTISING

Most auctioneers are responsible for seeing that an auction is advertised prior to its occurrence. The auctioneer must follow several rules when advertising:

- A) The party responsible for paying for the advertising should be identified in the auction listing contract.
- B) The auction must not be publicly advertised until the auction listing contract is signed.
- C) The advertising must include the auctioneer’s name and signify that he is an auctioneer.
- D) If an auction is advertised as absolute, all high bids must be accepted and ownership transferred.

ESCROW ACCOUNTS

An auctioneer is required to place any funds belonging to someone else in an account separate from his or her personal or business account. This separate account is called an escrow account and is required of auctioneers who handle the funds of others - § 17-17-308(4). Only one escrow account is required and money from several auctions may be placed in it at one time. Interest bearing accounts are not illegal provided that all of the parties agree to the disposition of the interest.

SELLING AN ITEM “AS IS”

When an auctioneer announces that he or she is selling an item “as is” it means that the auctioneer does not warrant the item’s authenticity or condition. This holds so long as the auctioneer or his or her assistants make no other comments about the item that could be perceived as promises about its authenticity or condition.

SAMPLE QUESTION

1. If two bidders think they have the final bid after the hammer falls, the auctioneer is required by law to reopen the bidding.

True False

Discussion – The correct answer is false. The auctioneer may choose one of several options. He may give the item to the bidder originally recognized as having the high bid, or reopen the bidding generally, or between two contending bidders.

MATHEMATICS

Every auctioneer must perform mathematical computations in the course of his or her business activities. As a result, the Auctioneer License Act of 1989 requires that a portion of the statewide examination deal with mathematics.

The test questions on the examination require the applicant to know the following:

- Basic addition, subtraction, multiplication and division
- Fractions and percentages
- Methods for determining profit and loss

Applicants should prepare using any good high school mathematics text that covers the areas shown above.

SAMPLE QUESTION

1. You have 1,216 bales of straw to sell. One bidder takes $\frac{1}{4}$ of the straw at \$.88 a bale, and the remainder sells at \$.78 a bale. How much did the straw bring?
A) \$ 802.56

- B) \$1,041.44
- C) \$1,021.46
- D) \$1,106.64
- E) None of the above

Discussion – The correct answer is E (None of the above). To get that answer you must first find how many bales of straw were sold at each price.

$$1,216 \times \frac{1}{4} = 304 \text{ bales}$$

If $\frac{1}{4}$ of the bales is 304, then you can subtract the 304 from the total number of bales to get the number that sold at \$.78 a bale.

$$1,216 - 304 = 912 \text{ bales}$$

If 304 bales sold at \$.88 ($304 \times \$.88$), the total is \$267.52

912 bales selling at \$.78 ($912 \times \$.78$) bring \$711.36

If you add the two amounts paid together (\$267.52 + \$711.36), you get \$978.88. Since this is not one of the choices given, the answer is E.

CONTRACTS

Every auctioneer enters into many contracts. To practice the profession effectively, you will need to be familiar with the basic requirements for a valid contract. You must also be familiar with the most frequently used auction contracts.

A contract is defined as a voluntary, legally enforceable agreement between two or more people. If an offer is made, there must be an acceptance of that offer, and there must be mutual agreement by the parties, or there is no contract.

The following elements are necessary for a contract to be valid:

- 1) The buyer and seller must be competent parties. They must generally be of legal age (18 in Arkansas), not intoxicated or mentally incompetent, and duly authorized to enter into a legal contract if acting for a partnership or corporation.
- 2) There must be an offer and acceptance. The contract must list all terms of the agreement and both parties must understand and agree to the terms.
- 3) The promises exchanged by the parties must also be based on a “good and valuable consideration”. A consideration does not have to be money, but it is generally something of value that is being exchanged for something specified in the contract.
- 4) The actions required by the contract and the purpose of the contract must be legal.
- 5) Certain kinds of contracts, including auction listing contracts, must be in writing. It must be signed by a spouse when marital rights must be released, and by all

coowners. They may be signed by an agent when one of the parties gives the agent written permission to sign in his or her behalf.

- 6) The contract must be dated.

When entering a contract, state the seller's name and the name he is doing business as, the address where the sale is to be located, and the time of day and date it is to be conducted. The contract should also state if the seller has any liens against the merchandise or property. Be sure to include your commission rate, who pays for advertising, if there are any reserves on the merchandise or property or if it is all selling regardless of price, and state who will collect bad checks. Both parties should sign the document.

Auction contracts come in many formats. Familiarize yourself with the contract forms, information to be included and the terms used.

SAMPLE QUESTION

1. In signing an auction contract, the auctioneer should state:

- A) The percentage of commission and any other applicable fees or charges
- B) The name of the business
- C) If it is selling with or without a reserve price
- D) All of the above

Discussion – The correct answer is D. All three of the items mentioned are important elements of the auction listing contract.

EXCERPTS FROM THE UNIFORM COMMERCIAL CODE

“BULK TRANSFERS”

- (1) A “bulk transfer” is any transfer in bulk and not in the ordinary course of the transferor’s business of a major part of the materials, supplies, merchandise or other inventory of any enterprise subject to this chapter.
- (2) A transfer of a substantial part of the equipment of such an enterprise is a bulk transfer if it is made in connection with a bulk transfer of inventory, but not otherwise.
- (3) The enterprises subject to this chapter are all those whose principal business is the sale of merchandise from stock, including those who manufacture what they sell.
- (4) Except as limited by the following section all bulk transfers of goods located within this state are subject to this chapter.

Uniform Commercial Code Comment

- (a) Much of the litigation under the existing laws has dealt with the kinds of businesses and the kinds of transfers covered. This section defines these matters.
- (b) The businesses covered are defined. Notice that they do not include farming nor contracting nor professional services, nor such things as cleaning shops, barber shops, pool halls, hotels, restaurants, and the like whose principal business is the sale not of merchandise but of services. While some bulk sales risk exists in the excluded businesses, they have in common the fact that unsecured credit is not commonly extended on the faith of a stock of merchandise.

“AUCTION SALES; AUCTIONEER”

- (1) A bulk transfer is subject to this chapter even though it is by sale at auction, but only in the manner and with the results stated in this section.
- (2) The transferor shall furnish a list of his creditors and assist in the preparation of a schedule of the property to be sold, both prepared as stated.
- (3) The person or persons other than the transferor who direct, control, or are responsible for the auction are collectively called the “auctioneer”. The auctioneer shall:
 - (a) receive and retain the list of creditors and prepare and retain the schedule of property for the period stated.
 - (b) give notice of the auction personally or by registered or certified mail at least ten (10) days before it occurs to all persons shown on the list of creditors and to all other persons who are known to him to hold or assert claims against the transferor; and
 - (c) assure that the net proceeds of the auction are applied as provided in this chapter.
- (4) Failure of the auctioneer to perform any of these duties does not affect the validity of the sale or the title of the purchasers, but if the auctioneer knows that the auction constitutes a bulk transfer such failure renders the auctioneer liable to the creditors of the transferor as a class for the sums owing to them from the transferor up to but not exceeding the net proceeds of the auction. If the auctioneer consists of several persons their liability is joint and several.

Uniform Commercial Code Comment

- (a) The section is intended to make appropriate application of the requirements of this Article to auction sales. It is clear that the provisions of the four previous sections in their literal form cannot be applied directly to an auction, since neither the price nor the identity of the purchaser or purchasers can be known until the sale occurs. But it is equally clear that if auctions were excluded entirely from the transfers covered by this Article the way would be open to a debtor to carry out a bulk transfer of his property without notice to his creditors and without any duty upon anyone to see to the application of the proceeds. The section attempts to meet this situation by imposing the obligations stated in the section upon the persons there described.
- (b) Since the obligation to give advance notice, etc., cannot rest upon bidders at an auction it is clear that the sale must be effective so far as they are concerned whether or not the section is complied with. The subsection therefore states a sanction which does not affect the purchasers. Notice that the sanction applies only "if the auctioneer knows that the auction constitutes a bulk transfer." No doubt in some cases, as for instance when goods are simply received on consignment for sale, he may not know.

"DECEPTIVE TRADE PRACTICES UNLAWFUL"

- (1) False, misleading or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.
- (2) The term "false, misleading, or deceptive acts or practices" includes, but is not limited to, the following acts:
 - (a) passing off goods or services as those of another;
 - (b) causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
 - (c) causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another;
 - (d) using deceptive representations or designations of geographic origin in connection with goods or services;
 - (e) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not;
 - (f) representing that goods are original or new if they are deteriorated, reconditioned, reclaimed, used or secondhand;

- (g) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
- (h) disparaging the goods, services, or business of another by false or misleading representation of facts;
- (i) advertising goods or services with intent not to sell them as advertised;
- (j) advertising goods or services with intent not to supply a reasonable expectable public demand, unless the advertisements disclosed a limitation of quantity;
- (k) making false or misleading statements of fact concerning the reasons for, existence of, or amount of price reductions;
- (l) representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law;
- (m) knowingly making false or misleading statements of fact concerning the need for parts, replacement, or repair service;
- (n) misrepresenting the authority of a salesman, representative or agent to negotiate the final terms of a consumer transaction;
- (o) basing a charge for the repair of any item in whole or in part on a guaranty or warranty instead of on the value of the actual repairs made or work to be performed on the item without stating separately the charges for the work and the charge for the warranty or guaranty, if any;
- (p) disconnecting, turning back, or resetting the odometer of any motor vehicle so as to reduce the number of miles indicated on the odometer gauge;
- (q) advertising of any sale by fraudulently representing that a person is going out of business;
- (r) using or employing a chair referral sales plan in connection with the sale or offer to sell of goods, merchandise, or anything of value, which uses the sales technique, plan, arrangement, or agreement in which the buyer or prospective buyer is offered the opportunity to purchase merchandise or goods and in connection with the purchase receives the seller's promise or representation that the buyer shall have the right to receive compensation or consideration in any form for furnishing to the seller the names of other prospective buyers if receipt of the compensation or consideration is contingent upon the occurrence of any event subsequent to the time the buyer purchases the merchandise or goods;
- (s) representing that guarantee or warranty confers or involves rights or remedies which it does not have or involve, provided, however, that nothing in this subchapter shall be

construed to expand the implied warranty of merchantability as defined in sections of the Business & Commerce Code to involve obligations in excess of those which are appropriate to the goods;

- (t) selling or offering to sell, either directly or associated with the sale of goods or services, a right of participation in a multi-level distributorship. As used herein, “multi-level distributorship” means a sales plan for the distribution of goods or services in which promises of rebate or payment are made to individuals, conditioned upon those individuals recommending or securing additional individuals to assume positions in the sales operation, and where the rebate or payment is not exclusively conditioned on or in relation to proceeds from the retail sales of goods; or
- (u) representing that work or services have been performed on, or parts replaced in, goods when the work or services were not performed or the parts not replaced.

“SALE BY AUCTION”

- (1) In a sale by auction, if goods are put up in lots, each lot is the subject of a separate sale.
- (2) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling
- (3) Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve, the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for a bid on an article or lot that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his bid until the auctioneer’s announcement of completion of the sale, but a bidder’s retraction does not revive any previous bid.
- (4) If the auctioneer knowingly receives a bid on the seller’s behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at his option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale.

Uniform Commercial Code Comment

- (a) The auctioneer may in his discretion either reopen the bidding or close the sale on the bid on which the hammer was falling when a bid is made at that moment. The recognition of a bid of this kind by the auctioneer in his discretion does not mean a closing in favor of such a bidder, but only that the bid has been accepted as a continuation of the bidding. If recognized, such a bid discharges the bid on which the hammer was falling when it was made.
- (b) An auction “with reserve” is the normal procedure. The crucial point, however, for determining the nature of an auction is the “putting up” of the goods. This Article accepts the view that the goods may be withdrawn before they are actually “put up” regardless of whether

the auction is advertised as one without reserve, without liability on the part of the auction announcer to persons who are present. This is subject to any peculiar facts, which might bring the case within the “firm offer” principle of this Article, but an offer to persons generally would require unmistakable language in order to fall within that section. The prior announcement of the nature of the auction either as with reserve or without reserve will, however, enter as an “explicit term” in the “putting up” of the goods and conduct thereafter must be governed accordingly. The present section continues the prior rule permitting withdrawal of bids in auctions both with and without reserve; and the rule is made explicit that the retraction of a bid does not revive a prior bid.

BIDDING

After an auction begins, the auctioneer is responsible for seeing that it is properly conducted. The seller has given him or her that authority. A well-managed auction is always marked by proper bid procedures.

- A) Highest bidder to be purchaser. The buyer is the highest bidder for each lot, and in case of a dispute concerning the bidding (or between two or more bidders) the lot disputed shall be immediately put up again (at the last undisputed bid) and resold.
- B) Auctioneer may refuse bid. The auctioneer may refuse any bid without giving a reason for refusal.
- C) Retraction of bids. Each bidder may retract his bid until the auctioneer announces the completion of a sale. However, if a bidder does retract his bid, the previous bid is not revived and no sale is complete. The auctioneer may, in his judgment, then refuse to put up again the item for sale.

The following questions about bidding are among the most often asked by beginning auctioneers:

QUESTION 1: If the high bidder doesn’t want an item, can it be resold?

ANSWER: Yes, if both buyer and seller agree.

QUESTION 2: What should be done if a bid is made as the hammer falls?

ANSWER: The auctioneer decides what to do. He may reopen the bidding to all, reopen the bidding between the two final bidders, or accept the bid made prior to the hammer’s fall.

QUESTION 3: When may the bidder retract his or her bid?

ANSWER: A bidder may legally retract a bid anytime before the hammer falls. The sale is considered complete when the auctioneer declares the item sold. In real estate auctions, however, the agreement between buyer and seller is not valid until the purchase and sales contract is reduced to writing.

QUESTION 4: Is the auctioneer required to accept any and all bids?

ANSWER: No, the auctioneer may reject certain bids. Bids may be rejected that are trifling advances over the preceding bid, or the auctioneer may refuse bids from someone who is inebriated, mentally incompetent, or a minor.

QUESTION 5: Is it always unethical for a seller to bid on his or her own property?

ANSWER: No, sellers generally may bid on their own property if the fact that they are doing so has been announced prior to the auction. They may not generally do so otherwise. Partners in a business or divorce settlement may always bid.

BID CALLING

Bid calling at auction requires professional communication skills as to

- A) Inform audience of terms and conditions of sale.
- B) Properly represent property to be sold.
- C) Convey the bid asking price as well as the bid received to members of his or her audience.
- D) Sell property at a pace as to create competition between bidders.
- E) Control audience as to maintain attention of buyers.
- F) Convey to audience when property is sold, to whom property is sold and for what price.
- G) Convey to audience when property is not sold in compliance with reserve conditions of sale.
- H) Maintain control of support staff while sale is in progress such as
 - a) Ring workers' assistance in displaying property and identifying bids.
 - b) Clerk's recording of sale to ensure that buyer and sale lot number are properly recorded.
- I) Exercise other sale management responsibilities to the extent assumed under a written agreement.

AUCTION OPENING STATEMENT

The opening statement of an auction should contain the following information:

- 1) Welcome everyone to the auction.
- 2) Introduce yourself as well as your crew - members.

- 3) Explain to your customers the reason for the sale and if the sale is forced or voluntary. You may or may not wish to introduce the seller.
- 4) Explain the terms of purchases and if it is free and clear of all liens, debts and encumbrances.
- 5) Let the customers know if the items for sale are as is, where is, or if there is any type of guarantee.
- 6) Explain on purchases made whether they are to be paid in cash, cashier's check, check, credit card, or by whatever means of payment; when payment is to be made on purchases; and if there is a buyer's premium.
- 7) Explain when they may remove purchased items, and if there are any specific rules in removing those items.

BID CALLING EXAMINATION

A person desiring to obtain an auctioneer license must do the bid calling examination, which will immediately follow the written examination.

A person desiring to obtain an auction house license is not required to do the bid calling examination.

Chapter 17.
Auctioneers.

Subchapter 1. General Provisions.

17-17-101. Title.

17-17-102. Legislative intent.

17-17-103. Definitions.

17-17-104. Applicability - Exception.

17-17-105. License required - Penalty for violation.

17-17-106. Actions by auctioneers.

17-17-107. Municipal taxes. 17-17-108

17-17-111. [Repealed.]

17-17-112. Written contract.

17-17-113. Injunction.

17-17-114. Civil penalty.

17-17-115. Inspection - Cease and desist.

Subchapter 2. Auctioneer's Licensing Board.

17-17-201. Creation - Members.

17-17-202. Organization.

17-17-203. Employees - Supplies.

17-17-204. Secretary-treasurer - Disposition of funds.

17-17-205. Finances - Educational programs.

17-17-206. List of licensees.

17-17-207. Rules and regulations.

[17-17-208. Proceedings.](#)

[17-17-209. Seal - Records.](#)

Subchapter 3. Licensing.

[17-17-301. Qualifications - Examination.](#)

[17-17-302. Issuance and renewal - Change of location.](#)

[17-17-303. \[Repealed.\]](#)

[17-17-304. Nonresidents - Licensing generally.](#)

[17-17-305. Nonresidents - Reciprocity.](#)

[17-17-306. Nonresidents - Actions against.](#)

[17-17-307. Auction owners.](#)

[17-17-308. Suspension or revocation.](#)

[17-17-309. Investigation by board.](#)

[17-17-310. Advertisements.](#)

[17-17-311. Continuing education.](#)

[17-17-312. Criminal background checks.](#)

Subchapter 4. Auctioneer Education and Recovery Fund.

[17-17-401. Auctioneer Education and Recovery Fund.](#)

[17-17-402. Applicability.](#)

[17-17-403. Construction.](#)

[17-17-404. Additional fee.](#)

[17-17-405. Disciplinary hearing - Recovery procedure.](#)

[17-17-406. Education.](#)

[17-17-407. Jurisdiction.](#)

17-17-408. Appeal.

17-17-409. Subrogation - Suspension of license.

Chapter 17. Auctioneers.

Subchapter 1. General Provisions

17-17-101. Title.

This chapter shall be known and cited as the "Auctioneer's Licensing Act".

History. Acts 1989, No. 266, § 2.

17-17-102. Legislative intent.

It is hereby found and determined by the General Assembly that the current law pertaining to auctioneers is out of date and is not being enforced, there is no administrative agency to enforce the laws pertaining to auctioneers, Arkansas does not have the ability, without legislation, to enter into reciprocal agreements with other states to allow the persons licensed as auctioneers in Arkansas to engage in the business of auctioneering in other states, auctioneers are not required to establish an escrow account to handle money belonging to others, and without legislation the level of professionalism desired by auctioneers cannot be attained. Therefore, it is the purpose of this chapter to establish a board to license and regulate auctioneers, other than livestock auction barn auctioneers and auctioneers conducting certain kinds of auctions.

History. Acts 1989, No. 266, § 1.

17-17-103. Definitions.

As used in this chapter, unless the context otherwise requires:

- (1) "Auctioneer" means any person who, for a fee, commission, or any other valuable consideration, or with the intention or expectation of receiving the same, by the means of, or process of, an auction or sale at auction, offers, negotiates, or attempts to negotiate, a listing contract, sale, purchase, or exchange of goods, chattels, merchandise, or personal property, or of any other commodity which may lawfully be kept or offered for sale by or at public auction;
- (2) "Board" means the Auctioneer's Licensing Board;
- (3) "Goods" means any chattels, goods, merchandise, or personal property, or commodities of any form or type which may be lawfully kept or offered for sale;
- (4) "Livestock auction barn" means a place where livestock is sold on a regular basis to the public;

- (5) "Livestock auction barn auctioneer" means an auctioneer who is solely engaged in the selling of livestock on a regular basis at one (1) or more locations; and
- (6) "Persons" includes individuals, associations, partnerships, and corporations, and the word "persons" shall also include the officers, directors, and employees of a corporation.

History. Acts 1989, No. 266, § 3.

17-17-104. Applicability - Exception.

- (a) This chapter does not apply to:
 - (1) Sales at an auction conducted by or under the direction of a public authority or pursuant to a judicial order or decree or to a sale by law required to be at auction;
 - (2) An auction conducted by or for a nonprofit organization;
 - (3) An individual who offers his or her own goods for auction;
 - (4) A livestock auction barn auctioneer; or
 - (5) An auction conducted over the Internet by means of a website dedicated primarily to conducting auctions.
- (b)(1) An auctioneer may work for an auction company that is licensed in the State of Arkansas in an emergency for a period of ninety (90) days.
 - (2) During the ninety-day period, the auctioneer shall make application and pay fees for the next testing date.
 - (3) After the ninety-day period, the auctioneer shall meet all of the provisions of this chapter.

History. Acts 1989, No. 266, § 4; 2009, No. 183, § 1.

17-17-105. License required - Penalty for violation.

- (a) On and after July 1, 1989, it shall be unlawful for any person to act as an auctioneer or to advertise or to assume to act as either within this state without a license issued by the Auctioneer's Licensing Board.

(b) Any person who violates subsection (a) of this section shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), or by imprisonment for a term not to exceed ninety (90) days, or both.

History. Acts 1989, No. 266, §§ 4, 19.

17-17-106. Actions by auctioneers.

No person engaged in the business of or acting in the capacity of an auctioneer shall bring or maintain any action in the courts of the State of Arkansas for the collection of compensation for any services permitted as an auctioneer without first alleging and proving that he or she was operating legally under the provisions of this chapter and was a duly licensed auctioneer at the time the alleged cause of action arose.

History. Acts 1989, No. 266, § 15.

17-17-107. Municipal taxes.

No person following for a livelihood the profession of an auctioneer shall be taxed or made liable to pay any municipal or other corporation tax or license fee for the privilege of following or carrying on the profession by a municipality unless that person maintains a business office within that municipality.

History. Acts 1989, No. 266, § 18.

17-17-108. [Repealed.]

Repealed.

17-17-109. [Repealed.]

Repealed.

17-17-110. [Repealed.]

Repealed.

17-17-111. [Repealed.]

Repealed.

17-17-112. Written contract.

(a) An auctioneer may not sell the property of another at auction without a prior written contract with the seller which sets forth the terms and conditions upon which the auctioneer will sell the property. The licensee must retain a copy of each contract for at least three (3) years after the auction.

(b) The Auctioneer's Licensing Board is authorized to prescribe by regulations the minimum requirements which must be included in a written contract.

History. Acts 1999, No. 1333, § 1.

17-17-113. Injunction.

(a) Whenever there is reason to believe that any person, licensed or unlicensed, has violated any provision of this chapter or any order, license, decision, demand, or requirement issued or made pursuant to this chapter, the Auctioneer's Licensing Board or its authorized representative may bring an action in the circuit court of any county in which the person resides or does business to enjoin such a person from continuing such a violation or engaging therein or doing any act or acts in furtherance thereof.

(b) Whenever there is any action brought pursuant to this section, the circuit court shall have jurisdiction and authority to enter a preliminary or final injunction or such other relief as may be appropriate.

History. Acts 1999, No. 1333, § 2.

17-17-114. Civil penalty.

(a)(1) Whenever the Auctioneer's Licensing Board finds that the holder of a license issued by the board is guilty of a violation of the rules of the board or the laws of the State of Arkansas pertaining to any occupation, profession, or business licensed or regulated by the board, it shall have the power and authority to impose a civil penalty and suspension or revocation of the license.

(2) Upon imposition of a civil penalty, the board shall have the power and authority to require that the licensee pay a penalty to the board in regard to the violation with the sanction that the license may be suspended until the penalty is paid.

(3) Before the imposition of any penalty, the board shall hold an investigation and hearing after notice to a licensee or his or her attorney. The penalty may be imposed only if the board formally finds that the public health, safety, welfare, and morals would not be impaired thereby and that payment of the penalty will achieve the desired disciplinary result.

- (b) No penalty imposed by the board may exceed a total of one thousand dollars (\$1,000). The power and authority of the board to impose these penalties shall not be affected by any other civil or criminal proceeding concerning the same violation.
- (c) If any person upon whom the board has levied a civil penalty fails to pay the civil penalty within sixty (60) days of the board's decision to impose the penalty, the amount of the fine shall be considered to be a debt owed to the board and may be collected by civil action by the board.
- (d) Any person penalized by the board under this chapter may appeal any order of the board in the manner now provided by law.
- (e) In addition to any other sanctions authorized by this chapter, the board may impose a civil penalty as provided in this section against any unlicensed person, firm, or corporation practicing or offering to practice any actions requiring licensure pursuant to the provisions of this chapter.
- (f) The board is authorized to promulgate regulations to implement the provisions of this chapter.

History. Acts 1999, No. 1333, § 3; 2003, No. 1748, § 1.

17-17-115. Inspection - Cease and desist.

- (a) Subsequent to five (5) days after proof of receipt of certified mail by the alleged offending auctioneer or auction house of any alleged violation or violations, the Auctioneer's Licensing Board or its authorized representative may enter the premises of any auction or auction house for the purpose of examining the license of an auctioneer or auction house, or both.
- (b) Should the board or its authorized representative find that an unlicensed auctioneer or auction house, or both, is practicing or offering to practice any actions requiring a license pursuant to the provisions of this chapter, the board or its authorized representative has the authority to demand that such unlicensed activity cease and desist immediately.
- (c) Any auctioneer or auction house, or both, refusing to allow the board or its authorized representative to inspect the premises of an auction or auction house for the purpose of examining the license of the auctioneer or auction house, or both, may be subject to a civil penalty.
- (d) Any unlicensed auctioneer or auction house, or both, found to be practicing or offering to practice any actions requiring a license pursuant to the provisions of this

chapter who refuses to cease and desist such unlicensed activity upon the request of the board or its authorized representative will be subject to criminal or civil penalties, or both.

History. Acts 1999, No. 1333, § 4.

Subchapter 2. Auctioneer's Licensing Board

17-17-201. Creation - Members.

- (a) There is hereby created the Auctioneer's Licensing Board. The Governor shall appoint a board consisting of seven (7) members, four (4) of whom are licensed auctioneers and three (3) from the public at large, each of whom immediately prior to the date of his or her appointment has been a resident of the State of Arkansas for five (5) years.
- (b) The four (4) members who are auctioneers shall have been auctioneers for at least five (5) years.
- (c) Each member shall serve until his or her successor is appointed and qualified. All successor members shall serve terms of four (4) years and until their successors are elected and qualified.
- (d) Vacancies shall be filled by appointment of the Governor for the unexpired term.
- (e) Each member of the board may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 1989, No. 266, § 6; 1997, No. 250, § 125.

17-17-202. Organization.

- (a) The Auctioneer's Licensing Board, immediately upon qualification of the member appointed in each year, shall organize by selecting from its members a chair.
- (b) A quorum of the board shall be four (4) members.

History. Acts 1989, No. 266, § 6.

17-17-203. Employees - Supplies.

- (a) The Auctioneer's Licensing Board shall have full authority to employ, and discharge, a secretary who shall also be the treasurer, and such other personnel as may be necessary to administer and enforce the provisions of this chapter.

(b) The board shall obtain office space, furniture, stationery, and other proper supplies and conveniences reasonably necessary to carry out the provisions of this chapter.

History. Acts 1989, No. 266, § 6.

17-17-204. Secretary-treasurer - Disposition of funds.

(a) All fees, charges, and penalties collected by the Auctioneer's Licensing Board under the provisions of this chapter shall be paid to the Secretary-treasurer of the Auctioneer's Licensing Board, who shall be the custodian of all funds and shall deposit them in a bank or banks to be designated by the board.

(b) The secretary-treasurer shall execute a bond in an amount determined by the State Risk Manager pursuant to the self-insured fidelity program as authorized in § 21-2-701 et seq.

(c)(1) The secretary-treasurer shall pay funds of the board only on vouchers signed by himself or herself and countersigned by the Chair of the Auctioneer's Licensing Board.

(2) The total expenses for all purposes and obligations of the board shall not exceed the total fees, charges, penalties, and other funds paid to the board under the provisions of this chapter.

(d) The secretary-treasurer shall make semiannual financial reports in detail to the board not later than January 30 and July 30 of each year, which will be kept on permanent file by the board.

History. Acts 1989, No. 266, § 6; 1999, No. 1333, §§ 5, 6.

17-17-205. Finances - Educational programs.

The Auctioneer's Licensing Board shall be financially self-sustaining, and, if funds permit, it may underwrite, within its financial limitations, educational programs for the enlightenment and benefit of the public and all auctioneers licensed under this chapter.

History. Acts 1989, No. 266, § 6.

17-17-206. List of licensees.

The Auctioneer's Licensing Board shall annually publish a list of the names and addresses of all auctioneers licensed by it pursuant to this chapter. This list shall contain

the names of all persons whose licenses have been suspended or revoked within the preceding year as well as any other information relative to the enforcement of the provisions of this chapter that the board may deem of interest to the public.

History. Acts 1989, No. 266, § 6.

17-17-207. Rules and regulations.

The Auctioneer's Licensing Board shall have the authority to promulgate such rules and regulations as may be necessary to implement this chapter and may establish by regulation such forms as may be necessary to administer this chapter.

History. Acts 1989, No. 266, § 6.

17-17-208. Proceedings.

The Auctioneer's Licensing Board shall be subject to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1989, No. 266, § 13.

17-17-209. Seal - Records.

(a) The Auctioneer's Licensing Board shall adopt a seal by which it shall authenticate its proceedings.

(b) Copies of all records and papers in the office of the board, duly certified and authenticated by the seal of the board, shall be received in evidence in all courts equally and with like effect as the original.

(c) All records kept in the office of the board under the authority of this chapter shall be open to public inspection under such rules and regulations as shall be prescribed by the board.

History. Acts 1989, No. 266, § 14.

Subchapter 3. Licensing

17-17-301. Qualifications - Examination.

(a) Auctioneer licenses shall be granted only to persons who are found to be of good reputation, trustworthy, and competent to transact the business of an auctioneer, in such a manner as to safeguard the interest of the public.

(b) The Auctioneer's Licensing Board is authorized to require information from every applicant to determine the applicant's honesty and truthfulness.

(c)(1) In addition to proof of honesty, truthfulness, and good reputation, an examination conducted by the board or its authorized representatives shall be held four (4) times each year, and an examination fee of one hundred dollars (\$100) shall be collected from each applicant to defray the expenses of the examination.

(2) The examination shall include questions on ethics, reading, writing, spelling, elementary arithmetic, and a general knowledge of the laws of Arkansas and the Arkansas Code, including, but not limited to, contracts of sale, agency, leases, auctions brokerage, and the provisions of the Uniform Commercial Code, § 4-1-101 et seq.

(d) In addition to the other qualifications provided for by this chapter, every applicant for an auctioneer's license shall be at least eighteen (18) years of age. Every application for a license shall be submitted on forms prepared by the board.

History. Acts 1989, No. 266, § 7; 1993, No. 1219, § 3; 2003, No. 1748, § 2.

17-17-302. Issuance and renewal - Change of location.

(a)(1) An examination shall not be required for the renewal of any present or future license unless the license has been revoked. In this case, the applicant shall take and pass the written examination offered by the Auctioneer's Licensing Board before a new license may be issued.

(2) Licensed auctioneers have a one-hundred-twenty-day grace period beyond a renewal date to renew a license.

(3)(A) Penalty for late renewals beyond the one-hundred-twenty-day grace period shall be two (2) times the sum of a normal license renewal fee.

(B)(i) The board shall notify a licensee of the penalty in subdivision (a)(3)(A) of this section by first class mail.

(ii) If a licensee does not renew his or her license within thirty (30) days after the notice in subdivision (a)(3)(B)(i) of this section is mailed, the board shall send a second notice by certified mail.

(b)(1)(A) The issuance fee for each auctioneer's license shall be one hundred dollars (\$100).

(B) The annual renewal fee for each license shall be one hundred dollars (\$100).

(C) All licenses shall expire on June 30 of each year.

(2) In the absence of a reason or condition that might warrant the refusal of the renewing of the license and upon receipt of the written request of the applicant and the applicant's annual fee, the board shall issue a new license each ensuing year.

(c) The board shall prepare and deliver to each licensee a license certificate and pocket card.

(d)(1) Notice in writing shall be given to the board by each licensee of any change of business location within thirty (30) days after any change in location, and at that time the board shall issue a new license for the unexpired period.

(2) A change of business location shall automatically cancel the license previously issued.

(3) Changing a business location and issuance of a new license shall entitle the board to collect five dollars (\$5.00).

History. Acts 1989, No. 266, § 8; 2003, No. 1748, § 3; 2009, No. 773, § 1.

17-17-303. [Repealed.]

Repealed.

17-17-304. Nonresidents - Licensing generally.

(a) A nonresident of this state may become a licensed auctioneer in this state by registering with the Auctioneer's Licensing Board and confirming in writing that his or her actions will be regulated by this chapter and other applicable laws of this state as stated in this section and §§ 17-17-305 and 17-17-306.

(b)(1) In every instance the nonresident must pay the issuance fee, the annual renewal fee, and the Auctioneer Education and Recovery Fund fee.

(2)(A) No person who is not a resident of this state shall conduct any livestock auction in this state unless bonded for at least fifty thousand dollars (\$50,000) by a surety licensed to do business in this state by the Insurance Commissioner.

(B) A violation of this section shall constitute a Class A misdemeanor.

History. Acts 1985, No. 477, § 1; Acts 1989, No. 266, § 10; 1999, No. 227, § 2.

A.S.A. 1947, § 71-413.

17-17-305. Nonresidents - Reciprocity.

(a) A person holding a license to engage in auctions issued to him or her by a proper authority of a state, territory, or possession of the United States of America or the District of Columbia having licensing requirements comparable to Arkansas and who in the opinion of the Auctioneer's Licensing Board otherwise meets the requirements of this chapter may upon application be licensed without further examination.

(b)(1) Nothing in this section and §§ 17-17-304 and 17-17-306 shall prevent the conducting of any auction in this state by any nonresident auctioneer if such an auctioneer is duly licensed by the state of his or her residence and that state, through reciprocity, permits a resident of this state who is an auctioneer duly licensed to conduct auctions in this state to conduct auctions in the other state without being required to obtain a license in the other state.

(2) The license fee applicable to a nonresident auctioneer from another state which does not permit an auctioneer who is a resident of this state and who is duly licensed in this state to conduct auctions in the other state without being required to obtain a license in the other state shall be of the same amount that the other state charges auctioneers who are residents of this state and who are duly licensed in this state to obtain a license to conduct an auction in the other state.

(c) Notwithstanding any other provision of law to the contrary, no person duly licensed as an auctioneer in any other state and temporarily present in this state shall conduct an auction in this state unless he or she acts in association with an auctioneer duly licensed in this state if the state in which the nonresident auctioneer is licensed requires such an association with an auctioneer licensed in that state before an auctioneer duly licensed in Arkansas may conduct an auction in that state.

History. Acts 1989, No. 266, § 10; 1991, No. 786, § 22.

17-17-306. Nonresidents - Actions against.

In addition, every nonresident applicant shall file an irrevocable consent that actions may be commenced against the applicant in any court of competent jurisdiction in the State of Arkansas, by the service of any summons, process, or pleading authorized by the law on the secretary of the Auctioneer's Licensing Board. The consent shall stipulate and agree that the service of the process, summons, or pleading on the secretary shall be taken and held in all courts to be as valid and binding as if actual service had been made upon

the applicant in Arkansas. In case any summons, process, or pleading is served upon the secretary of the board, it shall be by duplicate copies, one (1) of which shall be retained in the office of the board, and the other immediately forwarded by registered mail to the last known business address of the applicant against whom the summons, process, or pleading may be directed.

History. Acts 1989, No. 266, § 10.

17-17-307. Auction owners.

- (a) If an auction owner is one other than the principal auctioneer, the auction owner shall apply for a license and meet all the provisions of this chapter.
- (b) When the owner of an auction company or the designated person of a corporation and the auctioneer are one and the same, only one (1) license shall be required.

History. Acts 1989, No. 266, § 16.

17-17-308. Suspension or revocation.

The Auctioneer's Licensing Board may impose a civil penalty or suspend or revoke the license of an auctioneer for any of the following causes:

- (1) Obtaining a license through false or fraudulent representation;
- (2) Pursuing a continued and flagrant course of misrepresentation or making false promises through agents or advertising or otherwise;
- (3) Failing to account for or remit within a reasonable time any money belonging to others that comes into his or her possession;
- (4) Commingling funds of others with his or her own or failing to keep the funds of others in an escrow or trustee account;
- (5) Paying valuable consideration to any person for services performed in violation of this chapter;
- (6) Being convicted of a criminal offense involving moral turpitude or a felony in a court of competent jurisdiction of this or any other jurisdiction;
- (7) Willfully violating a rule or regulation promulgated by the board;

- (8) Failing to enter into a written contract with the seller and to furnish voluntarily to the seller at the time of execution copies of all written instruments prepared by the auctioneer, including the contract;
- (9) Any conduct of an auctioneer that demonstrates bad faith, dishonesty, incompetency, untruthfulness, or deceptive practices;
- (10) Any other conduct that constitutes improper, fraudulent, or dishonest dealings, including falsely accusing any auctioneer or auction house;
- (11) Failing to complete or submit the continuing education requirements as specified by this chapter and the rules and regulations adopted by the board; or
- (12) Failing to disclose the buyer's premium in all advertising associated with an auction.

History. Acts 1989, No. 266, § 11; 1999, No. 1333, § 7; 1999, No. 1506, § 2; 2001, No. 1258, § 1; 2003, No. 1748, § 4.

17-17-309. Investigation by board.

The Auctioneer's Licensing Board may, upon its own motion, and shall, upon the verified written complaint of any person, investigate the actions of any auctioneer or any person who assumes to act in that capacity, if the complaint, or complaint together with other evidence presented in connection with it if true, would be a violation of this chapter.

History. Acts 1989, No. 266, § 12.

17-17-310. Advertisements.

Each and every advertisement by an auctioneer or consignment auction house shall include the number of the license issued to the auctioneer or auction company by the Auctioneer's Licensing Board.

History. Acts 1989, No. 266, § 17.

17-17-311. Continuing education.

- (a) Except as provided in subsection (c) of this section, every application to the Auctioneer's Licensing Board for annual renewal of the license of an auctioneer shall be accompanied by proof that the applicant has satisfactorily completed six (6) hours of continuing education in approved programs within the preceding twelve-month period.

No auctioneer's license shall be renewed unless the application for renewal is accompanied by the proof required in this section.

(b) All programs of continuing education for licensed auctioneers shall be subject to approval of the board. The board is authorized to prescribe by regulations the minimum standards and requirements for continuing education programs for auctioneers, the procedures and policies for administering such programs, and the manner and conditions under which credit will be granted for participation in such programs.

(c) The continuing education requirements of this section shall not be applicable to any person who has been licensed as an auctioneer or auction house owner or operator by the board for a period of ten (10) consecutive years or more and who is at least fifty-five (55) years of age.

History. Acts 1999, No. 1506, § 1; 2001, No. 1754, § 1.

17-17-312. Criminal background checks.

- (a) Beginning July 16, 2003, each first-time applicant for a license issued by the Auctioneer's Licensing Board and each applicant seeking reinstatement of an expired license from the board shall be required to apply to the Identification Bureau of the Department of Arkansas State Police for a state and national criminal background check to be conducted by the Federal Bureau of Investigation.
- (b) The check shall conform to the applicable federal standards and shall include the taking of fingerprints.
- (c) The applicant shall sign a release of information to the board and shall be responsible to the Department of Arkansas State Police for the payment of any fee associated with the criminal background check.
- (d) Upon completion of the criminal background check, the Identification Bureau of the Department of Arkansas State Police shall forward to the board all information obtained concerning the applicant in the commission of any offense listed in subsection (f) of this section.
- (e) At the conclusion of any background check required by this section, the Identification Bureau of the Department of Arkansas State Police shall promptly destroy the fingerprint card of the applicant.
- (f) No person shall be eligible to receive or hold a license issued by the board if that person has pleaded guilty or nolo contendere to, or been found guilty of, any of the

following offenses by any court in the State of Arkansas or of any similar offense by a court in another state or of any similar offense by a federal court:

- (1) Capital murder, as prohibited in § 5-10-101;
- (2) Murder in the first degree and second degree, as prohibited in §§ 5-10-102 and 5-10-103;
- (3) Manslaughter, as prohibited in § 5-10-104;
- (4) Negligent homicide, as prohibited in § 5-10-105;
- (5) Kidnapping, as prohibited in § 5-11-102;
- (6) False imprisonment in the first degree, as prohibited in § 5-11-103;
- (7) Permanent detention or restraint, as prohibited in § 5-11-106;
- (8) Robbery, as prohibited in § 5-12-102;
- (9) Aggravated robbery, as prohibited in § 5-12-103;
- (10) Battery in the first degree, as prohibited in § 5-13-201;
- (11) Aggravated assault, as prohibited in § 5-13-204;
- (12) Introduction of a controlled substance into the body of another person, as prohibited in § 5-13-210;
- (13) Terroristic threatening in the first degree, as prohibited in § 5-13-301;
- (14) Rape, as prohibited in § 5-14-103;
- (15) Sexual indecency with a child, as prohibited in § 5-14-110;
- (16) Sexual assault in the first degree, second degree, third degree, and fourth degree, as prohibited in §§ 5-14-124 - 5-14-127;
- (17) Incest, as prohibited in § 5-26-202;
- (18) Offenses against the family, as prohibited in §§ 5-26-303 - 5-26-306;

- (19) Endangering the welfare of an incompetent person in the first degree, as prohibited in § 5-27-201;
 - (20) Endangering the welfare of a minor in the first degree, as prohibited in § 5-27-203;
 - (21) Permitting the abuse of a child, as prohibited in § 5-27-221(a)(1) and (3);
 - (22) Engaging children in sexually explicit conduct for use in visual or print media, transportation of minors for prohibited sexual conduct, pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, or use of a child or consent to use of a child in a sexual performance by producing, directing, or promoting a sexual performance by a child, as prohibited in §§ 5-27-303 - 5-27-305, 5-27-402, and 527-403;
 - (23) Felony adult abuse, as prohibited in § 5-28-103;
 - (24) Theft of property, as prohibited in § 5-36-103;
 - (25) Theft by receiving, as prohibited in § 5-36-106;
 - (26) Arson, as prohibited in § 5-38-301;
 - (27) Burglary, as prohibited in § 5-39-201;
 - (28) Felony violation of the Uniform Controlled Substances Act, §§ 5-64-101 - 5-64-608, as prohibited in § 5-64-401;
 - (29) Promotion of prostitution in the first degree, as prohibited in § 5-70-104;
 - (30) Stalking, as prohibited in § 5-71-229; and
 - (31) Criminal attempt, criminal complicity, criminal solicitation, or criminal conspiracy, as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401, to commit any of the offenses listed in this subsection.
- (g)(1) The provisions of subsection (f) of this section may be waived by the board upon the request of:
- (A) An affected applicant for licensure; or
 - (B) The person holding a license subject to revocation.
- (2) Circumstances for which a waiver may be granted shall include, but not be limited to, the following:

- (A) The age at which the crime was committed;
- (B) The circumstances surrounding the crime;
- (C) The length of time since the crime;
- (D) Subsequent work history;
- (E) Employment references; and
- (F) Character references.

(h)(1) Any information received by the board from the Identification Bureau of the Department of Arkansas State Police under this section shall not be available for examination except by the:

- (A) Affected applicant for licensure, or his or her authorized representative; or
 - (B) Person whose license is subject to revocation, or his or her authorized representative.
- (2) No record, file, or document shall be removed from the custody of the Department of Arkansas State Police.
- (i) Any information made available to the affected applicant for licensure or to the person whose license is subject to revocation shall be information pertaining to that person only.
 - (j) Rights of privilege and confidentiality established under this section shall not extend to any document created for purposes other than this background check.
 - (k) The board shall adopt the necessary rules and regulations to fully implement the provisions of this section.

History. Acts 2003, No. 834, § 1.

Subchapter 4. Auctioneer Education and Recovery Fund

17-17-401. Auctioneer Education and Recovery Fund.

- (a) The Auctioneer's Licensing Board shall establish a separate high interest bearing account in a bank located in this state. The account shall be referred to as the "Auctioneer Education and Recovery Fund" and shall only be used for education and recovery purposes as detailed in this chapter.

(b) The fees collected under § 17-17-404 shall be deposited into the Auctioneer Education and Recovery Fund.

History. Acts 1999, No. 227, § 3.

17-17-402. Applicability.

The provisions of this subchapter shall apply only to:

- (1) Auctioneers who were licensed at the time of the occurrence of the acts or violations complained of; and
- (2) Acts or violations which occur after December 31, 1999.

History. Acts 1999, No. 227, § 3.

17-17-403. Construction.

Nothing in this subchapter shall be construed to limit or restrict in any manner other civil or criminal remedies which may be available to any person.

History. Acts 1999, No. 227, § 3.

17-17-404. Additional fee.

(a) Except as provided in subsection (b) of this section, each auctioneer shall pay to the Auctioneer's Licensing Board at the time of initial licensure and at each annual renewal a fee as the board may require, not to exceed one hundred dollars (\$100). This fee shall be in addition to the other fees provided for in this chapter.

(b) When the balance in the Auctioneer Education and Recovery Fund reaches one hundred eighty thousand dollars (\$180,000), the fee shall be suspended until the fund balance falls to one hundred thousand dollars (\$100,000) at which time the collection of the fee shall resume until the fund balance reaches one hundred eighty thousand dollars (\$180,000).

History. Acts 1999, No. 227, § 3.

17-17-405. Disciplinary hearing - Recovery procedure.

(a)(1) In any disciplinary hearing before the Auctioneer's Licensing Board that involves a licensee who has allegedly violated any provision of this chapter, the board shall first determine whether a violation has occurred.

(2) If so, the board shall then determine the amount of damages, if any, suffered by the aggrieved party or parties. However, damages shall be limited to actual damages in accordance with § 17-17-407.

(3) The board shall then direct the licensee to pay that amount to the aggrieved party or parties.

(4)(A) If that amount has not been paid within thirty (30) calendar days following entry of the board's final order in the matter and the order has not been appealed to the circuit court, then upon request the board shall pay from the Auctioneer Education and Recovery Fund to the aggrieved party or parties the amount specified.

(B) However, the board shall not:

(i) Pay in excess of fifteen thousand dollars (\$15,000) for any one (1) violation or continuing series of violations regardless of the number of licensees who participated in the violation or continuing series of violations; or

(ii) Pay an amount in excess of the fund balance.

(b) The question of whether certain violations constitute a continuing series of violations shall be a matter solely within the discretion and judgment of the board.

(c) Nothing within this subchapter shall obligate the fund for any amount in excess of a total of fifteen thousand dollars (\$15,000) with respect to:

(1) The acts of any one (1) licensee; or

(2) Any group of related claims.

(d) Whether a claim is one (1) of a group of related claims shall be a matter solely within the discretion and judgment of the board.

(e) When unsatisfied or pending claims exceed the limits payable under subsection (c) of this section, the board shall be the sole determinant of how the available funds shall be allocated among such claims.

History. Acts 1999, No. 227, § 3; 2009, No. 773, § 2.

17-17-406. Education.

The Auctioneer's Licensing Board, in its discretion, may use any funds in the Auctioneer Education and Recovery Fund in excess of the one-hundred-eighty-thousand dollar level, regardless of whether it is from the fund fees or accrued interest thereon for any or all of the following purposes:

- (1) To carry out the advancement of education in the auction field for the benefit of those licensed under the provisions of this chapter;
- (2) To assist in the improvement and efficiency of the auctioneering profession; and
- (3) To underwrite educational seminars and other forms of educational projects for the use and benefit of auctioneer licensees.

History. Acts 1999, No. 227, § 3.

17-17-407. Jurisdiction.

- (a) The Auctioneer's Licensing Board's jurisdiction and authority to award damages to an aggrieved party pursuant to § 17-17-405 is limited to actual, compensatory damages. The board shall not award punitive or exemplary damages, nor shall it award interest on damages.
- (b) The appellate jurisdiction of the circuit court is limited to the awarding of actual, compensatory damages.
- (c) The circuit court shall have no authority or jurisdiction to assess punitive or exemplary damages under this subchapter.
- (d) The circuit court's jurisdiction over the Auctioneer Education and Recovery Fund shall be limited to appeals from the board's orders.
- (e) The circuit court shall have no jurisdiction or authority to order payments from the fund in any amount in excess of either:
 - (1) The amount determined by the board; or
 - (2) The limits set forth in § 17-17-405.

History. Acts 1999, No. 227, § 3.

17-17-408. Appeal.

(a) An appeal may be taken to the circuit court from a final order of the Auctioneer's Licensing Board in accordance with the Arkansas Administrative Procedure Act, § 2515-201 et seq.

(b) An appeal shall automatically stay that portion of the board's order which directs the payment of damages, and neither the licensee nor the board shall be obligated to pay the damages to the aggrieved party or parties until such time as the appeal is finally decided, whether in the circuit court or in the Arkansas Supreme Court.

History. Acts 1999, No. 227, § 3.

17-17-409. Subrogation - Suspension of license.

Upon the payment by the Auctioneer's Licensing Board of any amount of money under § 17-17-405:

(1) The recipients of the payment, to the extent of the payment, shall assign to the board all rights and claims that they may have against the licensee involved;

(2) The board shall be subrogated to all of the rights of the recipients of the payment, to the extent of the payment; and

(3) In addition to any other disciplinary action taken against the licensee on the merits of the hearing, his or her license shall be immediately suspended until he or she has completely reimbursed the board for the payment plus interest at a rate to be determined by the board.

History. Acts 1999, No. 227, § 3.

MISSION STATEMENT

Arkansas Auctioneers Licensing Board was created to define and regulate the profession of auctioneers and auction house owners, by prescribing the qualifications of the licensee and to provide a means to impose penalties against those licensees found to be in violation of the act against the public.

**ARKANSAS AUCTIONEER LICENSING BOARD
RULES AND REGULATIONS**

1. STATEMENT OF ORGANIZATION AND OPERATIONS	46
2. INFORMATION FOR PUBLIC GUIDANCE.....	46
3. GENERAL INFORMATION	47
4. RULE MAKING AUTHORITY.....	49
5. EMERGENCY RULE-MAKING	49
7. PRACTICES AND PROCEDURES FOR AUCTIONEERS.....	51
8. RECOVERY FUND	54
9. REQUIREMENTS AND QUALIFICATIONS FOR APPLICATION AND LICENSURE	56
10. RECIPROCAL REQUIREMENTS AND QUALIFICATIONS FOR APPLICATION AND LICENSE.....	60
11. DENIAL OF APPLICATION FOR LICENSURE	63
12. ANNUAL LICENSE RENEWAL	63
13. CONTINUING EDUCATION	65
14. COMPLAINTS	71
15. ADJUDICATIVE HEARINGS.....	74
16. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.....	82
17. SANCTIONS AND PENALTIES	84
18. DISCLOSURE.....	86
19. SEVERABILITY	86

RULES OF THE ARKANSAS AUCTIONEERS LICENSING BOARD

1. STATEMENT OF ORGANIZATION AND OPERATIONS

Arkansas Auctioneers Licensing Board was created to define and regulate the profession of auctioneers and auction house owners, by prescribing the qualifications of the licensee and to provide a means to impose penalties against those licensees found to be in violation of the act against the public.

Pursuant to the Auctioneers Licensing Act originally adopted in 1989, the Arkansas Auctioneers Licensing Board promulgates and adopts the following rules in accordance with §17-17-207 concerning official action of the Board and the regulations of the business of auctioning.

2. INFORMATION FOR PUBLIC GUIDANCE

2.1. REQUEST FOR INFORMATION. Board makes available a list of persons holding certain responsibilities for handling FOIA request, licensing questions, and complaints against licensees so that the public may obtain information about the Board or make submissions or request. The names, mailing addresses, telephone numbers, and electronic addresses can be obtained by contacting the Board's office.

2.2. OFFICIAL FORMS, POLICIES, ORDERS AND MEMORANDUM. Board maintains a list of official forms used by the Board and a list of all formal, written statement of policy and written interpretative memoranda, and orders, decisions and opinions resulting from adjudications, which may be obtained from the Board's office.

2.3. COPIES. Copies of all forms used by the Board, written statements of policy and written interpretive memoranda, and all orders issued by the Board, excluding

materials related to written and practical testing, may be obtained from the Board's office.

3. GENERAL INFORMATION.

3.1. DESCRIPTION OF ORGANIZATION. The officers of the Auctioneers Licensing Board shall be a chairman and vice-chairman. The Board shall elect officers from its membership at its first regular meeting of the year, and each officer shall serve for a term of one year or until his/her successor is elected and duly qualified. If a vacancy occurs, the Board shall elect a successor to complete the balance of the unexpired term of office. The Executive Secretary shall serve as the Board's Secretary-Treasurer and shall be the custodian of all funds.

3.2. MEETINGS OF THE BOARD. Regular meetings of the Board shall be held at least four times each year at a time and place determined by the Board. Other meetings of the Board shall be called by the Chairman or upon the written request of two Board members. Correspondence shall be directed to the office of the Executive Secretary, whose address is 101 East Capitol, Suite 112B, Little Rock, Arkansas 72201. Meetings of the Board shall be conducted in accordance with Robert's Rules of Order except where such rules conflict with these rules.

3.3. QUORUM. Four members of the Board shall constitute a quorum for the transaction of business. All official action of the Board must be approved by the majority vote of the members present.

3.4. AGENDA. The Secretary-Treasurer will prepare the agenda for regular and special meetings. The agenda will be distributed to Board members and made available to the public in advance of the meeting. The agenda should state with

specificity the items that will be considered at the meeting or hearing. The agenda should include the following topics, as applicable; the Call to Order, Review of Minutes, Old Business, New Business, Other Business, Adjudicatory Hearings, Rule-making hearings and Public Comment. The order of the agenda items is tended to be flexible and may be adjusted to meet the needs of the Board. The agenda may be amended by appropriate motion.

3.5. AMENDMENT TO RULES. These rules may be amended at any regular or special meeting of the Board, provided such proposed amendments have been submitted to all members of the Board at least 10 days prior to the meeting at which the amendment is to be considered. The specified 10-day notice may be waived provided there is unanimous written consent of all Board members. All requirements of the Arkansas Administrative Procedures Act shall be complied with prior to the final adoption of an amendment to these Rules and Regulations.

3.6. FISCAL YEAR OF THE BOARD. The fiscal year of the Board shall be from July 1 to June 30.

3.7. LIST OF LICENSEES. The Board shall annually prepare a list of the names and addresses of all auctioneers licensed by it. This list shall contain the names of all persons whose licenses have been suspended or revoked within the preceding year as well as other information the Board deemed relative to the enforcement. A copy of this list may be obtained from the Executive Secretary by submitting a \$5.00 fee payable by check or money order.

3.8. FINANCIAL AFFAIRS. The current rules of the Arkansas Department of Finance and Administration shall be followed in the financial affairs of the Board.

3.9. COMPENSATION. Board members shall be compensated pursuant to Ark.

Code Ann. § 25-16-901 et seq.

4. RULE MAKING AUTHORITY.

4.1. The Board has been authorized by the Legislature to promulgate rules. Ark. Code Ann. § 17-17-207. The Board follows the procedural requirement of the Arkansas Administrative Procedures Act, in particular Ark. Code Ann. §25-15203 and §25-15-204. Additionally, the Board is required to abide by the provisions of Ark. Code Ann. §10-3-309.

5. EMERGENCY RULE-MAKING.

5.1. **REQUEST.** The proponent of a rule may request the Board to adopt an emergency rule. In addition to the text of the proposed rule or amendment to an existing rule and any other information required by the Administrative Procedures Act, the proponent will provide a written statement setting out the facts or circumstances that would support a finding of imminent peril to the public health, safety, or welfare.

5.2. **ACTION UPON RECEIPT OF REQUEST.** Upon receipt of the written statement requesting an emergency rule-making and documents or other evidence submitted in support of the assertion that an emergency exists, the Board will make an independent judgment as to whether the circumstances and facts constitute an imminent peril to the public health, safety, or welfare requiring adoption of the rule upon fewer than 30 days notice. If the Board determines

5.3. **EFFECTIVE DATE OF EMERGENCY RULE.** The emergency rule will be effective immediately upon filing, or at a stated time less than ten (10) days thereafter, if the Board finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The Board will file with the

rule its written findings justifying the determination that emergency rule-making is appropriate and, if applicable, the basis for the effective date of the emergency rule being less than ten days after the filing of the rule pursuant to A.C.A. §25-15-204(e). The Board will take appropriate measures to make emergency rules known to persons who may be affected by them.

6. DECLARATORY ORDERS.

6.1. PURPOSE AND USE. A declaratory order is a means of resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the Board has authority. A petition for declaratory order may be used only to resolve questions or doubts as to how the statutes, rules or orders may apply to the petitioner's particular circumstances. A declaratory order is not the appropriate means of determining the conduct of another person or for obtaining a policy statement of general applicability from a Board. A petition or declaratory order must describe the potential impact of statutes, rules or orders upon the petitioner's interest.

6.2. PETITION. The process to obtain a declaratory order is begun by filing with the Board a petition that provides the following information:

6.2.1. The caption shall read: Petition for Declaratory Order Before the Arkansas Auctioneers Licensing Board.

6.2.2. The name, address, telephone number and facsimile number of the petitioner.

6.2.3. The name, address, telephone number, and facsimile number of the attorney of the petitioner.

6.2.4. The statutory provision(s), Board rule(s), or Board order(s) on which the declaratory order is sought.

6.2.5. A description of how the statute, rules, or orders may substantially affect the petitioner and the petitioner's particular set of circumstances, and the question or issue on which petitioner seeks a declaratory order.

6.2.6. The signature of the petitioner or petitioner's attorney.

6.2.7. The date.

6.2.8. A request for a formal hearing, if desired.

6.3. DISPOSITION.

6.3.1. The Board may hold a hearing to consider a petition for declaratory statement. If a hearing is held, it shall be conducted in accordance with Ark. Code Ann. § 25-15-208 and §25-15-213, and the Board's rules for adjudicatory hearing.

6.3.2. The Board may rely on the statements of fact set out in the petition without taking any position with regard to the validity of the facts. Within ninety (90) days of the filing of the petition, the Board will render a final order denying the petition or issuing a declaratory order.

7. PRACTICES AND PROCEDURES FOR AUCTIONEERS

7.1. LICENSED REQUIRED. On and after July 1, 1989, it shall be unlawful for any person to act as an auctioneer or to advertise or to assume to act as an auctioneer within this state without a license issued by the Auctioneers Licensing Board.

7.2. LICENSE NOT REQUIRED.

7.2.1. AUCTIONING OWN GOODS. An individual is not required to be a licensed auctioneer to auction his own goods. When one is auctioning his/her own

goods without a license that person must have a legal interest in all merchandise to be sold as one's "own goods". Consignment goods are not considered one's "own goods".

7.2.2. Court Ordered or Public Authority: An auctioneer license is not required to conduct an auction under the direction of a public authority, pursuant to a judicial order or decree, or a sale by law required to be at auction.

7.2.3. Nonprofit Organization: An auctioneer license is not required for an auction conducted by or for a nonprofit organization

7.2.4. Livestock Auction: An auctioneer license is not required for an individual who conducts the auction of livestock at a livestock auction facility.

7.2.5. Internet Auction: An auctioneer license is not required to conduct an auction over the internet by means of a website dedicated primarily to conducting auctions.

7.3. **EMERGENCY AUCTIONEER.** When an auctioneer or auction house owner exhausts all efforts to hire a licensed auctioneer and is unable to hire a licensed auctioneer, the auctioneer or auction house owner may employ an unlicensed emergency auctioneer for a period of ninety (90) days.

7.3.1. **NOTIFICATION.** The auctioneer or auction house owner must contact the Board immediately and provide them with the name and contact information of the emergency auctioneer. The auctioneer or auction house owner shall submit a written statement to the Board that the unlicensed emergency auctioneer has been advised that he must make application for licensure and pay fees for the next testing date.

7.3.2. LICENSE REQUIRED. After 90 days, the emergency auctioneer must meet all provisions of Ark. Code Ann. §17-17-101 et seq.

7.4. WRITTEN CONTRACT

7.4.1. Written Contract Required. Any agreement to provide auctioneer services shall be reflected in a written contract. A contract may be a simple written agreement but shall include the following:

- 7.4.1.1. Date of agreement;
- 7.4.1.2. Specific date, time and location of auction;
- 7.4.1.3. Special terms and conditions;
- 7.4.1.4. Commission charged;
- 7.4.1.5. Other expenses;
- 7.4.1.6. Signatures of auctioneer or auction house owner and seller(s); and,
- 7.4.1.7. Agreement must include whether the auction is absolute or with reserve and;
- 7.4.1.8. The amount of any buyer's premium to be charged.

7.4.2. Contract Must Be Signed Before Auction Conducted. The auction must not be held prior to obtaining the auction contract.

7.5. ADVERTISING

7.5.1. Absolute Auction. Any auction which is to be an absolute auction shall be listed as such in advertisements for that auction. If an auction is advertised as absolute, all high bids must be accepted and ownership transferred.

7.5.2. License Number Required. Any auctioneer or auction house owner who advertises to hold or conduct an auction shall include in such advertisement his/her/its name and designate whether auctioneer or auction house owner,

business address, license number and such other reasonable information deemed necessary or appropriate for such sale.

7.6. AUCTIONS – REQUIRED PROCEDURES - STANDARDS FOR AUCTION

7.6.1. **Board Authorized to Attend Auctions.** Board member(s) or employee(s) shall have the authority to attend any auction for the purpose of checking records of an auction and for any other purpose.

7.6.2. **Settlement of Proceeds Made Within Ten Days.** Settlement of any money received from auction of another person's goods shall be made within ten (10) business days of the auction.

7.6.3. **Terms and Conditions.** Terms and conditions of each auction must be announced at the beginning of the auction.

7.7. MAINTAINING RECORDS OF AUCTION. All auctioneers or auction house owners shall maintain records of the auctions for a period of three (3) years.

7.8. ESCROW ACCOUNTS. Funds in Separate Account. An auctioneer/auction house owner shall be required to place any funds belonging to someone else in an account separate from his/her personal or business account. This separate account is called an "escrow account" and is required of persons who handle the funds of others §17-17-308(4). Only one escrow account is required and money from several auctions may be placed in it at one time. Interest bearing accounts are not illegal provided that all the parties agree to the disposition of the interest.

8. RECOVERY FUND

8.1. PAYMENT TO RECOVERY FUND. Each auctioneer shall pay to the Board, at the time of initial licensure and at each annual renewal, a recovery fund fee of one hundred (\$100.00) dollars, in addition to all other fees assessed. Payment of this fee shall continue until such time as the fund shall reach \$180,000.00. All

applicants for renewal and all new licensees shall pay one hundred (\$100.00) dollars per year for a minimum of two years and shall continue to pay until such time as the recovery fund reaches \$180,000.00. At the time the fund balance falls to \$100,000.00, or below, each licensee shall pay a proportionate amount established by the Board until such time as the fund shall be restored to \$180,000.00.

8.2. PAYMENT OF DAMAGES. Damages from the recovery fund may be paid upon request only if, after ordering a licensee to pay a specified amount to an aggrieved person(s), the licensee fails to do so within thirty (30) calendar days and the order has not been appealed.

8.3. REQUIREMENTS FOR PAYMENT. In order to receive payment from the recovery fund, an aggrieved party must submit a request for payment, which request must contain:

- 8.3.1. Amount requested to be paid;
- 8.3.2. Name and address of payee;
- 8.3.3. Complaint number; and
- 8.3.4. Notarized, signed statement setting forth whether any amounts have been paid to the aggrieved party by licensee.

8.4. BOARD MAY AWARD ONLY COMPENSATORY DAMAGES. The Board's jurisdiction and authority to award damages to an aggrieved party from the recovery fund is limited to actual, compensatory damages. The Board shall not award punitive or exemplary damages, nor shall it award interest on damages.

8.5. PAYMENT LIMITED TO \$15,000.00. The Board shall not pay in excess of fifteen thousand dollars (\$15,000.00) for:

- 8.5.1. Any one (l) violation or continuing series of violations regardless of the number of licensees who participated in the violation or continuing series of violations; or
- 8.5.2. The acts of any one (l) licensee; or
- 8.5.3. Any group of related claims.

8.6. **DISCRETION OF THE BOARD.** It shall be a matter solely within the discretion and judgment of the Board whether certain violations constitute a continuing series of violations or a group of related claims.

9. REQUIREMENTS AND QUALIFICATIONS FOR APPLICATION AND LICENSURE

9.1. **GENERAL.** All board action regarding licensure shall be governed by Ark. Code Ann. §§ 17-17-101 et seq. and, when applicable Ark. Code Ann. §§ 25-15-208 through 213.

9.2. **REQUIREMENT TO KEEP CURRENT ADDRESS ON FILE.** All auctioneers or auction house owners holding a license issued by the board are required to provide the board with written notice of any change in business address and/or primary mailing address within 30 days of the change. Upon receipt of a notice of change of address, the Board shall issue a new license for the unexpired period of time as required. Service of notices of hearing sent by mail will be addressed to the latest address on file with the board.

9.3. **APPLICANT QUALIFICATIONS.** Each applicant for a license shall make application to the Board upon a form and in such a manner as the Board may require at least thirty (30) days prior to the date of examination. Each applicant shall:

- 9.3.1. Be of good reputation, trustworthy, and competent to transact the business of an auctioneer, in such a manner as to safeguard the interest of the public.
- In furtherance of this requirement, each applicant, shall provide two letters of reference to the Board which indicates the applicant is well known to the individual, that he/she is of good moral character and bears a good reputation for honesty, truthfulness and integrity;
- 9.3.2. At least 18 years of age;
- 9.3.3. Provide a completed application;
- 9.3.4. Provide a completed Individual Record Check Form;
- 9.3.5. Provide a completed FBI Fingerprint Card;
- 9.3.6. Enclose a check or money order for an examination fee of \$100.00;
- 9.3.7. Enclose a check or money order for a license fee of \$100.00 (if applying for reciprocity see Section 4 below);
- 9.3.8. Enclose a check for in the appropriate amount as provided by the Board Office made payable to Arkansas Auctioneers Licensing Board for a state background check;
- 9.3.9. Enclose a check for in the appropriate amount as provided by the Board Office made payable to the Arkansas State Police for a federal background check;
- 9.3.10. Enclose a check or money order for the Recovery Fund fee of \$100.00;
- 9.3.11. Enclose a current photograph full-face, passport-type (2"x2") of head and shoulders taken within the past six months.
- 9.3.12. Submit to a Criminal Background Check. All individuals seeking initial licensure as an auctioneer or an individual seeking reinstatement of

licensure as an auctioneer in the State of Arkansas shall submit to a State and Federal Criminal Background check.

9.3.13. **Disqualifying Conviction.** Applicants for which a disqualifying conviction is reported on the criminal background check will be notified that they are ineligible to hold an auctioneer license. The applicant shall have thirty (30) days from the date of the notification letter to request, in writing, a waiver by the Board of the disqualifying conviction. Upon proper request, a hearing before the Board will be conducted to determine whether or not a waiver will be granted.

9.4. REQUIREMENTS FOR LICENSING. In addition to providing a completed application and fees required by Section 9.3 herein, applicants must pass separate written and oral examinations. An applicant for an auctioneer license must pass each exam with a score of 70% or better. An applicant for an auction house license must only take the written portion of the exam and pass it with a score of 70% or better.

9.5. AUCTIONEER LICENSE REQUIRED. If the owner of an auction house or the designated person of a corporation operating as an auction house and the auctioneer are one and the same, only one auctioneer's license need be obtained.

9.6. AUCTION HOUSE LICENSE. An auction house license shall be issued in the name of one person only. An auction house license does not authorize the named individual to "call" an auction. Continuing education hours for out of state corporations owning an auction house may be obtained by the general manager or designated person.

9.7. NONRESIDENT APPLICANTS. Every nonresident applicant shall file an irrevocable consent that actions may be commenced against the applicant in any court of competent jurisdiction in the State of Arkansas in addition to all requirements listed in this section.

9.8. REVIEW OF APPLICATION. The application and supporting documentation will be reviewed by the Secretary-Treasurer. If it is determined that the application is incomplete, the Secretary-Treasurer will inform the applicant in writing and will specify why the application is incomplete. The application process will be suspended. When a completed application, a supplemental application, or the requested information is returned, the Secretary-Treasurer will reinitiate action on the application for license. If all requirements are met, the applicant will be allowed to take the licensing examination.

9.9. DURATION OF APPLICATION.

9.9.1. Applications are active for twelve (12) calendar months from the date the application is received in the Board office.

9.9.2. If the application process is not completed and the license issued in the twelve months, an applicant may request Board approval for an extension of the twelve month application window. If an extension is not requested, or is denied, the application becomes void and the individual must apply as any new applicant at any future date.

9.9.3. If new requirements have been placed for applicants in the twelve-month window the Board may require that the new requirements be met within the extension period as part of the application extension approval.

9.9.4. A second extension period will not be considered by the Board.

9.10. RECORD RETENTION. Applications for licensure and supporting documentation will be maintained by the Board office for a period of three (3) years.

9.11. WRITTEN EXAMINATION FOR LICENSURE. The Board shall establish the contents of the examinations for licensure and shall conduct an examination of applicants for licensure at least four (4) times each year at a time and place specified by the Board.

10. RECIPROCAL REQUIREMENTS AND QUALIFICATIONS FOR APPLICATION AND LICENSE

10.1. RECIPROCAL APPLICANT. A person holding a license to engage in auctions issued to him/her by a proper authority of a state, territory, or possession of the United States of America or the District of Columbia which other state has entered into a Reciprocal Agreement with Arkansas may upon application be licensed without further examination.

10.2. RECIPROCAL APPLICANT QUALIFICATIONS. Each applicant for a license through reciprocity shall make application to the Board upon a form and in such a manner as the Board may require and shall:

10.2.1. Be of good reputation, trustworthy, and competent to transact the business of an auctioneer, in such a manner as to safeguard the interest of the public. In furtherance of this requirement, each applicant, shall provide two letters of reference to the Board which indicates the applicant is wellknown to the individual, that he/she is of good moral character and bears a good reputation for honesty, truthfulness and integrity;

10.2.2. At least 18 years of age;

- 10.2.3. Provide a completed application;
- 10.2.4. Provide a completed Individual Record Check Form;
- 10.2.5. Provide a completed FBI Fingerprint Card;
- 10.2.6. Enclose a check or money order for a license fee the same amount he/she pays in his/her residential state unless that amount is under \$100.00. If the license fee in their state is less than \$100.00, the license fee amount shall be \$100.00;
- 10.2.7. Enclose a check in the appropriate amount as provided by the Board office made payable to the Arkansas Auctioneer Licensing Board for a state criminal background check;
- 10.2.8. Enclose a check for in the appropriate amount as provided by the Board office made payable to the FBI for a federal criminal background check;
- 10.2.9. Enclose an additional check or money order for a recovery fund fee of \$100.00;
- 10.2.10. Enclose a current photograph full-face, passport-type (2"x2") of head and shoulders taken within the past six months; and,
- 10.2.11. Submit a statement of irrevocable consent that actions may be commenced against him/her in any court of competent jurisdiction in the State of Arkansas.
- 10.2.12. Submit a criminal background check report from their home state's State Law Enforcement Agency.
- 10.2.13. Submit to a Criminal Background Check. All individuals seeking reciprocal licensure as an auctioneer or an individual seeking

reinstatement of reciprocal licensure as an auctioneer in the State of Arkansas shall submit to a State and Federal Criminal Background check. State background checks will include Arkansas and the home state of the applicant.

10.2.14. **Disqualifying Convictions.** Applicants for which a disqualifying conviction is reported on the criminal background check will be notified that they are ineligible to hold an auctioneer license. The applicant shall have thirty (30) days from the date of the notification letter to request, in writing, a waiver by the Board of the disqualifying conviction. Upon proper request, a hearing before the Board will be conducted to determine whether or not a waiver will be granted.

10.3. **RECIPROCAL AUCTIONEER LICENSE REQUIRED.** If the owner of an auction house or the designated person of a corporation operating as an auction house and the auctioneer are one and the same, only one auctioneer's license need be obtained.

10.4. **RECIPROCAL AUCTION HOUSE LICENSE.** An auction house license shall be issued in the name of one person only. An auction house license does not authorize the named individual to "call" an auction.

10.5. **RECIPROCAL LICENSE FEE.** The license fee applicable to a nonresident applicant from a state with which we have a Reciprocal Agreement shall be the same amount that such other reciprocal state charges auctioneers/auction house owners who are residents of this state and who are duly licensed in this state to obtain a license to conduct an auction in such other state.

11. DENIAL OF APPLICATION FOR LICENSURE.

- 11.1. OPPORTUNITY FOR HEARING.** Except for failure to pass the license examination, if a determination is made that the application should be denied; the Board will inform the applicant of the opportunity for a hearing on the application. The grounds or basis for the proposed denial of a license will be set forth in writing by the Board.
- 11.2. HEARING REQUEST.** The applicant must request, in writing, a hearing on the denial of application within 30 days of the denial notice. Any hearing on the denial of a license will be conducted in accordance with Ark. Code Ann. §25-15208 and Ark. Code Ann. §25-15-213, and unless otherwise provided by law, the applicant has the burden of establishing entitlement to the license.

12. ANNUAL LICENSE RENEWAL

- 12.1. RENEWAL OF LICENSE.** All auctioneer licenses expire on June 30 of each year unless renewed. Notice of license renewal shall include notice of the penalty and requirements for late renewal. Applications for license renewal postmarked by June 30 shall include a license renewal fee of \$100.00 and proof of required Continuing Education.

- 12.2. DENIAL OF APPLICATION FOR RENEWAL.** An application for renewal of license may be denied if the auctioneer has been convicted in a court of competent jurisdiction of this or any other jurisdiction of a criminal offense involving moral turpitude or a felony which demonstrates bad faith, dishonesty, incompetency, untruthfulness, or deceptive practices or has failed to submit proof of the continuing education requirements.

12.3. LATE RENEWAL. GRACE PERIOD. Auctioneers who fail to renew their license by June 30 shall have a grace period of one hundred twenty (120) days to renew their license. Applications for license renewal postmarked by October 31 shall include a license renewal fee of \$100.00 and proof of required Continuing Education hours.

12.4. LATE RENEWAL FINAL NOTICE: The Board shall notify any auctioneer who fails to renew his license by September 1 that the grace period for renewal ends on October 31; that after that date they must cease and desist all auction activities; and, that the fee for reinstatement of the lapsed license after October 31 will be doubled to \$200.00. This notice shall be sent certified mail, return receipt requested.

12.5. FAILURE TO RENEW LICENSE. LAPSED STATUS. Any license not renewed on or before October 31 shall be considered lapsed. Auctioneers who fail to renew their license by October 31 shall be notified of their lapsed status; to cease and desist all auction activities; and, the process for reinstatement to active status. This notification shall be by regular first class mail.

12.6. REINSTATEMENT FROM LAPSED STATUS. A lapsed license may be reinstated for a period of two (2) months following the October 31st deadline for license renewal. The lapsed licensee will be reinstated upon payment the late renewal penalty of \$200.00 and submission of required continuing education hours.

12.7. REVOCATION OF LAPSED LICENSE. A license which has lapsed for two (2) months following the October 31 deadline shall be considered revoked for nonrenewal. The Board will notify the auctioneer that the license has been

revoked for nonrenewal effective December 31. The notice will be provided by certified mail, return receipt requested. The auctioneer shall be advised that he may request a hearing before the Board within thirty (30) days of receipt of the notice to contest the revocation. Following revocation for nonrenewal the auctioneer must reapply for licensure pursuant to the Rule for new applicants at the time of the new application for licensure.

12.8. LICENSE RENEWAL – SPECIAL CIRCUMSTANCES

12.8.1. Military – Individuals called up for active duty military service shall be entitled to late renew within one (1) year following return from active duty by payment of the current license renewal fee and submission of six (6) hours of Continuing Education within the next license year.

12.8.2. Disaster Relief – Individuals, whose employment requires them to participate in disaster relief services, failing to renew due to disaster relief shall be entitled to renew for the current renewal period with no Continuing Education hours but will be required to obtain twelve (12) hours of Continuing Education during the next year prior to the next renewal.

13. CONTINUING EDUCATION

13.1. **CONTINUING EDUCATIONS REQUIREMENTS. GENERAL.** As a prerequisite to renewal of an auctioneer license, the licensee shall satisfactorily complete six (6) hours of continuing education from an auctioneer continuing education course approved by the Board. Correspondence courses may qualify for continuing education credit. Such correspondence course must be approved by the board.

13.2. **VERIFICATION OF CONTINUING EDUCATIONS HOURS.** The Board

may verify any information concerning continuing education that is submitted by the licensee as evidence supporting the course information. The board may require applicant(s) or licensee to provide information regarding the continuing education hours claimed on the individual's renewal. Failure to do so may lead to disciplinary action.

13.3. EVIDENCE TO SUPPORT COURSES TAKEN. It is the responsibility of each licensee to retain evidence to support the courses taken for a period of (12) months after the end of the renewal period for which the renewal application is submitted to the Board;

13.3.1. Course attendance verification by the sponsor.

13.3.2. Certificates of course completion.

13.3.3. Other evidence of support and justification

13.3.4. This requirement shall not apply to courses offered by the Board.

13.4. APPLICATION FOR CONTINUING EDUCATIONS COURSE SPONSOR.

Any request for Board approval of an auctioneer continuing education course sponsor shall be by written application on a form provided by the Board. Applicants for continuing education course sponsor shall submit the following information:

13.4.1. Name, address, telephone number and facsimile (FAX) number (if any) of the course sponsor;

13.4.2. If the ownership of the course sponsor is a partnership, the names and addresses of the partners;

13.4.3. If the ownership of the course sponsor is a corporation, the names and addresses of the officers and directors;

- 13.4.4. If the ownership of the course sponsorship is a limited liability company, the names and addresses of the members and managers;
- 13.4.5. A course content outline describing the subjects to be offered during the approval period. All course sponsors are approved for a period of twelve (12) months;
- 13.4.6. A statement that each instructor meets the qualifications required by Sections 13.10 and 13.11 of this rule;
- 13.4.7. A statement that the course sponsor shall provide the licensee who successfully completes an approved course, a certificate of course completion that meets the requirements of Section 13.9 of this rule;
- 13.4.8. A copy of the certificate of course completion required under Section 13.9 of this rule;
- 13.4.9. And a statement that any facility utilized by the course sponsor shall be at a location approved by the Board.

13.5. **COURSE CURRICULUM APPROVAL REQUIRED.** All sponsors must submit a request for approval of speakers and an agenda to the Board for approval by May 15th each year. The curriculum should include at least one (1) hour of law. A minimum total of six (6) hours must be provided.

13.6. **COURSE SPONSOR APPROVAL DATES.** Sponsors of auctioneer continuing education courses shall be considered approved as of the date of approval by the Board, and therefore courses predating the approval date do not qualify.

13.7. **COURSE OUTLINE.** A course outline shall be prepared and distributed to the attendees. The outline shall state the number of continuing education hours offered.

13.8. COURSE RECORDS. An approved auctioneer continuing education course sponsor must retain records of students who complete the course for a minimum of two (2) years. These records must include attendance records for all courses showing date, place, and attendee's name. The course sponsor may be asked to provide the board copies of records.

13.9. APPROVED AUCTIONEER CONTINUING EDUCATION SPONSOR.

CERTIFICATE REQUIREMENTS. Upon completion of a continuing education course, the approved auctioneer continuing education sponsor shall provide all attendees a course completion certificate that must include the following information:

- 13.9.1. The name of the participant;
- 13.9.2. The license number of the participant;
- 13.9.3. The name, address, and signature of the sponsor;
- 13.9.4. The course title;
- 13.9.5. The course topic if not reflected in the course title;
- 13.9.6. The date and location of the course;
- 13.9.7. And the number of approved actual course hours.

13.10. INSTRUCTOR REQUIREMENTS. Each instructor used by an approved auctioneer continuing education sponsor must have a minimum of two (2) years experience in the field in which that instructor is to teach.

13.11. INSTRUCTORS. PROHIBITIONS. An auctioneer continuing education sponsor is prohibited from hiring, or retaining in its employ, an instructor who has:

13.11.1. Had an auctioneer, auction company, or auction house license revoked or suspended by any jurisdiction;

13.11.2. Obtained or used, or attempted to obtain or use, in any manner, Arkansas auctioneer licensing questions to be used on future examinations unless authorized by law;

13.11.3. Been convicted of a crime that has a direct bearing on the individuals ability to competently instruct, including, but not necessarily limited to, violations of auction laws and abuse of fiduciary responsibilities;

13.11.4. Falsely certified hours of attendance or grades for any student; or

13.11.5. Unless allowed by law, refused to appear and/or testify under oath at any hearing held by the Board.

13.12. **MONITORING CONTINUING EDUCATIONS SERVICES.** Continuing education courses offered by an approved course sponsor may be monitored by the Board to ensure that participants are physically present for the duration of the course. In order to monitor a continuing education course, an approved course sponsor must do the following:

13.12.1. Require the participants to sign in and out as they enter and exit the classroom, noting the time of arrival and departure;

13.12.2. Ensure that order is maintained throughout the duration of the course;

13.12.3. Maintain the attendance sheets to assure their accuracy;

13.12.4. Verify the participant's signature upon the participant's entrance and exit;

13.12.5. Distribute course completion certificates to participants who have been physically present for duration of the course.

13.13. **INFORMATION MUST BE VERIFIED.** The Board may request

verification of any information submitted by the licensee and may request the licensee to submit evidence supporting the course credit claimed. Failure to do so shall subject a licensee to non-renewal or suspension of license.

13.14. FAILURE TO MEET CONTINUING EDUCATION PROVISIONS. A licensee who does not obtain the required number of continuing education hours during a one (1) year licensure period may cure that deficiency by taking them

13.15. BOARD REVIEW OF CONTINUING EDUCATIONS COMPLIANCE. If, as the result of an audit or other review, the Board determines that the continuing education hours a licensee has claimed do not meet the requirements of A.C.A. §17-17-311 and these rules, the Board shall notify the licensee of that determination.

13.16. LICENSEE MAY SUBMIT REASONS FOR FAILURE TO COMPLY. A licensee, who has been notified under Section 13.15 may within thirty (30) days submit information to the Board giving all the substantive reasons in support of the licensee's position that an adequate number of hours has been obtained.

13.17. SEMINAR ATTENDANCE. Hours for continuing education may be obtained through attendance at seminars conducted by the following organizations:

- 13.17.1. National Auctioneers Association
- 13.17.2. National Auctioneers Automobile Dealers Association
- 13.17.3. Any state association convention
- 13.17.4. Certified Auctioneers Institute
- 13.17.5. Any State Auctioneers Licensing Board

13.18. HOURS OBTAINED BY PROVIDING INSTRUCTORS. In addition, a

licensee may obtain continuing education hours by acting as an instructor at an accredited auction school. In order to be credited for hours as an instructor, a licensee must provide to the Board verification by a letter from the association or other entity that will verify the number of instructor hours.

13.19. RECIPROCAL HOURS. The Board will accept through reciprocity any continuing education hours from such other reciprocal state whether such hours be less or more than our state requirement, provided such other state will accept Arkansas's continuing education hours.

14. COMPLAINTS

14.1. COMPOSITION OF THE COMPLAINT COMMITTEEE. The Complaint Committee shall consist of the Chair of the Board and any other member appointed by the Chair of the Board.

14.2. PROCEDURE FOR INITIATION OF COMPLAINT.

14.2.1. Initiation. The formal investigation of a complaint against an auctioneer may be initiated when the complaint is in writing and filed with the board. The complaint must contain a brief statement setting forth the allegations of fact and naming the auctioneer against whom the complaint is filed.

14.2.2. Board Initiation. The Board may initiate an investigation upon its own motion when it has reason to believe a violation of A.C.A. § 17-17-101 et seq. or Board regulation may have occurred. Individual board members should utilize the written complaint method for complaints against individual Auctioneers.

14.2.3. Time Limit for Filing of Complaint. The Complaint committee may consider complaints only if the complaint was filed within one (1) year from the time the alleged complaint either occurred or was discovered. Any

14.3. PROCEDURE FOR INVESTIGATION OF COMPLAINT.

14.3.1. Notification of the Respondent. Upon receipt of the complaint the Complaint Committee shall notify the Auctioneer named in the complaint by certified or registered mail of the complaint and request a written response to the allegation/s.

14.3.2. Investigation. Upon receipt of the auctioneer's response or upon the expiration of the time period permitted for the licensee's response, the Complaint Committee shall conduct any further inquiry or investigation which appears to be appropriate based upon the circumstances of the individual case.

14.3.3. **Investigative Officer.** The Investigative Officer shall be a person designated by the Chair of the Board. The Chair of the Board shall agree, or contract, to pay compensation to, or reimburse the expenses of, any person serving as investigative officer authorized by the Board.

14.3.4. **Investigative Report.** Upon completion of the investigation, the investigative officer shall provide a written report to the Complaint Committee the results of the investigation. The Complaint Committee will determine whether to initiate a full board hearing, offer to the licensee an informal board hearing, take other action or present to the Board a request to dismiss the complaint. The report of the Complaint Committee shall be a summary of the

results of the investigation and shall be presented to the Board without naming the licensee.

14.4. ACTION BY THE BOARD. A majority vote of the board shall be required to support the recommendation of the Complaint Committee to dismiss a complaint. If the board agrees with the determination of the Complaint Committee that the case should be dismissed, the complainant and the respondent shall be so notified.

14.4.1. Additional Evidence. If additional evidence of conduct contrary to the laws, Rules and/or Regulations governing Auctioneers is presented within sixty (60) days after the matter has been closed with no action, the case may be reopened and acted upon under regular procedures.

14.5. ACTION ON COMPLAINT. If the Complaint Committee determines that the complaint presents sufficient evidence of a violation; it may offer to the licensee the following:

14.5.1. Formal Disciplinary Hearing. If the Complaint Committee determines that a formal disciplinary hearing is required, the hearing shall comply with the requirements of the Administrative Procedure Act.

14.5.2. Informal Hearing. The Complaint Committee may offer or the Licensee may request an informal hearing of a complaint before the Board consisting of a face to face meeting between the Licensee and the Board to discuss the allegations of the complaint. Prior to an informal hearing the Licensee must sign a consent statement agreeing to the terms and conditions of an informal hearing.

14.5.3. **Consent Agreement.** If the Complaint Committee determines that a consent agreement may be appropriate, the Complaint Committee shall authorize its Attorney to enter into negotiations for a consent agreement subject to the Board's final approval. The Complaint Committee may recommend terms for a consent agreement offer by the attorney to the respondent.

14.6. **DISQUALIFICATION.** During a formal disciplinary hearing, any member of the Board, except the Board Chair, who served on the Complaint Committee, was involved in the investigation or who initiated the complaint may be disqualified from participation in the hearing at the request of the respondent auctioneer.

14.7. **COUNTER COMPLAINT.** The Arkansas Auctioneers Licensing Board will not accept formal complaints from a respondent against a complainant during the course of an investigation of the initial complaint. Counter charges will only be considered after the disposition of the initial complaint.

15. ADJUDICATIVE HEARINGS

15.1. **SCOPE.** This chapter applies in all administrative adjudications conducted by the Arkansas Auctioneers Licensing Board. This procedure is developed to provide a process by which the Board formulates orders (for example, an order revoking a license to practice, or imposing civil penalties).

15.2. **PRESIDING OFFICER.** The Board shall preside at the hearing or may designate a hearing officer to preside at a hearing.

15.3. **APPEARANCES.** Any party appearing in any Board proceeding has the right, at his or her own expense, to be represented by counsel.

15.3.1. The respondent may appear on his or her own behalf.

15.3.2. Any attorney representing a party to an adjudicatory proceeding must file notice of appearance as soon as possible.

15.3.3. Service on counsel of record is the equivalent of service on the party represented.

15.3.4. On written motion served on the party represented and all other parties of record, the presiding officer may grant counsel of record leave to withdraw for good cause shown.

15.4. CONSOLIDATION. If there are separate matters that involve similar issues of law or fact, or identical parties, the matters may be consolidated if it appears that consolidation would promote the just, speedy, and inexpensive resolution of the proceedings, and would not unduly prejudice the rights of a party.

15.5. NOTICE TO INTERESTED PARTIES. If it appears that the determination of the rights of parties in a proceeding will necessarily involve a determination of the substantial interests of persons who are not parties, the presiding officer may enter an order requiring that an absent person be notified of the proceeding and be given an opportunity to be joined as a party of record.

15.6. SERVICE OF PAPERS. Unless the presiding officer otherwise orders, every pleading and every other paper filed for the proceeding, except applications for witness subpoenas and the subpoenas, shall be served on each party or the party's representative at the last address of record.

15.7. INITIATION & NOTICE OF HEARING. An administrative adjudication is initiated by the issuance by the Board of a notice of hearing. The notice of hearing will be sent to the respondent by U.S. Mail, return receipt requested, restricted delivery to the named recipient or his agent. Notice shall be sufficient when it

is so mailed to the respondent's latest address on file with the Board. Notice will be mailed at least 30 days before the scheduled hearing. The notice will include:

- 15.7.1. A statement of the time, place, and nature of the hearing;
- 15.7.2. A statement of the legal authority and jurisdiction under which the hearing is to be held; and
- 15.7.3. A short and plain statement of the matters of fact and law asserted.

15.8. **MOTIONS.** All requests for relief will be by motion. Motions must be in writing or made on the record during a hearing. A motion must fully state the action requested and the grounds relied upon. The original written motion will be filed with the Board. When time allows, the other parties may, within three (3) days of the service of the written motion, file a response in opposition. The presiding officer may conduct such proceedings and enter such orders as are deemed necessary to address issues raised by the motion. However, a presiding officer, other than the Board, will not enter a dispositive order unless expressly authorized in writing to do so.

15.9. **ANSWER.** A respondent may file an answer.

15.10. **DISCOVERY.** Upon written request, the Board will provide the information designated in A.C.A §25-15-208 (a) (3). Such requests should be received by the Board at least 10 days before the scheduled hearing.

15.11. **CONTINUANCES.** The Complaint Committee may grant a continuance of hearing for good cause shown. Requests for continuances will be made in writing. The request must state the grounds to be considered and be made as soon as practicable and, except in cases of emergencies, no later than five (5)

days prior to the date noticed for the hearing. In determining whether to grant a continuance, the Complaint Committee may consider:

- 15.11.1. Prior continuances;
 - 15.11.2. The interests of all parties;
 - 15.11.3. The likelihood of informal settlements;
 - 15.11.4. The existence of an emergency;
 - 15.11.5. Any objection;
 - 15.11.6. Any applicable time requirement;
 - 15.11.7. The existence of a conflict of the schedules of counsel, parties, or witnesses;
 - 15.11.8. The time limits of the request; and
 - 15.11.9. Other relevant factors.
- 15.11.10. The Complaint Committee may require documentation of any grounds for continuance.

15.12. HEARING PROCEDURES

- 15.12.1. The presiding officer presides at the hearing and may rule on motions, require briefs, and issue such orders as will ensure the orderly conduct of the proceedings; provided, however, any presiding officer other than the Board shall not enter a dispositive order or proposed decision unless expressly authorized in writing to do so.

- 15.12.2. All objections must be made in a timely manner and stated on the record.

- 15.12.3. Parties have the right to participate or to be represented by counsel in all hearings or pre-hearing conferences related to their case.

15.12.4. Subject to terms and conditions prescribed by the Administrative Procedure Act, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and, upon request by the Board, may submit briefs and engage in oral argument.

15.12.5. The presiding officer is charged with maintaining the decorum of the hearing and may refuse to admit, or may expel, anyone whose conduct is disorderly.

15.13. ORDER OF PROCEEDINGS. The presiding officer will conduct the hearing in the following manner:

15.13.1. The presiding officer will give an opening statement, briefly describing the nature of the proceedings.

15.13.2. The parties are to be given the opportunity to present opening statements.

15.13.3. The parties will be allowed to present their cases in the sequence determined by the presiding officer.

15.13.4. Each witness must be sworn or affirmed by the presiding officer, or the court reporter, and be subject to examination and cross-examination as well as questioning by the Board. The presiding officer may limit questioning in a manner consistent with the law.

15.13.5. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

15.14. EVIDENCE

15.14.1. The presiding officer shall rule on the admissibility of evidence and may, when appropriate, take official notice of facts in accordance with all applicable requirements of law.

15.14.2. Stipulation of facts is encouraged. The Board may make a decision based on stipulated facts.

15.14.3. Evidence in the proceeding must be confined to the issues set forth in the hearing notice, unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence outside the scope of the notice, over the objection of a party who did not have actual notice of those issues, that party, upon timely request, will receive a continuance sufficient to prepare for the additional issue and to permit amendment of pleadings.

15.14.4. A party seeking admission of an exhibit must provide 12 copies of each exhibit at the hearing. The presiding officer must provide the opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. All exhibits admitted into evidence must be appropriately marked and be made part of the record.

15.14.5. Any party may object to specific evidence or may request limits on the scope of the examination or cross-examination. A brief statement of the grounds upon which it is based shall accompany such an objection. The objection, the ruling on the objection, and the reasons for the ruling will be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve the ruling until the written decision.

15.14.6. Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony will briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

15.14.7. Irrelevant, immaterial, and unduly repetitive evidence will be excluded.

Any other oral or documentary evidence, not privileged, may be received if it is of a type commonly relied upon by reasonably prudent men and women in the conduct of their affairs.

15.14.8. Reasonable inferences. The finder of fact may base its findings of fact upon reasonable inferences derived from other evidence received.

15.15. **DEFAULT.** If a party fails to appear or participate in an administrative adjudication after proper service of notice, the Board may proceed with the hearing and render a decision in the absence of the party.

15.16. SUBPOENAS

15.16.1. At the request of any party, the Board shall issue subpoenas for the attendance of witnesses at the hearing. The requesting party shall specify whether the witness is also requested to bring documents and reasonably identify said documents.

15.16.2. A subpoena may be served by any person specified by law to serve process or by any person who is not a party and who is eighteen (18) years of age or older. Delivering a copy to the person named in the subpoena shall make service. Proof of service may be made by affidavit of the person making

service. The party seeking the subpoena shall have the burden of obtaining service of the process and shall be charged with the responsibility of tendering appropriate mileage fees and witness fees pursuant to Rule 45, Arkansas Rules of Civil Procedure. The witness must be served at least two days prior to the hearing. For good cause, the Board may authorize the subpoena to be served less than two days before the hearing.

15.16.3. Any motion to quash or limit the subpoena shall be filed with the Board and shall state the grounds relied upon.

15.17. **RECORDING THE PROCEEDINGS.** The responsibility to record the testimony heard at a hearing is borne by the Board. Upon the filing of a petition for judicial review, the Board will provide a verbatim transcript of testimony taken before the Board.

15.18. **FACTORS TO BE CONSIDERED IN IMPOSING SANCTIONS.** In addition to any other considerations permitted by Ark. Code Ann. § 17-17-101 et seq., if applicable, the Board in imposing any sanction may consider the following:

15.18.1. The nature and degree of the misconduct for which the licensee is being sanctioned.

15.18.2. The seriousness and circumstances surrounding this misconduct.

15.18.3. The loss or damage to clients or others.

15.18.4. The assurance that those who seek similar professional services in the future will be protected from the type of misconduct found.

15.18.5. The profit to the licensee.

15.18.6. The avoidance of repetition.

- 15.18.7. Whether the conduct was deliberate, intentional, or negligent.
- 15.18.8. The deterrent effect on others.
- 15.18.9. The conduct of the individual during the course of the disciplinary proceeding.
- 15.18.10. The professional's prior disciplinary record, including warnings.
- 15.18.11. Matters offered by the professional in mitigation or extenuation, except that a claim of disability or impairment resulting from the use of alcohol or drugs may not be considered unless the professional demonstrates that he or she is successfully pursuing in good faith a program of recovery.

15.19. **FINAL ORDER.** The Board will serve on the respondent a written order that reflects the action taken by the Board. The order will include a recitation of facts found based on testimony and other evidence presented and reasonable inferences derived from the evidence pertinent to the issues of the case. It will also state conclusions of law and directives or other disposition entered against or in favor of the respondent. The order will be served personally or by mail on the respondent. If counsel represents respondent, service of the order on respondent's counsel shall be deemed service on the respondent.

16. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.

16.1. **VIOLATION OF LAW OR RULES.** The Board may impose a civil penalty or deny, suspend, refuse to renew or revoke the license of any auctioneer or auction house owner for any of the following causes:

- 16.1.1. For providing false or fraudulent information on an application;
- 16.1.2. For obtaining a license through false or fraudulent representation;

- 16.1.3. For making any substantial misrepresentation in an application for a license or renewal of license;
- 16.1.4. For pursuing a continued and flagrant course of misrepresentation or making false promises through agents, advertising, or otherwise;
- 16.1.5. For failing to account for or remit, within ten (10) business days, any money belonging to others that comes into his/her possession and for commingling funds of others with his/her own or failing to keep such funds of others in an escrow or trustee account;
- 16.1.6. For conviction in a court of competent jurisdiction of this state or any other jurisdiction of a criminal offense involving moral turpitude or a felony;
- 16.1.7. If the auctioneer/auction house owner demonstrates bad faith, dishonesty, incompetency or untruthfulness, or deceptive practices;
- 16.1.8. For any violation of this Act or of any rule of the Board;
- 16.1.9. For a failure of a licensee to provide to the Board any change of business address within 30 days of such change; or
- 16.1.10. For failure to renew a license within the one hundred twenty (120) day grace period;
- 16.1.11. For failing to enter into a written contract with the seller and furnish voluntarily to the seller at the time of execution copies of all written instruments prepared by the auctioneer/auction house owner, including the contract;
- 16.1.12. For any other conduct that constitutes improper, fraudulent, or dishonest dealings, to include falsely accusing any auctioneer or auction house owner;
- 16.1.13. For failing to complete or submit the continuing education requirements as specified by this chapter and the rules and regulations adopted by the

Board;

16.1.14. Submitting false information as to the receipt of continuing education;
or,

16.1.15. For failure to comply with A.C.A. § 17-17-301 and Sections 9, 10 and
12 of these rules and regulations.

16.2. SANCTIONS FOR FALSE INFORMATION. A licensee who submits false information under these rules section shall be subject to the sanctions provided for under A.C.A. § 17-17-308.

17. SANCTIONS AND PENALTIES

17.1. SANCTIONS. After due notice and hearing, a person, found to have violated provisions of Ark. Code Anno. 17-17-101 et seq or Section 16 of these rules may have any one or more of the following sanctions imposed upon him by the board:

17.1.1. Suspension, revocation or denial of the license or the renewal thereof;

17.1.2. A penalty not to exceed one thousand dollars (\$1,000.00) for each violation;

17.1.3. Conditions or restrictions placed upon the person's license; or

17.1.4. Such other requirements or penalties as may be appropriate to the circumstances or the case, and which would achieve the desired disciplinary purposes, but which would not impair the public welfare and morals.

17.2. PENALTY IN LIEU. Whenever the Board finds that the holder of a license issued by it is guilty of a violation of these rules or the laws of the State of Arkansas, it shall have the power and authority to impose a penalty on the licensee in lieu of suspension or revocation of the license.

17.3. SUSPENSION OF LICENSE PENDING PAYMENT OF PENALTY. Upon

imposition of a penalty in lieu of suspension or revocation, the Board may require that the license be suspended until the penalty is paid.

17.4. CIVIL ACTION BY BOARD. If any person upon whom the Board has levied a civil penalty fails to pay the civil penalty within thirty (30) days of the Board's decision to impose the penalty, the amount of the fine shall be considered to be a debt owed to the Board and may be collected by civil action by the Board.

17.5. PENALTY FOR UNLICENSED PERSON. The Board may impose a civil penalty against any unlicensed person, firm, or corporation practicing or offering to practice any actions requiring licensure pursuant to the provisions herein.

17.6. ADDITIONAL HOURS OF CONTINUING EDUCATION MAY BE REQUIRED. The Board shall have the authority to require additional continuing education hours for auctioneer or auction house owner found in violation of the auctioneer law or these rules.

17.7. VOLUNTARY SURRENDER OF LICENSE. The licensee, in lieu of formal disciplinary proceedings, may offer to surrender his or her license, subject to the Board's determination to accept the proffered surrender, rather than conducting a formal disciplinary proceeding.

17.8 RE-LICENSEURE OF A REVOKED OR SURRENDERED LICENSE. No individual who has had his or her license revoked or who has surrendered his or her license will be licensed, except on petition made to the Board. The application for re-licensure is not allowed until at least five (5) years after the revocation or surrender of license took effect. EXCEPTION: An individual or corporation whose auctioneer license or auction house license was revoked for non-renewal only, may

make application for licensure at anytime pursuant to the rules for licensure in effect at the time of application.

17.8.1. The applicant bears the burden of proof that he is rehabilitated following the revocation or surrender of his license, that he can engage in the conduct authorized by the license without undue risk to the public health, safety, and welfare, and that he is otherwise qualified for the license pursuant to Ark. Code Ann. §§ 17-17-101 et seq..

17.8.2. The Board may impose any appropriate conditions or limitations on a license to protect the public health, safety, and welfare.

17.8.3. The Board may require that the person seeking re-licensure take the licensing examination and/or submit proof of continuing education hours.

18. DISCLOSURE.

18.1. Requirements to Provide Information to the Board. Every person licensed under the provisions Ark. Code. Ann §17-17-101 et seq., shall upon request make available to the Arkansas Auctioneers Licensing Board or its duly authorized representative any information which the Board requires to verify compliance of the Licensee with all provisions of Ark. Code. Ann. § 17-17-101 et seq., and these Board rules and regulations.

19. SEVERABILITY.

19.1. These rules being for the regulation of the business of auctioneers and the protection of the public, the provisions hereby are declared to be severable and the invalidity of any rule, clause, sentence, paragraph or section hereof shall not affect the validity of the remainder thereof.