

Proposed Auctioneers Board ~~Rules and~~ Regulations**18 VAC 25-21-20. LICENSURE.**

All persons or firms as defined in § 54.1-600 of the Code of Virginia who conduct auctions or offer their services to sell at auction in the Commonwealth are required to file a licensure application and pay the specified fee to the board. Applicants for individual licensure shall meet the following requirements:

1. Be at least 18 years of age.
2. Shall not have been previously found by any regulatory board or agency to have violated any applicable regulations or laws in the course of performing auctioneer duties or ~~convicted within the past five years of a criminal offense related to auction activity in Virginia or any other jurisdiction~~ been convicted or found guilty, regardless of the manner of adjudication, in any jurisdiction of the United States of a misdemeanor involving moral turpitude or any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Review of prior criminal convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any plea of nolo contendere shall be considered a conviction for purposes of this paragraph. A certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order shall be admissible as prima facie evidence of such conviction or discipline.

Proposed Auctioneers Board ~~Rules and~~ Regulations

3. Successfully complete a course of study at a school of auctioneering that has obtained course approval from the board, or an equivalent course and has passed the Virginia Licensed Auctioneer's Examination administered by the Auctioneers Board- or its designee.

18 VAC 25-21-40. LICENSE BY RECIPROACITY.

The board may issue a license to any individual applicant, ~~individual or firm~~ holding a license in any state, territory, or possession of the United States, with whom the board has established an act of reciprocity provided the requirements and standards under which the license was issued are substantially equivalent to those established by the board. At the time of application for licensure, the applicant must be currently licensed in the state in which reciprocity is established with the Commonwealth of Virginia. The board may deny an application if the licensed auctioneer ~~or firm~~ has been found guilty (i) by any regulatory board or agency to have violated any applicable regulations or laws in the course of performing auctioneering duties or (ii) by a court of any criminal offense or material misrepresentation in the course of performing auctioneering duties. A certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order shall be admissible as prima facie evidence of such conviction or discipline.

Proposed Auctioneers Board ~~Rules and~~ Regulations

Nonresident applicants shall also file with the board an irrevocable consent that service of process upon the director is valid and binding as the service of process upon the applicant.

18 VAC 25-21-50. APPLICATION.

A. All applicants, ~~both individuals and firms,~~ seeking licensure by reciprocity or examination shall submit a fully executed ~~and notarized~~ application with the appropriate fee or fees attached. Applicants will be notified if their application is incomplete.

Applications for licensure by examination must ~~be received by the Department of Professional and Occupational Regulation 45 days prior to a scheduled examination in order to be eligible to sit for that examination~~ comply with the requirements of the board's designee as to the deadline for submission of the application to the board's designee.

B. If a corporation, the application shall include ~~certified true~~ copies of the certificate of incorporation issued by the Virginia State Corporation Commission, articles of incorporation, bylaws and charter, ~~and, if~~ If a foreign corporation, a certificate of authority to conduct business issued by the Virginia State Corporation Commission, shall be required in lieu of the certification of incorporation.

Proposed Auctioneers Board ~~Rules and~~ Regulations

C. All applications will be reviewed by the Auctioneers Board staff, or the board's designee, to determine eligibility for examination and licensure within 30 days of receipt at the offices of the Department of Professional and Occupational Regulation or the board's designee. However, failure to review an application within 30 days of receipt shall not imply or result in the automatic approval of the application. No applicant will be approved for licensure unless all requirements of this part of this chapter are met.

18 VAC 25-21-60. EXAMINATION.

The examination shall test the applicant's knowledge of the following:

1. The auction business including fundamentals of auctioneering, elementary principles of real estate, preparation of contracts, advertising, final settlement statements, arithmetic and percentages, and ethics.
2. The Virginia statutes entitled Auctioneers' Licensure Act, ~~§§ 54.1-600 through 54.1-606~~ Chapter 6 of Title 54.1 of the Code of Virginia; bulk transfers, §§ 8.6A-101 through 8.6A-110 and 8.2-328 of the Code of Virginia; sales tax laws, Title 58.1 of the Code of Virginia; and the ~~rules and~~ regulations of the board.

18 VAC 25-21-95. BOARD DISCRETION.

Proposed Auctioneers Board ~~Rules and~~ Regulations

The Board may deny initial licensure, renewal or reinstatement of a license for any reason it may discipline a licensee.

18 VAC 25-21-110. CONTRACTS.

When an auctioneer or auction firm agrees to conduct an auction, a contract shall be drawn setting forth the particulars of the terms and conditions under which the auctioneer or auction firm received the real or personal property for auction and particulars for the disbursement of the proceeds. Each contract for auction shall include the following:

1. a. A detailed list of the real or personal property received for sale with adequate descriptions of the property so that the personal property can be readily identified. If a list cannot be made at the time of signing of the contract, then a list must be made a part of the contract (and attached) prior to auction of the real or personal property for that day; or

- b. If the auctioneer or auction firm enters into a contract to sell items on a consignment basis where the total value of all the items to be sold at any one auction does not exceed \$500, and the owner of the items agrees to waive this requirement in writing on a document separate from, but made a part of, the contract, then the

Proposed Auctioneers Board ~~Rules and~~ Regulations

requirement contained in subdivision 1.a of this section is not applicable.

2. The name, address, telephone number, and license number of the Virginia auctioneer or auction firm.
3. The name, address and telephone number of the owner.
4. The date, time and place of the auction or auctions at which the real or personal property is scheduled to be auctioned. The date by which the property is to be returned if it is not sold.
5. The fee or percentage of gross sales the auctioneer or auction firm will charge the owner and what services are included in the fee, such as preparation, travel, labor, advertising and any other auction related expenses.
6. By what date the owner is to be paid and who is responsible for disbursing the funds.
7. A statement that the clerk sheets, or other evidence to properly account for all items sold, shall be given or made available for inspection by the owner on a daily basis.

Proposed Auctioneers Board ~~Rules and~~ Regulations

8. The following statement above the owner's signature line: "I have read and accepted the terms of this contract."
9. A legible executed copy of the contract shall be given to the owner at the time of execution.

18 VAC 25-21-120. CONDUCT AT AUCTIONS.

A. No auctioneer or auction firm shall attempt to escalate bidding through false bids, or through collusion with another (shills). The auctioneer or auction firm shall not bid on the owner's behalf nor knowingly accept a bid made by the owner or made on the owner's behalf unless notice has been given that liberty for such bidding has been reserved. The auctioneer or auction firm shall not bid on his own behalf nor knowingly accept a bid made on his behalf unless notice has been given that such bidding will be permitted.

~~B. If a licensed Virginia auctioneer or auction firm contracts with a nonlicensed (in Virginia) auctioneer, corporation or firm to conduct auctions in Virginia, the Virginia auctioneer, corporation or firm shall be considered the principal and shall assume full responsibility for the auction and auctioneers subcontracted.~~

18 VAC 25-21-150. ESCROW FUNDS.

Proposed Auctioneers Board ~~Rules and~~ Regulations

A. Proceeds of a personal property auction not disbursed to the owner on auction day shall be deposited in an auction escrow account by the auctioneer/auction firm no later than the next banking day following the date of auction or sale of the goods, whichever occurs first.

B. Auctioneers/auction firms shall use federally insured depositories in the Commonwealth of Virginia.

C. Proceeds due from the sale of goods other than real property shall be disbursed to the owner no later than 30 days after the date of each auction.

D. Funds from a real estate auction shall be held in escrow until settlement in accordance with the agreement of sale.

E. If the owners' goods are not sold in a single auction, proceeds due shall be disbursed to the owner within 30 days after each auction for goods other than real property, or in accordance with the agreement of sale for the sale of real property. Notice must be given to the owner of tentative date of auction, or date of return to the owner, of the remaining goods.

F. The auction escrow account shall be used solely for the preservation and guarantee of auction proceeds until disbursed at settlement. Funds for any other purpose shall not be commingled with the auction escrow account. Contingency accounts established to guarantee checks accepted on the

Proposed Auctioneers Board ~~Rules and~~ Regulations

owner's behalf shall not be considered commingling of funds. Moneys due to the auctioneer or auction firm shall not be withdrawn from the auction escrow account until final settlement is made with the owner.

G. The balance in the escrow accounts shall be sufficient at all times to account for all funds that are designated to be held by the licensee.

H. Funds to be deposited in the escrow account may include monies which shall ultimately belong to the licensee, but such monies shall be separately identified in the escrow account records and shall be paid to the licensee by a check drawn on the escrow account when the funds become due to the licensee. The fact that an escrow account contains money which may ultimately belong to the licensee does not constitute “commingling of funds” provided that there are periodic withdrawals of said funds at intervals of not more than six months, and that the licensee can at all times accurately identify the total funds in that account which belong to the licensee.

I. On funds placed in an account bearing interest, written disclosure in the contract of sale or lease at the time of contract or lease writing shall be made to the principals to the transaction regarding the disbursement of interest.

Proposed Auctioneers Board ~~Rules and~~ Regulations

J. A licensee shall not disburse or cause to be disbursed moneys from an escrow account unless sufficient money is on deposit in that account to the credit of the individual client or property involved.

18 VAC 25-21-170. CHANGE OF ADDRESS.

A. An auctioneer's or auction firm's license shall not be transferable and shall bear the same name and physical address as the business. Upon dissolution or change in the form of the business entity of an auction firm, the auction firm license shall become void.

B. Written notice shall be given within 30 days to the board by each individual or firm licensee of any change of physical business address or location, whereupon the board shall issue an amended license without fee for the unexpired portion of the biennial period.

C. A post office box is not an acceptable physical business address.

18 VAC 25-21-180. DISCIPLINE.

A. The board has the power to fine any individual or firm licensee, or to suspend or revoke any license issued under the provisions of Chapter 6 (§ 54.1-600 et seq.) of Title 54.1 of the Code of

Proposed Auctioneers Board ~~Rules and~~ Regulations

Virginia and the regulations of the board pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) if it finds that:

1. The license was obtained or renewed through fraud or misrepresentation;
2. The licensed auctioneer or firm has been ~~found guilty by a court of any criminal offense or material misrepresentation in the course of performing auctioneer duties~~ convicted or found guilty, regardless of the manner of adjudication, in any jurisdiction of the United States of a misdemeanor involving moral turpitude or any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Review of prior criminal convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. A certified copy of a final order, decree or case decision by a court with the lawful authority to issue such order shall be admissible as prima facie evidence of such conviction or discipline;
3. The licensed auctioneer or firm has been found by any regulatory board, ~~or~~ agency, or jurisdiction where licensed to have had a license or registration suspended, revoked or surrendered in connection with a disciplinary action, who has been the subject of discipline in another jurisdiction or to have violated any applicable regulations or laws in the course of performing auctioneer duties. A certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order shall be admissible

Proposed Auctioneers Board ~~Rules and~~ Regulations

as prima facie evidence of such conviction or discipline;

4. The licensed auctioneer or firm has not demonstrated reasonable care, judgment, or application of his knowledge and ability in the performance of auctioneering duties;

5. The licensed auctioneer or firm violated or induced another person to violate any provisions of Chapters 1, 2, 3, or 6 of Title 54.1 of the Code of Virginia, or any provision of this chapter; or

~~6. The licensee, auction firm, or firm owner refuses or fails, upon request or demand, to produce to the board or any of its agents any document, book, or copy thereof in licensee's or owner's possession concerning the performance of auctioneering duties. The licensee shall, upon request or demand, produce to the board, or any of its agents, within 10 days any plan, document, book, record or copy thereof in his possession concerning a transaction covered by this chapter, and shall cooperate in the investigation of a complaint filed with the board.~~

7. A professional who has direct knowledge that any individual, including himself, or firm may be violating any of these provisions, or the provisions of Chapters 1 through 3 or 6 of Title 54.1 of the Code of Virginia, shall immediately inform the secretary of the board in writing and shall cooperate in furnishing any further information or assistance that may be

Proposed Auctioneers Board ~~Rules and~~ Regulations

required.

B. The board, in its discretion, may refuse to grant or renew a license of any person for any of the reasons specified in subsection A of this section.