

Final Auctioneers Board Rules and Regulations

PART I.
DEFINITIONS.

18 VAC 25-21-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

~~"Absolute auction" means an auction where at the time of the auction sale the real or personal property to be sold will pass to the highest bidder regardless of the amount of the highest and last bid.~~

~~"Auction" means the sale of goods or real estate by means of exchanges between an auctioneer and members of his audience, the exchanges consisting of a series of invitations for offers made by the auctioneer, offers made by members of the audience, and acceptance by the auctioneer of the highest or more favorable offer.~~

~~"Auctioneer" means any person who conducts or offers to conduct an auction.~~

~~"Auction firm" means any corporation, partnership or entity, except a sole proprietorship, performing any of the acts of an auctioneer as defined in this section.~~

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~~"Board" means the Auctioneers Board.~~

~~"Director" means the Director of the Department of Professional and Occupational Regulation.~~

~~"Estate auctions" means the liquidation at auction of real or personal property of a specified person.~~

"Owner" means the bona fide owner of the real or personal property being offered for sale; in the case of a corporation, partnership, or other entity, except a sole proprietorship, an authorized officer, director, or partner may be deemed to be "owner" of the real or personal property being offered for sale, provided such entity is licensed to do business in the Commonwealth of Virginia.

~~"Person" means any natural person, association, partnership, or corporation, and the officers, directors, and employees of a corporation.~~

~~"Regular business" means recurring, routine, planned activities performed for profit by those persons, corporations, partnerships, entities, charitable, religious, fraternal or~~

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~~political and all other profit or non-profit organizations who do not meet the exemptions of §54.1-601 of the Code of Virginia.~~

~~"Reserve auction" means the auctioneer reserves the right to reject any and all bids.~~

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PART II.

ENTRY REQUIREMENTS.

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. Any plea of nolo contendere shall be considered a conviction for purposes of this paragraph. ~~The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction.~~ 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.

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3. Successfully complete a course of study at a school of auctioneering which has obtained course approval from the board, or an equivalent course ~~or conducted at least 25 auctions within the past eight years at which the applicant has called the bids~~; and has passed the Virginia Licensed Auctioneer's Examination administered by the Auctioneers Board.

18 VAC 25-21-30. BOND REQUIRED.

All applicants shall submit evidence that a surety bond, executed by a surety company authorized to do business in the Commonwealth and in at least the amount of \$10,000, has been obtained. Proof of current bond must be submitted in order to obtain or renew the license. ~~Bonds shall be for a term of two years and run concurrently with the two-year term of the license.~~ The bond must commence no later than the effective date of the license and shall expire no sooner than the date of expiration of the license.

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

The board may issue a license to any applicant, ~~or active officer in a firm~~ 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

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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 his 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 as prima facie evidence of such conviction or discipline.

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, ~~corporations, firms, or active officers~~ both individual and firms, seeking licensure by reciprocity or examination shall submit a fully executed and notarized application with the appropriate fee or fees attached. ~~Incomplete applications will be returned to the applicant.~~ Applicants will be notified if their application is incomplete.

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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.

B. If a corporation, the application shall include certified true copies of the articles of incorporation, bylaws and charter, and, if a foreign corporation, a certificate of authority issued by the State Corporation Commission.

C. All applications will be reviewed by the Auctioneers Board staff to determine eligibility for examination and licensure within 30 days of receipt at the offices of the Department of Professional and Occupational Regulation. 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.

~~D. — Applicants may appeal the initial application review to the board in writing within 60 days of the staff's determination.~~

18 VAC 25-21-60. EXAMINATION.

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

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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 of the Code of Virginia; bulk transfers, §§ ~~8.6-101 through 8.6-111~~ 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 25-21-70. FEES.

Fees are nonrefundable and shall not be prorated.

The following fees shall apply:

1. Individual auctioneer license - \$40.
2. Auctioneer firm license - \$70.
3. Examination - \$40.

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4. Reexamination fee - \$40.
5. Renewal for individual auctioneer's license - \$70.
6. Renewal for firm or corporation license - \$80.
7. Late renewal for an individual auctioneer's license - \$95.
8. Late renewal for an auction firm or corporate license - \$105.
9. Reinstatement of the individual auctioneer's license - \$120.
10. Reinstatement of the firm or corporate license - \$130.

[~~11. Bad Check Fee \$25.~~]

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PART III.

RENEWAL/REINSTATEMENT.

18 VAC 25-21-80. NOTICE OF RENEWAL.

The Department of Professional and Occupational Regulation will mail a renewal notice to the licensee outlining the amount due and procedures for renewal. Failure to receive this notice shall not relieve the individual or firm licensee of the obligation to renew.

Licenses issued under these regulations shall be issued for a two-year period. Each license holder, corporation or firm shall be required to renew the license by submitting the proper fee made payable to the Treasurer of Virginia, with verification of current surety bond coverage as detailed in 18 VAC 25-21-30 of these regulations.

18 VAC 25-21-90. FAILURE TO RENEW.

A. Any individual or firm licensee who fails to renew a license within 30 days after the license expires, shall be required to pay a late renewal fee ~~which shall be equal to twice the regular renewal fee.~~

B. Any individual or firm licensee, including individuals initially licensed pursuant to § 54.1-603.A

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of the Code of Virginia, who fails to renew his license within six calendar months after the expiration date of the license shall be required to apply for reinstatement of the license. The applicant shall submit to the Department of Professional and Occupational Regulation a reinstatement application and fee- and comply with the following paragraph:

If the license has expired for six months or more, but less than two years, the applicant shall be required to submit a reinstatement application, which shall be evaluated by the board to determine if the applicant meets the renewal requirements. A license that is reinstated shall be deemed as having been continuous without interruption. Nothing in these regulations shall divest the board of its authority to discipline a license holder for a violation of the law or regulation during the period of time for which the regulant was licensed.

C. If the license has expired for two years or more, the applicant shall be required to submit a new application and meet current entry requirements that are in effect as of the date the application is received by the board office. The applicant shall be required to submit the examination fee and sit for and pass the Virginia Licensed Auctioneer's Examination or comply with the provisions contained in 18 VAC 25-21-40. Any auctioneering activity conducted between the time the previous license expired and the effective date of the new license shall be considered unlicensed activity.

€ D. The date the renewal application is received by the Department of Professional and

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Occupational Regulation or its agent will determine whether a license will be renewed without penalty or will be subject to reinstatement requirements.

D E. Auctioneer individual and firm licenses issued under this regulation shall expire 24 months from the last day of the month in which the license was issued as indicated on the license.

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PART IV.

STANDARDS OF PRACTICE.

18 VAC 25-21-100. ADVERTISING.

A. All advertising must be truthful. Advertising shall contain no false, misleading or deceptive statements, with respect to types or conditions of merchandise offered at auction, why merchandise is being sold, who has ownership, where the merchandise was obtained, or the terms and conditions of the auction and sale.

B. In all advertisements relating to an auction, the auctioneer's name and Virginia license number or the auction firm's name and Virginia license number shall be clearly displayed.

18 VAC 25-21-110. CONTRACTS.

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

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1. a. A detailed list of the real or personal property received for sale. 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 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 ~~this~~ the 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.

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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.

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 shall attempt to escalate bidding through false bids, or through collusion with another (shills). The auctioneer 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.

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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 25-21-130. DISPLAY OF LICENSE.

Auctioneers shall carry their pocket cards on their person and shall produce them upon request. Auction firms shall display their license in a conspicuous location at the address of record. The address of record shall not be a post office box as detailed in 18 VAC 25-21-170.C.

18 VAC 25-21-140. DOCUMENTATION.

Upon completion of the auctioneer's or auction firm's service, each owner shall be given legible copies of bills of sale, clerk sheets, consignment sheets, settlement papers, balance sheets or other evidence to properly account for all items sold at auction.

18 VAC 25-21-150. ESCROW FUNDS.

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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 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

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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.

18 VAC 25-21-160. RECORDS.

The contract drawn with each owner; auction records, including but not limited to lists of buyers and their addresses; and clerk sheets showing the items sold including the buyers' numbers or names and the selling prices and the final settlement papers shall be retained for a period of four years from the date of settlement. These business records shall be available for inspection by the board or its designees as deemed appropriate and necessary.

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.

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.

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

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PART V.

STANDARDS OF CONDUCT.

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 Virginia and the regulations of the board pursuant to the provisions of the Administrative Process Act (§ ~~9-6.14:1~~ 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 the board or~~ by a court of any criminal offense or material misrepresentation in the course of performing his auctioneer duties. 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 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

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agency with the lawful authority to issue such order shall be admissible as prima facie evidence of such conviction or discipline;

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

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

5 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.

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.

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PART VI.

SCHOOLS OF AUCTIONEERING.

18 VAC 25-21-190. APPLICATION FOR COURSE APPROVAL.

Schools seeking approval of their courses shall file a request with the board. The request shall include the following information:

1. Name and address of the school;
2. Locations where classes will be held;
3. Length of the course and total number of hours of instruction;
4. Subjects covered together with number of instruction hours assigned;
5. Names and qualifications of instructors (area of expertise and experience).

18 VAC 25-21-200. REQUIREMENTS FOR COURSE APPROVAL.

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To receive course approval the institution must offer to Virginia candidates a minimum of 80 hours of classroom and field instruction in the conduct of auction business to include fundamentals of auctioneering, elementary principles of real estate, brokerage, contract drawing, advertising, sale preparation, bid calling, settlement statements ~~and~~ , ethics and exposure to the current rules and regulations of the Virginia Auctioneers Board. There must be at least five instructors who have been licensed ~~or certified~~ auctioneers for at least five years and who specialize in different fields of the auction business.

18 VAC 25-21-210. AMENDMENTS AND CHANGES.

Any change in the information provided by the school to the board as required by 18 VAC 25-21-190, 18 VAC 25-21-200 or 18 VAC 25-21-220 shall be reported to the board in writing within 30 days of such an occurrence.

18 VAC 25-21-220. PERIODIC REQUALIFICATION FOR CONTINUED COURSE APPROVAL.

At times established by the board, the board may require that schools that have previously obtained course approval provide the board with evidence, in a form set forth by the board, that they continue to comply with the requirements of 18 VAC 25-21-190 and 18 VAC 25-21-200. Failure to continue to comply with the board's requirements or respond to such a request may result in the board

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withdrawing its approval.

I certify that this regulation is full, true and correctly dated.

Mark N. Courtney, Assistant Director *Date*
Department of Professional and Occupational Regulation/
Auctioneers Board