

IT'S THE LAW

By

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Session Law 2005-330, House Bill 1271

On August 26, 2005, Governor Michael F. Easley signed House Bill 1271 into Law. Due to the changes to the Auctioneer Law, new Law and Rule books were recently mailed to all licensees.

The North Carolina Auctioneer Licensing Board is presently working on rule changes that would reflect the changes in the Auctioneer Law. Once the rules have been written, they will be published with a public comment period and a public hearing will follow.

In an effort to assist licensees to understand the changes to the Law, the additions and deletions appear below. Underlined text are additions to the Law and bold dashed text are deletions to the Law.

N.C.G.S. 85B-1. Definitions.

For the purposes of this Chapter the following definitions shall apply:

(8) 'Auctioneering', 'conduct of auction', or 'conduct of business' means, in addition to the actual calling of bids, any of the following:

- a. Contracting for auction.
- b. Accepting consignments of items for sale at auction.
- c. Advertising an auction.
- d. Offering items for sale at auction.
- e. Accepting payment or disbursing monies for items sold at auction.
- f. Otherwise soliciting, arranging, sponsoring, or managing an auction or holding oneself out as an auctioneer or auction firm.

(9) 'Consignment' means, unless otherwise modified by written agreement, the act of delivering or transferring goods or real estate in fact or constructively to an auctioneer or the auctioneer's agent in trust for the purpose of resale at auction whereby title does not pass to the buyer until there is an action indicating a sale. For purposes of this section, consignment may also mean a bailment for sale.

(10) 'Designated person' means any person approved by the Board to have the authority to transact business for a licensed auction firm.

N.C.G.S. 85B-2(b) reads as rewritten:

(b) The exceptions provided in subdivisions (2), (4), (9), (9a) and (11) of subsection (a) of this section shall not apply to any person or entity engaged in the business of organizing, arranging, or conducting auction sales for compensation, compensation or any person who or entity that accepts consignments to be sold at auction where the consignor receives any proceeds from the sale.

N.C.G.S. 85B-2 is amended by adding the following new subsection to read:

(c) The exceptions provided in subdivision (7) of subsection (a) of this section shall not apply to any auctioneer licensed pursuant to this Chapter employed to be an auctioneer of motor vehicles for a licensed motor vehicle dealer, while conducting an auction for that dealer.

N.C.G.S. 85B-4(d) reads as rewritten:

(d) No person shall be licensed as an auctioneer unless the person has held an apprentice auctioneer license and served as an apprentice auctioneer for the two preceding years, accumulated sufficient knowledge and experience in such areas of the auctioneer profession as the Commission may deem appropriate, and has taken an examination approved by the Commission and performed on it to the satisfaction of the Commission. The examination shall test the applicant's understanding of the law relating to auctioneers and auctions, ethical practices for auctioneers, the mathematics applicable to the auctioneer business, and such other matters relating to auctions as the Commission considers appropriate. The examination shall be given at least twice each year in Raleigh, North Carolina, and at other times and places the Commission designates, but no person shall be allowed to take the examination within six months after

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having failed it a second time.

Any person who has successfully completed the equivalent of at least 80 hours of classroom instruction in a course in auctioneering at an institution whose curriculum and instructors meet the qualifications approved or established by the Commission may be licensed as an auctioneer without holding an apprentice license and serving as an apprentice for two years, but shall take the examination required by this subsection and perform on it to the satisfaction of the Commission.

Each applicant for an auctioneer license shall submit a written application in a form approved by the Commission, pay all applicable fees, and consent in writing to a criminal history check as required by G.S. 85B-3.2. If the applicant has been previously licensed as an apprentice auctioneer, the application shall contain an evaluation by the applicant's supervisor of the applicant's performance as an apprentice auctioneer and the applicant's performance in specific areas as required by the Commission. If the applicant is exempted from apprenticeship after completion of the equivalent of at least 80 hours of classroom instruction in auctioneering, the application shall contain a transcript of the applicant's course work in auctioneering. Each application shall be accompanied by statements of at least two residents of the community in which the applicant resides attesting to the applicant's good moral character. The Commission may require verification of any information included in an application for an auctioneer license and may request other information or verification of information provided to determine whether the applicant possesses the good moral character or other qualifications for licensure.

N.C.G.S. 85B-7 reads as rewritten:

Section 85B-7. Conduct of auction; records.

(a) No licensee shall conduct an auction in this State without first having a written agreement with the owner of any property to be sold. The agreement must contain the terms and conditions upon which the auctioneer received the goods for sale. The licensee shall provide the owner with a signed copy of the agreement and shall keep at least one copy for his own records for two years from the date of the agreement. Copies of all contracts shall be made available to the Commission or its designated agent upon request.

(b) Each licensee shall maintain accounting consignment records and enter in them, upon receipt of goods for auction and before their sale, the name and address of the person who employed the licensee to sell the goods at auction and the name and address of the owner of the goods to be sold. The consignment record shall contain an adequate description of the goods to be sold and shall be sufficient to positively identify each item. The accounting Consignment records shall be open for inspection by the Commission or its designated agent at reasonable times.

(c) All licensees shall have their licenses available at each auction they conduct.

(d) Each licensee shall maintain records sales records, which identify the purchaser of all goods sold by name, address, and when possible, telephone number. The sales records shall contain an adequate description of the items sold and must be sufficient to positively identify the owner of the property. Sales records shall be maintained for a period of not less than two years from the date of sale. Sales records shall be open for inspection by the Commission or its designated agent at reasonable times.

N.C.G.S. 85B-7.1(a) reads as rewritten:

(a) Each licensee who does not disburse all funds to the seller on auction day shall maintain a trust or escrow account and shall deposit in the account all funds that are received for the benefit of another person and are not disbursed to the seller on auction day. The licensee shall deposit funds that are not disbursed on auction day with an insured bank or savings and loan association located in North Carolina. A licensee who disburses funds on auction day shall prepare a receipt or settlement statement for the disbursed funds that contains the name and address of the person receiving the disbursement and the amount of the disbursement. The receipt or statement shall be signed by the licensee and the person receiving the disbursement. At or before the time of all final settlements, the auctioneer shall provide the seller or consignor with a settlement statement, which includes a description of all goods sold, the selling price of the goods sold, the net proceeds due to the seller or consignor, the name and address of the person receiving the disbursement, and the amount of the disbursement. All settlement statements shall be signed by the licensee or the licensee's agent and by the person receiving the disbursement.

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N.C.G.S. 85B-8(e) reads as rewritten:

(e) The Commission may investigate complaints and conduct hearings as follows:

(1) The Commission may upon its own motion or upon the complaint in writing of any person, provided the complaint and any evidence presented with it establishes a prima facie case, hold a hearing and investigate the actions of any auctioneer, apprentice auctioneer, or auction firm, or any person who holds himself or herself out as an auctioneer or apprentice auctioneer, and shall have the power to impose a civil penalty on any licensee, suspend or revoke any license issued under the provisions of this Chapter, or to reprimand or censure any licensee. In all pro-

ceedings for the imposition of a civil penalty or the denial, suspension, or revocation of licenses, the provisions of Chapter 150B of the General Statutes including provisions relating to summary suspension shall be applicable. Any person who desires to appeal the denial of an application for any license authorized to be issued under this Chapter shall file a written appeal with the Commission not later than 30 days following notice of denial.

(2) The Commission may, upon its own motion, summarily suspend a license when the health, safety, or welfare of the public is at risk, such as in the event of a potential loss of consigned items or potential loss of funds.

We Have New Board Members!

Mr. Willie A. Johnson of Greensboro and Ms. Jean W. Woolard of Plymouth were recently appointed by Governor Michael F. Easley to the North Carolina Auctioneer Licensing Board. Special thanks and gratitude go to Keith J. Pierce and Patricia D. Worley, who have proven their commitment and dedication to the Board through their hard work throughout the years.

Mr. Johnson served two years in the U.S. Army, thirteen months of which he served in Vietnam with the 25th Infantry Division. He received a degree in Business Administration from GTCC and later attended North Carolina A&T University.

In 1989, Mr. Johnson enrolled at Mendenhall School of Auctioneering and was licensed as an auctioneer in August of 1989. In 1993, Mr. Johnson attended Dan Mohr Real Estate School. Passing the state exam he received his real estate broker license. Mr. Johnson is an active member in the Greensboro Regional REALTORS Association, North Carolina Association REALTORS and National REALTORS Association.

As an active member in the Auctioneers Association of North Carolina, Mr. Johnson has served in many positions. In January 2005, he was installed as president of the AANC. Mr. Johnson is also an active member of the National Auctioneers Association. As operator of Willie Johnson Auctioneer & Associates, he conducts auctions in real estate and personal properties.

Mr. Johnson was appointed in August 2005 to a three year term.

Ms. Woolard holds a B. S. Degree and a Masters Degree in Secondary Education from East Carolina University. She retired from Plymouth High School as the Teacher/Coordinator of a Business and Office Occupations Program.

Ms. Woolard is a member of the North Carolina Association of Educators and a lifetime member of the National Education Association. She has held offices in the NCAE and the NEA on the local, regional, and state levels and served as a delegate to many state and national conventions.

After her retirement from the classroom, Ms. Woolard worked for a number of years with the North Carolina Teacher Academy and has been a partner in several retail shops, including antiques. Ms. Woolard has been active in politics for many years, having chaired successful campaigns for several state representatives and working as a liaison for the NCAE in campaigns to elect an education-friendly General Assembly.

Ms. Woolard is currently serving a three-year term, representing the public at large.