

IT'S THE LAW

By

Robert A. Hamilton, Executive Director
North Carolina Auctioneer Licensing Board

and Jeffrey P. Gray, Legal Counsel to the North Carolina Auctioneer Licensing Board

The Transaction of Business Under an Auction Firm License

Statutes provide the general licensing requirements for auctioneers and auction firms. A portion of N.C.G.S. 85B-4, subsection (g), states, "...Where a license is issued to an auction firm, authority to transact business under the license is limited to the person or persons designated in the application and named in the license..." This one sentence is many times overlooked, but it is one of the most important parts of the Law as it applies to the day to day business of auction firms.

The above sentence only allows for approved designated persons to transact the business for an auction firm. As of late, some people who either work for or own an auction firm have been mistaken that because they were issued an auction firm license that anyone associated with the firm could transact the auction firm's business.

This is simply not true. "Authority to transact business under the license," means that the designated person is responsible for arranging, managing, conducting and advertising auctions. This does not mean that the designated person has to personally handle all of the clerking duties or all of the advertising duties. It does mean, however, that the designated person is the responsible individual if clerk does not do their job correctly, if the advertising violates the Auctioneer Law and Rules, if contracts or agreements are not properly signed and retained, or if unlicensed persons are calling bids, etc.

Many auction firms have applied for and received licenses from the Board with an auction-

eer listed as the only designated person. Some of these firms are sole proprietorships where the owner is not the auctioneer or listed as the designated person. It has come to the Board's attention that some of these owners have mistakenly listed the auctioneer as the designated person when the owner's intentions were to use the auctioneer for bid calling purposes only. In this case the owner, whether intentionally or unintentionally, is transacting the business of the auction firm without properly being approved as a designated person. This is a violation of the Auctioneer Law and as such the firm license would be subject to disciplinary action.

When auctioneers have been confronted by the Board's staff in this situation, some will give the excuse that the owner would not allow them to transact the business of the firm. In cases such as this, the auctioneer should remove himself as a designated person from the firm license to relieve himself of liability and possible administrative violations.

A licensed auction firm that does not have a currently valid designated person(s) is put into an invalid status by the Board's staff until a new designated person(s) can be added. This means that no one can legally transact the business of the firm and as such the firm would be in violation of N.C.G.S. 85B-4(a) because the auction firm license would not be currently valid.

The question often arises that if the firm only has one designated person and this person is unable to attend the auction, can the auction be

The Transaction of Business Under an Auction Firm License (continued)

performed? The answer is no, unless another designated person is added and approved. Many auction firms upon learning about the above information have added multiple designated persons to be used in emergency situations. Auction firms are not limited to the number of approved designated persons they can list.

There are only four types of people who can be authorized under an auction firm license to transact the business. The first person is a North Carolina licensed auctioneer. This person is exempt from the requirement to successfully complete a written auction firm examination. Once approved, this person can handle all of the business aspects of the firm when it relates to personal property auctions and call bids for the firm during both personal and real property auctions. This person can also use and/or employ another auctioneer to assist in calling bids for the firm.

The second person is a North Carolina licensed real estate broker. This person is also exempt from the requirement to successfully complete a written auction firm examination, as long as this person is only acting as the designated person for real estate transactions. If this person will act as the designated person for a personal property auction, then he/she must successfully complete a written auction firm examination. This person would be required to use and/or employ a licensed auctioneer to call the bids

for either real or personal property auction sales.

The third person is a North Carolina licensed auctioneer and real estate broker. This person is exempt from the requirement to successfully complete a written auction firm examination. After this person has been approved, he/she can act as the designated person both for personal and real property auction sales. This person can also call the bids for both types of sales or use and/or employ a licensed auctioneer to call the bids.

The fourth person is not a licensed auctioneer or a licensed real estate broker. This person would be required to successfully complete a written auction firm examination. After this person has been approved, he/she can act as the designated person for only personal property auction sales. This person cannot legally call bids and must use and/or employ a licensed auctioneer to call bids.

If you are interested in adding a designated person to your auction firm license, contact the Board's office to receive information as to what materials would be needed.