

# Newsletter

## Board's Interpretation of the Law

In the past there has been confusion by licensees as to the Board's interpretation of subsection N.C.G.S. 85B-4(g) as it relates to the sentence, "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." There has also been confusion as to the Board's policy on what duties a licensed auctioneer can perform when he is contracted/employed by another licensed auctioneer.

At the regular monthly North Carolina Auctioneer Licensing Board meeting in January, the Board approved a written interpretation/policy of the above concerns, which is as follows,

1. Only designated person(s) for an auction firm have the authority to transact business under the firm license. This includes arranging, managing, soliciting, and contracting auctions; the supervision of the auction staff; the supervision of the acceptance of consignments of items for sale at auction; the supervision of the advertising of an auction; and the supervision of the acceptance of payment and disbursement of monies for items sold at auction;
2. At least one designated person shall be on the premises of an auction firm's auction sale location while the auction sale is conducted;
3. A licensed auctioneer who owns and operates a non-auction firm business has the sole responsibility for arranging, managing, soliciting, and contracting auctions; the supervision of the auction staff; the supervision of the acceptance of consignments of items for sale at auction; the supervision of the advertising of an auction; and the supervision of the acceptance of payment and disbursement of monies for items sold at auction;
4. A licensed auctioneer who is employed or contracted by another licensed auctioneer who owns and operates a non-auction firm business can only be responsible for calling bids and performing duties that a non-auctioneer is allowed; and
5. A licensed auctioneer who owns and operates a non-auction firm business shall be on the premises of his business's auction sale location while the auction sale is conducted.

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### 2005

#### Board Meeting Dates

The Board has set the following dates and locations for its regularly scheduled meetings for the end of the 2004 fiscal year. The July 2005 through December 2005 dates below are tentative.

<u>Date</u>	<u>Location</u>
February 16	Fuquay Varina, NC
March 16	Fuquay Varina, NC
April 20	Fuquay Varina, NC
May 18	Fuquay Varina, NC
June 17	New Bern, NC
July 15	Pittsburgh, PA
August 17	Fuquay Varina, NC
September 21	Fuquay Varina, NC
October 19	Fuquay Varina, NC
November 16	Fuquay Varina, NC
December 21	Fuquay Varina, NC

All Board meetings normally begin at 9:00 a.m. and are open for the most part to all licensees and the public. Certain matters, such as discussions of potential disciplinary cases to determine probable cause as well as final sanctions, if appropriate, are discussed in closed sessions. We encourage all interested persons to attend one or more of these meetings.

**Although not required, you may wish to notify the staff if you plan to attend a meeting. This will assist in our planning to accommodate visitors.**

## Interpretation of the Law (Continued)

A licensed auctioneer who is contracted/employed by a licensed auction firm and is not an approved designated person for the firm can only call bids and perform duties a non-auctioneer is allowed. Duties that a non-auctioneer is allowed includes acting as a ringman, clerking, assisting with the set up of the auction, and assisting with the acceptance of consignments, etc.

An auction firm that has multiple auctions occurring simultaneously is required to have at least one Board approved designated person at each auction site. Designated persons for auction firms are the only persons allowed to solicit auction business and to sign contracts for the firm.

A non-auctioneer/non-broker who passes the auction firm exam can be approved as a designated person for a personal property auction firm. An auctioneer is exempt from the auction firm exam and can be approved as designated person for a personal property auction firm. A broker is exempt from the auction firm exam and can be approved as designated person for a real property auction firm. A broker is not exempt from the auction firm exam if he/she wishes to be approved as designated person for a personal property auction firm.

The cost to add an additional designated person to an auction firm application or to add an additional designated person to a licensed auction firm is \$50.00 for each person who is required to take the auction firm exam, \$14.00 for resident fingerprint processing fees for a non-auctioneer, and \$38.00 for non-resident fingerprint processing fees for a non-auctioneer.

An auctioneer who owns and operates a non-auction firm business must understand that he cannot allow other auctioneers to "borrow" his auction business. If the auctioneer/owner cannot be on site at an auction due to illness, scheduling conflicts, or any other reason, the auction must be rescheduled or cancelled. This sometimes justifies the need for an auction firm license. By obtaining an auction firm license, multiple designated persons can be approved and can fill in when others are not available.

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## CURRENT BOARD MEMBERS

Patricia D. Worley  
Princeton, NC  
Chairman

William M. O'Neal  
Norwood, NC  
Vice Chairman

James W. Johnson, III  
Angier, NC  
Board Member

Jesse G. Meeks  
Eden, NC  
Board Member

Keith J. Pierce  
Winston-Salem, NC  
Board Member

## CURRENT STAFF MEMBERS

Robert A. Hamilton, Executive Director

Daniel Rothra, Administrative Officer

Teresa L. Watson, Administrative Assistant

Barbara Phillips, Secretary

Bruce E. Marshburn, Investigations Coordinator

Ralph Southerland, Investigator

Ronnie Stewart, Investigator

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## Licensing Board Activity Report

This activity report covers the period from April 2004 through January 2005. The Board met ten times; conducted five auctioneer licensing examination sessions and gave eighteen auction firm exams; issued one hundred and three auctioneer licenses, six apprentice auctioneer licenses and thirty-eight auction firm licenses; denied licensing to ten auctioneer, one apprentice auctioneer and two auction firm applicants; conducted six settlement hearings; attended the AANC conventions in Asheville and Greensboro; and attended the NAA convention in Madison, Wisconsin. A Board Member and the Executive Director attended the Council for License, Enforcement and Regulation (CLEAR) Annual Conference in Kansas City, Missouri.

### Disciplinary Actions

A summary of the disciplinary actions is as follows:

- 1) **Randal Blake McLean, NCAL #5310 (Gastonia)** - Randal Blake McLean paid a \$150.00 fine for giving the Board a check in payment of required fees which was returned unpaid. Randal Blake McLean waived his right to appeal as allowed by law and agreed to the Board's findings of violations.
- 2) **V. Delton Cooper, NCAL #2076 (Maysville)** - V. Delton Cooper paid a \$500.00 fine in lieu of a one year suspension of his auctioneer license for auctioneering at an unlicensed auction firm sale. V. Delton Cooper waived his right to appeal as allowed by law and agreed to the Board's findings of violations.
- 3) **Eric Heath Smith, NCAL #7565 (Reidsville)** - Eric Heath Smith's auctioneer license was suspended for a period of two years for making any false statement or giving any false information in connection with any investigation by the Board or the Board's designee; for failing to provide copies of all trust or escrow account records and records of disbursement that were requested as required by N.C.G.S. 85B-7.1(b); for failing to account for or to pay over within a reasonable time, not to exceed 30 days, funds belonging to another which have come into the licensee's possession through an auction sale after being ordered by a Court; for engaging in unprofessional conduct; and for failure to possess truth, honesty and integrity sufficient to be entitled to the high regard and confidence of the public. Eric Heath Smith waived his right to appeal as allowed by law and agreed to the Board's findings of violations.
- 4) **Eric Heath Smith, NCAL #7565 (Reidsville)** - Eric Heath Smith's auctioneer license was automatically suspended indefinitely due to the Commission's payment from the Auctioneer Recovery Fund toward the settlement of a claim or toward the satisfaction of a judgement against the licensee. Eric Heath Smith's auctioneer license is not eligible for consideration for reinstatement until repayment in full, plus interest at the legal rate as provided for in N.C.G.S. 24-1, the amount paid from the Fund.
- 4) **Fred Wall Hamilton, NCAL #7585 (Smithfield)** - Fred Wall Hamilton's auctioneer license was suspended for a period of one hundred and eighty days for conducting an auction in this State without first having a written agreement with the owner of any property to be sold; for auctioneering at an unlicensed auction firm sale; and for making any false statement or giving any false information in connection with any investigation by the Board or the Board's designee. Fred Wall Hamilton waived his right to appeal as allowed by law and agreed to the Board's findings of the violations.
- 5) **Jack H. Childs, NCAL #17 (Broadway)** - Jack H. Childs paid a \$100.00 fine for permitting his name or license number to appear on any advertisement for an auction without reviewing the contents of the advertisement prior to its publication to ascertain its compliance with applicable Law and Rules. Jack H. Childs waived his right to appeal as allowed by law and agreed to the Board's findings of violations.
- 6) **Keith J. Pierce, NCAL #154 (Winston-Salem)** - Keith J. Pierce paid a \$450.00 fine in lieu of a ninety day suspension of his auctioneer license for auctioneering at an unlicensed auction firm sale and for permitting his name or license number to appear on any advertisement for an auction without reviewing the contents of the advertisement prior to its publication to ascertain its compliance with applicable Law and Rules. Keith J. Pierce waived his right to appeal as allowed by law and agreed to the Board's findings of violations.
- 7) **Letters of Reprimand** - The following Letters of Reprimand were issued;
  - Barry Laney, NCAL #4574, for permitting his name or license number to appear on any advertisement for an auction without reviewing the contents of the advertisement prior to its publication to ascertain its compliance with applicable Law and Rules;
  - Myron C. Bowling, NCAL #5800, for failure to report to the Board by written notice any and all administrative proceedings which are commenced against him which involves any potential revocation or suspension of, or other disciplinary action against, any auction license or auctioneer license that he holds in another state;

## Licensing Board Activity Report (continued)

7) **Letters of Reprimand (continued)** The following Letters of Reprimand were issued;

- Dovebid, Inc., NCAFL #7151, for failure to report to the Board by written notice any and all administrative proceedings which are commenced against them which involves any potential revocation or suspension of, or other disciplinary action against, any auction license or auctioneer license that they hold in another state;
- Jack H. Childs, NCAL #17, for auctioneering at an unlicensed auction firm sale;
- Clarence L. Teague, NCAL #7264, for auctioneering at an unlicensed auction firm sale; and
- Thomas Dimsdale, NCAL #4035, for auctioneering at an unlicensed auction firm sale.

8) **Cautionary Letters** - During this reporting period, ten letters of caution were issued for the following reasons:

- For engaging in unprofessional conduct;
- For auctioning at an unlicensed auction firm sale;
- For failing to secure buyers' and sellers' goods after an auction;
- For removing an air conditioning unit to gain access to a home without permission;
- For reopening an auction after an item was declared sold;
- For failing to specifically disclose at or before the time of the auction items that were no longer a part of the estate;
- Per a Settlement Stipulation and Agreement between the Board and an auctioneer, for temporary physical and/or mental disability during an auction, for financially being unable to abide by a minimum guaranteed sales price, and for financially being unable to abide by a purchase contract;
- Per a Settlement Stipulation and Agreement between the Board and an auctioneer, for auctioneering at an unlicensed auction firm sale;
- Per a Settlement Stipulation and Agreement between the Board and an auction firm, for auctioneering at an unlicensed auction firm sale; and
- For cutting a screen to gain access to a home without permission.

## Interpretation of the Law (Continued)

The North Carolina Auctioneer Licensing Board expects to submit the interpretation/policy to the Rules Review Commission by mid-Summer to be codified and approved as rules under 21 NCAC 4B.

The Board and staff attempts to keep up with and address issues in the profession. Both the licensees' and the public's questions and concerns help to keep the Board and staff up to date on new standards of practices and established ethical procedures.

The next newsletter will provide information on some of the profession's acceptable standards of practices and established ethical procedures.

Never hesitate to contact the Auctioneer Licensing Board for more information or to answer any questions that you might have.

### Announcement!

On January 11, 2005, Governor Michael F. Easley reappointed Jesse G. Meeks of Eden to the North Carolina Auctioneer Licensing Board.

Congratulations are in order for Mr. Meeks who begins a new three year term.

Also, the Board and Staff wishes to welcome Daniel Rothra as the new Administrative Officer and Barbara Phillips as the new Receptionist/Secretary. Mr. Rothra began employment in April and replaces Connie Crisman and Ms. Phillips began employment in January and replaces Robin Rowell.