

North Carolina Auctioneer Licensing Board Newsletter

November 2012

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Chairperson Corner

The Fall of the year has arrived and with it comes a wonderful opportunity for those associated with auctioneering. Many organizations in our local communities are holding fundraisers and are holding auctions as part of their fundraising efforts. I would encourage each of you to volunteer your expertise to assist these organizations in their efforts. The fundraising efforts may be conducted by local churches, local civic organizations as well as hospital and home health and hospice groups. Please seek opportunities within your local communities to help these groups with their efforts.

Additionally, and as a reminder, the staff at the auctioneering board office is available to help you. Please feel free to call with questions or concerns. The number to call is (919) 567-2844.

Respectfully,

Clegg Grady

Statistics for fiscal year 2011/2012 (ending 6/30/2012):

21 official complaints were filed with the Board;
10 disciplinary actions were taken against licensees;
3 non-disciplinary actions were taken against licensees;
0 non-disciplinary actions were taken against non-licensees;
2 licenses were revoked;
4 licenses were suspended;
120 auctioneers were issued initial licenses;
4 apprentice auctioneers were issued initial licenses; and,
49 auction firms were issued initial licenses.

Board Meeting Dates:

November 13, 2012
December 10, 2012

Active Licenses:

| | |
|-----------------------|------|
| Auctioneer License: | 2021 |
| Apprentice License | 10 |
| Auction Firm License: | 448 |

Article by Garris Neil Yarborough-Board Legal Counsel

Technology, particularly the internet, has brought many changes to the Auctioneer Profession. As it has become an aid to Auctioneers, it has also created opportunities for unlicensed auctioneering activities. In interpreting our North Carolina Auctioneer Licensing Laws, the Board has attempted to differentiate between legitimate internet "trading platforms", payment systems, advertising activities, and unlicensed auctioneering activities, which simply use the internet as the medium for conducting auctions. This is sometimes a difficult task, but through the Board's enforcement program, we have identified several clear-cut means for identifying violations: the easiest being identifying individuals or businesses that are unlicensed, but use some form of the word "auction" in their business name. Other times, it takes a little more investigation and analysis to see if an unlicensed activity is in violation of Chapter 85B of the North Carolina General Statutes. The following are the legal guidelines we use in that analysis:

N.C. Gen. Stat. §85B-4(a) states:

No person who is not exempt under G.S. 85B-2, shall sell, or offer to sell, goods or real estate at auction in this State or perform any act for which an auction firm license is required unless the person holds a currently valid license issued under this Chapter.

[GS 85B-2 has twelve different exceptions, e.g., automobile auctions, livestock auctions, judicial sales, etc.]

N.C. Gen. Stat. §85B-9 goes on to state:

(a) Any person, corporation or association of persons violating the provisions of G.S. 85B-4(a) shall be guilty of a Class 1 misdemeanor. The Attorney General of North Carolina, or the Attorney General's designee, shall have concurrent jurisdiction with the district attorneys of this State to prosecute violations of this Chapter.

(b) The Commission may in its own name seek injunctive relief in the General Court of Justice to restrain any violation or anticipated violation of the provisions of G.S. 85B-4(a) or any violation of this Chapter.

(c) The Commission shall be entitled to the services of the Attorney General of North Carolina in enforcing the provisions of this Chapter or may employ an attorney to assist and represent it in enforcement of specific matters. Continued on page 2.

Article by Garris Neil Yarborough-Board Legal Counsel

The North Carolina General Assembly has defined “Auctioneer” as “any person who conducts or offers to conduct auctions and includes apprentice auctioneers except as stricter standards are specified by this Chapter for apprentice auctioneers.” N.C. Gen. Stat. §85B-1(2). It has gone on to make the other following relevant definitions:

- “Auction Firm” means a sole proprietorship of which the owner is not a licensed auctioneer, or any partnership, association, or corporation, not otherwise exempt from this Chapter, that sells either directly or through agents, real or personal property at auction, or that arranges, sponsors, manages, conducts or advertises auctions, or that in the regular course of business uses or allows the use of its facilities for auctions. This definition applies whether or not an owner or officer of the business acts as an auctioneer. N.C. Gen. Stat. §85B-1(6)
- “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.

N.C. Gen. Stat. §85B-1(8)

- “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. N.C. Gen. Stat. §85B-1(9)

The Board learns of unlicensed activities in a variety of means, including observing advertisements by unlicensed auctioneers, inquiries by licensed auctioneers and receiving citizen complaints. When it comes to the attention of the Board that there is a possibility of unlicensed activity involving so-called “internet auctions” or “consignments for internet auctions”, we first send a letter to the individual or business involved and provide them an opportunity to explain why they should not be licensed, or in the alternative, to get a license or stop what they are doing. If need be, we then conduct follow-up investigation or enforcement activity.

It is important to note that our activities in these unlicensed matters are a critical part of the North Carolina Auctioneer Licensing Boards Mission. The statutory basis for our licensing effort is to protect the public from misconduct or harm through the auction process. In doing so, we license and regulate individuals and businesses who meet certain standards designed to protect the public from such ills. On the other side of that equation, we must try to prevent harm to citizens by unlicensed individuals or businesses attempting to conduct auctioneering activities. This is particularly important in that our client recovery fund only covers injuries to citizens harmed in auction activities by licensed auctioneers. Therefore, not only is it more likely that an unlicensed auctioneer may innocently or intentionally harm one of North Carolina's citizens in the conduct of such activities, but also that the injured party has no access to the recovery fund.

From the perspective of the Auctioneer Profession, these enforcement activities are also important because unlicensed auctioneer activities, which injure clients, can possibly cause as much damage to the profession's image as that of a licensed auctioneer. This is true because typically the only thing people will read or hear is that “someone got ripped off in an auction scam” without mention as to whether the perpetrator was licensed or unlicensed.

Chances are if you are reading this article, you are a licensed auctioneer and, therefore, “I'm preaching to the choir.” However, as a licensed auctioneer it is important for you to know how the NCALB approaches these matters.