



# UNIFORM AUCTION AND AUCTIONEER LICENSING ACT ("UAALA")



By Kurt R. Bachman and Joshua A. Burkhardt  
Published the National Auctioneers Association



The National Auctioneers Association headquarters in Overland Park, Kansas.

## NAA Mission Statement

To promote, increase and build the trustworthiness of the competitive bidding method of marketing, including: live, Internet and sealed bid auctions, and enhance the professionalism of its practitioners.

## NAA Vision

Competitive bidding will be increasingly utilized as a method to sell all types of goods in all segments of the economy. The National Auctioneers Association (NAA) will unify and lead the competitive bidding industry to fulfill this vision.

## INTRODUCTION BY THE NATIONAL AUCTIONEERS ASSOCIATION

# A SAMPLE AUCTION LAW FOR STATES TO ENACT

The National Auctioneers Association, publisher of this book, organized the development of this Uniform Auction and Auctioneer Licensing Act (UAALA) with the help of attorneys Kurt R. Bachman, Joshua A. Burkhardt, and the National Auctioneers License Law Officials Association (NALLOA).

The UAALA provides a sample auction law, a template, for states to base the content of their state auction and auctioneer laws upon. In America there is no single federal law regulating the conduct of auctions. Regulation is left up to individual state legislatures and agencies, many of which have drafted their own unique regulations to protect the public in the conduct of business. Many states have differing requirements on licensing, education, bonding, fees and other aspects of conducting an auction. Because the differences are often vast from state to state, significant burdens are placed on professional auctioneers simply trying to do business in multiple states. A uniform law such as the one contained in this book, would help streamline the business process for auctioneers and their clients.

State officials will also likely find this document helpful because it addresses the complete array of issues that state laws examine in regulation of auctions, and it sets out reasonable regulations. Also, some states do not have an auction law and will wish to create one in the near future. These states may use this sample law with confidence that it provides a sound platform for regulation of this industry.

Auctioneers today continue to grow in professionalism, education, dedication to ethical practices, and willingness to embrace changes in their industry, from technology to market composition. The National Auctioneers Association assists them in these goals, and will work as much as possible to help enact uniform auction laws across America that will benefit the auction industry, the public and be acceptable to state officials. Interested state officials are encouraged to call NAA at 913-541-8084 for assistance.

Please read the following letters by NALLOA and by the authors of the Act: Attorneys Kurt R. Bachman and Joshua A. Burkhardt.

The National Auctioneers Association is the largest organization of its kind, with about 6,000 members, and is dedicated to promoting the auction method of marketing, the competitive bidding industry, and enhancing the professionalism of its members. For more information on the NAA and its programs, log on to [www.auctioneers.org](http://www.auctioneers.org).



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# A WORD FROM THE NATIONAL AUCTIONEERS LICENSE LAW OFFICIALS ASSOCIATION

The National Auctioneers License Law Officials Association (NALLOA) was pleased to be provided the opportunity to work with the National Auctioneer Association to assist in the development and composition of the Uniform Auction and Auctioneer Licensing Act (UAALA). This Act replaces the previous version that had been produced by the NALLOA in 1998.

At the most recent NALLOA Summer and Mid-Winter meetings, members of the public and Associate Members had concerns that the NALLOA was not assisting national auctioneers and auction companies with licensing issues. Reciprocity for auctioneers was the largest concern. The UAALA is a tool that can be used to make states more consistent so that reciprocity will be more available to auctioneers.

The NALLOA will provide representatives in the future to assist the National Auctioneer Association and state legislatures with implementing this Act.

While the UAALA attempts to offer individual states a template to enact or amend auction and auctioneer laws, it must be understood that it will always be a work in progress. The auction industry is a dynamic trade that will continue to change as technology and techniques evolve. The NALLOA will continue to be available when new revisions are needed.

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# NOTE FROM THE AUTHORS:

*“To give real service you must add something which cannot be bought or measured with money, and that is sincerity and integrity.”*

*- Douglas Adams*

The custom of selling goods at auction has been around for centuries. It is a method of marketing and selling property that has been used by individuals with and without integrity. Each state has authority to regulate auction sales, auctioneers, and the business of an auctioneer within its borders under its general police powers. “It has been said that the business of conducting auctions is one that requires public supervision so that purchasers will not be imposed on or the owners of property sold at auction defrauded. . . .” 7 AM. JUR. 2D Auctions and Auctioneers § 3.

Over the years, several states have adopted licensing requirements for auctioneers and auction businesses. When the research was completed, thirty-three states, and the District of Columbia, required a license before an auctioneer could lawfully conduct auctions within the state. Twelve states did not require a state license, but permitted political subdivisions and municipalities to impose licensing requirements for auctioneers and regulations for the auction industry. The remaining five states did not generally impose licensing requirements.

A little over a year ago we started drafting uniform auction licensing laws for the National Auctioneers Association (“NAA”) and National Auctioneer License Law Officials Association (“NALLOA”). We drafted the “Uniform Auction and Auctioneer Licensing Act,” (hereinafter “UAALA” or “Act”) for the purpose of bringing some uniformity to auctioneer licensing laws and provide a model for states to consider. In addition, we drafted UAALA to reduce deceptive practices and promote confidence in auctioneers and the auction industry.

First, UAALA seeks to unify auction and auctioneer licensing laws in the United States of America. More uniformity in the law would help standardize auction procedures, facilitate commerce, and assist bidders that travel to auctions in various states. The adoption of the UAALA would also ensure minimum national standards for auctioneers and auction firms.

Second, UAALA seeks to reduce fraud and deceptive practices in the auction industry. For the protection of buyers and sellers, UAALA requires an auctioneer to obtain a state license in order to conduct lawful auctions within a state. This Act establishes a licensing commission for each state to enforce the laws and regulate the auction industry. UAALA further establishes appropriate penalties for violations of the Act and gives the licensing commission of each state authority to regulate the industry.

Third, UAALA seeks to promote public trust and confidence in auctioneers and the auction industry. The Act attempts to establish minimum standards to ensure that auctioneers will have a certain amount of knowledge, skills, compe-

tence, and training.

UAALA is organized in a logical order so individuals and businesses can quickly locate the desired provisions. There are also comments for some sections of the Act. The comments are for the purpose of clarification, interpretation, or elaboration of the section. In some instances, the comments will provide states with options to consider regarding the Act's adoption.

We enjoyed working with the NAA and NALLOA in drafting the provisions of UAALA. We will continue to look for ways to improve UAALA and the law as it relates to auctioneers and auctions. If you have concerns or comments about UAALA for future revisions, please contact us and let us know.

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# UNIFORM AUCTION AND AUCTIONEER LICENSING ACT (“UAALA”)

PREPARED FOR AND ENDORSED BY THE:

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## CHAPTER I

# GENERAL PROVISIONS

1-101 Title. This act shall be known and may be cited as the "Uniform Auction and Auctioneer Licensing Act."

1-102 Legislative Intent. The legislative body of this state finds that, without legislation, this state does not have the ability to evaluate the competency of persons engaged in the business of auctioneering or to regulate the auction industry for the protection of the public. This body further finds that it does not have the ability, without legislation, to enter into reciprocal agreements with other states to allow its residents to practice as auctioneers in other states. Therefore, it is the purpose of this Act to license auctioneers and auction firms and to regulate the business of auctioneering.

1-103 Preemption. A political subdivision or municipality of this state may not levy on or collect from an auctioneer or auction firm a license tax or fee as a regulatory or revenue measure or require additional licensing, if the auctioneer or auction firm holds a license under this Act and is in compliance with this Act.

1-104 Definitions. As used in this Act:

- (a) "Absolute Auction" means an auction where real or personal property is sold to the highest qualified bidder with no limiting conditions or amount. The seller may not bid personally or through an agent on property to be sold at an absolute auction. In an absolute auction, after the auctioneer calls for bids on real or personal property, it cannot be withdrawn unless no bid is made within a reasonable time.
- (b) "Applicant" means any person applying for an auctioneer or auction firm license under this Act.
- (c) "Auction" means the public sale of real or personal property, or both, in which the sale price of the property offered is increased by competitive bids until the highest accepted bidder becomes the purchaser.
- (d) "Auctioneer" means an individual who engages in, or who by advertising or otherwise holds himself out as being available to engage in, the calling for, the recognition of, and the acceptance of competitive bids for the purchase of goods or real estate at an auction or otherwise engaging in the business of auctioneering.

- (e) “Auctioneering” or “business of auctioneering” means, in addition to the actual calling of competitive bids, the following:
  - (1) Contracting for an auction.
  - (2) Accepting consignments of items for sale at auction.
  - (3) Advertising an auction.
  - (4) Offering items for sale at auction and calling for bids.
  - (5) Accepting payment or disbursing monies for items sold at auction.
  - (6) Otherwise soliciting, arranging, sponsoring or managing an auction or holding oneself out as an auctioneer or auction firm.
- (f) “Auction Firm” means a sole proprietorship of which the owner is not a licensed auctioneer, or any partnership, association, corporation, or any other legal entity that sells either directly or through agents, real or personal property at auction, or that arranges, sponsors, manages, conducts or advertises auctions, or otherwise engages in the business of auctioneering. This definition applies whether or not an owner or officer of the business acts as an auctioneer.
- (g) “Calling for Bids” means crying the auction, the chant, and asking the audience at an auction for bids.
- (h) “Commission” means the Auctioneer Licensing Commission created by this Act.
- (i) “Consignment” means the act of delivering or transferring goods 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 the auctioneer declares the item(s) “sold.” For the purpose of this section, consignment may also mean a bailment for sale.
- (j) “Designated Person” means any person approved by the Commission to have the authority to transact business for an auction firm.
- (k) “Fund” means the recovery fund established under this Act.
- (l) “Goods” means any goods, wares, chattels, merchandise, or other personal property, including domestic animals and farm products.
- (m) “Person” means an individual and any entity, including a partnership, corporation, limited liability company, or association.
- (n) “Reserve Auction” means an auction in which the seller retains the right to establish a minimum price, to accept or decline any and all bids or to withdraw the property at any time prior to the announcement of the completion of the sale by the auctioneer. An auction is a

reserve auction unless the property is in explicit terms put up without reserve for an absolute auction.

(o) State. “State” means the State of \_\_\_\_\_.

Comment: The terms “auction,” “auctioneer,” and “auction firm” are defined above specifically for the purposes of this Act. These definitions should be liberally construed to provide protection for consumers. These terms, however, may be defined differently in other contexts, such as for a code of ethics. This definition is not intended to be used in all circumstances or to limit the role of an auctioneer. These definitions could be construed and/or modified to include individuals and companies conducting auctions online through an Internet auction website. However, each State should decide whether to exempt individuals and companies conducting auctions online from the licensing requirements provided in this Act.

A licensed auctioneer by himself or herself can lawfully engage in the business of auctioneering without an auction firm license. However, an auction firm license is required if the auctioneer hires employees to advertise, manage, or otherwise engage in the business of auctioneering.

Under UAALA, there are no licenses for auction houses, auction companies, auction barns, or apprentices. The Act only recognizes an auctioneer and auction firm license. If an individual (other than a licensed auctioneer) or entity engages in the business of auctioneering, it is an auction firm.

A difficult question to consider is whether and when a landlord that rents space or land to an auctioneer or auction firm is required to obtain an auction firm license. A landlord that simply rents space or property to an auctioneer is not an auction firm. The landlord will only become an auction firm when the landlord participates in the business of auctioneering (by accepting consignments, advertising an auction, etc.).

- 1-105 Severability. If a provision of this Act or the application of a provision to a person or circumstance is held to be invalid, the invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared severable.
- 1-106 Grandfather Provision. (a) After the effective date of this Act and for a period of \_\_\_\_\_ years thereafter, any person including non-residents who have engaged in the business of auctioneering in this State for at least

\_\_\_\_\_ years prior to the passage of this Act may apply for an auctioneer's license under this section without taking the examination as set forth in section 2-103. The requirements for such an application are as follows:

- (1) Submit an application to the Commission on forms provided by the Commission as outlined in section 2-103.
  - (2) Submit an affidavit with the application stating the applicant has been a practicing auctioneer for at least \_\_\_\_\_ years prior to the passage of this Act, and the applicant has actually called bids in \_\_\_\_\_ sales in the past twelve months.
  - (3) Tender with the application the license fee of \$\_\_\_\_\_.
  - (4) Tender the applicant's initial contribution to the recovery fund in the sum of \$\_\_\_\_\_.
- (b) Upon verification of the information contained in the application and the individual is found to be otherwise qualified, the Commission shall issue the applicant a license without examination.

Comment: UAALA does not address the issue of transitioning from the current laws of each state to the laws suggested herein. The requirements for an auctioneer to obtain a license vary significantly from state to state. For example, the laws of some states do not require a high school diploma or its equivalent before an individual can obtain an auctioneer's license. UAALA requires a high school diploma or its equivalent to obtain a license. Each state should carefully consider how they want the transition to take place. As one option to consider, this Grandfather Provision has been included.

The Commission should avoid simply granting a license to everyone that was working as an auctioneer before the State adopted UAALA. In order to properly protect the public, there needs to be some consideration of whether the applicant is honest and competent. It defeats one of the purposes of this Act to allow anyone to be licensed regardless of their qualifications. If an applicant cannot show the essential skills and experience, he or she should be required to take the examination and meet all of the requirements for licensure.

## CHAPTER II

# LICENSING PROVISIONS

### A. Auctioneer License

- 2-101 Auctioneer License. It is unlawful for any person to conduct an auction, engage in the business of auctioneering, provide an auction service, hold himself or herself out as an auctioneer, or advertise his or her services as an auctioneer in this State without an auctioneer license, unless the sale is exempt under section 2-102.
- 2-102 Exemptions. The license requirement contained in section 2-101 of this Act shall not apply to any of the following types of auction sales:
- (a) The sale conducted by the owner of all of the goods or real estate being offered, or an attorney representing the owner, unless the owner's regular course of business includes engaging in the sale of goods or real estate by means of auction or unless the owner originally acquired the goods or real estate for the purpose of resale at auction.
  - (b) The sale of livestock conducted by a person who specializes in the sale of livestock, provided that the sale is regulated by the federal Packers and Stockyards Act (currently 7 U.S.C. 181 et. seq.) and the auctioneer is required to be bonded by the United States Department of Agriculture.
  - (c) The sale of personal or real property conducted by any charitable, religious, or civic organization, which has a tax-exempt status. This exemption does not apply when the person engaged in the business of organizing, arranging, or conducting auction sales receives compensation or when consignments are sold at auction where the consignor receives any proceeds from the sale.
  - (d) The sale of personal or real property conducted by an agent, officer, or employee of the State, any political subdivision, or a federal agency in the conduct of his or her official duties.
  - (e) The sale of personal or real property required by law to be held at auction, or sales ordered to be held at auction by a court of competent jurisdiction.

Comment: The exemptions to the licensing requirement should be limited and strictly construed. In order to protect the public, a licensed auctioneer should generally be required to conduct an

auction. Auctioneers are trained professionals that are familiar with the laws, procedures, and industry standards. An unlicensed individual will not be familiar with these matters.

Each State should consider whether to exempt individuals and businesses that conduct auctions online via the Internet. UAALA has intentionally taken no position on this issue and will allow each State to consider the issue.

2-103 Requirements for License. All applicants for an auctioneer license under this Act shall possess the following minimum qualifications:

- (a) Applicant shall have attained the age of eighteen (18) years by the date the Commission receives the application.
- (b) Applicant shall have obtained at a minimum a high school diploma, a G.E.D., or its equivalent.
- (c) Applicant shall prepare a written application on forms provided by the Commission.
- (d) Applicant shall have at least 80 hours of a prescribed course of study at an accredited educational institution or auctioneering school.
- (e) Each applicant for a license under this Act shall take and successfully complete a written examination as prescribed by the Commission. The examination shall include questions on ethics, reading comprehension, writing, elementary arithmetic, elementary principals of land economics, general knowledge of bulk sales law, contracts of sale, agency, leases, brokerage, knowledge of various goods commonly sold at auction, ability to call bids, knowledge of sale preparation and proper sale advertising and sale summary, and knowledge of the provisions of this Act and the Commission's rules and regulations. The Commission shall ensure that the various forms of the test remain secure.
- (f) In order to defray the cost of administration of the examination, each applicant taking the examination must pay a reasonable examination fee, to be set by the Commission.
- (g) Applicant shall pay a licensing fee in an amount to be established by the Commission.
- (h) Applicant must pay a reasonable assessment, to be determined by the Commission, to participate in the recovery fund.

- (i) Applicant must not have a conviction for an act that would constitute grounds for disciplinary action under the law, or a felony that has a direct bearing on his or her ability to practice competently within the past five (5) years.
- (j) Applicant must not have had his or her auctioneer license or auction firm license previously revoked by any jurisdiction.

Comment: Several states require an apprentice license prior to being licensed as an auctioneer. The apprentice requirement, however, is not a reliable or effective method for preparing or screening auctioneers. Instead, auctioneers should be properly trained by completing a prescribed course of study at an educational institution or auctioneering school. The educational institution and auctioneering school must be accredited by the Commission in order for the hours to satisfy the licensing requirement. The Commission should consider the recommendation of the National Auctioneers Association in determining whether a program should be accredited.

Auctioneers will have to show their knowledge of the industry and laws by passing an examination. These requirements will help ensure that each auctioneer will have a certain amount of knowledge, skills, competence, and training.

The licensing fee established in subsection (g), as with all fees established by the Commission, should be reasonable and established to cover the reasonable cost of the Commission in administering and enforcing the provisions of this Act.

The State may desire to obtain social security numbers and/or fingerprints from each applicant in order to conduct a thorough background search. With social security numbers and fingerprints the Commission can have State and federal law enforcement personnel conduct a search on an individual. There may be other state laws that must be complied with for this to take place. It may be necessary to have an express statutory provision in order for federal officials, such as the Department of Justice, to conduct the search.

#### 2-104 Issuance of License.

- (a) Upon the receipt of a completed application for an initial or a renewal license, the Commission shall examine the application and verify the information contained therein.
- (b) The Commission shall issue an auctioneer license, in such form as it may prescribe, to each individual who meets all of the requirements for licensing and pays the appropriate fees.

- (c) An auctioneer license shall be valid for a term of \_\_\_\_\_ year(s). A license must be renewed by the auctioneer before midnight, on June 30, of the year in which the license will expire.
- (d) If the license has lapsed, it may be reactivated within the twelve months immediately following the expiration of the license. A license may be reactivated, by filing an application for renewal showing that all requirements for licensing have been met (including completion of continuing education) and paying the appropriate fees, plus a late filing fee to be established by the Commission.
- (e) If the license has not been reactivated within twelve months of the expiration date, the individual must file an application and comply with section 2-103, except for the 80 hours of a prescribed course of study requirement in section 2-103(d).

#### 2-105 Continuing Education.

- (a) An auctioneer who applies for a renewal of an auctioneer license under section 2-106 must complete at least four (4) hours of continuing education each year from course providers that are approved by the Commission.
- (b) The Commission may grant an auctioneer who applies for a renewal of an auctioneer license under section 2-106 a waiver from all or part of the continuing education requirement for a year if the auctioneer was not able to fulfill the requirements due to a hardship that resulted from any of the following conditions:
  - (1) Service in the armed forces of the United States.
  - (2) An incapacitating illness or injury.
  - (3) Other circumstances determined by the Commission.

#### 2-106 Maintaining Auctioneer License. When filing an application for a renewal of an auctioneer license, each individual licensed as an auctioneer shall:

- (a) File with the Commission a completed application on the form prescribed by the Commission;
- (b) File with the Commission a certificate in the form prescribed by the Commission, stating under oath, that auctioneer has completed all of the continuing education requirements set forth in section 2-105; and
- (c) Pay the license fee established in section 2-103(g).

- 2-107 Real Estate Auctions. An individual licensed as an auctioneer shall not be required to possess a real estate or broker's license if employed only call for bids at an auction of real property.
- 2-108 Actions for Compensation. No person engaged in the business of auctioneering such as to require an auctioneer license shall bring or maintain any action in the courts of this State for the collection of compensation for any services provided as an auctioneer without first alleging and proving that he or she was a duly licensed auctioneer at the time the alleged cause of action arose.
- 2-109 Nonresident Auctioneer Reciprocity.
- (a) An individual holding a license to engage in auctioneering issued to him or her by the proper authority of a state, territory, or possession of the United States of America or the District of Columbia that has licensing requirements equal to or substantially equivalent to the requirements of this State and that otherwise meets the requirements of this Act may obtain a license under this Act without examination, provided:
- (1) The Commission has entered into a valid reciprocal agreement with the proper authority of the state, territory, or possession of the United States of America or the District of Columbia from which the nonresident applicant has a valid license;
  - (2) Applicant provides the Commission with sufficient proof of his or her license in another state and a certificate of good standing from the applicant's resident state;
  - (3) Applicant provides the Commission with sufficient proof of his or her residency in the state where he or she is licensed;
  - (4) Applicant provides the Commission a completed application containing the same information as that required of resident applicants;
  - (5) Applicant must establish that he or she satisfies the provisions of section 2-103, other than 2-103(e) & (f).
  - (6) Applicant must pay all applicable fees required under this Act.
- (b) A nonresident applicant shall file an irrevocable consent with the Commission that actions may be commenced against the applicant or nonresident auctioneer in a court of competent jurisdiction in this State by the service of summons, process, or other pleadings author-

ized by the law upon the Vice Chairman of the Commission. The consent shall stipulate and agree that service of the process, summons, or pleading upon the Vice Chairman of the Commission shall be taken and held in all courts to be valid and binding as if actual service had been made upon the applicant in State. If a summons, process, or other pleading is served upon the Vice Chairman of the Commission, it shall be by duplicate copies, one of which shall be retained by the Commission and the other immediately forwarded by certified or registered mail to the last known business address of the applicant or nonresident auctioneer against whom the summons, process, or other pleading may be directed.

#### B. Auction Firm Licenses

2-201 Auction Firm License. It is unlawful for any person to engage in the business of auctioneering, provide an auction service, hold himself or herself out as an auction firm, or advertise his or her services as an auction firm in this State without an auction firm license, unless the sale is exempt under section 2-202.

2-202 Exemptions. The license requirement contained in section 2-101 of this Act shall not apply to any of the following types of auction sales:

- (a) The sale conducted by the owner of all of the goods or real estate being offered, or an attorney representing the owner, unless the owner's regular course of business includes engaging in the sale of goods or real estate by means of auction or unless the owner originally acquired the goods or real estate for the purpose of resale at auction.
- (b) The sale of livestock conducted by a person who specializes in the sale of livestock, provided that the sale is regulated by the federal Packers and Stockyards Act (currently 7 U.S.C. 181 et. seq.) and the auctioneer is required to be bonded by the United States Department of Agriculture.
- (c) The sale of personal or real property conducted by any charitable, religious, or civic organization, which has a tax-exempt status. This exemption does not apply when the person engaged in the business of organizing, arranging, or conducting auction sales receives compensation or when consignments are sold at auction where the consignor receives any proceeds from the sale.
- (d) The sale of personal or real property conducted by an agent, officer, or employee of the State, any political subdivision, or a federal agency in the conduct of his or her official duties.

- (e) The sale of personal or real property required by law to be held at auction, or sales ordered to be held at auction by a court of competent jurisdiction.

2-203 Requirements for License. All applicants for an auction firm license under this Act shall possess the following minimum qualifications:

- (a) Applicant or Applicant's principal(s) shall have attained the age of eighteen (18) years by the issuance date of the license.
- (b) Applicant or Applicant's principal(s) shall have obtained at a minimum a high school diploma, a G.E.D., or its equivalent.
- (c) Applicant shall prepare a written application on forms provided by the Commission.
- (d) Applicant shall pay a licensing fee in an amount to be established by the Commission.
- (e) Applicant must pay a reasonable assessment, to be determined by the Commission, to participate in the recovery fund.
- (f) Applicant or Applicant's principal(s) must not have a conviction for an act that would constitute grounds for disciplinary action under the law, or a felony that has a direct bearing on his or her ability to practice competently within the past five (5) years.
- (g) Applicant or Applicant's principal(s) must not have had his or her auctioneer license or auction firm license, or an equivalent license, previously revoked by any jurisdiction.
- (h) Applicant shall provide the Commission with documentation from the Secretary of State's Office establishing that the entity is authorized to transact business in this State, unless the person to be licensed as an auction firm is a sole proprietorship.
- (i) Each applicant must identify at least one designated person to have authority to transact business for the auction firm. The designated person shall take and successfully complete a written examination as prescribed by the Commission. The Commission shall ensure that the various forms of the test remain secure. The designated person of applicant will not be required to take the written examination if he or she is licensed as an auctioneer under this Act.
- (j) In order to defray the cost of administration of the examination, each applicant or designated individual taking the examination, must pay a reasonable examination fee, to be set by the Commission.

**2-204 Issuance of License.**

- (a) Upon the receipt of a completed application for the initial or a renewal license, the Commission shall examine the application and verify the information contained therein.
- (b) The Commission shall issue an auction firm license, in such form as it may prescribe, to each person who meets all of the requirements for licensing and pays the appropriate fees.
- (c) An auction firm license shall be valid for a term of \_\_\_\_\_ year(s). A license must be renewed by the auction firm before midnight, on June 30, of the year in which the license will expire.
- (d) If the license has lapsed, it may be reactivated within the twelve months immediately following the expiration of the license. A license may be reactivated, by filing an application for renewal showing that all requirements for licensing have been met and paying the appropriate fees, plus a late filing fee to be established by the Commission.
- (e) If the license has not been reactivated within twelve months of the expiration date, the person must file an application and comply with section 2-203.

**2-205 Maintaining Auction Firm License.** When filing an application for renewal of an auction firm license, each person licensed as an auction firm shall:

- (a) File with the Commission a completed application on the form prescribed by the Commission;
- (b) Provide the Commission with documentation from the Secretary of State's Office establishing that the entity is authorized to transact business in this State, unless the person licensed as an auction firm is a sole proprietorship; and
- (c) Pay the license fee established by the Commission for auction firm licenses.

**2-206 Actions for Compensation.** No person engaged in the business of auctioneering such as to require an auction firm license shall bring or maintain any action in the courts of this State for the collection of compensation for any services provided as an auction firm without first alleging and proving that the person or business was duly licensed as an auction firm at the time the alleged cause of action arose.

## CHAPTER III

# BUSINESS PRACTICES PROVISIONS

### 3-101 Written Agreements.

- (a) No individual licensed as an auctioneer 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 auctioneer 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) No person required to be licensed as an auction firm shall engage in the business of auctioneering without first having a written agreement with the owner of any property to be sold. The agreement must contain the terms and conditions of the transaction, sale (either directly or through agents), or work to be completed by the auction firm. The person or business 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.

### 3-102 Agency. An individual licensed as an auctioneer is the agent for the seller in performance of his duties.

### 3-103 Auctioneer's Authority from the Seller. An individual licensed as an auctioneer, in the absence of special authorization provided in the contract to the contrary, has authority from the seller, only as follows:

- (a) To sell by public auction to the highest bidder;
- (b) To bind the seller by preparing a written memorandum of the contract;
- (c) To sell for cash only;
- (d) To prescribe reasonable rules and terms of sale;
- (e) To deliver the property sold, upon payment of the price;

- (f) To collect the price; and
  - (g) To do whatever else is necessary, or proper and usual, in the ordinary course of business, for effecting these purposes.
- 3-104 Auctioneer's Authority from the Bidder. An individual licensed as an auctioneer has authority from a successful bidder at the auction to bind the bidder by preparing a written memorandum of the contract of sale. This section shall not apply to the sale of real property when the auctioneer must be licensed as a real estate agent, sales person, or broker to prepare the memorandum or contract of sale.
- 3-105 Performance by Auctioneer. In performing the duties of an auctioneer, every auctioneer shall follow the reasonable requests of the owner or consignor of the goods or real estate being sold at the auction, shall perform his or her duties so that the highest or most favorable offer made by a bidder is accepted, and shall otherwise perform his or her duties in accordance with the highest standards of the auctioneering profession.
- 3-106 License. An individual licensed as an auctioneer and person licensed as an auction firm shall have his or her license(s) available at each auction he or she conducts and advertises.
- 3-107 Sales Records. Each individual licensed as an auctioneer and person licensed as an auction firm shall maintain sales records, which identify the purchaser of all property 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 at least two years from the date of sale. Sales records shall be open for inspection by the Commission or its designated agents after reasonable notice.
- 3-108 Consignment Records. Each individual licensed as an auctioneer and person licensed as an auction firm shall maintain consignment records and enter in them, upon receipt of goods for auction and before sale, the name and address of the person who employed the auctioneer 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. Consignment records shall be maintained for a period of at least two years from the date of the sale. Consignment records shall be open for inspection by the Commission or its designated agents after reasonable notice.
- 3-109 Escrow and Trust Accounts.
- (a) Each individual licensed as an auctioneer and person licensed as an

auction firm 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. Each individual licensed as an auctioneer and person licensed as an auction firm shall deposit funds that are not disbursed on auction day with an insured bank or savings and loan association located within the State.

- (b) Each individual licensed as an auctioneer and person licensed as an auction firm shall maintain, for not less than five years, complete records showing the deposit, maintenance, and withdrawal of trust or escrow funds and the disbursement of funds on auction days. Records of the disbursement of funds on auction day shall include a copy of each receipt or settlement statement issued when the funds were disbursed. The Commission or its designated agent may inspect these records periodically, without prior notice, and may also inspect those records whenever the Commission determines that they are pertinent to an investigation of any specific complaint against an individual licensed as an auctioneer or person licensed as an auction firm.

3-110 Final Settlements. At or before the time of all final settlements, the individual licensed as an auctioneer or designated person of a licensed auction firm shall provide the seller or consignor with a settlement statement, which includes a description of all goods or real property sold, the selling price of the property 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 auctioneer or a designated person of the licensed auction firm and by the person receiving the disbursement. The individual licensed as an auctioneer or designated person of a licensed auction firm shall provide the owner with a signed copy of the settlement statement and shall keep at least one copy for his own records for two years from the date of the sale.

## CHAPTER IV

# ADMINISTRATIVE PROVISIONS

### 4-101 Creation of Auctioneer Licensing Commission.

- (a) The Commission is hereby created. The board shall be composed of five (5) members, appointed by the Governor to serve for a term of \_\_\_\_\_ years. A vacancy arising on the Commission shall be filled by an appointment made by the Governor, and the individual appointed to fill such vacancy shall serve for the unexpired term of the individual whose vacancy is being filled.
- (b) The Commission shall receive and act upon applications for auctioneer and auction firm licenses and shall have the power to issue, reinstate, suspend, and revoke such licenses and to take such other action as is necessary to carry out the provisions of this Act.
- (c) The Commission has the authority to make or adopt such rules and regulations as are reasonable and necessary for the orderly regulation of the auctioneering profession and the protection of the public. The Commission also has the authority to implement the provisions of this Act conferring duties upon it.

Comment: The Commission should consist of at least five members. It should generally be an odd number to reduce the possibility of a deadlock. The Commission board members should have their terms staggered. In other words, the term of membership should end at different times.

### 4-102 Members of the Commission. At least three (3) of the members appointed must be licensed auctioneers. At least one (1) of the members appointed to the Commission must be an individual who is not and has not been associated with auctioneering in any way other than as a consumer.

### 4-103 Exclusive Authority. No other agency or political subdivision of the state shall impose on an auctioneer or seller at auction any registration or license requirement or any license or employment fee or charge on account of auctioneering activities.

### 4-104 Requirements for Members. Each appointee to the Commission must possess the following requirements:

- (a) Each appointee shall be a citizen of the United States of America;
- (b) Each appointee shall be a citizen of the State and domiciled in the State;
- (c) Each appointee shall have obtained at least thirty years of age;
- (d) Each appointee for an auctioneer position on the Commission shall have been licensed as an auctioneer for a period of not less than five (5) years immediately preceding the appointment.
- (e) No appointee shall act as a member of the Commission while holding another elected or appointed office in either the State or federal government; and
- (f) No appointee shall act as a member of the Commission while he or she maintains a controlling interest in a school or other facility to train individuals to be auctioneers.

#### 4-105 Officers & Meetings.

- (a) The Commission shall elect one member of the Commission to serve as Chairman. The Commission shall also elect one member as Vice Chairman. The Chairman and Vice Chairman shall be elected annually by majority vote of the total membership of the Commission.
- (b) The Commission shall meet each January, at a time and place established by the Chairman, to conduct an election of officers and such other business as may be appropriate. The Commission shall also meet upon the call of the Chairman or upon the request of any two (2) members of the Commission. The Chairman shall provide reasonable notice of the time and place of each meeting to all members.
- (c) Three members constitute a quorum for the purpose of transacting business. A majority vote of the Commission is necessary to bind the Commission.

#### 4-106 Per Diem and Expenses. Each member of the Commission shall receive a per diem for each day actually engaged in service of the Commission. Each member of the Commission shall also receive reimbursement for necessary travel expenses incurred in the performance of his official duties, in accordance with travel policies and procedures established by the Commission.

Comment: It may be necessary for each State to consider adding language to this section designating the fund or funds from which the payment of compensation and expenses will be made.

- 4-107 Jurisdiction. The Commission has jurisdiction over the actions of auctioneers and any person licensed as an auction firm. The Commission also has jurisdiction over the business of auctioneering, including individuals and persons engaging in the business of auctioneering without the proper license or licenses.
- 4-108 Powers. In addition to the powers specified in other sections, the Commission shall have the following powers:
- (a) The power to set reasonable license fees, examination fees, and other fees created under this Act, to collect and hold such fees and to disburse such fees in any manner not inconsistent with this Act.
  - (b) The power to examine each applicant to be licensed as an auctioneer or auction firm in the State.
  - (c) The power to make such rules and regulations as will promote the orderly functioning of the auction profession and ensure the protection of the public.
  - (d) The power to hire and retain such staff and support as are necessary to conduct business and assure compliance with this Act.
  - (e) The power to conduct investigations, hold hearings, subpoena witnesses, make findings of fact and otherwise enforce the disciplinary provisions contained in this Act.
  - (f) The power to regulate the business of auctioneering and fine or prosecute individuals or persons engaging in auctioneering without an auctioneer or auction firm license.
  - (g) The power to fine or otherwise discipline auctioneers and auction firms for violations of section 5-101.
  - (h) The power to accredit educational institutions, auctioneering schools, and continuing education providers.
  - (i) The power to levy assessments on auctioneers and each person licensed as an auction firm, to collect and hold such assessments for the recovery fund.

- (j) The power to sue in its own name for damages and/or injunctive relief to enforce the provisions of this Act

4-109 Investigations. The Commission may upon its own initiative and shall upon the written complaint of any person investigate alleged violations of this Act by any licensed or unlicensed auctioneer, auction firm, person, or any applicant.

4-110 Cease and Desist Orders.

- (a) When the Commission determines that a person not licensed under this article is engaging in, or is believed to be engaged in, activities for which a license is required under this Act, the Commission may issue an order requiring that person to show cause why he should not be ordered to cease and desist from such activities. The show cause order shall set forth a time and place for a hearing at which the affected person may appear and show cause as to why he should not be subject to the licensing laws under this Act.
- (b) If the Commission, after a hearing, determines that the activities in which the person is engaged are subject to licensing under this article, the Commission may issue a cease and desist order that shall describe the person and the activities that are the subject of the order.
- (c) A cease and desist order under this section shall be enforceable in the courts of the State.

4-111 Penalties for Unlicensed Conduct.

- (a) Any person or associations of persons violating the provisions of sections 2-101 or 2-201 shall be guilty of a \_\_\_\_\_ misdemeanor. The Attorney General of State, or his designee, shall have concurrent jurisdiction with the prosecuting attorneys of this State to prosecute violations of this Act.
- (b) The Commission may in its own name seek injunctive relief in the courts of general jurisdiction to restrain any violation or anticipated violation of any provisions of this Act.
- (c) The Commission shall be entitled to the services of the Attorney General in enforcing the provisions of this Act or may employ an attorney to assist and represent it in enforcement of specific matters.
- (d) When the Commission determines that a person engaged in the

business of auctioneering without being licensed under this Act and the person's conduct injured an individual or business within State, it may impose a fine of not more than ten thousand (\$10,000.00) dollars.

- 4-112 Current Laws. The Commission shall maintain, and provide upon request, a copy of the current auctioneer and auction laws and an accurate list of those states having reciprocity with State.

## CHAPTER V

# DISCIPLINARY PROVISIONS

- 5-101 Prohibited Acts. Committing any of the following actions shall be a violation of the law, and may subject an individual licensed as an auctioneer or person licensed as an auction firm to the penalties and discipline as provided in this Act.
- (a) Knowingly filing or causing to be filed a false application.
  - (b) Failure to enter into a written agreement with the seller or consignor prior to the sale or advertising the sale. The appearance of an auctioneer's or auction firm's name in advertising creates a rebuttable presumption that the advertising was placed with their knowledge.
  - (c) Failure to give the seller or consignor a signed receipt for items received for sale at auction, either by item or by lot at the time the goods are received, unless the goods are to remain in the possession of the seller or the consignor.
  - (d) Failure to give the seller and the purchaser of goods sold at auction a statement indicating the item or lot description, selling price, purchaser's identity, and the net proceeds due to the seller or consignor.
  - (e) Unless contemporaneous payment is made to the consignor or seller, failure to place funds received from an auction sale in an escrow or trust account, and failure to make a timely settlement on escrowed funds. Absent a written agreement to the contrary, thirty (30) business days shall be deemed timely for settlement on personal property and real property.
  - (f) Knowingly permitting an unlicensed auctioneer to call bids in an auction sale.
  - (g) Engaging in the business of auctioneering for an unlicensed auction firm.
  - (h) Being convicted of one or more felonies. For the purposes of this section, "convicted" means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

- (i) Any course of intentional or wanton conduct which misleads or creates a false impression among the seller, buyer, or bidders in the advertising, conduct and closing of an auction.
- (j) Any violation of this Act or any duly promulgated regulations of the Commission.
- (k) Aiding or abetting the activity of another person which violates this Act or any duly promulgated regulations of the Commission.
- (l) Misrepresenting a fact material to the purchaser's decision on whether to purchase goods or property.
- (m) Materially misrepresenting the qualities or characteristics of any item offered for sale at auction.
- (n) Failing to comply with or violating any order of the Commission requiring an individual licensed as an auctioneer or person licensed as an auction firm to comply with any provision of this Act or administrative rules.
- (o) Failure to provide information within thirty (30) days in response to a written request made the by Commission.
- (p) Using a misleading or untruthful advertisement, or using any trade name or insignia of membership in any auctioneer association or organization of which the auctioneer or auction firm is not a member.
- (q) Engaging in the business of auctioneering without a license or after the license was expired, revoked, suspended, or terminated.
- (r) Failure to disclose to the audience, immediately prior to offering an item for sale, the existence and amount of any known liens or other encumbrances on the item.
- (s) Failure to notify the Commission of any change in address, name, business or trade name, or corporate status of the auctioneer or auction firm within thirty (30) days of the change.
- (t) Failure to make the required contribution to the recovery fund.
- (u) Selling or offering for sale at auction goods known to be owned by a minor or other incapacitated individual, without the express written consent of a parent or legal guardian.

- (v) Any conduct in connection with a sale transaction that the Commission determines to demonstrate bad faith or dishonesty.
- (w) Engaging in conduct determined by the Commission to be unethical, unprofessional, and of a character likely to deceive, defraud, or harm the public.
- (x) Knowingly permitting or engaging in phantom bidding, using shells, or any type of bidrigging.

Comment: A significant concern regarding state licensing laws is whether they are effective, or can be effectively used, to prevent fraudulent and criminal conduct. UAALA provides an expansive list of prohibited conduct and defines actions that may result in disciplinary action by the Commission. In addition, UAALA contains two "catch all" provisions that provide the Commission with broad powers to reprimand behavior that it finds unacceptable.

Subsection (g) relates to the problem of auctioneers calling the bids at a sale for an unlicensed auction firm. The profession continues to experience problems with licensed auctioneers calling bids for unlicensed auction firms. Auctioneers should get all of the details about the auction and the company prior to the day of the sale. If at any point in time an auctioneer is not sure whether a business is properly licensed, contact the Commission for assistance.

5-102 Disciplinary Action. Nothing in this Act limits the authority of the Commission to take disciplinary action against any individual licensed as an auctioneer or person licensed as an auction firm under this Act, nor shall the repayment in full of all obligations to the fund by any individual licensed as an auctioneer or person licensed as an auction firm nullify or modify the effect of any disciplinary proceedings brought under this Article.

#### 5-103 Penalties.

- (a) Each individual sale or act in connection with the conduct of an auction in violation of any provisions of this Act or any rules and regulation adopted by the Commission shall constitute a separate offense and violation of this Act. When the Commission finds a person guilty of any of the prohibited acts set out in section 5-101, it may enter an order imposing one or more of the following penalties:
  - (1) A fine of not more than ten thousand (\$10,000) dollars.
  - (2) Issuance of a letter of reprimand.

- (3) Placement of the auctioneer on probation for a period of time and subject to conditions as the Commission may specify.
- (4) Order payment of restitution to each consumer affected by such violation. Proof of such restitution shall be a signed and notarized release executed by the consumer or the consumer's estate.
- (5) Suspension of license for a period of time established by the Commission with or without automatic reinstatement.
- (6) Revocation of license.
- (b) The Commission may in its own name seek injunctive relief in the courts of general jurisdiction to restrain any violation or anticipated violation of any provision of this Act.
- (c) The Commission shall be entitled to the services of the Attorney General in enforcing the provisions of this Act or may employ an attorney to assist and represent it in enforcement of specific matters.
- (d) When the Commission finds a person guilty of a violation of this Act and enters an order imposing a penalty, the investigative costs incurred by the Commission shall be recoverable. The Commission may order the person to pay the investigative costs in its order and the Commission's order shall be enforceable in a court of competent jurisdiction.

Comment: Each state should consider whether to add other penalties to this section. A jurisdiction may desire to give authority to the Commission to imprison an individual for a period of time for egregious violations. However, depriving an individual of his or her freedom requires compliance with the due process clause of the Constitution of the United States, the state constitution, and other state laws. It is mentioned simply as another option to consider.

#### 5-104 Foreign Disciplinary Actions.

- (a) The Commission may refuse to issue or renew a license, may place on probation, suspend, or revoke any license or may otherwise discipline any auctioneer or auction firm for being disciplined by another state, the District of Columbia, a territory of the United States, or the United States if at least one of the grounds for that discipline is the same as or equivalent to one of the grounds for discipline in this Act.
- (b) The Commission may refuse to issue or renew a license, may place on

probation, suspend, or revoke a license or may otherwise discipline any auctioneer or auction firm for failing to report to the Commission, within thirty (30) days, any adverse final action taken against the auctioneer or auction firm by any other licensing jurisdiction, government agency, law enforcement agency, or court, or liability for conduct that would constitute grounds for action as set forth in this Act.

## CHAPTER VI

# RECOVERY FUND

### 6-101 Establishment of the Recovery Fund

- (a) The recovery fund is established for the purposes set forth in this Chapter. The recovery fund shall be administered by the Commission.
- (b) The Treasurer of State shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited to the credit of the fund and shall be available for the same purposes as other moneys deposited in the fund. Sufficient liquidity shall be maintained to insure that funds will be available to satisfy claims processed by the Commission.
- (c) If at any time the moneys in the fund are insufficient to satisfy any valid claim or portion thereof, the Commission shall satisfy such unpaid claim or portion thereof as soon as a sufficient amount has been deposited in or transferred to the fund. When there is more than one unsatisfied claim outstanding, such claims shall be paid in the order in which the claims were made.
- (d) Upon the payment of any amount from the fund in settlement of a claim in satisfaction of a judgment against an auctioneer or auction firm, the license of such auctioneer or auction firm shall be automatically suspended until the auctioneer or auction firm has complied with section 6-106. A discharge of bankruptcy shall not relieve a person from the penalties and disabilities provided in this section.
- (e) Moneys in the fund at the end of a fiscal year shall be retained in the fund and shall accrue for the benefit of auctioneers and auction firms. When the fund exceeds the amount set forth in section 6-102, all surcharges or assessments for the fund shall be suspended until such time as the fund is reduced below the amount set forth in section 6-102.

Comment: The recovery fund is provided for the protection of the public. These funds are to be available to compensate any individuals harmed by the criminal or fraudulent conduct of an auctioneer or auction firm.

The fund should be established with sufficient funds to handle the claims that will be made. When an individual is initially licensed as an auctioneer he or she should pay a specified amount of money to

the fund. Similarly, when a business or entity is initially licensed as an auction firm it should be required to pay a specified amount to the fund. An individual or entity could also be required to pay a specified amount to the fund, as necessary, upon the renewal of their licenses.

Requiring each auctioneer and auction firm to obtain a bond in a specific amount is a reasonable alternative to the establishment of a recovery fund. A bond requirement can be imposed when there are too many claims or insufficient funds to satisfy the claims.

6-102 Surcharge to License Fee: Assessments.

- (a) Before an auctioneer or auction firm license is issued under this Act, each person shall pay, in addition to an application and license fee, an assessment as required by sections 2-103(h) and 2-203(e). The assessment shall be in an amount to be determined by the Commission, not to exceed \$300, which shall be deposited in the fund.
- (b) The Commission shall maintain at least \_\_\_\_\_ dollars (\$\_\_\_\_\_) in the fund for use as provided in this Chapter. If the total amount in the fund, including principal and interest, exceeds \$\_\_\_\_\_ at the end of the state fiscal year after the payment of all claims and expenses, the amount in excess of \$\_\_\_\_\_ shall remain in the fund for the benefits of auctioneers and auction firms in tolling the assessments until such time as the fund shall need replenishing.
- (c) If the total amount of the fund, including principal and interest, is less than \$\_\_\_\_\_ at the end of the fiscal year after the payment of all claims and expenses, the Commission shall assess, in addition to any other fees required by this Act, a surcharge against auctioneers and auction firms at the time of initial licensure or at the time of renewal, according to the following formula in order to maintain the fund at \$\_\_\_\_\_:
  - (1) Determine the amount remaining in the fund at the end of the State fiscal year after all expenses and claims have been paid.
  - (2) Subtract the amount determined under paragraph (1) from the amount desired by the Commission for the fund.
  - (3) Determine the number of initial licenses and license renewals in the fiscal year that precedes the current fiscal year.
  - (4) Divide the amount determined under paragraph (2) by the number determined under paragraph (3).

- (d) The Commission shall assess the surcharge described in subsection (c) against each person who received an initial auctioneer or auction firm license during the fiscal year that follows the year in which the amount remaining in the fund was less than \$\_\_\_\_\_.

6-103 Conditions of Recovery.

- (a) Recovery from the fund may be obtained as follows:

- (1) Any aggrieved person is eligible to receive recovery from the fund if the Commission has issued a final order directing an offending licensed auctioneer or licensed auction firm to pay restitution to the claimant as the result of violating, within this State, any provision of this Act or any rule adopted by the Commission and the Commission has determined that the order of restitution cannot be enforced; or
  - (2) Any aggrieved person who obtains a final judgment in any court against any licensed auctioneer or licensed auction firm to recover damages for any actual loss that results from the violation, within this State, of this Act or any rule adopted by the Commission may, upon termination of all proceedings, including appeals and proceedings supplemental to judgment for collection purposes, file a verified application to the Commission for an order directing payment out of the fund of the amount of actual loss in the transaction that remains unpaid upon the judgment. The amount of actual loss may include court costs, but shall not include attorney's fee or punitive damages awards.
- (b) The amount paid from the fund may not exceed \$\_\_\_\_\_ per claim or claims arising out of the same transaction or auction or an aggregate lifetime limit of \$\_\_\_\_\_ with respect to any one auctioneer or auction firm. For the purposes of this subsection, auctions conducted under a single contract, agreement, or consignment shall be considered a single transaction or auction even though conducted at more than one time or place.
- (c) A claim for recovery from the fund shall be made within two (2) years from the time of the act giving rise to the claim or within two (2) years from the time the act is discovered or should have been discovered with the exercise of due diligence; however, in no event may a claim for recovery be made more than four (4) years of the date of the act giving rise to the claim.
- (d) The Commission shall not issue an order for payment of a claim from the fund unless the claimant has reasonably established to the

Commission that he or she has taken proper and reasonable action to collect the amount of his or her claim from the auctioneer or auction firm responsible for the loss and that any recovery made has been applied to reduce the amount of the claim on the fund.

- (e) Notwithstanding any other provision of this Chapter, no claim based on any act or omission that occurred outside of this state shall be payable from the fund.
- (f) In case of payment of loss from the fund, the fund shall be subrogated, to the extent of the amount of the payment, to all the rights of the claimant against any auctioneer or auction firm with respect to the loss.

6-104 Payment of Claim. Upon a final order of the court directing that payment be made out of the recovery fund, the Commission shall, subject to the provisions of this Chapter, make the payment out of the recovery fund as provided in Section 6-103.

6-105 Payment of Multiple Claims.

- (a) If the payment in full of two or more pending valid claims that have been filed by aggrieved persons against a single auctioneer or auction firm would exceed the \_\_\_\_\_ limit as set forth in Section 6-103, the money shall be distributed among the aggrieved persons in the ratio that their respective claims bear to the aggregate of all valid claims or in any other manner that a court of record may determine to be equitable. Such money shall be distributed among the persons entitled to share in it without regard to the order of priority in which their respective judgments have been obtained or their claims have been filed.
- (b) Upon petition of the Commission, the court may require all claimants and prospective claimants against one auctioneer or auction firm to be joined in one action, to the end that the respective rights of all the claimants to the Commission may be equitably adjudicated and settled.
- (c) On June 30 and December 31 of each year, the Commission shall identify each claim that the court orders to be paid during the six (6) month period that ended on that day. The Commission shall pay the part of each claim that is so identified within twenty (20) days after the end of the six (6) month period in which the claim is ordered paid. However, if the balance of the fund is insufficient to pay the full payable amount of each claim that is ordered to be paid during a six (6) month period, the Commission shall pay a prorated portion of

each claim that is ordered to be paid during the period. Any part of the payable amount of a claim left unpaid due to the prorating of payments under this subsection must be paid (subject to the applicable limits set forth in Section 6-103) before the payment of claims ordered to be paid during the following six (6) month period.

- 6-106 Suspension of License. If the Commission is required to make any payment from the fund in settlement of a claim or toward the satisfaction of a judgment under this part, the Commission shall suspend the judgment debtor's license. The auctioneer or auction firm is not eligible to be licensed again as an auctioneer or auction firm until the auctioneer or auction firm has repaid in full the amount paid from the fund, with interest at the current applicable rate or ten (10) percent whichever is higher.
- 6-107 Expenditure of Excess Funds. Subject to the approval of the Commission, the Commission may expend excess moneys from the fund for the following purposes:
- (1) To prepare publications which provide information concerning the Commission's activities and administrative rulings.
  - (2) To prepare publications which provide for the distribution of laws, rules, and educational information concerning the practice of auctioneering.
  - (3) To promote education and research in the auctioneer profession, in order to benefit persons licensed under this Act and to improve the efficiency of the profession.
  - (4) To underwrite educational seminars, training centers, and other forms of educational projects for the use and benefit of auctioneers and auction firms.

# ACKNOWLEDGMENT:

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Joshua A. Burkhardt is an associate attorney with Beers Mallers Backs & Salin, LLP. He graduated with the highest distinction from Ohio Northern University College of Law and was licensed to practice law in the State of Indiana in 2001. In addition, he has been able to build on his unique experience as a federal judicial law clerk (2001-2002). He clerked in the United States District

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Beers Mallers and its predecessors have provided legal services for its clients since 1901. It cultivated and developed its practice in the areas of auction law, commercial and residential banking law, municipal law, labor and employment law, litigation, administrative law, creditor rights and bankruptcy, general business and corporate law, estate planning and administration, financing law, and tax law.

# CODE OF ETHICS

## NATIONAL AUCTIONEERS ASSOCIATION

### RESPONSIBILITIES TO CLIENTS AND CUSTOMERS

- Article 1 Members pledge to protect and promote the interests of the client. This obligation of absolute fidelity to the client's interests is primary but does not relieve members of their obligation to treat all parties to the transaction fairly.
- Article 2 Members must, in conducting an auction, deal with customers in a manner exhibiting the highest standards of professionalism and respect. Members owe the customer the duties of honesty, integrity and fair dealing at all times.
- Article 3 Members should, to assure better service to the seller and to prevent misunderstandings, enter into written agreements or, at a minimum, clear oral agreements that set forth the specific terms and conditions of the engagement.
- Article 4 Members shall not accept compensation from any party, other than the client, even if permitted by law, without the full knowledge of all the parties to the transaction.
- Article 5 Members shall provide the highest level of competent service in those fields in which members are customarily engaged. This competency is attained by education, training, study, practice and experience. Competence also includes the wisdom to recognize the limitations of that knowledge and when to seek the counsel, assistance or client referral appropriate for the circumstances.
- Article 6 Members shall not undertake to provide professional services where either they members of their immediate family members of their firm, or any entity in which they have an ownership interest has presently or contemplates an interest, without first specifically disclosing such interest or contemplated interest.
- Article 7 Members shall not make a profit on expenditures made for their client without the client's prior knowledge and consent.
- Article 8 Members shall not engage in activities that constitute the unauthorized practice of law and shall recommend that legal counsel be obtained when the interest of any party to the transaction would be appropriately served.
- Article 9 Members shall keep monies coming into their possession in trust for other persons such as escrows, trust funds, client's monies and other similar items in a separate special account, in an appropriate financial institution.
- Article 10 Members shall not disclose any confidential client information without the client's specific consent except as required by appropriate legal authorities.

### RESPONSIBILITIES TO THE PUBLIC

- Article 11 Members shall avoid misrepresentation or concealment of pertinent facts.

There is an affirmative obligation to disclose adverse factors of which they have personal knowledge.

- Article 12 Members must be careful at all times to present a true picture in their advertising and representations to the public. Members shall ensure that all advertising includes the names and information necessary for the public to contact the auctioneer or firm responsible for conducting the auction.
- Article 13 Members must participate in continuing education programs and should keep informed on all matters affecting the auction industry and their areas of specialization.
- Article 14 Members are duty bound at all times to abide by the laws and regulations which govern the profession as well as those which, if violated, would negatively affect their ability to present to the public an image of behavior that appropriately represents the professionalism of our industry.

### **RESPONSIBILITIES TO THE PROFESSION**

- Article 15 Members should never publicly criticize a competitor using false or deceptive information. Where an opinion of a competitor's transaction is especially requested, it should be rendered in conformity with strict professional courtesy and dignity.
- Article 16 Members should willingly share with other members the lessons learned through experience and study to better the profession, members' business practices and how the profession is perceived by society. Members shall be loyal to the NAA; this includes active participation in educational, civic and charitable endeavors.
- Article 17 Members should conduct their business affairs so as to avoid disputes with other members. In an instance where a controversy between members arises, they should seek the assistance of the NAA to arbitrate the controversy.
- Article 18 Members, having personal knowledge of an act by another member that, in their opinion, is a material violation of the ethical principles of this Code shall treat the matter in accordance with the procedures of filing a grievance.
- Article 19 Members charged with unethical practice or who are asked to present evidence in any disciplinary proceeding or investigation shall promptly and voluntarily place all pertinent facts and information before the appropriate body.





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