

West Virginia Auctioneer

Rules *and* Regulations

West Virginia Department of Agriculture
agriculture.wv.gov

TABLE OF CONTENTS

Auctioneer Associations.....	1
Related Contact Information	2
Examinations	3
Recent Rule/Law Changes	4
WV Code, Chapter 19.....	5
Title 61, Series 11B - Legislative Rule	16
Public Markets Regulations	24
Uniform Commercial Code	25
Auctioneers and Sales Tax	27
Reciprocal States.....	28
Auctioneering Schools.....	29

AUCTIONEER ASSOCIATIONS

ASSOCIATED AUCTIONEERS OF AMERICA, INC.

www.aaoa-wv.org

President Chuck Moore (304) 421-0565

chuck.moore@aaoa-wv.com

Executive Secretary/Treasurer

Oscar E. Click (304) 895-3640

oeclick50@gmail.com

NATIONAL AUCTIONEERS ASSOCIATION

www.auctioneers.org

8880 Ballentine Overland Park, KS 66214

(913) 541-8084 – (888) 541-8084

WEST VIRGINIA AUCTIONEERS ASSOCIATION

www.wvaa.org

President Rob Fouss

foussauction@gmail.com

WEST VIRGINIA PROFESSIONAL AUCTIONEER ASSOCIATION

President Madison Williams (304) 428-4967

madisonwilliams@suddenlink.net

Executive Officer

Jeff Little (304) 428-8702

Seminars are provided by the various auctioneer associations and WVU Extension Offices around the state. Announcements of upcoming seminars are posted on the Department of Agriculture website, <https://agriculture.wv.gov>, printed in The Market Bulletin and through the sponsoring organizations' newsletters.

RELATED CONTACT INFORMATION

For questions regarding:

Business Licenses:

West Virginia Secretary of State
(304) 558-6000

State Sales Tax:

West Virginia State Tax Department
(304) 558-3333

Real Estate Sales:

West Virginia Real Estate Commission
(304) 558-3555

Firearms Sales:

Department of the Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)

West Virginia Field Offices:

Charleston II Field Office
(Industry Operations)
(304) 340-7820

Clarksburg Satellite Office
(Industry Operations)
(304) 842-9830

Wheeling Satellite Office
(Industry Operations)
(304) 232-4170

EXAMINATIONS

Examinations for auctioneers and apprentice auctioneers are held a minimum of two times each year. Applicants must apply at least two (2) weeks prior to the examination date in order to participate.

The apprentice auctioneer's examination consists of a written examination.

The auctioneer examination consists of both a written and oral examination.

More information on the examinations can be found in W.Va. Code §19-2C-5a.

To obtain an application, visit the WVDA website at agriculture.wv.gov or call (304) 558-3200.

RECENT RULE/LAW CHANGES

CHANGES EFFECTIVE APRIL 25, 2022.

- Application §61-11B-3
- License Renewal §61-11B-6
- Licensing and Fees §61-11B-16

WEST VIRGINIA CODE
CHAPTER 19. AGRICULTURE
ARTICLE 2C. AUCTIONEERS

§19-2C-1. Definitions.

For the purposes of this article:

- (a) "Absolute auction" means the sale of real or personal property at auction whereby every item offered from the block is sold to the highest bidder without reserve and without the requirements of a minimum bid or other conditions which limit the sale other than to the highest bidder.
- (b) "Auctioneer" means a person who sells goods or real estate at public auction for another on commission or for other compensation.
- (c) "Commissioner" means the Commissioner of Agriculture of West Virginia.
- (d) "Department" means the West Virginia Department of Agriculture.
- (e) "Escrow account" means a separate custodial or trust fund account maintained by the auctioneer.
- (f) "Estate auction" means the sale at auction of property of a specified deceased person or the property of a specified living person's estate. Estate auctions may contain property other than that of the specified living or deceased person. However, the inclusion of additional property must be included in all advertising and auction announcements.
- (g) "In this state" means that an auction satisfies one of the following criteria:
 - (1) The auctioneer performed the auction within the borders of the State of West Virginia;
 - (2) The auctioneer is selling items for a person located in the State of West Virginia;
 - (3) The auctioneer is auctioning real or personal property located in the State of West Virginia;
 - (4) The auctioneer delivers purchased property to a location in the State of West Virginia; or
 - (5) The auctioneer is otherwise subject to the laws, including taxation authority, of the State of West Virginia.
- (h) "Public auction" or "auction" means any public sale of real or personal property in any manner, whether in-person, via written offers or bids, or online, when offers or bids are made by prospective purchasers and the property sold to the highest bidder.

§19-2C-2. License required; exceptions.

- (a) Except as provided in subsection (b) of this section, no person shall conduct an auction as an auctioneer in this state unless he or she shall have first obtained from the commissioner a license therefor.
- (b) The provisions of this section do not apply to:
 - (1) Persons conducting sales at auctions conducted by or under the direction of any public authority or pursuant to any judicial order or direction or to any sale required by law to be at auction;
 - (2) The owner of any real or personal property when personally sold at auction by the owner and the owner has not personally conducted an auction within the previous 12-month period;
 - (3) Persons conducting sales pursuant to a deed of trust;
 - (4) Fiduciaries of estates when selling real or personal property of the estate;
 - (5) Persons conducting sales without compensation on behalf of charitable, religious, fraternal, or other nonprofit organizations: Provided, That the commissioner shall promulgate rules to limit the number of charitable auctions an exempt person may perform in a 12-month

period;

(6) Persons properly licensed pursuant to the provisions in §30-40-1 et seq. of this code when conducting an auction, any portion of which contains any leasehold or any estate in land whether corporeal or incorporeal, freehold or nonfreehold, when the person is retained to conduct an auction by a receiver or trustee in bankruptcy, a fiduciary acting under the authority of a deed of trust or will, or a fiduciary of a decedent's estate: Provided, That nothing contained in this article exempts persons conducting sales at public markets from the provisions of §19-2A-1 et seq. of this code, where the sale is confined solely to livestock, poultry, and other agriculture and horticulture products; and

(7) Persons listing items online for sale via a platform that establishes a fixed time for the conclusion of the sale without extension: Provided, That the commissioner may further define this exemption in legislative rules.

§19-2C-3. Procedure for license; Department of Agriculture as statutory agent for licensees.

(a) An applicant for an auctioneer license shall:

(1) Apply on forms prescribed by the commissioner;

(2) Pay a nonreturnable application fee and a license fee; and, upon successful completion of the application process, a license fee; and

(3) File a bond as required by this article.

(b) The commissioner shall, within 30 days after the receipt of an application, notify the applicant of his or her eligibility to be examined at the next regularly scheduled examination, as well as the date of the examination.

(c) If the license is denied, the commissioner shall refund the license fee submitted with the application to the applicant.

(d) All licenses expire on June 30 of each year: Provided, That an auctioneer may continue to perform auctions for up to 30 days after June 30, so long as he or she has submitted the required paperwork to renew his or her auctioneer license: Provided, however, That licenses issued in 2019 shall continue to be active through June 30, 2020. A license may be renewed upon the payment of the annual renewal fee within 60 days of the expiration date. Renewals received more than 60 days after the expiration date are subject to a late renewal fee in addition to the annual renewal fee.

(e) A license that has been expired for more than two years cannot be renewed until the auctioneer or apprentice auctioneer takes the written and oral examination, pays the examination fee and complies with the other requirements of this article.

(f) Where an auctioneer or apprentice auctioneer requires a duplicate or replacement license or a license reflecting a change in information, the auctioneer or apprentice auctioneer shall submit the fee with the request.

(g) The State Department of Agriculture is the agent for the purpose of service of process on a licensed auctioneer for any action occasioned by the performance of the duties of the auctioneer. Every licensed auctioneer, by virtue of his or her application for a license, shall be considered to have consented to the statutory agency.

§19-2C-3a. Rulemaking.

(a) The commissioner shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, to:

- (1) Establish the license requirements for auctioneers and apprentice auctioneers, including the bond requirements;
 - (2) Set a fee schedule;
 - (3) Establish the renewal and expiration requirements for licenses;
 - (4) Establish the continuing education requirements for licensees;
 - (5) Establish waiver of examination requirements for apprentice auctioneers;
 - (6) Permit consent agreements or negotiated settlements for the civil penalties; and
 - (7) Implement the provisions of this article.
- (b) The fees in effect on January 1, 2014, shall remain in effect until modified by legislative rule.

§19-2C-3b. Special revenue fund.

All fees collected under this article shall be paid into a special revenue fund in the State Treasury to be used by the Department of Agriculture for the purpose of administering and enforcing this article, and providing continuing education for auctioneers.

§19-2C-4. Bond required.

Every person applying for a license as an auctioneer, apprentice auctioneer or continuing to act as a licensed auctioneer or apprentice auctioneer shall file with the commissioner and maintain in full effect a bond satisfactory to the commissioner and in form and amount as prescribed by the commissioner pursuant to the rules and regulations promulgated in accordance with this article: Provided, That in no event shall the amount of such bond be less than \$10,000 for an auctioneer and in no event less than \$5,000 for an apprentice auctioneer. The bond may include, at the option of the applicant, corporate surety bonding, collateral bonding (including costs and securities), establishment of an escrow account, an irrevocable letter of credit or a combination of these methods. If collateral bonding is used, the auctioneer may elect to deposit cash, or any of the following collateral securities or certificates: Bonds of the United States or its possessions, of the federal land bank, or of the homeowners' loan corporation; full faith and credit general obligation bonds of the State of West Virginia, or other states, and of any county, district, or municipality of the State of West Virginia or other states; or certificates of deposit in a bank in this state, which certificates shall be in the name of the department. The cash deposit or market value of such securities or certificates shall be equal to or greater than the sum of the bond. It shall be the duty of the applicant to ensure the market value of such bonds is sufficient. The commissioner shall, upon receipt of any such deposits of cash, securities or certificates, promptly place the same with the treasurer of the State of West Virginia whose duty it shall be to receive and hold the same in the name of the state in trust for the purpose for which the deposit is made when the license is issued. The applicant making the deposit shall be entitled from time to time to receive from the state Treasurer, upon written approval of the commissioner, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with him in lieu thereof, cash or other securities or certificates of the classes herein specified having value equal to or greater than the sum of the bond. Such bond shall be conditioned upon the faithful compliance by the auctioneer with the provisions of this article and the payment of all required taxes, fees and penalties imposed by this state and its political subdivisions, as well as the payment by any auctioneer of any final judgment obtained for damages arising out of his conduct or duties as an auctioneer. Such bond shall be open to public inspection.

§19-2C-5. Requirements for auctioneer license; duties of licensee.

(a) A person seeking an auctioneer license shall submit satisfactory evidence to the commissioner showing that he or she:

- (1) Has successfully completed the written and oral examinations required by this article;
- (2) Has a good reputation;
- (3) Is of trustworthy character;
- (4) Has met the apprenticeship requirements set forth in this article, if applicable;
- (5) Is a citizen of the United States; and
- (6) Has a general knowledge of the auctioneering profession and the principles involved in conducting an auction.

(b) A licensee shall:

- (1) Promptly produce for inspection his or her license at all sales conducted by or participated in by the licensee when requested to do so by any person; and
- (2) Keep complete and accurate records of all transactions engaged in for a period of three years from the date on which the sale was completed.

(c) For the purposes of this section, the term "record" includes, but is not limited to:

- (1) Copies of signed contracts, including the names of buyers and their addresses;
- (2) Clerk sheets showing items sold, including buyers numbers or names, and the selling prices; and
- (3) Final settlement papers.

(d) The records of the auctioneer shall be open to inspection by the commissioner or his or her authorized representative.

(e) A person who has an auctioneer license is considered to be a professional in his or her trade.

§19-2C-5a. Examinations of applicants.

(a) Examinations shall be held a minimum of two times each year, at a time and place to be designated by the commissioner or his or her authorized representative.

(b) An individual auctioneer applicant may take the examination for auctioneer or apprentice auctioneer at the regularly scheduled time and place.

(c) The apprentice auctioneer's examination shall consist of a written examination.

(d) The auctioneer's examination shall consist of both a written and oral examination. The passing grade for any written or oral examination shall be 70 percent out of 100 percent. The oral portion will be scored by the commissioner or his or her authorized representative.

(e) If the applicant fails either the written or oral portion of the examination, no license will be issued and he or she may not be administered the examination again until the next regularly scheduled examination date.

(f) Only one notice of the examination will be mailed or emailed to the applicant at the address given on the application. If the applicant fails to appear for an examination, except as provided in this subsection, a new application and a new fee shall be required. No fee will be returned, except when the applicant fails to take the examination because of illness evidenced by a doctor's certificate sent to the commissioner. If excused because of illness, the applicant shall be admitted to the next scheduled examination without paying an additional fee. No applicant may be excused from taking the scheduled examination for any reason other than illness, unless in the judgment of the commissioner the applicant would suffer undue hardship by not being excused.

(g) An examination fee and any other fees required by this article, shall be collected from each person taking an examination. If the applicant has previously paid the examination fee and successfully completed the apprentice auctioneer's examination, no additional examination fee will be required to take the auctioneer's examination.

(h) If the commissioner determines that an applicant does not qualify for a license, he or she shall notify the applicant by certified mail. The notice shall state:

(1) The reason for the refusal to grant a license; and

(2) The applicant's right to appeal the commissioner's decision within 20 days of receipt of the notice.

(i) An examination is not required for the renewal of a license, unless the license has been revoked or suspended, or has expired. If the license was revoked or suspended, then the commissioner may require a person to take and pass a written or oral examination. If a license has been expired for more than two years and was not revoked or suspended, then the applicant is required to take and pass any written and oral examinations required by the commissioner.

§19-2C-5b. Background checks required.

(a) A person applying for a license pursuant to §19-2C-5, §19-2C-6, or §19-2C-6c of this code may be required to submit to a state and national criminal history record check. The criminal history record check shall be based on fingerprints submitted to the West Virginia State Police or its assigned agent for forwarding to the Federal Bureau of Investigation.

(b) The applicant shall meet all requirements necessary to accomplish the state and national criminal history record check, including:

(1) Submitting fingerprints for the purposes set forth in this subsection; and

(2) Authorizing the board, the West Virginia State Police, and the Federal Bureau of Investigation to use all records submitted and produced for the purpose of screening the applicant for a license.

(c) The results of the state and national criminal history record check may not be released to or by a private entity except:

(1) To the individual who is the subject of the criminal history record check;

(2) With the written authorization of the individual who is the subject of the criminal history record check; or

(3) Pursuant to a court order.

(d) The criminal history record check and related records are not public records for the purposes of chapter 29B of this code.

(e) The applicant shall pay the actual costs of the fingerprinting and criminal history record check.

(f) The commissioner may not disqualify an applicant for initial licensure, certification or registration because of a prior criminal conviction that has not been reversed unless that conviction is for a crime that bears a rational nexus to the occupation requiring licensure.

(g) The commissioner may not use crimes involving moral turpitude in making licensure, certification or registration determinations.

(h) If an applicant is disqualified for licensure, certification or registration because of a criminal conviction that has not been reversed, the commissioner shall afford the applicant the opportunity to reapply for licensure, certification or registration after the expiration of five years from the date of conviction or date of release from the penalty that was imposed, whichever

is later, if the individual has not been convicted of any other crime during that period of time: Provided, That convictions for violent or sexual offenses or offenses shall subject an individual to a longer period of disqualification, to be determined by the individual board or licensing authority.

(i) An individual with a criminal record who has not previously applied for licensure, certification or registration may petition the commissioner at any time for a determination of whether the individual's criminal record will disqualify the individual from obtaining a license or other authorization. This petition shall include sufficient details about the individual's criminal record to enable the commissioner to identify the jurisdiction where the conviction occurred, the date of the conviction and the specific nature of the conviction. The commissioner shall inform the individual of his or her standing within 60 days of receiving the petition from the applicant. The licensing authority may charge a fee to recoup its costs for each petition.

(j) Nothing in this section alters the standards and procedures the commissioner uses for evaluating licensure, certification or registration renewals.

(k) The commissioner shall propose rules or amendments to existing rules for legislative approval to comply with the provisions of this section. These rules or amendments to rules shall be proposed pursuant to the provisions of §29A-3-1 et seq. of this code within the applicable time limit to be considered by the Legislature during its regular session in the year 2020.

(l) The provisions of this section, enacted during the 2019 Regular Session of the Legislature, shall not apply to current licensees who maintain active licensure, but shall apply to individuals currently holding an apprentice auctioneer license who are applying for an auctioneer license, or to any current license holder whose license lapses and who is required to reapply.

§19-2C-6. Requirements for apprentice auctioneer license.

(a) A person seeking an apprentice auctioneer license shall furnish to the commissioner, on forms provided by the commissioner, satisfactory proof that he or she:

- (1) Has a good reputation;
- (2) Is a trustworthy character;
- (3) Is a citizen of the United States; and
- (4) Has taken and passed a written examination relating to the skills and knowledge of the statutes and rules governing auctioneers.

(b) An apprentice auctioneer may take the examination to become an auctioneer after completing one of the following:

- (1) Serving a two-year apprenticeship under a licensed auctioneer; or
- (2) Attending a nationally accredited graduate school of auctioneering, approved by the commissioner, and serving an apprenticeship of six months.

(c) Before an apprentice auctioneer may take the auctioneer's examination, the apprentice auctioneer shall conduct at least six auction sales under the direct supervision of the sponsoring auctioneer. The commissioner may waive the requirements of this section, on an individual basis, upon the presentation of written evidence that the applicant has educational training or exceptional experience in the auctioneering profession and that the applicant has been unable to obtain sponsorship by a licensed auctioneer: Provided, That the commissioner may not waive apprenticeship requirements for an applicant without the concurrence of the board of review.

(d) When an apprentice auctioneer is discharged or terminates his or her employment with an auctioneer for any reason, the auctioneer shall immediately provide written notification to the

commissioner. No discharged or terminated apprentice auctioneer may thereafter perform any acts under the authority of his or her license until the apprentice auctioneer receives a new license bearing the name and address of his or her new employer. No more than one license may be issued to an apprentice auctioneer for the same period of time.

(e) The commissioner may not issue an apprentice auctioneer license until bond has been filed. All apprentice auctioneer licenses expire on June 30 of each year, but are renewable upon the payment of the annual fee: Provided, That an apprentice auctioneer may continue to perform auctions for up to 20 days after June 30, so long as he or she has submitted the required paperwork to renew his or her apprentice auctioneer license: Provided, however, That licenses issued in 2019 shall continue to be active through June 30, 2020.

(f) A person cannot be licensed as an apprentice auctioneer for more than three years without applying for an auctioneer license. Should an apprentice auctioneer allow the three year limit to lapse, then the apprentice auctioneer shall be required to take the apprentice examination and meet all the requirements of this article.

§19-2C-6a. Investigation of complaints; board of review.

(a) The Department of Agriculture may, upon its own action, and shall upon the verified written complaint of any person, investigate the actions of any auctioneer, apprentice auctioneer, any applicant for an auctioneer's or apprentice auctioneer's license, or any person who assumes to act in that capacity, if the complaint, together with other evidence presented in connection with it, establishes probable cause. Upon verification of the complaint, the department shall present the complaint to the board of review. The board of review shall consider all of the facts of the complaint and recommend a course of action to the commissioner.

(b) The board of review shall be appointed by the Governor, by and with the advice and consent of the Senate, and shall consist of three members, each appointed for a staggered three-year term. Two members of the board of review shall be licensed auctioneers in West Virginia and residents of this state and shall have been licensed and been practicing the profession of auctioneering for five years immediately preceding their appointment. The third member shall be a lay person from the commercial or agricultural community who has utilized services of auctioneers for at least three years. No more than two board members shall be from any one congressional district and no more than two members shall be from the same political party. Board members shall receive no compensation for their service on the board, but shall be entitled to receive reimbursement for expenses in accordance with the Department of Agriculture travel regulations. There shall be no limit on the number of consecutive terms a member may serve on the board. The Governor is authorized to fill a vacancy when it occurs on the board for any reason. An appointment to fill a vacancy shall be for the remainder of the existing term of the vacant position.

§19-2C-6b. Duties and responsibilities of an apprentice auctioneer and a sponsoring auctioneer.

(a) A licensed apprentice auctioneer shall only conduct or assist in auctions under the direct supervision of his or her sponsoring auctioneer. A licensed apprentice auctioneer may not enter into a contract to conduct an auction, unless the contract is cosigned by his or her sponsoring auctioneer.

(b) The sponsoring auctioneer is responsible for:

- (1) The actions of an apprentice auctioneer to ensure adherence to state law; and
- (2) Training the apprentice auctioneer in all aspects of practical business functions and duties

related to the auctioneering profession.

(c) Should an apprentice auctioneer fail to pass both the written and oral examinations to become a fully licensed auctioneer in two consecutive testing sessions, the sponsorship will be terminated. The apprentice auctioneer will be permitted one additional opportunity to pass the oral and written auctioneer examinations only after serving another six month apprenticeship under a different sponsoring auctioneer.

(d) A sponsoring auctioneer relieved of his or her sponsorship will not be considered for another sponsorship unless he or she provides a written affidavit to the commissioner that he or she fully understands the responsibilities of a sponsoring auctioneer and gives the details as to what additional training will be provided to a new apprentice auctioneer. If the commissioner or his or her representative approves the presented plan, then an auctioneer may be permitted to sponsor a new apprentice auctioneer.

(e) If an apprentice auctioneer conducts an auction without the consent of his or her sponsoring auctioneer, then only the apprentice auctioneer is subject to the penalties set forth in this article.

§19-2C-6c. Procedure for obtaining reciprocal or nonresident auctioneer's and apprentice auctioneer's license.

(a) To qualify for a license by reciprocity, the applicant must show evidence of licensing in another state for a period of one year preceding the date of application. The licensing may have been as an apprentice auctioneer or as an auctioneer. Provided this qualification is met and the applicant meets all the other requirements as required by this article and by regulation, he or she shall be licensed either as an apprentice auctioneer or as an auctioneer, based on a nonresident license, as the case may be.

(b) When an applicant's resident state has no licensing law for auctioneers or the applicant's resident state has no written or oral examination associated with its licensing requirements, the Department of Agriculture shall require proof that the applicant has been a practicing auctioneer for a period of two years preceding the date of application. The proof shall be in the form of sale bills, contracts, sale permits and other such evidence acceptable to the commissioner. Provided this qualification is met, and the applicant meets other requirements for licensing as required by the statutes and regulations, the applicant shall be admitted to the next scheduled written and oral examination for auctioneers without being required to first serve an apprenticeship.

§19-2C-7. Orders of commissioner; hearing; review.

Any order of the commissioner shall be served by him upon all persons affected thereby by registered mail. Within ten days of the receipt of such order any party adversely affected thereby may, in writing, request a hearing before the commissioner. Such hearing and any judicial review thereof shall be conducted in accordance with the applicable provisions of articles five and six, chapter twenty-nine-a of this code as if the same were set forth herein in extenso. The effect of any order shall be suspended during the course of any hearing or subsequent appeals.

§19-2C-8. Penalties.

(a) Criminal penalties. — Any person, firm, association or corporation violating a provision of this article or the rules, is guilty of a misdemeanor and, upon conviction, shall be fined not less than \$250 nor more than \$500 for the first offense, and not less than \$500 nor more than

\$1,000 for the second and subsequent offenses. Magistrates have concurrent jurisdiction with circuit courts to enforce the provisions of this article.

(b) Civil penalties. — Any person violating a provision of this article or the rules, may be assessed a civil penalty by the commissioner.

(1) In determining the amount of the civil penalty, the commissioner shall give due consideration to the history of previous violations by the person, the seriousness of the violation, and the demonstrated good faith of the person charged in attempting to achieve compliance with this article before and after written notification of the violation. The commissioner may assess a penalty of not more than \$500 for a first offense, and not more than \$1,000 for each second and subsequent offense.

(2) In addition to a penalty assessed against an unlicensed auctioneer for practicing without the required license, the commissioner may assess penalties against an unlicensed auctioneer for violations of the provisions of this article that would have applied to the individual's conduct had he or she held the required license.

(3) The civil penalty is payable to the State of West Virginia and is collectible in any manner provided for collection of debt. If any person liable to pay the civil penalty neglects or refuses to pay the penalty, the amount of the civil penalty, together with interest at 10 percent, is a lien in favor of the State of West Virginia upon the property, both real and personal, of the person after the same has been entered and docketed to record in the county where the property is situated. The clerk of the county, upon receipt of the certified copy of the lien, shall enter it to record without requiring the payment of costs as a condition precedent to recording.

(c) No state court may allow for the recovery of damages for any administrative action taken if the court finds that there was probable cause for such action.

§19-2C-8a. Revocation.

In addition to the penalties in section eight of this article, the commissioner may, by order, suspend, deny or revoke any license granted hereunder for any violation of this article or the rules and regulations promulgated hereunder or for any of the following reasons:

(a) Obtaining a license through false or fraudulent representation;

(b) Making any substantial misrepresentation in any application for an auctioneer's or apprentice auctioneer's license;

(c) Engaging in a continued or flagrant course of misrepresentation or for making false promises through an agent, advertisement or otherwise;

(d) Failing to account for or remit within a reasonable time any money belonging to others that comes into his or her possession;

(e) Being convicted in any court of competent jurisdiction of this state or any other state of a criminal offense involving moral turpitude or a felony; or for failing to notify the department of any such conviction within 15 days of conviction;

(f) Violating any other laws related to the conduct of auctions or auctioneering;

(g) Engaging in any conduct of an auctioneer which demonstrates dishonesty or incompetency;

(h) Engaging in any other conduct that constitutes fraudulent or dishonest dealing;

(i) Engaging in any other unethical conduct in the contexts of his or her work as an auctioneer; and

(j) Acting as an attorney for a client.

Any auctioneer or apprentice auctioneer who has had his or her license suspended or revoked

shall not be issued another such license until a period not to exceed two years has elapsed from the date of revocation. The commissioner may also require the successful completion of the examinations required for an auctioneer's license or an apprentice auctioneer's license.

§19-2C-9. Written contracts.

- (a) No person may act as an auctioneer on the sale at public auction of any goods, wares, merchandise or of any other property, real or personal, until he or she has entered into a written contract in duplicate with the owner or consignor of the property to be sold. No apprentice auctioneer may be authorized to enter into a contract without the written consent of his or her sponsoring auctioneer. All contracts shall be in the name of and on behalf of the sponsoring auctioneer.
- (b) The written contract shall:
- (1) State the terms and conditions upon which the auctioneer receives or accepts the property for sale at auction;
 - (2) Be between the auctioneer and the seller;
 - (3) Be made in duplicate;
 - (4) Be retained by the auctioneer for a period of three years from the date of final settlement;
 - (5) Be furnished to each person that entered into the contract;
 - (6) State that an apprentice auctioneer may not contract directly with a client but only through his or her sponsoring auctioneer;
 - (7) State that an apprentice auctioneer may not engage in a sale with an auctioneer by whom he or she is not sponsored without first obtaining the written consent of his or her sponsoring auctioneer;
 - (8) Have a prominent statement indicating that the auctioneer is licensed by the Department of Agriculture and is bonded in favor of the State of West Virginia; and
 - (9) Include the following information:
 - (A) The name, address and phone number of the owner of the property to be sold or the consignor;
 - (B) The date of the auction or a termination date of the contract;
 - (C) The terms and conditions of the auction;
 - (D) The location of the auction;
 - (E) The date the owner or consignor is to be paid;
 - (F) A statement establishing the responsibility for bad checks, debts and unpaid auction items;
 - (G) A detailed list of all fees to be charged by the auctioneer, including commissions, rentals, advertising and labor;
 - (H) A statement of the auctioneer's policy regarding absentee bidding;
 - (I) A statement above the owner's signature line: "I have read and accept the terms of the contract"; and
 - (J) A statement indicating that an explanation of settlement of the auction, or settlement sheet, will be provided to the owner or consignor at the end of the auction.
- (c) As a condition of entering into a contract, the auctioneer shall be provided with proof or certificate of ownership for all titled property, or assurances of ownership for all other property. The auctioneer shall have such proof or certificate or ownership with him or her at the time the auction is held.
- (d) Notwithstanding the provisions of subsection (a) of this section, an auctioneer may conduct

an auction on behalf of an auction house or other business entity without having entered into a contract directly with the seller of the auctioned goods, so long as the following conditions are satisfied:

- (1) The auction house or business must have a written contract with both the seller of the goods and the auctioneer;
- (2) The contract between the auction house or business entity must satisfy all the requirements set forth in subsection (b) of this section; and
- (3) The auction house or business entity must file with the commissioner a bond satisfying the requirements of §19-2C-4 of this code.

(e) By entering into contracts with sellers of property pursuant to this section, the owners and partners of any auction house or business entity agree to submit to the jurisdiction of the commissioner and the Board of Review and are subject to the penalties set forth in §19-2C-8 of this code.

§19-2C-9a. Escrow accounts.

Each auctioneer shall maintain an escrow account and deposit all moneys from each sale from an auction in the escrow account within twenty-four hours of the completion of the sale or on the first business day following the sale, unless the owner or consignor was paid in cash directly at the end of the sale.

§19-2C-10. Advertising.

In advertising an auction sale by any licensed auctioneer, the principal auctioneer or auctioneers who physically conduct the sale shall be listed prominently in such advertising as used by said auctioneer or auctioneers. The individual auctioneer or auctioneers who conduct the sale shall be the person or persons who call for, accept and close bids on the majority of items offered for sale.

Any apprentice auctioneer who advertises, as provided in this section, shall indicate in his or her advertisement the name of the sponsoring auctioneer under whom he or she is licensed. The auctioneer's name and license number shall be displayed in equal prominence with the name of the apprentice auctioneer and license number in such advertisement.

Nothing in the provisions of this article shall be construed so as to prohibit any other auctioneer, licensed pursuant to this article, from assisting with any auction, notwithstanding the failure to list the name of the other auctioneer in any advertising associated with such auction.

It is unlawful to conduct or advertise that an auction is absolute if minimum opening bids are required or other conditions are placed on the sale that limit the sale other than to the highest bidder.

No property other than the property of a specified deceased person or the property of a specified living person's estate may be sold at auction if the auction is conducted or advertised only as an estate auction. However, property other than that of the specified estate may be sold at the sale if all advertisements for the sale specify that items will be sold that do not belong to the estate and those items are identified at the sale.

§19-2C-11.

Repealed.

Acts, 1991 Reg. Sess., Ch. 123.

TITLE 61
LEGISLATIVE RULE
STATE DEPARTMENT OF AGRICULTURE
SERIES 11B - AUCTIONEERS

§61-11B-1. General.

- 1.1. Scope. -- This legislative rule establishes general procedures for the licensing of auctioneers.
- 1.2. Authority. -- W. Va. Code §19-2C-3a, §19-2C-5.
- 1.3. Filing Date. -- April 25, 2022
- 1.4. Effective Date. -- April 25, 2022
- 1.5. Sunset Date. -- This rule shall terminate and have no further force or effect on August 1, 2032.

§61-11B-2. Definitions.

2.1. "Absolute auction" means the sale of real or personal property at auction whereby every item offered from the block is sold to the highest bidder without reserve and without the requirements of a minimum bid or other conditions which limit the sale other than to the highest bidder.

2.2. "Apprentice auctioneer" means an auctioneer who is in training and is operating under the supervision of a licensed auctioneer.

2.3. "Auction house" or "auction firm" means and includes any person or entity that contracts with one or more individuals or entities to provide for the auctioning of goods, but does not auction the goods itself, and must retain the services of a licensed auctioneer to perform the auction.

2.4. "Auctioneer" means a person who sells goods or real estate at public auction for another on commission or for other compensation.

2.5. "Bid rigging" means any action in which two or more people conspire to restrain trade by artificially "fixing" or influencing bids in an auction. This can occur when bidders agree not to bid against one another so as to depress selling prices, or when an auctioneer and one or more others agree to try and artificially increase selling prices.

2.6. "Commissioner" means the Commissioner of Agriculture of West Virginia.

2.7. "Department" means the West Virginia Department of Agriculture.

2.8. "Escrow account" means a separate custodial or trust fund account maintained by the auctioneer.

2.9. "Estate auction" means the sale at auction of property of a specified deceased person or the property of a specified living person's estate.

2.10. "In this state" means a that an auction satisfies one of the following criteria:

2.10.a. The auctioneer performed the auction within the borders of the State of West Virginia;

2.10.b. The auctioneer is selling items for a person located in the State of West Virginia;

2.10.c. The auctioneer is auctioning real or personal property located in the State of

West Virginia;

2.10.d. The auctioneer delivers purchased property to a location in the State of West Virginia; or

2.10.e. The auctioneer is otherwise subject to the laws, including taxation authority, of the State of West Virginia.

2.11. "License year" means the twelve-month period for which an auctioneer or apprentice auctioneer's license is valid. For purposes of licenses issued in 2019, "license year" means the eighteen-month period for which that license is valid.

2.12. "Public auction" or "auction" means any public sale of real or personal property in any manner, whether in-person, via written offers or bids, or online, when offers or bids are made by prospective purchaser and the property is sold to the highest bidder.

2.13. "Reserve" means the minimum bid a seller has indicated he or she will accept at the auction.

§61-11B-3. Application.

3.1. An individual wishing to apply to be an auctioneer or an apprentice auctioneer shall submit an application to the Commissioner, on a form provided by the Commissioner.

3.2. The application shall contain sufficient information to allow the Commissioner to determine the applicant's eligibility for an auctioneer or apprentice auctioneer license and shall include a statement by two (2) individuals testifying to the applicant's character.

3.3. An applicant for an apprentice license or auctioneer license shall be at least 18 years of age.

3.4. An applicant for an auctioneer or apprentice auctioneer license shall present a photo I.D. before participating in examinations.

3.5. Each applicant for an auctioneer or apprentice auctioneer license shall comply with the following background check requirements:

3.5.a. Each first-time applicant shall file a set of the applicant's fingerprints, taken by a law-enforcement officer, and any other information necessary to complete a statewide and nationwide criminal history check with the Criminal Investigation Bureau of the Department of Justice for state processing and with the Federal Bureau of Investigation for federal processing.

3.5.b. The applicant shall pay all costs associated with the criminal history checks.

3.5.c. Criminal history records provided to the Department are confidential.

3.6. The Commissioner shall, within thirty (30) days after receipt of an application, notify the applicant of his or her eligibility to be examined.

3.6.a. The thirty (30)-day period for action by the Commissioner shall not commence until all necessary information has been submitted by the applicant.

3.6.b. The thirty (30)-day period for action by the Commissioner may be extended if the Commissioner has not yet received the required background checks.

3.7. All auctioneers licensed by the Department are required to maintain up-to-date contact information with the Department, including mailing address, telephone number, and email address.

§61-11B-4. Bond Requirements.

4.1 The amount of bond required is no less than five thousand dollars (\$5,000) for an apprentice auctioneer and no less than twenty-five thousand dollars (\$25,000)

for an auctioneer or auction house. Corporate surety bonds shall be on forms provided by the Commissioner. A bond in an amount higher than these minimums may be imposed by the Commissioner upon recommendation of the Board of Review, as set forth in section 15.2.

4.2. All corporate surety bonds shall be executed by a company authorized to do business in the State of West Virginia as determined by the Secretary of State.

4.3. An apprentice auctioneer applicant is not required to have a bond in place prior to testing; however, they shall submit a properly executed bond to West Virginia Department of Agriculture before the Department will issue the license.

§61-11B-5. License.

5.1. The license numbers issued under W. Va. Code §19-2C-1 et seq. are permanent, subject to annual renewal. A license number issued to an individual cannot be reissued to another auctioneer if that license lapses or is otherwise revoked.

5.2. All licenses issued under W. Va. Code §19-2C-1 et seq. expire on June 30 of each year, unless revoked or suspended.

5.2.a. An auctioneer who has submitted all the necessary paperwork to renew his or her license may continue to operate under his or her license for up to thirty (30) days after June 30.

5.2.b. An apprentice auctioneer who has all the necessary paperwork to renew his or her license may continue to operate under his or her license for up to twenty (20) days after June 30.

5.3. The Department shall consider licenses issued at the successful completion of the examination held in the second half of the license year as licensure for the upcoming calendar year and shall not collect an additional fee for that year.

§61-11B-6. License Renewal.

6.1. An applicant shall submit all materials required by the Commissioner to the Department of Agriculture before the Commissioner may renew a license. Requests which do not contain all necessary information may result in delays in the issuance of the license.

6.2. An auctioneer shall provide the Commissioner with proof of completion of at least six (6) hours of continuing education within the previous year.

6.2.a. An auctioneer shall complete six (6) hours of continuing education each subsequent year in order to qualify for license renewal.

6.2.b. The Commissioner or his or her designee must approve all continuing education programs as to subject matter before credit will be granted.

6.2.c. Requests for approval shall include: the name of course, the course provider, the date of instruction, an outline of the course, the instructor or sponsor and his or her qualifications for teaching the class, the instructor or sponsor's address and the number of hours of instruction.

6.2.d. Curricula must be approved in advance, and in the case of group instruction, the instructor or course provider shall provide a certified list of those persons completing the course. Failure of the provider to seek and be given approval in advance may result in the denial of continuing education credit.

6.2.e. Continuing education may include, but is not limited to, seminars, correspondence courses, certified home study and formal course work offered through vocational programs, extension programs, colleges and universities, or certified auction schools.

6.3. An auctioneer shall complete six (6) hours of continuing education each calendar year in order to qualify to renew his or her license for the next year.

6.3.a. Only classes taught by course providers approved by the Commissioner or his or her designee qualify for credit.

6.3.b. At least three (3) hours of the required six (6) hours of class shall be from core subjects. Core subjects are:

6.3.b.1. West Virginia statutes and rules governing auctioneering;

6.3.b.2. Federal statutes and rules governing auctioneering;

6.3.b.2. Auctioneering ethics;

6.3.b.4. Escrow, trust and custodial accounts;

6.3.b.5. Advertising;

6.3.b.6. Contracts; and

6.3.b.7. Other subjects approved by the Commissioner.

6.4. An apprentice auctioneer shall complete three (3) hours of continuing education set forth in section 6.3 each licensed year in order to qualify to renew his or her license for the next year

6.5. An auctioneer who wishes to place his or her license on inactive status may do so, provided that he or she satisfy the following requirements:

6.5.a. The auctioneer notifies the Commissioner, on a form provided for that purpose, prior to the conclusion of the license year.

6.5.b. The auctioneer pays the annual license fee of fifty dollars.

6.5.c. The auctioneer does not conduct any auctions during the period of inactivity.

6.6. If the auctioneer does wish to reactivate his license, he or she must provide notice, on a form provided by the Commissioner, to the Commissioner at least thirty (30) days before the auctioneer wishes to perform auctions.

6.6.a. The notice must contain sufficient information to satisfy the Commissioner that the auctioneer has complied with all annual requirements, including continuing education requirements, for active licensure for the year for which the license will be active.

6.6.b. The notice must include a required reactivation fee of fifty dollars.

§61-11B-7. Receipts.

7.1. Each auctioneer shall provide a buyer or purchaser with a receipt that includes:

7.1.a. The date of the sale;

7.1.b. A description of the item or lot;

7.1.c. The price paid for the item or lot purchased; and

7.1.d. The name, license number and permanent address of the auctioneer. This information shall be provided to each buyer or purchaser only once.

7.2. The auctioneer shall retain a copy of issued receipts for his or her records for a minimum of three (3) years.

§61-11B-8. Examination of Applicants.

8.1. The written examination shall test the applicant's knowledge of the West Virginia Auctioneer Law, W. Va. Code §19-2C-1 et seq., rules promulgated under the law and

other fundamentals of the auctioneering profession.

8.2. The oral examination shall test the auctioneer's competency in conducting an auction, and his or her knowledge of all applicable laws, state and federal.

§61-11B-9. Accredited Auctioneering Schools.

9.1. The Commissioner shall annually issue a list of accredited auctioneering schools.

9.2. Any school wishing to be included on the list of accredited auctioneering schools shall submit to the Commissioner a complete curriculum, a course schedule, a list of the instructors, credentials of the instructors, the location of the school, the cost and any other information considered necessary by the Commissioner for a decision on the qualifications of the school to be accredited in West Virginia.

§61-11B-10. Suspension, Revocation, Expiration or Termination of Supervising Auctioneer's License.

10.1. The suspension, revocation, expiration or termination of a supervising auctioneer's license shall automatically suspend the license of any apprentice auctioneer sponsored or employed by the suspended auctioneer.

10.2. An apprentice auctioneer may retain an apprentice by transferring to the sponsorship of another licensed auctioneer: Provided, that the request for the transfer is made in writing and according to the procedures outlined in W. Va. Code §19-2C-6, and approved by the Commissioner or his or her designee.

§61-11B-11. Reciprocity.

11.1. Any holder of a a valid auctioneer's license from another state may be granted a West Virginia license. Provided, that the state in which he or she is licensed provides similar recognition to a licensee of this State, and that the licensing requirements of the reciprocal state are at least equal to those of the State of West Virginia. The Commissioner shall annually issue a list of states with whom reciprocity has been formally approved.

11.2. Any auctioneer who has practiced in a state that has no licensing law for auctioneers and wishes to obtain a West Virginia license shall submit all information required for the Commissioner to determine that he or she has been a practicing auctioneer for a period of two years preceding the date of the application.

11.3. Once an individual has received a West Virginia auctioneer's license pursuant to the provisions of this section, he or she becomes subject to all other licensure requirements of this rule, including those relating to expired, revoked, or lapsed license. An individual who has once obtained a license through reciprocity may not obtain another license in the same manner.

§61-11B-12. Waiver of Apprenticeship.

12.1. The Commissioner may, with the concurrence of the Auctioneer Board of Review, grant a wavier of the apprenticeship requirements. For an applicant to be granted a wavier, he or she shall petition the Commissioner for a waiver and provide certified documentation as to the qualifications of the candidate to be an auctioneer without serving an apprenticeship. This documentation shall include formal training in the profession, exceptional practical training such as verification of conducting charity or other types of auctions which are exempt from the licensing requirements, and any other information to assist the Commissioner in making a ruling. The Commissioner may grant a waiver only under exceptional circumstances, after receiving concurrence from the Auctioneer Board of Review, and shall not consider them a routine matter. Under no circumstances shall the Commissioner grant a wavier if it is

determined that experience in the profession has been gained as a result of auctioneering which was not in compliance with the laws and rules of the State of West Virginia or the State where the experience was gained.

12.2. To be a sponsoring auctioneer of an apprentice, the auctioneer must have held an auctioneer's license for at least two (2) consecutive years and can sponsor no more than two (2) apprentice auctioneers at any time.

12.3. If an applicant seeks a waiver of apprenticeship based on his or her inability to find a sponsoring auctioneer, the Commissioner may assign an auctioneer in good standing with the Department to serve as sponsoring auctioneer for the applicant.

§61-11B-13. Advertising.

13.1. Any circular or other printed material advertising a sale shall contain the name and license number of the auctioneer conducting the sale, the name and license number of any apprentice auctioneer assisting with the sale, and the date, place and exact time of the auction.

13.1.a. An advertisement for an auction for which the auctioneer has not yet been selected, such as an auction advertised by a firm with multiple auctioneers, shall contain the name and license number of the auctioneer in charge.

13.1.b. An auctioneer performing an auction shall announce his or her name and license number at the beginning of his or her sale, or otherwise display that information when he or she is performing an auction.

13.2. Absolute and estate auctions must satisfy the advertising requirements set forth in W. Va. Code §19-2C-10.

§61-11B-14. Contracts.

14.1. All contracts between an auctioneer and a seller shall meet, at a minimum, the requirements set forth in W. Va. Code §19-2C-9, including the following guidelines:

14.1.a. The contract shall be executed in duplicate;

14.1.b. The contract shall specifically state the amount of time to settle the account with the consignors, which is within fourteen (14) calendar days of the sale unless otherwise stated in the contract.

14.2. An apprentice auctioneer may not contract directly with a client.

14.3. All auction house contracts for the sale of property must comply with the requirements set forth in W. Va. Code §19-2C-9 and this rule. All auction house contracts with auctioneers must be in writing.

14.4. All contracts must be retained by the auctioneer and/or auction house for a period of three years following the date on which the sale was completed, and are subject to inspection by the Commissioner upon request.

§61-11B-15. Board of Review.

15.1. The Board of Review shall meet at the call of the Commissioner or his or her designee to review the findings of an investigation resulting from a verified complaint received by the Department or an investigation initiated by the Department's own actions.

15.2. The Board of Review shall review these findings, all of the material related to the investigation, and any other material considered by the Board to be appropriate. The

Board of review shall make a recommendation, in writing, to the Commissioner as to the course of action for the Commissioner on the complaint. Such recommendation may include a recommendation for the Commissioner to impose an increased bond amount, pursuant to section 4.1. Board decisions shall be majority decisions of those members present. A quorum of two (2) members is required for Board action.

15.3. When considered appropriate by the Commissioner, or his or her designee, the Board may meet via telephone conference call, but shall only provide a recommendation after receiving and reviewing hard copies of the material pertinent to the complaint.

15.4. A member of the staff of the Department, appointed by the Commissioner, shall serve as staff for the Board and shall be responsible for the presentation of each complaint. The staff member shall not participate in the discussions beyond the reasonable explanation of the facts of the complaint.

§61-11B-16. Licensing and Fees.

16.1. Any person who wishes to conduct an auction as an auctioneer may apply for a license on forms prescribed by the commissioner. A nonreturnable fifty dollar (\$50) application fee and hundred dollar (\$100) license fee shall accompany each application.

16.2. The approved applicant shall take an examination to become a licensed auctioneer or apprentice auctioneer at the regularly scheduled time and place designated. The examination fee is fifty dollars (\$50), in addition to any other required fees.

16.2.a. An applicant, who has previously paid the examination fee and successfully completed the apprentice auctioneer's examination, is not required to pay an additional fee for the auctioneer exam.

16.3. A license expires June 30 of each year, The fee for the annual renewal of the auctioneer or apprentice auctioneer's license is hundred dollars (\$100).

16.3.a. Renewals received more than thirty (30) days after the expiration date are subject to a late renewal fee of twenty-five dollars (\$25), in addition to the annual renewal fee.

16.3.b. Renewals received more than sixty (60) days after the expiration date are subject to a late renewal fee of fifty dollars (\$50), in addition to the annual renewal fee.

16.3.c. Renewals received more than ninety (90) days after the expiration date are subject to a late renewal fee of seventy-five dollars (\$75), in addition to the annual renewal fee.

16.3.d. Renewals received more than one hundred and twenty (120) days after the expiration date are subject to a late renewal fee of one hundred dollars (\$100), in addition to the annual renewal fee.

16.3.e. For purposes of the assessment of late fees, a renewal application must be complete and contain all necessary information and documentation to process the renewal before it is considered received by the Department.

16.4. If a duplicate or replacement license or license reflecting a change in information is required, the auctioneer or apprentice auctioneer shall submit with the request a fee of five dollars (\$5).

16.5. The fee for the transfer of the license of an apprentice auctioneer to a new employer auctioneer is fifteen dollars (\$15).

16.6. To obtain an auctioneer license by reciprocity, the applicant must meet the qualifications required in W. Va. Code 19-2C and submit a nonreturnable fifty dollar (\$50) application fee and one hundred dollars (\$100) license fee with each application.

16.7 The fee for an auction house to register with the Department is one hundred dollars (\$100) annually.

§61-11B-17. Auctioneering Exemptions.

17.1. A person who does not have a West Virginia auctioneer license may conduct an auction on behalf of a charitable organization, provided the person conducting the auction:

17.1.a. Receives no monetary compensation for his or her services, or for any services associated with the charitable event.

17.1.b. Does not engage in any activities related to the sale, such as soliciting items, setting minimum bids, or other traditional auctioneering activities, other than volunteer auction services; and

17.1.c. Records charitable auctions on forms prescribed by the commissioner.

17.1.d. An unlicensed auctioneer may only conduct four (4) charitable auctions in a 12-month period. Special requests to allow for more than four (4) charitable auctions per licensed year may be submitted to the Commissioner in writing, detailing specific reasons to exceed the charitable auction limit and justification for not acquiring West Virginia auctioneer license.

17.2. Any person listing goods for sale at public auction or auction on the Internet which includes live, real-time, extended, or any similar such event as may be devised with the development of technology or any combination of such and increases in bid increments, is subject to the rules and regulations set forth therein and W.Va. Code 19-2C.

17.2.a. The provisions of this section do not apply to e-commerce corporations or marketplaces that facilitate or provide consumer-to-consumer or business-to-consumer sales through its website and provide internal buyer and seller protections to its participants, e.g., eBay or similar auction-based websites.

17.2.b. Auctions that are held utilizing a platform owned or operated by the person offering the items for sale at public auction or auction are not subject to this exemption, and the individual operating such a website or software must hold a license to conduct those auctions

§61-11B-18. Auction Houses.

18.1. Any individual or business entity operating as an auction house is required to register with the Commissioner, on a form to be prescribed by the Commissioner.

18.1.a. Each auction house shall be required to pay the registration fee set forth in section sixteen of this rule.

18.1.b. The registration shall also include a verification stating that, by engaging in auction house activities, it is subject to the oversight of the Commissioner, the Board of Review, and the requirements of §19-2C-1 et seq.

18.2. An auction house or auction firm shall, at the time it submits its registration, file the surety bond required by section four of this rule.

18.3. Auction house registrations shall expire on June 30 of each year. Each auction house must annually renew its registration.

PUBLIC MARKETS

Chapter 19, Article 2A. Public Markets

§19-2A-10. Licensing of weighmen and auctioneers; application and fee; sale of livestock by weight.

It shall be unlawful for any person to serve in the capacity of weighman, or auctioneer at any public market without first having secured a license. Applications for such licenses shall be made on forms furnished by the commissioner and shall be accompanied by a fee of two dollars and fifty cents for either weighman or auctioneer and shall contain such information as may be required.

All livestock sold by weight at any public market shall be sold subject to weight at place of sale on day sold by auctioneer.

§19-2A-13. Unlawful for licensed weighman, grader or auctioneer to buy or trade at market in which employed; false weights.

It shall be unlawful for any weighman, grader, or auctioneer, licensed in accordance with the provisions of this article, to buy or trade in any livestock or other agricultural and horticultural products, graded, weighed, or auctioned by him, either for himself or partnership at any public market in which he is employed, or to misweigh or falsely report any weights or otherwise fraudulently manipulate the scales to produce a weight other than the true and actual weight of any livestock, poultry, or other agricultural and horticultural products consigned to and sold at any public market.

The following are portions of the Public Markets Regulations (61-CSR-11) that pertain to auctioneers:

5.7. Auctioneer, application and duties. Auctioneers shall be licensed as required under article two-c, chapter nineteen of the West Virginia Code.

5.7.1. In case of a dispute between bidders, the auctioneer is authorized to settle such dispute by reopening the bid and reselling to the highest bidder.

5.7.2. An auctioneer, when offering livestock for sale at any public market for immediate slaughter, shall publicly announce that such livestock may be purchased for immediate slaughter only.

5.7.3. An auctioneer, when selling livestock received, entered and/or offered for sale by any public market for feeding and breeding purposes, shall publicly announce that such livestock may be purchased for feeding or breeding purposes.

5.7.4. An auctioneer, when selling livestock by weight, shall announce the weight of such livestock before same is sold. When any livestock is sold he shall announce the name of the person or firm buying said livestock. When livestock is sold to a person representing himself as agent or order buyer for another person, the auctioneer shall announce the name of the agent or order buyer, and, if possible, the name of the person for whom the livestock was purchased. The auctioneer shall also announce the price at which said livestock was sold. Such announcements shall be in an audible voice that can be heard throughout the sale arena by persons of average hearing.

UNIFORM COMMERCIAL CODE

West Virginia Code, Chapter 46

Provisions that pertain directly to auctioneers:

46-2-328. Sale by Auction

46-9-501. Filing Office

The entire code can be found in your local library under West Virginia Code, Chapter 46 or online at <http://www.legis.state.wv.us/WVCODE/Code.cfm?chap=46&art=1>

§46-2-328. Sale by auction.

- (1) In a sale by auction if goods are put up in lots each lot is the subject of a separate sale.
- (2) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.
- (3) Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.
- (4) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at his option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale.

OFFICIAL COMMENT

ALR references. – Title to goods, as between purchaser from, and one who entrusted them to, auctioneer, 36 ALR2d 1362.

Withdrawal of property from auction sale, 37 ALR2d 1049 Auctioneer's action got commissions against seller, 38 ALR4th 170.

Auction sales under UCC § 2-328, 44 ALR4th 110.

ART 5. FILING.

Subpart 1. Filing Office; Contents and Effectiveness of Financing Statement.

§46-9-501. Filing office.

(a) Filing offices. Except as otherwise provided in subsection (b) of this section, if the local law of this state governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is:

(1) The office designated for the filing or recording of a record of a mortgage on the related real property, if:

(A) The collateral is as-extracted collateral or timber to be cut; or

(B) The financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; or

(2) The office of the secretary of state, in all other cases, including a case in which the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

(b) Filing office for transmitting utilities. The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of secretary of state. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement which is or is to become fixtures.

OFFICIAL COMMENT

s1. Source. Derived from former section 9-401.

2. Where to File. Subsection (a) indicates where in a given state a financing statement is to be filed. Former article 9 afforded each state three alternative approaches, depending on the extent to which the state desires central filing (usually within the Secretary of State), local filing (usually with a county office), or both. As comment 1 to former section 9-401 observed, "The principal advantage of state-wide filing is ease of access to the credit information which the files exist to provide. Consider for example the national distributor who wishes to have current information about the credit standing of the thousands of persons he sells to on credit. The more completely the files are centralized on a state-wide basis, the easier the cheaper it becomes to procure credit information; the more the files are scattered in local filing units, the more burdensome and costly." Local filing increases the net costs of secured transactions also by increasing uncertainty and the number of required filings. Any benefit that local filing may have had in the 1950s is not insubstantial.

AUCTIONEERS AND SALES TAX

Publication TSD-364 (03/2018)
<https://tax.wv.gov/Documents/TSD/tsd364.pdf>

This publication is intended to present general information about sales tax as it applies to auctioneers. It is not a substitute for tax laws or administrative regulations.

Fees and Services.

An auctioneer commissioned to sell property on behalf of another, and who is licensed under West Virginia Code 19-2C-1, is not providing a service that is subject to the consumers sales and service tax. Services, fees or commissions received by an unlicensed auctioneer would be subject to the tax.

Auctioneers are responsible for collecting sales tax from purchases.

Auctioneers are responsible for collecting sales tax from those who buy taxable goods at auctions and for remitting that tax to the State Tax Department. A municipal tax may also be applicable.

Not all goods sold at auction are taxable.

Auctioneers need to be familiar with the laws governing taxability of the goods sold at auction. For instance, a person may sell items of tangible personal property through an auctioneer on four separate occasions during the year without subjecting the property to sales tax, even though the auctioneer may make numerous sales for other clients during the year. Each of these occasions is considered an "isolated transaction."

An example of an isolated transaction is when an auctioneer is hired to auction the furnishings and equipment from an owner's home or farm on a one-time basis. This also applies to sheriffs' sales and sales under chattel deeds of trust.

If an owner engages an auctioneer more than four times a year, the isolated transaction exemption ceases to apply and all sales by that owner become taxable. Items that are purchased solely for resale are not subject to sales tax. Purchasers of such items must present a properly completed Certificate of Exemption (form F0003) to the auctioneer to qualify for the tax exemption.

Purchases for use in business are taxable.

An Auctioneer must pay tax on all of his or her purchases for use in business except purchases for resale.

RECIPROCAL STATES

Alabama State Board of Auctioneers

610 South McDonough St.
Montgomery, AL 36104
(334) 269-9990 or (866) 873-4264
www.auctioneer.state.al.us

Florida Board of Auctioneers

1940 N. Monroe St.
Tallahassee, FL 32399-0783
(850) 487-1395
www.myfloridalicense.com/DBPR/pro/auct/index.html

Georgia Auctioneer Commission

237 Coliseum Dr.
Macon, GA 31217-3858
(478) 207-2440
www.sos.ga.gov/

Indiana Professional Licensing Agency

Attn: Auctioneer Group
402 W. Washington St.
Room W-072
Indianapolis, IN 46204-2700
(317) 234-3040
www.in.gov/pla/auction.htm

Kentucky Board of Auctioneers

2819 Ring Road, Suite 200
Elizabethtown, KY 42701
(502) 429-7145
www.auctioneers.ky.gov

North Carolina Auctioneering Licensing Board

108 Ber Creek Dr.
Fuqua-Varina, NC 27526
(919) 567-2844
www.ncalb.org

Ohio Department of Agriculture Auctioneer Program

8995 East Main St.
Reynoldsburg, OH 43068
(614) 728-6240
www.ohioagriculture.gov/auction

Commonwealth of Pennsylvania State Board of Auctioneer Examiners

P.O. Box 2649
Harrisburg, PA 17105-2649
(717) 783-3397
www.dos.state.pa.us/auct

South Carolina Auctioneers Commission

P.O. Box 11329
Columbia, SC 29211-1329
(803) 896-4501
www.llr.state.sc.us/pol/auctioneers/

Tennessee Auctioneer Commission

500 James Robertson Parkway
Nashville, TN 37243-1152
(615) 741-3600
www.tn.gov/regboards/auction/

Texas Department of Licensing & Regulations

P.O. Box 12157
Austin, TX 78711
(512) 463-6599
www.tdlr.texas.gov/

Virginia Auctioneers Board Department of Professional & Occupational Regulation

9960 Mayland Dr., Suite 400
Richmond, VA 23233-1485
(804) 367-8506
www.dpor.virginia.gov/boards/auctioneers/

APPROVED AUCTIONEERING SCHOOLS

Continental Auctioneers School

P.O. Box 346
Mankato, MN 56002-0346
(507) 625-5595
www.auctioneerschool.com

Florida Auctioneer Academy

P.O. Box 121279
Clermont, FL 34712-1279
(407) 886-4900
(800) 422-9155
www.f-a-a.com

International Auction School

Douglas Auctions Route 5
South Deerfield, MA 01373
(413) 665-2877
www.douglasauctioneers.com

Kentucky Auction Academy

2435 Fitzgerald Industrial Dr.
Bowling Green, KY 42104
(270) 780-9513
www.kentuckyauctionacademy.com

Mendenhall School of Auctioneering

P.O. Box 7344
High Point, NC 27264
(336) 887-1165
(888) 833-0316
www.mendenhallschool.com

Missouri Auction School

12905 S. 71 Highway #121
Grandview, MO 64030
(800) 835-1955
www.auctionschool.com

Nashville Auction School

112 West Lauderdale St.
Tullahoma, TN 37388
(931) 393-4735
(800) 543-7061
www.learntoauction.com

The Ohio Auction School

4949 Hendron Rd.
Groveport, OH 43125
(614) 836-2754
www.theohioauctionschool.com

Reppert School of Auctioneering

6851 Madison Avenue
Indianapolis, IN 46227
(317) 300-1075
www.reppertschool.com

Southeastern School of Auctioneering

315 Eastview Rd.
Pelzer, SC 29669
(864) 947-2000
(800) 689-5654
www.SSAuctioneering.info

Texas Auction Academy

c/o Mike Jones
P.O. Box 803503
Dallas, TX 75380-3503
(972) 387-4200
www.texasauctionacademy.com

The Walton School of Auctioneering

7996 Boneta Rd. Ste. B
Wadsworth, OH 44281
(330) 607-3687
(800) 369-2818
www.waltonauctionsite.com

World Wide College of Auctioneering

P.O. Box 949
Mason City, IA 50402-0949
(800) 423-5242
www.worldwidecollegeofauctioneering.com



WV Department of Agriculture
Kent Leonhardt, Commissioner
agriculture.wv.gov

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