

ARKANSAS AUCTIONEER LICENSING BOARD
RULES AND REGULATIONS

1

2

3

4 1. STATEMENT OF ORGANIZATION AND OPERATIONS.....2

5 2. INFORMATION FOR PUBLIC GUIDANCE.....2

6 3. ~~SECTION 4.~~ GENERAL INFORMATION.....3

7 4. RULE MAKING AUTHORITY.....5

8 5. EMERGENCY RULE-MAKING.....5

9 7. PRACTICES AND PROCEDURES FOR AUCTIONEERS ~~SECTION 2. PROHIBITED PRACTICE~~ 8

10 8. ~~SECTION 8.~~ RECOVERY FUND.....11

11 9. ~~SECTION 3.~~ REQUIREMENTS AND QUALIFICATIONS FOR APPLICATION AND LICENSURE.13

12 10 ~~SECTION 4.~~ RECIPROCAL REQUIREMENTS AND QUALIFICATIONS FOR APPLICATION AND

13 LICENSE.....17

14 11 DENIAL OF APPLICATION FOR LICENSURE.....19

15 12 ~~SECTION 5 LICENSE RENEWAL~~ ANNUAL LICENSE RENEWAL.....20

16 13 ~~SECTION 6.~~ CONTINUING EDUCATION22

17 14 COMPLAINTS28

18 15 ADJUDICATIVE HEARINGS.....32

19 16 ~~13.1~~ DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.....40

20 17 ~~SECTION 14.~~ SANCTIONS AND PENALTIES.....42

21 18 DISCLOSURE.....44

22 19 SEVERABILITY.....45

23

1 PROPOSED REVISION: January 2005

2 **RULES OF THE ARKANSAS AUCTIONEERS LICENSING BOARD**

3 **1. STATEMENT OF ORGANIZATION AND OPERATIONS**

4 Arkansas Auctioneers Licensing Board was created to define and regulate the
 5 profession of auctioneers and auction house owners, by prescribing the qualifications of
 6 the licensee and to provide a means to impose penalties against those licensees found
 7 to be in violation of the act against the public.

8 Pursuant to the Auctioneers Licensing Act originally adopted in 1989, the Arkansas
 9 Auctioneers Licensing Board promulgates and adopts the following rules and
 10 regulations in accordance with §17-17-207 concerning official action of the Board and
 11 the regulations of the business of auctioning.

12 **2. INFORMATION FOR PUBLIC GUIDANCE**

13 2.1. **REQUEST FOR INFORMATION.** Board makes available a list of persons
 14 holding certain responsibilities for handling FOIA request, licensing questions,
 15 and complaints against licensees so that the public may obtain information about
 16 the Board or make submissions or request. The names, mailing addresses,
 17 telephone numbers, and electronic addresses can be obtained by contacting the
 18 Board's office.

19 2.2. **OFFICIAL FORMS, POLICIES, ORDERS AND MEMORANDUM.** Board
 20 maintains a list of official forms used by the Board and a list of all formal, written
 21 statement of policy and written interpretative memoranda, and orders, decisions
 22 and opinions resulting from adjudications, which may be obtained from the
 23 Board's office.

1 2.3. COPIES. Copies of all forms used by the Board, written statements of policy
2 and written interpretive memoranda, and all orders issued by the Board,
3 excluding materials related to written and practical testing, may be obtained from
4 the Board's office.

5 3. ~~SECTION 4.~~ **GENERAL INFORMATION.**

6 3.1. ~~4.1~~ **DESCRIPTION OF ORGANIZATION.** The officers of the Auctioneers
7 Licensing Board shall be a chairman and vice- chairman. The Board shall elect
8 officers from its membership at its first regular meeting of the year, and each
9 officer shall serve for a term of one year or until his/her successor is elected and
10 duly qualified. If a vacancy occurs, the Board shall elect a successor to
11 complete the balance of the unexpired term of office. The Executive Secretary
12 shall serve as the Board's Secretary-Treasurer and shall be the custodian of all
13 funds.

14 3.2. ~~4.2~~ **MEETINGS OF THE BOARD.** Regular meetings of the Board shall be held
15 at least four times each year at a time and place determined by the Board.
16 Other meetings of the Board shall be called by the Chairman or upon the written
17 request of two Board members. Correspondence shall be directed to the office
18 of the Executive Secretary, whose address is 101 East Capitol, Suite 112B, Little
19 Rock, Arkansas 72201. Meetings of the Board shall be conducted in
20 accordance with Robert's Rules of Order except where such rules conflict with
21 these rules and regulations.

1 3.3. ~~4.3~~ **QUORUM.** Four members of the Board shall constitute a quorum for the
2 transaction of business. All official action of the Board must be approved by the
3 majority vote of the members present.

4 3.4. **AGENDA.** The Secretary-Treasurer will prepare the agenda for regular and
5 special meetings. The agenda will be distributed to Board members and made
6 available to the public in advance of the meeting. The agenda should state with
7 specificity the items that will be considered at the meeting or hearing. The
8 agenda should include the following topics, as applicable; the Call to Order,
9 Review of Minutes, Old Business, New Business, Other Business, Adjudicatory
10 Hearings, Rule-making hearings and Public Comment. The order of the agenda
11 items is tended to be flexible and may be adjusted to meet the needs of the
12 Board. The agenda may be amended by appropriate motion.

13 3.5. ~~4.4~~ **AMENDMENT TO RULES AND REGULATIONS.** These rules and
14 regulations may be amended at any regular or special meeting of the Board,
15 provided such proposed amendments have been submitted to all members of
16 the Board at least 10 days prior to the meeting at which the amendment is to be
17 considered. The specified 10-day notice may be waived provided there is
18 unanimous written consent of all Board members. All requirements of the
19 Arkansas Administrative Procedures Act shall be complied with prior to the final
20 adoption of an amendment to these Rules and Regulations.

21 3.6. **FISCAL YEAR OF THE BOARD.** The fiscal year of the Board shall be from July
22 1 to June 30.

1 3.7. ~~4.5~~ **LIST OF LICENSEES.** The Board shall annually prepare a list of the names
2 and addresses of all auctioneers licensed by it. This list shall contain the names
3 of all persons whose licenses have been suspended or revoked within the
4 preceding year as well as other information the Board deemed relative to the
5 enforcement. A copy of this list may be obtained from the Executive Secretary
6 by submitting a \$4.00 fee payable by check or money order.

7 3.8. **FINANCIAL AFFAIRS.** The current rules and regulations of the Arkansas
8 Department of Finance and Administration shall be followed in the financial
9 affairs of the Board.

10 3.9. **COMPENSATION.** Board members shall be compensated pursuant to Ark.
11 Code Ann. § 25-16-901 et seq.

12 4. **RULE MAKING AUTHORITY.**

13 4.1. The Board has been authorized by the Legislature to promulgate rules. Ark.
14 Code Ann. § 17-17-207. The Board follows the procedural requirement of the
15 Arkansas Administrative Procedures Act, in particular Ark. Code Ann. §25-15-
16 203 and §25-15-204. Additionally, the Board is required to abide by the
17 provisions of Ark. Code Ann. §10-3-309.

18 5. **EMERGENCY RULE-MAKING.**

19 5.1. **REQUEST.** The proponent of a rule may request the Board to adopt an
20 emergency rule. In addition to the text of the proposed rule or amendment to an
21 existing rule and any other information required by the Administrative
22 Procedures Act, the proponent will provide a written statement setting out the

1 facts or circumstances that would support a finding of imminent peril to the
 2 public health, safety, or welfare.

3 **5.2. ACTION UPON RECEIPT OF REQUEST.** Upon receipt of the written statement
 4 requesting an emergency rule-making and documents or other evidence
 5 submitted in support of the assertion that an emergency exists, the Board will
 6 make an independent judgment as to whether the circumstances and facts
 7 constitute an imminent peril to the public health, safety, or welfare requiring
 8 adoption of the rule upon fewer than 30 days notice. If the Board determines
 9 that the circumstances warrant emergency rule-making, it will make a written
 10 determination that sets out the reasons for the Board's finding that an
 11 emergency exists. Upon making this finding, the Board may proceed to adopt
 12 the rule without any prior notice or hearing, or it may determine to provide an
 13 abbreviated notice and hearing.

14 **5.3. EFFECTIVE DATE OF EMERGENCY RULE.** The emergency rule will be
 15 effective immediately upon filing, or at a stated time less than ten (10) days
 16 thereafter, if the Board finds that this effective date is necessary because of
 17 imminent peril to the public health, safety, or welfare. The Board will file with the
 18 rule its written findings justifying the determination that emergency rule-making
 19 is appropriate and, if applicable, the basis for the effective date of the
 20 emergency rule being less than ten days after the filing of the rule pursuant to
 21 A.C.A. §25-15-204(e). The Board will take appropriate measures to make
 22 emergency rules known to persons who may be affected by them.

23 **6. DECLARATORY ORDERS.**

1 6.1. **PURPOSE AND USE.** A declaratory order is a means of resolving a
2 controversy or answering questions or doubts concerning the applicability of
3 statutory provisions, rules, or orders over which the Board has authority. A
4 petition for declaratory order may be used only to resolve questions or doubts as
5 to how the statutes, rules or orders may apply to the petitioner's particular
6 circumstances. A declaratory order is not the appropriate means of determining
7 the conduct of another person or for obtaining a policy statement of general
8 applicability from a Board. A petition or declaratory order must describe the
9 potential impact of statutes, rules or orders upon the petitioner's interest.

10 6.2. **PETITION.** The process to obtain a declaratory order is begun by filing with the
11 Board a petition that provides the following information:

12 6.2.1. The caption shall read: Petition for Declaratory Order Before the
13 Arkansas Auctioneers Licensing Board.

14 6.2.2. The name, address, telephone number and facsimile number of the
15 petitioner.

16 6.2.3. The name, address, telephone number, and facsimile number of the
17 attorney of the petitioner.

18 6.2.4. The statutory provision(s), Board rule(s), or Board order(s) on which the
19 declaratory order is sought.

20 6.2.5. A description of how the statute, rules, or orders may substantially affect
21 the petitioner and the petitioner's particular set of circumstances, and the
22 question or issue on which petitioner seeks a declaratory order.

23 6.2.6. The signature of the petitioner or petitioner's attorney.

1 6.2.7. The date.

2 6.2.8. A request for a formal hearing, if desired.

3 6.3. **DISPOSITION.**

4 6.3.1. The Board may hold a hearing to consider a petition for declaratory
5 statement. If a hearing is held, it shall be conducted in accordance with Ark.
6 Code Ann. § 25-15-208 and §25-15-213, and the Board’s rules for
7 adjudicatory hearing.

8 6.3.2. The Board may rely on the statements of fact set out in the petition without
9 taking any position with regard to the validity of the facts. Within ninety (90)
10 days of the filing of the petition, the Board will render a final order denying
11 the petition or issuing a declaratory order.

12 7. **PRACTICES AND PROCEDURES FOR AUCTIONEERS** ~~SECTION 2.~~

13 **PROHIBITED PRACTICE**

14 7.1. ~~2.1~~-LICENSED REQUIRED. On and after July 1, 1989, it shall be unlawful for
15 any person to act as an auctioneer or to advertise or to assume to act as either
16 an auctioneer within this state without a license issued by the Auctioneers
17 Licensing Board.

18 7.2. ~~2.2~~-AUCTIONING OWN GOODS. When one is auctioning his/her own goods
19 without a license that person must have a legal interest in all merchandise to be
20 sold as one’s “own goods”. Consignment goods are not considered one’s “own
21 goods”.

22 7.3. **EMERGENCY AUCTIONEER.** ~~2.3 Unable to Hire Licensed Auctioneer.~~ When
23 an auctioneer or auction house owner exhausts all efforts to hire a licensed

1 auctioneer and is unable to hire a licensed auctioneer, the auctioneer or auction
2 house owner must request an exception under the emergency clause enabling
3 him/her to use an unlicensed person. In order to enact the emergency clause,
4 the auctioneer or auction house owner must contact the Board office
5 immediately.

6 **7.4. ~~SECTION 7.~~ WRITTEN CONTRACT**

7 7.4.1. ~~7.1~~ Written Contract Required. Any agreement to provide auctioneer
8 services shall be reflected in a written contract. A contract may be a simple
9 written agreement but shall include the following:

10 7.4.1.1. ~~a.~~ Date of agreement;

11 7.4.1.2. ~~b.~~ Specific date, time and location of auction;

12 7.4.1.3. ~~c.~~ Special terms and conditions;

13 7.4.1.4. ~~d.~~ Commission charged;

14 7.4.1.5. ~~e.~~ Other expenses;

15 7.4.1.6. ~~f.~~ Signatures of auctioneer or auction house owner and seller(s);

16 and,

17 7.4.1.7. ~~g.~~ Agreement must include whether the auction is absolute or with

18 reserve and;

19 7.4.1.8. The amount of any buyer's premium to be charged.

20 7.4.2. ~~7.2~~ Contract Must Be Signed Before Auction Conducted. The auction
21 must not be held prior to obtaining the auction ~~listing~~ contract.

22 **7.5. ~~SECTION 9.~~ ADVERTISING**

1 7.5.1. ~~9.4~~ Absolute Auction. Any auction which is to be an absolute auction
2 shall be listed as such in advertisements for that auction. If an auction is
3 advertised as absolute, all high bids must be accepted and ownership
4 transferred.

5 7.5.2. ~~9.2~~ License Number Required. Any auctioneer or consignment auction
6 house who advertises to hold or conduct an auction shall include in such
7 advertisement his/her/its name and designate whether auctioneer or auction
8 house owner, business address, license number and such other reasonable
9 information deemed necessary or appropriate for such sale.

10 7.6. ~~SECTION 10.~~ **AUCTIONS – REQUIRED PROCEDURES - STANDARDS FOR**
11 **AUCTION**

12 7.6.1. ~~40.4~~ Board Authorized to Attend Auctions. Board member(s) or
13 employee(s) shall have the authority to attend any auction for the purpose of
14 checking records of an auction and for any other purpose.

15 7.6.2. ~~40.2~~ Settlement of Proceeds Made Within Ten Days. Settlement of any
16 money received from auction of another person's goods shall be made
17 within ten (10) business days of the auction.

18 7.6.3. ~~40.3~~ Terms and Conditions. Terms and conditions of each auction must
19 be announced at the beginning of the auction.

20 7.7. ~~SECTION 11.~~ **MAINTAINING RECORDS OF AUCTION.** ~~11.1~~ Maintain Records
21 of Auction. All auctioneers or auction house owners shall maintain records of
22 the auctions for a period of three (3) years.

1 ~~7.8. SECTION 12.~~ **ESCROW ACCOUNTS.** Funds in Separate Account. An
 2 auctioneer/auction house owner shall be required to place any funds belonging
 3 to someone else in an account separate from his/her personal or business
 4 account. This separate account is called an “escrow account” and is required of
 5 persons who handle the funds of others §17-17-308(4). Only one escrow
 6 account is required and money from several auctions may be placed in it at one
 7 time. Interest bearing accounts are not illegal provided that all the parties agree
 8 to the disposition of the interest.

9 ~~8. SECTION 8.~~ **RECOVERY FUND**

10 **8.1. PAYMENT TO RECOVERY FUND.** Each auctioneer shall pay to the Board, at
 11 the time of initial licensure and at each annual renewal, a recovery fund fee of
 12 one hundred dollars (\$100.), in addition to all other fees assessed. Payment of
 13 this fee shall continue until such time as the fund shall reach \$180,000. All
 14 applicants for renewal and all new licensees shall pay one hundred (\$100.) per
 15 year for a minimum of two years and shall continue to pay until such time as the
 16 recovery fund reaches \$180,000. At the time the fund balance falls to \$100,000,
 17 or below, each licensee shall pay a proportionate amount established by the
 18 Board.

19 **8.2. PAYMENT OF DAMAGES.** Damages from the recovery fund may be paid upon
 20 request only if, after ordering a licensee to pay a specified amount to an
 21 aggrieved person(s), the licensee fails to do so within thirty (30) calendar days
 22 and the order has not been appealed.

1 **8.3. REQUIREMENTS FOR PAYMENT.** In order to receive payment from the
2 recovery fund, an aggrieved party must submit a request for payment, which
3 request must contain:

4 8.3.1. ~~a~~— Amount requested to be paid;

5 8.3.2. ~~b~~—Name and address of payee;

6 8.3.3. ~~c~~— Complaint number; and

7 8.3.4. ~~d~~— Notarized, signed statement setting forth whether any amounts have
8 been paid to the aggrieved party by licensee.

9 **8.4. BOARD MAY AWARD ONLY COMPENSATORY DAMAGES.** The Board's
10 jurisdiction and authority to award damages to an aggrieved party from the
11 recovery fund is limited to actual, compensatory damages. The Board shall not
12 award punitive or exemplary damages, nor shall it award interest on damages.

13 **8.5. PAYMENT LIMITED TO \$5,000.00.** The Board shall not pay in excess of five
14 thousand dollars (\$5,000.00) for:

15 8.5.1. ~~a~~— Any one (l) violation or continuing series of violations regardless of the
16 number of licensees who participated in the violation or continuing series of
17 violations; or

18 8.5.2. ~~a~~— The acts of any one (l) licensee; or

19 8.5.3. ~~b~~— Any group of related claims.

20 **8.6. DISCRETION OF THE BOARD.** It shall be a matter solely within the discretion
21 and judgment of the Board whether certain violations constitute a continuing
22 series of violations or a group of related claims.

1 **9. SECTION 3. REQUIREMENTS AND QUALIFICATIONS FOR APPLICATION AND**
 2 **LICENSURE**

3 9.1. **GENERAL.** All board action regarding licensure shall be governed by Ark. Code
 4 Ann. §§ 17-17-101 et seq. and, when applicable Ark. Code Ann. §§ 25-15-208
 5 through 213.

6 9.2. **REQUIREMENT TO KEEP CURRENT ADDRESS ON FILE.** All persons
 7 holding a license issued by the board are required to provide the board with
 8 information so that the board can remain in contact and provide notice of
 9 complaints and/or hearings. The licensee is required to provide is required to
 10 provide written notice to the board of any change in business location and/or
 11 residential address within 30 days of the change. Service of notices of hearing
 12 sent by mail will be addressed to the latest address on file with the board.

13 9.3. ~~3.4~~ **APPLICANT QUALIFICATIONS.** Each applicant for a license shall make
 14 application to the Board upon a form and in such a manner as the Board may
 15 require at least ~~45~~ thirty (30) days prior to the date of examination. Each
 16 applicant shall:

17 9.3.1. ~~a.~~ Be of good reputation, trustworthy, and competent to transact the
 18 business of an auctioneer, in such a manner as to safeguard the interest of
 19 the public. In furtherance of this requirement, each applicant, shall provide
 20 two letters of reference to the Board which indicates the applicant is well-
 21 known to the individual, that he/she is of good moral character and bears a
 22 good reputation for honesty, truthfulness and integrity;

23 9.3.2. ~~b.~~ At least 18 years of age;

- 1 9.3.3. ~~e.~~ Provide a completed application;
- 2 9.3.4. Provide a completed Individual Record Check Form;
- 3 9.3.5. Provide a completed FBI Fingerprint Card;
- 4 9.3.6. ~~d.~~ Enclose a check or money order for an examination fee of ~~\$50.00-~~
5 \$100.00;
- 6 9.3.7. ~~e.~~ Enclose a check or money order for a license fee of ~~\$50.00~~ \$100.00 (if
7 applying for reciprocity see Section 4 below);
- 8 9.3.8. Enclose a check for \$20.00 made payable to Arkansas Auctioneers
9 Licensing Board for a state background check;
- 10 9.3.9. Enclose a check for \$24.00 made payable to the Arkansas State Police for
11 a federal background check;
- 12 9.3.10. ~~f.~~ Enclose an ~~additional~~ check or money order for a the Recovery Fund
13 fee of \$100.00;
- 14 9.3.11. ~~g.~~ Enclose a current photograph full-face, passport-type (2"x2") of
15 head and shoulders taken within the past six months.
- 16 9.3.12. Submit to a Criminal Background Check. All individuals seeking
17 initial licensure as an auctioneer or an individual seeking
18 reinstatement of licensure as an auctioneer in the State of Arkansas
19 shall submit to a State and Federal Criminal Background check.
- 20 9.3.13. Disqualifying Conviction. Applicants for which a disqualifying
21 conviction is reported on the criminal background check will be
22 notified that they are ineligible to hold an auctioneer license. The
23 applicant shall have thirty (30) days from the date of the notification

1 letter to request, in writing, a waiver by the Board of the disqualifying
 2 conviction. Upon proper request, a hearing before the Board will be
 3 conducted to determine whether or not a waiver will be granted.

4 9.4. ~~3.2~~ Requirements for Licensing. In addition to providing a completed
 5 application and fees required by Section ~~3.4~~ 9.3 herein, applicants must
 6 pass an separate written and oral examinations. ~~An applicant for an~~
 7 ~~auctioneer license must pass a written exam along with an oral exam.~~
 8 ~~The written exam is 75% of the exam and the oral portion is 25% of the~~
 9 ~~exam.~~ An applicant for an auctioneer license must pass ~~these~~ each
 10 exams with a ~~combined~~ score of 70% or better. An applicant for an
 11 auction house license must only take the written portion of the exam and
 12 pass it with a score of 70% or better.

13 9.5. ~~3.3~~ **AUCTIONEER LICENSE REQUIRED.** If the owner of an auction
 14 company or the designated person of a corporation and the auctioneer
 15 are one and the same, only one auctioneer’s license need be obtained.

16 9.6. ~~3.4~~ **AUCTION HOUSE LICENSE.** An auction house license shall be
 17 issued in the name of one person only. Continuing education hours for
 18 out of state corporations owning an auction house may be obtained by
 19 the general manager or designated person.

20 9.7. ~~3.5~~ **NONRESIDENT APPLICANTS.** Every nonresident applicant shall file an
 21 irrevocable consent that actions may be commenced against the applicant in
 22 any court of competent jurisdiction in the State of Arkansas in addition to all
 23 requirements listed in this section.

1 **9.8. REVIEW OF APPLICATION.** The application and supporting documentation will
 2 be reviewed by the Secretary-Treasurer. If it is determined that the application
 3 is incomplete, the Secretary-Treasurer will inform the applicant in writing and will
 4 specify why the application is incomplete. The application process will be
 5 suspended. When a completed application, a supplemental application, or the
 6 requested information is returned, the Secretary-Treasurer will reinitiate action
 7 on the application for license. If all requirements are met, the applicant will be
 8 allowed to take the licensing examination.

9 **9.9. DURATION OF APPLICATION.**

10 9.9.1. Applications are active for twelve (12) calendar months from the date the
 11 application is received in the Board office.

12 9.9.2. If the application process is not completed and the license issued in the
 13 twelve months, an applicant may request Board approval for an extension of
 14 the twelve month application window. If an extension is not requested, or is
 15 denied, the application becomes void and the individual must apply as any
 16 new applicant at any future date.

17 9.9.3. If new requirements have been placed for applicants in the twelve-month
 18 window the Board may require that the new requirements be met within the
 19 extension period as part of the application extension approval.

20 9.9.4. A second extension period will not be considered by the Board.

21 **9.10. RECORD RETENTION.** Applications for licensure and supporting
 22 documentation will be maintained by the Board office for a period of three (3)
 23 years.

1 9.11. WRITTEN EXAMINATION FOR LICENSURE. The Board shall establish the
2 contents of the examinations for licensure and shall conduct an examination of
3 applicants for licensure at least four (4) times each year at a time and place
4 specified by the Board.

5 10 SECTION 4. **RECIPROCAL REQUIREMENTS AND QUALIFICATIONS FOR**
6 **APPLICATION AND LICENSE**

7 10.1 ~~4.1~~ **RECIPROCAL APPLICANT.** A person holding a license to engage in
8 auctions issued to him/her by a proper authority of a state, territory, or
9 possession of the United States of America or the District of Columbia which
10 other state has entered into a Reciprocal Agreement with Arkansas may upon
11 application be licensed without further examination.

12 10.2 ~~4.2~~ **RECIPROCAL APPLICANT QUALIFICATIONS.** Each applicant for a
13 license through reciprocity shall make application to the Board upon a form
14 and in such a manner as the Board may require and shall:

15 10.2.1 ~~a.~~ Be of good reputation, trustworthy, and competent to transact the
16 business of an auctioneer, in such a manner as to safeguard the interest
17 of the public. In furtherance of this requirement, each applicant, shall
18 provide two letters of reference to the Board which indicates the
19 applicant is well-known to the individual, that he/she is of good moral
20 character and bears a good reputation for honesty, truthfulness and
21 integrity;

22 10.2.2 ~~b.~~ At least 18 years of age;

23 10.2.3 ~~c.~~ Provide a completed application;

- 1 10.2.4 Provide a completed Individual Record Check Form;
- 2 10.2.5 Provide a completed FBI Fingerprint Card;
- 3 10.2.6 ~~d.~~ Enclose a check or money order for a license fee the same amount
- 4 he/she pays in his/her residential state unless that amount is under
- 5 ~~\$50.00~~ \$100.00. If the license fee in their state is less than ~~\$50.00~~
- 6 \$100.00, the license fee amount shall be ~~\$50.00~~ \$100.00;
- 7 10.2.7 Enclose a check for \$20.00 made payable to the Arkansas Auctioneer
- 8 Licensing Board for a state criminal background check;
- 9 10.2.8 Enclose a check for \$24.00 made payable to the FBI for a federal
- 10 criminal background check;
- 11 10.2.9 ~~e.~~ Enclose an additional check or money order for a recovery fund fee of
- 12 \$100.00;
- 13 10.2.10 ~~f.~~ Enclose a current photograph full-face, passport-type (2"x2") of head
- 14 and shoulders taken within the past six months; and,
- 15 10.2.11 ~~g.~~ Submit a statement of An irrevocable consent that actions may be
- 16 commenced against him/her in any court of competent jurisdiction in the
- 17 State of Arkansas.
- 18 10.2.12 Submit a criminal background check report from their home state's
- 19 State Law Enforcement Agency.
- 20 10.2.13 Submit to a Criminal Background Check. All individuals seeking
- 21 reciprocal licensure as an auctioneer or an individual seeking
- 22 reinstatement of reciprocal licensure as an auctioneer in the State
- 23 of Arkansas shall submit to a State and Federal Criminal

1 Background check. State background checks will include
2 Arkansas and the home state of the applicant.

3 10.2.14 Disqualifying Convictions. Applicants for which a disqualifying
4 conviction is reported on the criminal background check will be
5 notified that they are ineligible to hold an auctioneer license. The
6 applicant shall have thirty (30) days from the date of the
7 notification letter to request, in writing, a waiver by the Board of
8 the disqualifying conviction. Upon proper request, a hearing
9 before the Board will be conducted to determine whether or not a
10 waiver will be granted.

11 10.3 ~~4.3~~ **RECIPROCAL AUCTIONEER LICENSE REQUIRED.** If the owner of an
12 auction company or the designated person of a corporation and the auctioneer
13 are one and the same, only one auctioneer's license need be obtained.

14 10.4 ~~4.4~~ **RECIPROCAL AUCTION HOUSE LICENSE.** An auction house license
15 shall be issued in the name of one person only.

16 10.5 ~~4.5~~ **RECIPROCAL LICENSE FEE.** The license fee applicable to a
17 nonresident applicant from a state with which we have a Reciprocal
18 Agreement shall be the same amount that such other reciprocal state charges
19 auctioneers/auction house owners who are residents of this state and who are
20 duly licensed in this state to obtain a license to conduct an auction in such
21 other state.

22 11 **DENIAL OF APPLICATION FOR LICENSURE.**

1 11.1 **OPPORTUNITY FOR HEARING.** Except for failure to pass the license
 2 examination, if a determination is made that the application should be denied,
 3 the Board will inform the applicant of the opportunity for a hearing on the
 4 application. The grounds or basis for the proposed denial of a license will be
 5 set forth in writing by the Board.

6 11.2 **HEARING REQUEST.** The applicant must request, in writing, a hearing on the
 7 denial of application within 30 days of the denial notice. Any hearing on the
 8 denial of a license will be conducted in accordance with Ark. Code Ann. §25-
 9 15-208 and Ark. Code Ann. §25-15-213, and unless otherwise provide by law,
 10 the applicant has the burden of establishing entitlement to the license.

11 12 ~~Section 5 LICENSE RENEWAL~~ **ANNUAL LICENSE RENEWAL**

12 12.1 **RENEWAL OF LICENSE.** All licenses expire on June 30 of each year.
 13 Applications for license renewal postmarked by June 30 shall include a license
 14 renewal fee of \$100.00 and proof of required Continuing Education hours.

15 12.2 **LATE RENEWAL.** Licensed auctioneers have a ninety (90) day grace period
 16 beyond June 30 to renew a license. Application for renewal of license must be
 17 postmarked no later than September 30 of the renewal year. Each application
 18 for late renewal shall include a renewal fee in the amount of \$200.00 and proof
 19 of required Continuing Education hours.

20 12.3 ~~5.1~~ **DENIAL OF APPLICATION FOR RENEWAL.** An application for renewal
 21 of license may be denied if the auctioneer has been convicted in a court of
 22 competent jurisdiction of this or any ~~state~~ other jurisdiction of a criminal
 23 offense involving moral turpitude or a felony ~~of if the auctioneer which~~

1 demonstrates bad faith, dishonesty, incompetency, or untruthfulness, or
2 deceptive practices or has failed to submit proof of the continuing education
3 requirements. As referred to in 7.1.

4 12.4 **FAILURE TO RENEW LICENSE. INACTIVE STATUS.** Any license
5 not renewed on or before September 30 shall be considered inactive.
6 The licensee shall be notified of the inactive status of the license and
7 directed to cease and desist any auctioneer activities.

8 12.5 **REINSTATEMENT FROM INACTIVE STATUS .** An inactive license may be
9 reinstated for a period of nine (9) months following the September 30th
10 deadline for license renewal. The inactive licensee will be reinstated upon
11 payment of the late renewal penalty and submission of required continuing
12 education hours. A license which has been inactive for more than nine (9)
13 months following the September 30th for license renewal must reapply for
14 licensure pursuant to the Rule and Regulations for new applicants at the time
15 of the new application for licensure.

16 12.6 **LICENSE RENEWAL – SPECIAL CIRCUMSTANCES**

17 12.6.1 Military – Individuals called up for active duty military service shall be
18 entitled to late renew within one (1) year following return from active duty
19 by payment of the current license renewal fee and submission of six (6)
20 hours of Continuing Education within the next license year.

21 12.6.2 Disaster Relief – Individuals, whose employment requires them to
22 participate in disaster relief services, failing to renew due to disaster
23 relief shall be entitled to renew for the current renewal period with no

1 Continuing Education hours but will be required to obtain twelve (12)
 2 hours of Continuing Education during the next year prior to the next
 3 renewal.

4 13 ~~SECTION 6.~~ **CONTINUING EDUCATION**

5 13.1 ~~6.1~~ **CONTINUING EDUCATIONS REQUIREMENTS. GENERAL.** As a

6 prerequisite to renewal of an auctioneer license, the licensee shall
 7 satisfactorily complete six (6) hours of continuing education from an
 8 auctioneer continuing education course approved by the Board.

9 Correspondence courses may qualify for continuing education credit. Such
 10 correspondence course must be approved by the board.

11 13.2 ~~6.2~~ **VERIFICATION OF CONTINUING EDUCATIONS HOURS.** The Board

12 may verify any information concerning continuing education that is submitted
 13 by the licensee as evidence supporting the course information. The board
 14 may require applicant(s) or licensee to provide information regarding the
 15 continuing education hours claimed on the individual's renewal. Failure to do
 16 so may lead to disciplinary action.

17 13.3 ~~6.3~~ **EVIDENCE TO SUPPORT COURSES TAKEN.** It is the responsibility of

18 each licensee to retain evidence to support the courses taken for a period of
 19 (12) months after the end of the renewal period for which the renewal
 20 application is submitted to the Board;

21 13.3.1 ~~a.~~ Course attendance verification by the sponsor.

22 13.3.2 ~~b.~~ Certificates of course completion.

23 13.3.3 ~~c.~~ Other evidence of support and justification

1 13.3.4 ~~d~~. This requirement shall not apply to courses offered by the Board.

2 13.4 ~~6.4~~ **APPLICATION FOR CONTINUING EDUCATIONS COURSE SPONSOR.**

3 Any request for Board approval of an auctioneer continuing education course
4 sponsor shall be by written application on a form provided by the Board.

5 Applicants for continuing education course sponsor shall submit the following
6 information:

7 13.4.1 ~~a~~. Name, address, telephone number and facsimile (FAX) number (if
8 any) of the course sponsor;

9 13.4.2 ~~b~~. If the ownership of the course sponsor is a partnership, the names
10 and addresses of the partners;

11 13.4.3 ~~c~~. If the ownership of the course sponsor is a corporation, the names
12 and addresses of the officers and directors;

13 13.4.4 ~~d~~. If the ownership of the course sponsorship is a limited liability
14 company, the names and addresses of the members and managers;

15 13.4.5 ~~e~~. A course content outline describing the subjects to be offered during
16 the approval period. All course sponsors are approved for a period of
17 twelve (12) months;

18 13.4.6 ~~f~~. A statement that each instructor meets the qualifications required by
19 Sections 13.10 and 13.11 of this rule;

20 13.4.7 ~~g~~. A statement that the course sponsor shall provide the licensee who
21 successfully completes an approved course, a certificate of course
22 completion that meets the requirements of Section 13.9 of this rule;

1 13.4.8 ~~h~~. A copy of the certificate of course completion required under
2 Section 13.9 of this rule;

3 13.4.9 ~~i~~. And a statement that any facility utilized by the course sponsor shall be
4 at a location approved by the Board.

5 13.5 ~~6.5~~ **COURSE CURRICULUM APPROVAL REQUIRED.** All sponsors must
6 submit a request for approval of speakers and an agenda to the Board for
7 approval by May 15th each year. The curriculum should include at least one
8 (1) hour of law and the additional four (4) hours shall be by two speakers at
9 two (2) hours each speaker or one speaker for two (2) hour sessions. A
10 minimum total of six (6) hours must be provided.

11 13.6 ~~6.6~~ **COURSE SPONSOR APPROVAL DATES.** Sponsors of auctioneer
12 continuing education courses shall be considered approved as of the date of
13 approval by the Board, and therefore courses predating the approval date do
14 not qualify.

15 13.7 ~~6.7~~ **COURSE OUTLINE.** A course outline shall be prepared and distributed to
16 the attendees. The outline shall state the number of continuing education
17 hours offered.

18 13.8 ~~6.8~~ **COURSE RECORDS.** An approved auctioneer continuing education
19 course sponsor must retain records of students who complete the course for a
20 minimum of two (2) years. These records must include attendance records for
21 all courses showing date, place, and attendee's name. The course sponsor
22 may be asked to provide the board copies of records.

1 13.9 ~~6.9~~ **APPROVED AUCTIONEER CONTINUING EDUCATION SPONSOR.**

2 **CERTIFICATE REQUIREMENTS.** Upon completion of a continuing education
3 course, the approved auctioneer continuing education sponsor shall provide
4 all attendees a course completion certificate that must include the following
5 information:

6 13.9.1 ~~a.~~ The name of the participant;

7 13.9.2 ~~b.~~ The license number of the participant;

8 13.9.3 ~~c.~~ The name, address, and signature of the sponsor;

9 13.9.4 ~~d.~~ The course title;

10 13.9.5 ~~e.~~ The course topic if not reflected in the course title;

11 13.9.6 ~~f.~~ The date and location of the course;

12 13.9.7 ~~g.~~ And the number of approved actual course hours.

13 13.10 ~~6.10~~ **INSTRUCTOR REQUIREMENTS.** Each instructor used by an approved
14 auctioneer continuing education sponsor must have a minimum of two (2)
15 years experience in the field in which that instructor is to teach.

16 13.11 ~~6.11~~ **INSTRUCTORS. PROHIBITIONS.** An auctioneer continuing education
17 sponsor is prohibited from hiring, or retaining in its employ, an instructor who
18 has:

19 13.11.1 a. Had an auctioneer, auction company, or auction house license
20 revoked or suspended by any jurisdiction;

21 13.11.2 **~~b.~~** Obtained or used, or attempted to obtain or use, in any manner,
22 Arkansas auctioneer licensing questions to be used on future
23 examinations unless authorized by law;

1 13.11.3 ~~–e.~~ Been convicted of a crime that has a direct bearing on the
2 individuals ability to competently instruct, including, but not necessarily
3 limited to, violations of auction laws and abuse of fiduciary
4 responsibilities;

5 13.11.4 ~~–d.~~ Falsely certified hours of attendance or grades for any student; or

6 13.11.5 ~~–e.~~ Unless allowed by law, refused to appear and/or testify under oath
7 at any hearing held by the Board.

8 13.12 ~~6.12~~ **MONITORING CONTINUING EDUCATIONS SERVICES.** Continuing
9 education courses offered by an approved course sponsor may be monitored
10 by the Board to ensure that participants are physically present for the duration
11 of the course. In order to monitor a continuing education course, an approved
12 course sponsor must do the following:

13 13.12.1 a. Require the participants to sign in and out as they enter and exit the
14 classroom, noting the time of arrival and departure;

15 13.12.2 ~~–b.~~ Ensure that order is maintained throughout the duration of the
16 course;

17 13.12.3 ~~–c.~~ Maintain the attendance sheets to assure their accuracy;

18 13.12.4 ~~–d.~~ Verify the participant’s signature upon the participant’s entrance
19 and exit;

20 13.12.5 ~~–e.~~ Distribute course completion certificates to participants who have
21 been physically present for duration of the course.

22 13.13 ~~6.13~~ **INFORMATION MUST BE VERIFIED.** The Board may request
23 verification of any information submitted by the applicant and may request the

1 applicant to submit evidence supporting the course credit claimed. The Board
2 may request applicants to prove information as provided in subsection (c) in
3 order to verify continuing education hours claimed in the application. Failure
4 to do so shall subject a licensee to non-renewal or suspension of license.

5 **13.14 ~~6.14~~ FAILURE TO MEET CONTINUING EDUCATION PROVISIONS.** A

6 licensee who does not obtain the required number of continuing education
7 hours during a one (1) year licensure period may cure that deficiency by taking
8 them prior to renewal whereby all penalties and fees will be due and payable
9 to the Board prior to renewal.

10 **13.15 ~~6.15~~ BOARD REVIEW OF CONTINUING EDUCATIONS COMPLIANCE.** If,

11 as the result of an audit or other review, the Board determines that the
12 continuing education hours a licensee has claimed do not meet the
13 requirements of A.C.A. §17-17-311 and these rules, the Board shall notify the
14 licensee of that determination.

15 **13.16 ~~6.16~~ LICENSEE MAY SUBMIT REASONS FOR FAILURE TO COMPLY.** A

16 licensee, who has been notified under Section 4.14 13.15 may within thirty
17 (30) days submit information to the Board giving all the substantive reasons in
18 support of the licensee's position that an adequate number of hours has been
19 obtained.

20 **13.17 ~~6.17~~ SEMINAR ATTENDANCE.** Hours for continuing education may be

21 obtained through attendance at seminars conducted by the following
22 organizations:

- 23 13.17.1 -a. National Auctioneers Association

1 13.17.2 ~~b.~~ National Auctioneers Automobile Dealers Association

2 13.17.3 ~~c.~~ Any state association convention

3 13.17.4 ~~d.~~ Certified Auctioneers Institute

4 13.17.5 Any State Auctioneers Licensing Board

5 13.18 ~~6.18~~ **HOURS OBTAINED BY PROVIDING INSTRUCTORS.** In addition, a
6 licensee may obtain continuing education hours by acting as an instructor at
7 an accredited auction school. In order to be credited for hours as an
8 instructor, a licensee must provide to the Board verification by a letter from the
9 association or other entity that will verify the number of instructor hours.

10 13.19 ~~6.19~~ **RECIPROCAL HOURS.** The Board will accept through reciprocity any
11 continuing education hours from such other reciprocal state whether such
12 hours be less or more than our state requirement, provided such other state
13 will accept Arkansas's continuing education hours.

14 14 **COMPLAINTS**

15 14.1 **COMPOSITION OF THE COMPLAINT COMMITTEE.** The Complaint
16 Committee shall consist of the Chair of the Board and any other member
17 appointed by the Chair of the Board.

18 14.2 **PROCEDURE FOR INITIATION OF COMPLAINT.**

19 14.2.1 Initiation. The formal investigation of a complaint against an auctioneer
20 may be initiated when the complaint is in writing and filed with the board.
21 The complaint must contain a brief statement setting forth the allegations
22 of fact and naming the auctioneer against whom the complaint is filed.

1 14.2.2 Board Initiation. The Board may initiate an investigation upon its own
2 motion when it has reason to believe a violation of A.C.A. § 17-17-101 et
3 seq. or Board regulation may have occurred. Individual board members
4 should utilize the written complaint method for complaints against
5 individual Auctioneers.

6 14.2.3 Time Limit for Filing of Complaint. The Complaint committee may
7 consider complaints only if the complaint was filed within one (1) year
8 from the time the alleged complaint either occurred or was discovered.
9 Any complaint not received within this time limit shall not be considered
10 and the complainant shall be so notified.

11 14.3 **PROCEDURE FOR INVESTIGATION OF COMPLAINT.**

12 14.3.1 Notification of the Respondent. Upon receipt of the complaint the
13 Complaint Committee shall notify the Auctioneer named in the complaint
14 by certified or registered mail of the complaint and request a written
15 response to the allegation/s.

16 14.3.2 Investigation. Upon receipt of the auctioneer's response or upon the
17 expiration of the time period permitted for the licensee's response, the
18 Complaint Committee shall conduct any further inquiry or investigation
19 which appears to be appropriate based upon the circumstances of the
20 individual case.

21 14.3.3 Investigative Officer. The Investigative Officer shall be a person
22 designated by the Chair of the Board. The Chair of the Board shall

1 agree, or contract, to pay compensation to, or reimburse the expenses
2 of, any person serving as investigative officer authorized by the Board.

3 14.3.4 Investigative Report. Upon completion of the investigation, the
4 investigative officer shall provide a written report to the Complaint
5 Committee the results of the investigation. The Complaint Committee
6 will determine whether to initiate a full board hearing, offer to the
7 licensee an informal board hearing, take other action or present to the
8 Board a request to dismiss the complaint. The report of the Complaint
9 Committee shall be a summary of the results of the investigation and
10 shall be presented to the Board without naming the licensee.

11 14.4 **ACTION BY THE BOARD.** A majority vote of the board shall be required to
12 support the recommendation of the Complaint Committee to dismiss a
13 complaint. If the board agrees with the determination of the Complaint
14 Committee that the case should be dismissed, the complainant and the
15 respondent shall be so notified.

16 14.4.1 Additional Evidence. If additional evidence of conduct contrary to the
17 laws, Rules and/or Regulations governing Auctioneers is presented
18 within sixty (60) days after the matter has been closed with no action, the
19 case may be reopened and acted upon under regular procedures.

20 14.5 **ACTION ON COMPLAINT.** If the Complaint Committee determines that the
21 complaint presents sufficient evidence of a violation; it may offer to the
22 licensee the following:

1 14.5.1 Formal Disciplinary Hearing. If the Complaint Committee determines
2 that a formal disciplinary hearing is required, the hearing shall comply
3 with the requirements of the Administrative Procedure Act.

4 14.5.2 Informal Hearing. The Complaint Committee may offer or the Licensee
5 may request an informal hearing of a complaint before the Board
6 consisting of a face to face meeting between the Licensee and the Board
7 to discuss the allegations of the complaint. Prior to an informal hearing
8 the Licensee must sign a consent statement agreeing to the terms and
9 conditions of an informal hearing.

10 14.5.3 Consent Agreement. If the Complaint Committee determines that a
11 consent agreement may be appropriate, the Complaint Committee shall
12 authorize its Attorney to enter into negotiations for a consent agreement
13 subject to the Board's final approval. The Complaint Committee may
14 recommend terms for a consent agreement offer by the attorney to the
15 respondent.

16 14.6 **DISQUALIFICATION.** During a formal disciplinary hearing, any member of the
17 Board, except the Board Chair, who served on the Complaint Committee, was
18 involved in the investigation or who initiated the complaint may be disqualified
19 from participation in the hearing at the request of the respondent auctioneer.

20 14.7 **COUNTER COMPLAINT.** The Arkansas Auctioneers Licensing Board will not
21 accept formal complaints from a respondent against a complainant during the
22 course of an investigation of the initial complaint. Counter charges will only be
23 considered after the disposition of the initial complaint.

1 15 **ADJUDICATIVE HEARINGS**

2 15.1 **SCOPE.** This chapter applies in all administrative adjudications conducted by
 3 the Arkansas Auctioneers Licensing Board. This procedure is developed to
 4 provide a process by which the Board formulates orders (for example, an
 5 order revoking a license to practice, or imposing civil penalties).

6 15.2 **PRESIDING OFFICER.** The Board shall preside at the hearing or may
 7 designate a hearing officer to preside at a hearing.

8 15.3 **APPEARANCES.** Any party appearing in any Board proceeding has the right,
 9 at his or her own expense, to be represented by counsel.

10 15.3.1 The respondent may appear on his or her own behalf.

11 15.3.2 Any attorney representing a party to an adjudicatory proceeding must file
 12 notice of appearance as soon as possible.

13 15.3.3 Service on counsel of record is the equivalent of service on the party
 14 represented.

15 15.3.4 On written motion served on the party represented and all other parties
 16 of record, the presiding officer may grant counsel of record leave to
 17 withdraw for good cause shown.

18 15.4 **CONSOLIDATION.** If there are separate matters that involve similar issues of
 19 law or fact, or identical parties, the matters may be consolidated if it appears
 20 that consolidation would promote the just, speedy, and inexpensive resolution
 21 of the proceedings, and would not unduly prejudice the rights of a party.

22 15.5 **NOTICE TO INTERESTED PARTIES.** If it appears that the determination of
 23 the rights of parties in a proceeding will necessarily involve a determination of

1 the substantial interests of persons who are not parties, the presiding officer
 2 may enter an order requiring that an absent person be notified of the
 3 proceeding and be given an opportunity to be joined as a party of record.

4 15.6 **SERVICE OF PAPERS.** Unless the presiding officer otherwise orders, every
 5 pleading and every other paper filed for the proceeding, except applications
 6 for witness subpoenas and the subpoenas, shall be served on each party or
 7 the party's representative at the last address of record.

8 15.7 **INITIATION & NOTICE OF HEARING.** An administrative adjudication is
 9 initiated by the issuance by the Board of a notice of hearing. The notice of
 10 hearing will be sent to the respondent by U.S. Mail, return receipt requested,
 11 restricted delivery to the named recipient or his agent. Notice shall be
 12 sufficient when it is so mailed to the respondent's latest address on file with
 13 the Board. Notice will be mailed at least 30 days before the scheduled
 14 hearing. The notice will include:

15 15.7.1 A statement of the time, place, and nature of the hearing;

16 15.7.2 A statement of the legal authority and jurisdiction under which the
 17 hearing is to be held; and

18 15.7.3 A short and plain statement of the matters of fact and law asserted.

19 15.8 **MOTIONS.** All requests for relief will be by motion. Motions must be in writing
 20 or made on the record during a hearing. A motion must fully state the action
 21 requested and the grounds relied upon. The original written motion will be
 22 filed with the Board. When time allows, the other parties may, within three (3)
 23 days of the service of the written motion, file a response in opposition. The

1 presiding officer may conduct such proceedings and enter such orders as are
2 deemed necessary to address issues raised by the motion. However, a
3 presiding officer, other than the Board, will not enter a dispositive order unless
4 expressly authorized in writing to do so.

5 15.9 **ANSWER.** A respondent may file an answer.

6 15.10 **DISCOVERY.** Upon written request, the Board will provide the information
7 designated in A.C.A §25-15-208 (a) (3). Such requests should be received by
8 the Board at least 10 days before the scheduled hearing.

9 15.11 **CONTINUANCES.** The Complaint Committee may grant a continuance of
10 hearing for good cause shown. Requests for continuances will be made in
11 writing. The request must state the grounds to be considered and be made
12 as soon as practicable and, except in cases of emergencies, no later than five
13 (5) days prior to the date noticed for the hearing. In determining whether to
14 grant a continuance, the Complaint Committee may consider:

15 15.11.1 Prior continuances;

16 15.11.2 The interests of all parties;

17 15.11.3 The likelihood of informal settlements;

18 15.11.4 The existence of an emergency;

19 15.11.5 Any objection;

20 15.11.6 Any applicable time requirement;

21 15.11.7 The existence of a conflict of the schedules of counsel, parties, or
22 witnesses;

23 15.11.8 The time limits of the request; and

1 15.11.9 Other relevant factors.

2 15.11.10 The Complaint Committee may require documentation of any
3 grounds for continuance.

4 15.12 **HEARING PROCEDURES**

5 15.12.1 The presiding officer presides at the hearing and may rule on
6 motions, require briefs, and issue such orders as will ensure the orderly
7 conduct of the proceedings; provided, however, any presiding officer
8 other than the Board shall not enter a dispositive order or proposed
9 decision unless expressly authorized in writing to do so.

10 15.12.2 All objections must be made in a timely manner and stated on the
11 record.

12 15.12.3 Parties have the right to participate or to be represented by counsel
13 in all hearings or pre-hearing conferences related to their case.

14 15.12.4 Subject to terms and conditions prescribed by the Administrative
15 Procedure Act, parties have the right to introduce evidence on issues of
16 material fact, cross-examine witnesses as necessary for a full and true
17 disclosure of the facts, present evidence in rebuttal, and, upon request
18 by the Board, may submit briefs and engage in oral argument.

19 15.12.5 The presiding officer is charged with maintaining the decorum of
20 the hearing and may refuse to admit, or may expel, anyone whose
21 conduct is disorderly.

22 15.13 **ORDER OF PROCEEDINGS.** The presiding officer will conduct the hearing in
23 the following manner:

1 15.13.1 The presiding officer will give an opening statement, briefly
2 describing the nature of the proceedings.

3 15.13.2 The parties are to be given the opportunity to present opening
4 statements.

5 15.13.3 The parties will be allowed to present their cases in the sequence
6 determined by the presiding officer.

7 15.13.4 Each witness must be sworn or affirmed by the presiding officer, or
8 the court reporter, and be subject to examination and cross-examination
9 as well as questioning by the Board. The presiding officer may limit
10 questioning in a manner consistent with the law.

11 15.13.5 When all parties and witnesses have been heard, parties may be
12 given the opportunity to present final arguments.

13 15.14 **EVIDENCE**

14 15.14.1 The presiding officer shall rule on the admissibility of evidence and
15 may, when appropriate, take official notice of facts in accordance with all
16 applicable requirements of law.

17 15.14.2 Stipulation of facts is encouraged. The Board may make a decision
18 based on stipulated facts.

19 15.14.3 Evidence in the proceeding must be confined to the issues set forth
20 in the hearing notice, unless the parties waive their right to such notice
21 or the presiding officer determines that good cause justifies expansion of
22 the issues. If the presiding officer decides to admit evidence outside the
23 scope of the notice, over the objection of a party who did not have actual

1 notice of those issues, that party, upon timely request, will receive a
 2 continuance sufficient to prepare for the additional issue and to permit
 3 amendment of pleadings.

4 15.14.4 A party seeking admission of an exhibit must provide 12 copies of
 5 each exhibit at the hearing. The presiding officer must provide the
 6 opposing parties with an opportunity to examine the exhibit prior to the
 7 ruling on its admissibility. All exhibits admitted into evidence must be
 8 appropriately marked and be made part of the record.

9 15.14.5 Any party may object to specific evidence or may request limits on
 10 the scope of the examination or cross-examination. A brief statement of
 11 the grounds upon which it is based shall accompany such an objection.
 12 The objection, the ruling on the objection, and the reasons for the ruling
 13 will be noted in the record. The presiding officer may rule on the
 14 objection at the time it is made or may reserve the ruling until the written
 15 decision.

16 15.14.6 Whenever evidence is ruled inadmissible, the party offering that
 17 evidence may submit an offer of proof on the record. The party making
 18 the offer of proof for excluded oral testimony will briefly summarize the
 19 testimony or, with permission of the presiding officer, present the
 20 testimony. If the excluded evidence consists of a document or exhibit, it
 21 shall be marked as part of an offer of proof and inserted in the record.

22 15.14.7 Irrelevant, immaterial, and unduly repetitive evidence will be
 23 excluded. Any other oral or documentary evidence, not privileged, may

1 be received if it is of a type commonly relied upon by reasonably prudent
2 men and women in the conduct of their affairs.

3 15.14.8 Reasonable inferences. The finder of fact may base its findings of
4 fact upon reasonable inferences derived from other evidence received.

5 15.15 **DEFAULT.** If a party fails to appear or participate in an administrative
6 adjudication after proper service of notice, the Board may proceed with the
7 hearing and render a decision in the absence of the party.

8 15.16 **SUBPOENAS**

9 15.16.1 At the request of any party, the Board shall issue subpoenas for the
10 attendance of witnesses at the hearing. The requesting party shall
11 specify whether the witness is also requested to bring documents and
12 reasonably identify said documents.

13 15.16.2 A subpoena may be served by any person specified by law to serve
14 process or by any person who is not a party and who is eighteen (18)
15 years of age or older. Delivering a copy to the person named in the
16 subpoena shall make service. Proof of service may be made by affidavit
17 of the person making service. The party seeking the subpoena shall
18 have the burden of obtaining service of the process and shall be charged
19 with the responsibility of tendering appropriate mileage fees and witness
20 fees pursuant to Rule 45, Arkansas Rules of Civil Procedure. The
21 witness must be served at least two days prior to the hearing. For good
22 cause, the Board may authorize the subpoena to be served less than
23 two days before the hearing.

1 15.16.3 Any motion to quash or limit the subpoena shall be filed with the
2 Board and shall state the grounds relied upon.

3 15.17 **RECORDING THE PROCEEDINGS.** The responsibility to record the
4 testimony heard at a hearing is borne by the Board. Upon the filing of a
5 petition for judicial review, the Board will provide a verbatim transcript of
6 testimony taken before the Board.

7 15.18 **FACTORS TO BE CONSIDERED IN IMPOSING SANCTIONS.** In addition to
8 any other considerations permitted by Ark. Code Ann. § 17-17-101 et seq., if
9 applicable, the Board in imposing any sanction may consider the following:

10 15.18.1 The nature and degree of the misconduct for which the licensee is
11 being sanctioned.

12 15.18.2 The seriousness and circumstances surrounding this misconduct.

13 15.18.3 The loss or damage to clients or others.

14 15.18.4 The assurance that those who seek similar professional services in
15 the future will be protected from the type of misconduct found.

16 15.18.5 The profit to the licensee.

17 15.18.6 The avoidance of repetition.

18 15.18.7 Whether the conduct was deliberate, intentional, or negligent.

19 15.18.8 The deterrent effect on others.

20 15.18.9 The conduct of the individual during the course of the disciplinary
21 proceeding.

22 15.18.10 The professional's prior disciplinary record, including warnings.

1 15.18.11 Matters offered by the professional in mitigation or extenuation,
2 except that a claim of disability or impairment resulting from the use of
3 alcohol or drugs may not be considered unless the professional
4 demonstrates that he or she is successfully pursuing in good faith a
5 program of recovery.

6 15.19 **FINAL ORDER.** The Board will serve on the respondent a written order that
7 reflects the action taken by the Board. The order will include a recitation of
8 facts found based on testimony and other evidence presented and reasonable
9 inferences derived from the evidence pertinent to the issues of the case. It will
10 also state conclusions of law and directives or other disposition entered
11 against or in favor of the respondent. The order will be served personally or by
12 mail on the respondent. If counsel represents respondent, service of the order
13 on respondent's counsel shall be deemed service on the respondent.

14 16 ~~13.1~~ **DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.**

15 16.1 ~~13.4~~ **VIOLATION OF LAW OR RULES.** The Board may impose a civil
16 penalty or deny, suspend, refuse to renew or revoke the license of any
17 auctioneer or auction house owner for any of the following causes:

18 16.1.1 ~~a.~~ For providing false or fraudulent information on an application;

19 16.1.2 ~~b.~~ For obtaining a license through false or fraudulent representation;

20 16.1.3 ~~c.~~ For making any substantial misrepresentation in an application for a
21 license or renewal of license;

22 16.1.4 ~~d.~~ For pursuing a continued and flagrant course of misrepresentation or
23 making false promises through agents, advertising, or otherwise;

- 1 16.1.5 ~~e.~~ For failing to account for or remit, within ten (10) business days, any
2 money belonging to others that comes into his/her possession and for
3 commingling funds of others with his/her own or failing to keep such
4 funds of others in an escrow or trustee account;
- 5 16.1.6 ~~f.~~ For conviction in a court of competent jurisdiction of this state or any
6 other jurisdiction of a criminal offense involving moral turpitude or a
7 felony;
- 8 16.1.7 ~~g.~~ If the auctioneer/auction house owner demonstrates bad faith,
9 dishonesty, incompetency or untruthfulness, or deceptive practices;
- 10 16.1.8 ~~h.~~ For any violation of this Act or of any rule or regulation of the Board;
- 11 16.1.9 ~~i.~~ For a failure of a licensee to provide to the Board any change of
12 business address within 30 days of such change; or
- 13 16.1.10 ~~j.~~ For failure to renew a license within the ninety (90) day grace period;
- 14 16.1.11 ~~k.~~ For failing to enter into a written contract with the seller and furnish
15 voluntarily to the seller at the time of execution copies of all written
16 instruments prepared by the auctioneer/auction house owner, including
17 the contract;
- 18 16.1.12 ~~l.~~ For any other conduct that constitutes improper, fraudulent, or
19 dishonest dealings, to include falsely accusing any auctioneer or auction
20 house owner;
- 21 16.1.13 ~~m.~~ For failing to complete or submit the continuing education
22 requirements as specified by this chapter and the rules and regulations
23 adopted by the Board;

1 16.1.14 ~~n.~~ Submitting false information as to the receipt of continuing
2 education; or,

3 16.1.15 ~~e.~~ For failure to comply with A.C.A. § 17-17-301 and Sections 9, 10
4 and 12 of these rules and regulations.

5 ~~13.2 Notice of Hearing.~~ If you have been charged with a violation of these rules, the
6 party which has been charged with a violation of these rules shall be notified by mail
7 at the last known address on file with the board at least 20 days prior to a hearing on
8 the matter. (see Section 15.7)

9 16.2 ~~13.3~~ **SANCTIONS FOR FALSE INFORMATION.** A licensee who submits
10 false information under these rules section shall be subject to the sanctions
11 provided for under A.C.A. § 17-17-308.

12 ~~13.4 Board May Act on Own Motion.~~ The Board may act upon its own motion or
13 upon signed written complaints from any person for matters of investigating possible
14 violations of Board regulations or applicable state laws. (See Section 14.2.3)

15 17 **SECTION 14. SANCTIONS AND PENALTIES**

16 17.1 **SANCTIONS.** After due notice and hearing, a person, found to have violated
17 provisions of Ark. Code Anno. 17-17-101 et seq or Section 16 of these rules
18 may have any one or more of the following sanctions imposed upon him by
19 the board:

20 17.1.1 Suspension, revocation or denial of the license or the renewal thereof;

21 17.1.2 A penalty not to exceed one thousand dollars (\$1,000.00) for each
22 violation;

23 17.1.3 Conditions or restrictions placed upon the person's license; or

1 17.1.4 Such other requirements or penalties as may be appropriate to the
2 circumstances or the case, and which would achieve the desired
3 disciplinary purposes, but which would not impair the public welfare and
4 morals.

5 17.2 ~~44.1~~ **PENALTY IN LIEU.** Whenever the Board finds that the holder of a
6 license issued by it is guilty of a violation of these rules or the laws of the State
7 of Arkansas, it shall have the power and authority to impose a penalty on the
8 licensee in lieu of suspension or revocation of the license.

9 17.3 ~~44.2~~ **SUSPENSION OF LICENSE PENDING PAYMENT OF PENALTY.**

10 Upon imposition of a penalty in lieu of suspension or revocation, the Board
11 may require that the license be suspended until the penalty is paid.

12 ~~44.3 Maximum Penalty. No penalty imposed by the Board in lieu of revocation or~~
13 ~~suspension of a license may exceed a total of one thousand dollars (\$1,000) per~~
14 ~~violation. (See Section 17.1.2)~~

15 17.4 ~~44.4~~ **CIVIL ACTION BY BOARD.** If any person upon whom the Board has
16 levied a civil penalty fails to pay the civil penalty within sixty (60) days of the
17 Board's decision to impose the penalty, the amount of the fine shall be
18 considered to be a debt owed to the Board and may be collected by civil
19 action by the Board.

20 17.5 ~~44.6~~ **PENALTY FOR UNLICENSED PERSON.** The Board may impose a civil
21 penalty against any unlicensed person, firm, or corporation practicing or
22 offering to practice any actions requiring licensure pursuant to the provisions
23 herein.

1 17.6 ~~44.6~~ **ADDITIONAL HOURS OF CONTINUING EDUCATION MAY BE**

2 **REQUIRED.** The Board shall have the authority to require additional
 3 continuing education hours for auctioneer or auction house owner found in
 4 violation of the auctioneer law or these rules.

5 17.7 **VOLUNTARY SURRENDER OF LICENSE.** The licensee, in lieu of formal
 6 disciplinary proceedings, may offer to surrender his or her license, subject to
 7 the Board's determination to accept the proffered surrender, rather than
 8 conducting a formal disciplinary proceeding.

9 **17.8 RE-LICENSURE OF A REVOKED OR SURRENDERED LICENSE.** No
 10 individual who has had his or her license revoked or who has surrendered his
 11 or her license will be licensed, except on petition made to the Board. The
 12 application for re-licensure is not allowed until at least five (5) years after the
 13 revocation or surrender of license took effect.

14 17.8.1 The applicant bears the burden of proof that he is rehabilitated
 15 following the revocation or surrender of his license, that he can engage
 16 in the conduct authorized by the license without undue risk to the public
 17 health, safety, and welfare, and that he is otherwise qualified for the
 18 license pursuant to Ark. Code Ann. §§ 17-17-101 et seq..

19 17.8.2 The Board may impose any appropriate conditions or limitations on a
 20 license to protect the public health, safety, and welfare.

21 17.8.3 The Board may require that the person seeking re-licensure take the
 22 licensing examination and/or submit proof of continuing education hours.

23 18 **DISCLOSURE.**

1 18.1 Requirements to Provide Information to the Board. Every person licensed
2 under the provisions Ark. Code. Ann §17-17-101 et seq., shall upon request
3 make available to the Arkansas Auctioneers Licensing Board or its duly
4 authorized representative any information which the Board requires to verify
5 compliance of the Licensee with all provisions of Ark. Code. Ann. § 17-17-101
6 et seq., and these Board rules and regulations.

7 19 **SEVERABILITY.**

8 19.1 These rules being for the regulation of the business of auctioneers and the
9 protection of the public, the provisions hereby are declared to be severable
10 and the invalidity of any rule, clause, sentence, paragraph or section hereof
11 shall not affect the validity of the remainder thereof.