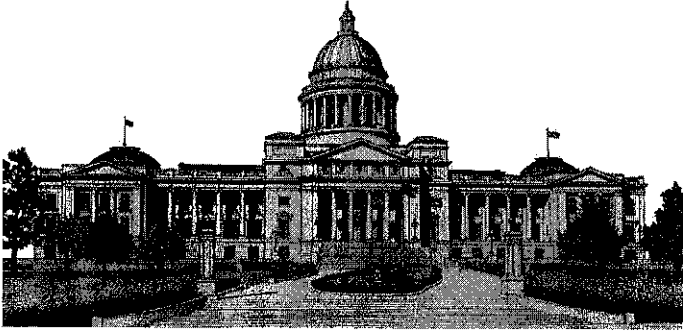


ARKANSAS REGISTER



Proposed Rule Cover Sheet

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Other Subdivision or Department, If Applicable _____

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ARKANSAS AUCTIONEER LICENSING BOARD
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RULES OF THE ARKANSAS AUCTIONEERS LICENSING BOARD

1. STATEMENT OF ORGANIZATION AND OPERATIONS

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

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

2. INFORMATION FOR PUBLIC GUIDANCE

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

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

2.3.COPIES. Copies of all forms used by the Board, written statements of policy and written interpretive memoranda, and all orders issued by the Board,

excluding materials related to written and practical testing, may be obtained from the Board's office.

3. **GENERAL INFORMATION.**

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

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

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

3.4. **AGENDA.** The Secretary-Treasurer will prepare the agenda for regular and special meetings. The agenda will be distributed to Board members and made

available to the public in advance of the meeting. The agenda should state with specificity the items that will be considered at the meeting or hearing. The agenda should include the following topics, as applicable; the Call to Order, Review of Minutes, Old Business, New Business, Other Business, Adjudicatory Hearings, Rule-making hearings and Public Comment. The order of the agenda items is tended to be flexible and may be adjusted to meet the needs of the Board. The agenda may be amended by appropriate motion.

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

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

3.7. LIST OF LICENSEES. The Board shall annually prepare a list of the names and addresses of all auctioneers licensed by it. This list shall contain the names of all persons whose licenses have been suspended or revoked within the preceding year as well as other information the Board deemed relative to the enforcement. A copy of this list may be obtained from the Executive Secretary by submitting a \$5.00 fee payable by check or money order.

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

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

4. **RULE MAKING AUTHORITY.**

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

5. **EMERGENCY RULE-MAKING.**

5.1. **REQUEST.** The proponent of a rule may request the Board to adopt an emergency rule. In addition to the text of the proposed rule or amendment to an existing rule and any other information required by the Administrative Procedures Act, the proponent will provide a written statement setting out the facts or circumstances that would support a finding of imminent peril to the public health, safety, or welfare.

5.2. **ACTION UPON RECEIPT OF REQUEST.** Upon receipt of the written statement requesting an emergency rule-making and documents or other evidence submitted in support of the assertion that an emergency exists, the Board will make an independent judgment as to whether the circumstances and facts constitute an imminent peril to the public health, safety, or welfare requiring adoption of the rule upon fewer than 30 days notice. If the Board determines

that the circumstances warrant emergency rule-making, it will make a written determination that sets out the reasons for the Board's finding that an emergency exists. Upon making this finding, the Board may proceed to adopt the rule without any prior notice or hearing, or it may determine to provide an abbreviated notice and hearing.

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

6. DECLARATORY ORDERS.

6.1.PURPOSE AND USE. A declaratory order is a means of resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the Board has authority. A petition for declaratory order may be used only to resolve questions or doubts as to how the statutes, rules or orders may apply to the petitioner's particular circumstances. A declaratory order is not the appropriate means of determining the conduct of another person or for obtaining a policy statement of general

applicability from a Board. A petition or declaratory order must describe the potential impact of statutes, rules or orders upon the petitioner's interest.

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

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

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

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

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

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

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

6.2.7. The date.

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

6.3. **DISPOSITION.**

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

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

7. PRACTICES AND PROCEDURES FOR AUCTIONEERS

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

7.2. LICENSE NOT REQUIRED.

7.2.1. AUCTIONING OWN GOODS. An individual is not required to be a licensed auctioneer to auction his own goods. When one is auctioning his/her own goods without a license that person must have a legal interest in all merchandise to be sold as one's "own goods". Consignment goods are not considered one's "own goods".

7.2.2. Court Ordered or Public Authority: An auctioneer license is not required to conduct an auction under the direction of a public authority, pursuant to a judicial order or decree, or a sale by law required to be at auction.

7.2.3. Nonprofit Organization: An auctioneer license is not required for an auction conducted by or for a nonprofit organization

7.2.4. Livestock Auction: An auctioneer license is not required for an individual who conducts the auction of livestock at a livestock auction facility.

7.2.5. Internet Auction: An auctioneer license is not required to conduct an auction over the internet by means of a website dedicated primarily to conducting auctions.

7.3. **EMERGENCY AUCTIONEER.** When an auctioneer or auction house owner exhausts all efforts to hire a licensed auctioneer and is unable to hire a licensed auctioneer, the auctioneer or auction house owner may employ an unlicensed emergency auctioneer for a period of ninety (90) days.

7.3.1. **NOTIFICATION.** The auctioneer or auction house owner must contact the Board immediately and provide them with the name and contact information of the emergency auctioneer. The auctioneer or auction house owner shall submit a written statement to the Board that the unlicensed emergency auctioneer has been advised that that he must make application for licensure and pay fees for the next testing date.

7.3.2. **LICENSE REQUIRED.** After 90 days, the emergency auctioneer must meet all provisions of Ark. Code Ann. §17-17-101 et seq.

7.4. **WRITTEN CONTRACT**

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

- 7.4.1.1. Date of agreement;
- 7.4.1.2. Specific date, time and location of auction;
- 7.4.1.3. Special terms and conditions;
- 7.4.1.4. Commission charged;

7.4.1.5. Other expenses;

7.4.1.6. Signatures of auctioneer or auction house owner and seller(s); and,

7.4.1.7. Agreement must include whether the auction is absolute or with reserve and;

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

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

7.5. ADVERTISING

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

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

7.6. AUCTIONS – REQUIRED PROCEDURES - STANDARDS FOR AUCTION

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

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

7.6.3. Terms and Conditions. Terms and conditions of each auction must be announced at the beginning of the auction.

7.7. **MAINTAINING RECORDS OF AUCTION.** All auctioneers or auction house owners shall maintain records of the auctions for a period of three (3) years.

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

8. **RECOVERY FUND**

8.1. **PAYMENT TO RECOVERY FUND.** Each auctioneer shall pay to the Board, at the time of initial licensure and at each annual renewal, a recovery fund fee of one hundred (\$100.00) dollars, in addition to all other fees assessed. Payment of this fee shall continue until such time as the fund shall reach \$180,000.00. All applicants for renewal and all new licensees shall pay one hundred (\$100.00) dollars per year for a minimum of two years and shall continue to pay until such time as the recovery fund reaches \$180,000.00. At the time the fund balance falls to \$100,000.00, or below, each licensee shall pay a proportionate amount established by the Board until such time as the fund shall be restored to \$180,000.00.

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

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

8.3.1. Amount requested to be paid;

8.3.2. Name and address of payee;

8.3.3. Complaint number; and

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

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

8.5. PAYMENT LIMITED TO \$15,000.00. The Board shall not pay in excess of fifteen thousand dollars (\$15,000.00) for:

8.5.1. Any one (l) violation or continuing series of violations regardless of the number of licensees who participated in the violation or continuing series of violations; or

8.5.2. The acts of any one (l) licensee; or

8.5.3. Any group of related claims.

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

9. REQUIREMENTS AND QUALIFICATIONS FOR APPLICATION AND LICENSURE

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

9.2. **REQUIREMENT TO KEEP CURRENT ADDRESS ON FILE.** All auctioneers or auction house owners holding a license issued by the board are required to provide the board with written notice of any change in business address and/or primary mailing address within 30 days of the change. Upon receipt of a notice of change of address, the Board shall issue a new license for the unexpired period of time as required. Service of notices of hearing sent by mail will be addressed to the latest address on file with the board.

9.3. **PRE-LICENSURE CRIMINAL BACKGROUND CHECK.** Pursuant to Ark. Code Ann. § 17-3-103, an individual may petition for a pre-licensure determination of whether the individual's criminal record will disqualify the individual from licensure and whether a waiver may be obtained.

9.3.1. The individual must obtain the pre-licensure criminal background check petition from the Board.

9.3.2. The Board will respond with a decision in writing to the completed petition within a reasonable time.

9.3.3. The Board's response will state the reason(s) for the decision.

9.3.4. All decisions of the Board in response to a pre-licensure criminal background check petition are not subject to appeal.

9.3.5. The Board will retain a copy of the petition and response and it will be reviewed during the formal application process.

9.4. APPLICANT QUALIFICATIONS. Each applicant for a license shall make application to the Board upon a form and in such a manner as the Board may require at least thirty (30) days prior to the date of examination. Each applicant shall:

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

9.4.2. At least 18 years of age;

9.4.3. Provide a completed application;

9.4.4. Provide a completed Individual Record Check Form;

9.4.5. Provide a completed FBI Fingerprint Card;

9.4.6. Enclose a check or money order for an examination fee of \$100.00;

9.4.7. Enclose a check or money order for a license fee of \$100.00 (if applying for reciprocity see Section 4 below);

- 9.4.8. Enclose a check for in the appropriate amount as provided by the Board Office made payable to Arkansas Auctioneers Licensing Board for a state background check;
- 9.4.9. Enclose a check for in the appropriate amount as provided by the Board Officee made payable to the Arkansas State Police for a federal background check;
- 9.4.10. Enclose a check or money order for the Recovery Fund fee of \$100.00;
- 9.4.11. Enclose a current photograph full-face, passport-type (2"x2") of head and shoulders taken within the past six months.
- 9.4.12. Submit to a Criminal Background Check. All individuals seeking initial licensure as an auctioneer or an individual seeking reinstatement of licensure as an auctioneer in the State of Arkansas shall submit to a State and Federal Criminal Background check.
- 9.4.13. Disqualifying Conviction. ~~Applicants for which a disqualifying conviction is reported on the criminal background check will be notified that they are ineligible to hold an auctioneer license. The applicant shall have thirty (30) days from the date of the notification letter to request, in writing, a waiver by the Board of the disqualifying conviction. Upon proper request, a hearing before the Board will be conducted to determine whether or not a waiver will be granted. If an individual has been convicted of an offense listed in A.C.A. § 17-3-102, except those permanently disqualifying offenses found in subsection (e), the Board may waive disqualification of a potential~~

applicant or revocation of a license based on the conviction if a request for a waiver is made by:

9.4.13.1.1. An affected applicant for a license; or

9.4.13.1.2. An individual holding a license subject to revocation.

9.4.13.2. The Board may grant a waiver upon consideration of the following, without limitation:

9.4.13.2.1. The age at which the offense was committed;

9.4.13.2.2. The circumstances surrounding the offense;

9.4.13.2.3. The length of time since the offense was committed;

9.4.13.2.4. Subsequent work history since the offense was committed;

9.4.13.2.5. Employment references since the offense was committed;

9.4.13.2.6. Character references since the offense was committed;

9.4.13.2.7. Relevance of the offense to the occupational license; and

9.4.13.2.8. Other evidence demonstrating that licensure of the applicant does not pose a threat to the health or safety of the public.

9.4.13.3. A request for a waiver, if made by an applicant, must be in writing and accompany the completed application and fees.

9.4.13.4. The Board will respond with a decision in writing and will state the reasons for the decision.

9.4.13.5. An appeal of a determination under this section will be subject to the Administrative Procedures Act § 25-15-201 et seq.

9.5. Requirements for Licensing. In addition to providing a completed application and fees required by Section 9.34 herein, applicants must pass separate written and oral examinations. An applicant for an auctioneer license must pass each exam with a score of 70% or better. An applicant for an auction house license must only take the written portion of the exam and pass it with a score of 70% or better.

9.6. **AUCTIONEER LICENSE REQUIRED.** If the owner of an auction house or the designated person of a corporation operating as an auction house and the auctioneer are one and the same, only one auctioneer's license need be obtained.

9.7. **AUCTION HOUSE LICENSE.** An auction house license shall be issued in the name of one person only. An auction house license does not authorize the named individual to "call" an auction. Continuing education hours for out of state corporations owning an auction house may be obtained by the general manager or designated person.

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

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

9.10. DURATION OF APPLICATION.

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

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

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

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

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

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

10. **RECIPROCAL REQUIREMENTS AND QUALIFICATIONS FOR APPLICATION AND LICENSE**

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

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

10.2.1.1. ~~The Applicant shall hold a substantially similar license in another~~ United States' jurisdiction.

10.2.1.1.1. ~~A license from another state is substantially similar to an Arkansas Auctioneer's license if the other state's licensure requirements require a written examination demonstrating competency to act as an Auctioneer.~~

- 10.2.1.1.2. The applicant shall hold his or her Auctioneer license in good standing;
- 10.2.1.1.3. The applicant shall not have had a license revoked for an act of bad faith; or a violation of law, rules or ethics.
- 10.2.1.1.4. The applicant shall not hold a suspended or probationary license in a United States' jurisdiction;
- 10.2.1.2. The applicant shall be sufficiently competent to act as an Auctioneer; and
- 10.2.1.3. The applicant shall meet the requirements of Section 9.4 above.
- 10.2.2. **Required Documentation.** An applicant shall submit a fully-executed application, the required fee, and the documentation described below:
 - 10.2.2.1. As evidence that the applicant's license from another jurisdiction is substantially similar to Arkansas's, the applicant shall submit the following information:
 - 10.2.2.1.1. Evidence of current and active licensure in that state; and
 - 10.2.2.1.2. Evidence that the other state's licensure requirements match those listed in 10.2.1.1.1.
 - 10.2.2.2. To demonstrate that the applicant meets the requirement in 10.2.1.1.2. through 10.2.1.1.4., the applicant shall provide the Board with:

10.2.2.2.1. The names of all states in which the applicant is currently licensed or has been previously licensed;

10.2.2.2.2. Letters of good standing or other information from each state in which the applicant is currently or has ever been licensed showing that the applicant has not had his license revoked for the reasons listed in 10.2.1.1.3. and does not hold a license on suspended or probationary status as described in 10.2.1.1.4;

10.2.2.2.3. And proof of having passed that state's competency exam.

10.3. **TEMPORARY AND PROVISIONAL LICENSE**

10.3.1. The Board shall issue a temporary and provisional license immediately upon receipt of the application, the required fee, and the documentation required under 10.2.2.

10.3.2. The temporary and provisional license shall be effective until the Board makes a decision on the application, unless the Board determines that the applicant does not meet the requirements in 10.2.1.1 and 10.2.1.2., in which case the temporary and provisional license shall be immediately revoked.

10.3.3. An applicant may provide the rest of the documentation required above in order to receive a license, or the applicant may only provide the information necessary for the issuance of a temporary and provisional license.

~~10.3.4. Disqualifying Convictions. Applicants for which a disqualifying conviction is reported on the criminal background check will be notified that they are ineligible to hold an auctioneer license. The applicant shall have thirty (30) days from the date of the notification letter to request, in writing, a waiver by the Board of the disqualifying conviction. Upon proper request, a hearing before the Board will be conducted to determine whether or not a waiver will be granted.~~

10.4. **RECIPROCAL AUCTIONEER LICENSE REQUIRED.** If the owner of an auction house or the designated person of a corporation operating as an auction house and the auctioneer are one and the same, only one auctioneer's license need be obtained.

10.5. **RECIPROCAL AUCTION HOUSE LICENSE.** An auction house license shall be issued in the name of one person only. An auction house license does not authorize the named individual to "call" an auction.

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

10.7. **SPECIAL PROCEDURES FOR ACTIVE DUTY MILITARY, RETURNING**

MILITARY VETERANS AND THEIR SPOUSES. As used in this subsection, “returning military veteran” means a former member of the United States Armed Forces who was discharged from active duty under circumstances other than dishonorable.

10.7.1. The Board shall grant automatic licensure to an individual who holds a substantially equivalent license in another U.S. jurisdiction and is:

10.7.1.1. An active duty military service member stationed in the State of Arkansas;

10.7.1.2. A returning military veteran applying for licensure within one (1) year of his or her discharge from active duty; or

10.7.1.3. The spouse of a person under 10.6.1.1 or 10.6.1.2 above.

10.7.2. The Board shall grant automatic licensure upon receipt of all the below:

10.7.2.1. Payment of the initial licensure fee;

10.7.2.2. Evidence that the individual holds a substantially equivalent license in another state; and

10.7.2.3. Evidence that the applicant is a qualified applicant under Section 10.7.1.

11. DENIAL OF APPLICATION FOR LICENSURE.

11.1. **OPPORTUNITY FOR HEARING.** Except for failure to pass the license examination, if a determination is made that the application should be denied; the Board will inform the applicant of the opportunity for a hearing on the

application. The grounds or basis for the proposed denial of a license will be set forth in writing by the Board.

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

12. **ANNUAL LICENSE RENEWAL**

- 12.1. **RENEWAL OF LICENSE.** All auctioneer licenses expire on June 30 of each year unless renewed. Notice of license renewal shall include notice of the penalty and requirements for late renewal. Applications for license renewal postmarked by June 30 shall include a license renewal fee of \$100.00 and proof of required Continuing Education.

- 12.2. **DENIAL OF APPLICATION FOR RENEWAL.** An application for renewal of license may be denied if the auctioneer has been convicted in a court of competent jurisdiction of this or any other jurisdiction of a criminal offense involving ~~moral turpitude or~~ a felony listed under § 17-3-102 or any conduct which demonstrates bad faith, dishonesty, incompetency, untruthfulness, or deceptive practices or has failed to submit proof of the continuing education requirements.

- 12.3. **LATE RENEWAL. GRACE PERIOD.** Auctioneers who fail to renew their license by June 30 shall have a grace period of one hundred twenty (120) days to renew their license. Applications for license renewal postmarked by October

31 shall include a license renewal fee of \$100.00 and proof of required Continuing Education hours.

12.4. **LATE RENEWAL FINAL NOTICE:** The Board shall notify any auctioneer who fails to renew his license by September 1 that the grace period for renewal ends on October 31; that after that date they must cease and desist all auction activities; and, that the fee for reinstatement of the lapsed license after October 31 will be doubled to \$200.00. This notice shall be sent certified mail, return receipt requested.

12.5. **FAILURE TO RENEW LICENSE. LAPSED STATUS.** Any license not renewed on or before October 31 shall be considered lapsed. Auctioneers who fail to renew their license by October 31 shall be notified of their lapsed status; to cease and desist all auction activities; and, the process for reinstatement to active status. This notification shall be by regular first class mail.

12.6. **REINSTATEMENT FROM LAPSED STATUS.** A lapsed license may be reinstated for a period of two (2) months following the October 31st deadline for license renewal. The lapsed licensee will be reinstated upon payment the late renewal penalty of \$200.00 and submission of required continuing education hours.

12.7. **REVOCATION OF LAPSED LICENSE.** A license which has lapsed for two (2) months following the October 31 deadline shall be considered revoked for nonrenewal. The Board will notify the auctioneer that the license has been revoked for nonrenewal effective December 31. The notice will be provided by certified mail, return receipt requested. The auctioneer shall be advised that he

may request a hearing before the Board within thirty (30) days of receipt of the notice to contest the revocation. Following revocation for nonrenewal the auctioneer must reapply for licensure pursuant to the Rule for new applicants at the time of the new application for licensure.

12.8. LICENSE RENEWAL – SPECIAL CIRCUMSTANCES

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

12.8.2. Disaster Relief – Individuals, whose employment requires them to participate in disaster relief services, failing to renew due to disaster relief shall be entitled to renew for the current renewal period with no Continuing Education hours but will be required to obtain twelve (12) hours of Continuing Education during the next year prior to the next renewal.

13. CONTINUING EDUCATION

13.1. **CONTINUING EDUCATIONS REQUIREMENTS. GENERAL.** As a prerequisite to renewal of an auctioneer license, the licensee shall satisfactorily complete six (6) hours of continuing education from an auctioneer continuing education course approved by the Board. Correspondence courses may qualify for continuing education credit. Such correspondence course must be approved by the board.

13.2. **VERIFICATION OF CONTINUING EDUCATIONS HOURS.** The Board may verify any information concerning continuing education that is submitted by

the licensee as evidence supporting the course information. The board may require applicant(s) or licensee to provide information regarding the continuing education hours claimed on the individual's renewal. Failure to do so may lead to disciplinary action.

13.3. EVIDENCE TO SUPPORT COURSES TAKEN. It is the responsibility of each licensee to retain evidence to support the courses taken for a period of (12) months after the end of the renewal period for which the renewal application is submitted to the Board;

13.3.1. Course attendance verification by the sponsor.

13.3.2. Certificates of course completion.

13.3.3. Other evidence of support and justification

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

13.4. APPLICATION FOR CONTINUING EDUCATIONS COURSE SPONSOR.

Any request for Board approval of an auctioneer continuing education course sponsor shall be by written application on a form provided by the Board. Applicants for continuing education course sponsor shall submit the following information:

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

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

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

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

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

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

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

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

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

13.5. **COURSE CURRICULUM APPROVAL REQUIRED.** All sponsors must submit a request for approval of speakers and an agenda to the Board for approval by May 15th each year. The curriculum should include at least one (1) hour of law. A minimum total of six (6) hours must be provided.

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

- 13.7. **COURSE OUTLINE.** A course outline shall be prepared and distributed to the attendees. The outline shall state the number of continuing education hours offered.
- 13.8. **COURSE RECORDS.** An approved auctioneer continuing education course sponsor must retain records of students who complete the course for a minimum of two (2) years. These records must include attendance records for all courses showing date, place, and attendee's name. The course sponsor may be asked to provide the board copies of records.
- 13.9. **APPROVED AUCTIONEER CONTINUING EDUCATION SPONSOR. CERTIFICATE REQUIREMENTS.** Upon completion of a continuing education course, the approved auctioneer continuing education sponsor shall provide all attendees a course completion certificate that must include the following information:
- 13.9.1. The name of the participant;
 - 13.9.2. The license number of the participant;
 - 13.9.3. The name, address, and signature of the sponsor;
 - 13.9.4. The course title;
 - 13.9.5. The course topic if not reflected in the course title;
 - 13.9.6. The date and location of the course;
 - 13.9.7. And the number of approved actual course hours.
- 13.10. **INSTRUCTOR REQUIREMENTS.** Each instructor used by an approved auctioneer continuing education sponsor must have a minimum of two (2) years experience in the field in which that instructor is to teach.

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

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

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

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

13.11.4. Falsely certified hours of attendance or grades for any student; or

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

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

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

13.12.2. Ensure that order is maintained throughout the duration of the course;

13.12.3. Maintain the attendance sheets to assure their accuracy;

13.12.4. Verify the participant's signature upon the participant's entrance and exit;

13.12.5. Distribute course completion certificates to participants who have been physically present for duration of the course.

13.13. **INFORMATION MUST BE VERIFIED.** The Board may request verification of any information submitted by the licensee and may request the licensee to submit evidence supporting the course credit claimed. Failure to do so shall subject a licensee to non-renewal or suspension of license.

13.14. **FAILURE TO MEET CONTINUING EDUCATION PROVISIONS.** A licensee who does not obtain the required number of continuing education hours during a one (1) year licensure period may cure that deficiency by taking them prior to renewal whereby all penalties and fees will be due and payable to the Board prior to renewal.

13.15. **BOARD REVIEW OF CONTINUING EDUCATIONS COMPLIANCE.** If, as the result of an audit or other review, the Board determines that the continuing education hours a licensee has claimed do not meet the requirements of A.C.A. §17-17-311 and these rules, the Board shall notify the licensee of that determination.

13.16. **LICENSEE MAY SUBMIT REASONS FOR FAILURE TO COMPLY.** A licensee, who has been notified under Section 13.15 may within thirty (30) days submit information to the Board giving all the substantive reasons in support of the licensee's position that an adequate number of hours has been obtained.

13.17. **SEMINAR ATTENDANCE.** Hours for continuing education may be obtained through attendance at seminars conducted by the following organizations:

13.17.1. National Auctioneers Association

13.17.2. National Auctioneers Automobile Dealers Association

13.17.3. Any state association convention

13.17.4. Certified Auctioneers Institute

13.17.5. Any State Auctioneers Licensing Board

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

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

14.COMPLAINTS

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

14.2.PROCEDURE FOR INITIATION OF COMPLAINT.

- 14.2.1. Initiation. The formal investigation of a complaint against an auctioneer may be initiated when the complaint is in writing and filed with the board. The complaint must contain a brief statement setting forth the allegations of fact and naming the auctioneer against whom the complaint is filed.
- 14.2.2. Board Initiation. The Board may initiate an investigation upon its own motion when it has reason to believe a violation of A.C.A. § 17-17-101 et seq. or Board ~~regulation~~ rule may have occurred. Individual board members should utilize the written complaint method for complaints against individual Auctioneers.
- 14.2.3. Time Limit for Filing of Complaint. The Complaint committee may consider complaints only if the complaint was filed within one (1) year from the time the alleged complaint either occurred or was discovered. Any complaint not received within this time limit shall not be considered and the complainant shall be so notified.

14.3.PROCEDURE FOR INVESTIGATION OF COMPLAINT.

- 14.3.1. Notification of the Respondent. Upon receipt of the complaint the Complaint Committee shall notify the Auctioneer named in the complaint by certified or registered mail of the complaint and request a written response to the allegation/s.
- 14.3.2. Investigation. Upon receipt of the auctioneer's response or upon the expiration of the time period permitted for the licensee's response, the Complaint Committee shall conduct any further inquiry or investigation which

appears to be appropriate based upon the circumstances of the individual case.

14.3.3. Investigative Officer. The Investigative Officer shall be a person designated by the Chair of the Board. The Chair of the Board shall agree, or contract, to pay compensation to, or reimburse the expenses of, any person serving as investigative officer authorized by the Board.

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

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

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

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

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

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

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

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

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

15.ADJUDICATIVE HEARINGS

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

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

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

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

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

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

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

15.4. **CONSOLIDATION.** If there are separate matters that involve similar issues of law or fact, or identical parties, the matters may be consolidated if it

appears that consolidation would promote the just, speedy, and inexpensive resolution of the proceedings, and would not unduly prejudice the rights of a party.

15.5. **NOTICE TO INTERESTED PARTIES.** If it appears that the determination of the rights of parties in a proceeding will necessarily involve a determination of the substantial interests of persons who are not parties, the presiding officer may enter an order requiring that an absent person be notified of the proceeding and be given an opportunity to be joined as a party of record.

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

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

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

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

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

15.8. **MOTIONS.** All requests for relief will be by motion. Motions must be in writing or made on the record during a hearing. A motion must fully state the action requested and the grounds relied upon. The original written motion will be filed with the Board. When time allows, the other parties may, within three (3) days of the service of the written motion, file a response in opposition. The presiding officer may conduct such proceedings and enter such orders as are deemed necessary to address issues raised by the motion. However, a presiding officer, other than the Board, will not enter a dispositive order unless expressly authorized in writing to do so.

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

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

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

15.11.1. Prior continuances;

15.11.2. The interests of all parties;

15.11.3. The likelihood of informal settlements;

15.11.4. The existence of an emergency;

- 15.11.5. Any objection;
- 15.11.6. Any applicable time requirement;
- 15.11.7. The existence of a conflict of the schedules of counsel, parties, or witnesses;
- 15.11.8. The time limits of the request; and
- 15.11.9. Other relevant factors.
- 15.11.10. The Complaint Committee may require documentation of any grounds for continuance.

15.12. HEARING PROCEDURES

- 15.12.1. The presiding officer presides at the hearing and may rule on motions, require briefs, and issue such orders as will ensure the orderly conduct of the proceedings; provided, however, any presiding officer other than the Board shall not enter a dispositive order or proposed decision unless expressly authorized in writing to do so.
- 15.12.2. All objections must be made in a timely manner and stated on the record.
- 15.12.3. Parties have the right to participate or to be represented by counsel in all hearings or pre-hearing conferences related to their case.
- 15.12.4. Subject to terms and conditions prescribed by the Administrative Procedure Act, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses as necessary for a full and true

disclosure of the facts, present evidence in rebuttal, and, upon request by the Board, may submit briefs and engage in oral argument.

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

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

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

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

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

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

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

15.14. EVIDENCE

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

- 15.14.2. Stipulation of facts is encouraged. The Board may make a decision based on stipulated facts.
- 15.14.3. Evidence in the proceeding must be confined to the issues set forth in the hearing notice, unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence outside the scope of the notice, over the objection of a party who did not have actual notice of those issues, that party, upon timely request, will receive a continuance sufficient to prepare for the additional issue and to permit amendment of pleadings.
- 15.14.4. A party seeking admission of an exhibit must provide 12 copies of each exhibit at the hearing. The presiding officer must provide the opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. All exhibits admitted into evidence must be appropriately marked and be made part of the record.
- 15.14.5. Any party may object to specific evidence or may request limits on the scope of the examination or cross-examination. A brief statement of the grounds upon which it is based shall accompany such an objection. The objection, the ruling on the objection, and the reasons for the ruling will be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve the ruling until the written decision.
- 15.14.6. Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the

offer of proof for excluded oral testimony will briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

15.14.7. Irrelevant, immaterial, and unduly repetitive evidence will be excluded. Any other oral or documentary evidence, not privileged, may be received if it is of a type commonly relied upon by reasonably prudent men and women in the conduct of their affairs.

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

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

15.16. SUBPOENAS

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

15.16.2. A subpoena may be served by any person specified by law to serve process or by any person who is not a party and who is eighteen (18) years of age or older. Delivering a copy to the person named in the subpoena shall make service. Proof of service may be made by affidavit of the person making service. The party seeking the subpoena shall have the burden of

obtaining service of the process and shall be charged with the responsibility of tendering appropriate mileage fees and witness fees pursuant to Rule 45, Arkansas Rules of Civil Procedure. The witness must be served at least two days prior to the hearing. For good cause, the Board may authorize the subpoena to be served less than two days before the hearing.

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

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

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

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

15.18.2. The seriousness and circumstances surrounding this misconduct.

15.18.3. The loss or damage to clients or others.

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

15.18.5. The profit to the licensee.

15.18.6. The avoidance of repetition.

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

15.18.8. The deterrent effect on others.

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

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

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

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

16. **DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.**

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

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

- 16.1.2. For obtaining a license through false or fraudulent representation;
- 16.1.3. For making any substantial misrepresentation in an application for a license or renewal of license;
- 16.1.4. For pursuing a continued and flagrant course of misrepresentation or making false promises through agents, advertising, or otherwise;
- 16.1.5. For failing to account for or remit, within ten (10) business days, any money belonging to others that comes into his/her possession and for commingling funds of others with his/her own or failing to keep such funds of others in an escrow or trustee account;
- 16.1.6. For conviction in a court of competent jurisdiction of this state or any other jurisdiction of a ~~criminal offense involving moral turpitude or~~ a felony listed under § 17-3-102;
- 16.1.7. If the auctioneer/auction house owner demonstrates bad faith, dishonesty, incompetency or untruthfulness, or deceptive practices;
- 16.1.8. For any violation of this Act or of any rule of the Board;
- 16.1.9. For a failure of a licensee to provide to the Board any change of business address within 30 days of such change; or
- 16.1.10. For failure to renew a license within the one hundred twenty (120) day grace period;
- 16.1.11. For failing to enter into a written contract with the seller and furnish voluntarily to the seller at the time of execution copies of all written instruments prepared by the auctioneer/auction house owner, including the contract;

16.1.12. For any other conduct that constitutes improper, fraudulent, or dishonest dealings, to include falsely accusing any auctioneer or auction house owner;

16.1.13. For failing to complete or submit the continuing education requirements as specified by this chapter and the rules ~~and regulations~~ adopted by the Board;

16.1.14. Submitting false information as to the receipt of continuing education; or,

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

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

17. SANCTIONS AND PENALTIES

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

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

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

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

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

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

17.3. **SUSPENSION OF LICENSE PENDING PAYMENT OF PENALTY.** Upon imposition of a penalty in lieu of suspension or revocation, the Board may require that the license be suspended until the penalty is paid.

17.4. **CIVIL ACTION BY BOARD.** If any person upon whom the Board has levied a civil penalty fails to pay the civil penalty within thirty (30) days of the Board's decision to impose the penalty, the amount of the fine shall be considered to be a debt owed to the Board and may be collected by civil action by the Board.

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

17.6. **ADDITIONAL HOURS OF CONTINUING EDUCATION MAY BE REQUIRED.** The Board shall have the authority to require additional continuing education hours for auctioneer or auction house owner found in violation of the auctioneer law or these rules.

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

17.8. **RE-LICENSURE OF A REVOKED OR SURRENDERED LICENSE.** No individual who has had his or her license revoked or who has surrendered his or her license will be licensed, except on petition made to the Board. The application for re-licensure is not allowed until at least five (5) years after the revocation or surrender of license took effect. EXCEPTION: An individual or corporation whose auctioneer license or auction house license was revoked for non-renewal only, may make application for licensure at anytime pursuant to the rules for licensure in effect at the time of application.

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

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

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

18. DISCLOSURE.

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

19. SEVERABILITY.

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

ARKANSAS AUCTIONEER LICENSING BOARD

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RULES OF THE ARKANSAS AUCTIONEERS LICENSING BOARD

1. STATEMENT OF ORGANIZATION AND OPERATIONS

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

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

2. INFORMATION FOR PUBLIC GUIDANCE

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

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

2.3. COPIES. Copies of all forms used by the Board, written statements of policy and written interpretive memoranda, and all orders issued by the Board,

excluding materials related to written and practical testing, may be obtained from the Board's office.

3. GENERAL INFORMATION.

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

3.2. MEETINGS OF THE BOARD. Regular meetings of the Board shall be held at least four times each year at a time and place determined by the Board. Other meetings of the Board shall be called by the Chairman or upon the written request of two Board members. Meetings of the Board shall be conducted in accordance with Robert's Rules of Order except where such rules conflict with these rules.

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

3.4. AGENDA. The Secretary-Treasurer will prepare the agenda for regular and special meetings. The agenda will be distributed to Board members and made available to the public in advance of the meeting. The agenda should state with specificity the items that will be considered at the meeting or hearing. The

agenda should include the following topics, as applicable; the Call to Order, Review of Minutes, Old Business, New Business, Other Business, Adjudicatory Hearings, Rule-making hearings and Public Comment. The order of the agenda items is tended to be flexible and may be adjusted to meet the needs of the Board. The agenda may be amended by appropriate motion.

3.5. AMENDMENT TO RULES. These rules may be amended at any regular or special meeting of the Board, provided such proposed amendments have been submitted to all members of the Board at least 10 days prior to the meeting at which the amendment is to be considered. The specified 10-day notice may be waived provided there is unanimous written consent of all Board members. All requirements of the Arkansas Administrative Procedures Act shall be complied with prior to the final adoption of an amendment to these Rules.

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

3.7. LIST OF LICENSEES. The Board shall annually prepare a list of the names and addresses of all auctioneers licensed by it. This list shall contain the names of all persons whose licenses have been suspended or revoked within the preceding year as well as other information the Board deemed relative to the enforcement. A copy of this list may be obtained from the Executive Secretary by submitting a \$5.00 fee payable by check or money order.

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

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

4. **RULE MAKING AUTHORITY.**

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

5. **EMERGENCY RULE-MAKING.**

5.1. **REQUEST.** The proponent of a rule may request the Board to adopt an emergency rule. In addition to the text of the proposed rule or amendment to an existing rule and any other information required by the Administrative Procedures Act, the proponent will provide a written statement setting out the facts or circumstances that would support a finding of imminent peril to the public health, safety, or welfare.

5.2. **ACTION UPON RECEIPT OF REQUEST.** Upon receipt of the written statement requesting an emergency rule-making and documents or other evidence submitted in support of the assertion that an emergency exists, the Board will make an independent judgment as to whether the circumstances and facts constitute an imminent peril to the public health, safety, or welfare requiring adoption of the rule upon fewer than 30 days notice. If the Board determines that the circumstances warrant emergency rule-making, it will make a written determination that sets out the reasons for the Board's finding that an

emergency exists. Upon making this finding, the Board may proceed to adopt the rule without any prior notice or hearing, or it may determine to provide an abbreviated notice and hearing.

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

6. DECLARATORY ORDERS.

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

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

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

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

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

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

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

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

6.2.7. The date.

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

6.3. **DISPOSITION.**

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

6.3.2. The Board may rely on the statements of fact set out in the petition without taking any position with regard to the validity of the facts. Within ninety (90)

days of the filing of the petition, the Board will render a final order denying the petition or issuing a declaratory order.

7. PRACTICES AND PROCEDURES FOR AUCTIONEERS

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

7.2. LICENSE NOT REQUIRED.

7.2.1. AUCTIONING OWN GOODS. An individual is not required to be a licensed auctioneer to auction his own goods. When one is auctioning his/her own goods without a license that person must have a legal interest in all merchandise to be sold as one's "own goods". Consignment goods are not considered one's "own goods".

7.2.2. Court Ordered or Public Authority: An auctioneer license is not required to conduct an auction under the direction of a public authority, pursuant to a judicial order or decree, or a sale by law required to be at auction.

7.2.3. Nonprofit Organization: An auctioneer license is not required for an auction conducted by or for a nonprofit organization

7.2.4. Livestock Auction: An auctioneer license is not required for an individual who conducts the auction of livestock at a livestock auction facility.

7.2.5. Internet Auction: An auctioneer license is not required to conduct an auction over the internet by means of a website dedicated primarily to conducting auctions.

7.3. EMERGENCY AUCTIONEER. When an auctioneer or auction house owner exhausts all efforts to hire a licensed auctioneer and is unable to hire a licensed auctioneer, the auctioneer or auction house owner may employ an unlicensed emergency auctioneer for a period of ninety (90) days.

7.3.1. NOTIFICATION. The auctioneer or auction house owner must contact the Board immediately and provide them with the name and contact information of the emergency auctioneer. The auctioneer or auction house owner shall submit a written statement to the Board that the unlicensed emergency auctioneer has been advised that that he must make application for licensure and pay fees for the next testing date.

7.3.2. LICENSE REQUIRED. After 90 days, the emergency auctioneer must meet all provisions of Ark. Code Ann. §17-17-101 et seq.

7.4. WRITTEN CONTRACT

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

- 7.4.1.1. Date of agreement;
- 7.4.1.2. Specific date, time and location of auction;
- 7.4.1.3. Special terms and conditions;
- 7.4.1.4. Commission charged;
- 7.4.1.5. Other expenses;
- 7.4.1.6. Signatures of auctioneer or auction house owner and seller(s); and,

7.4.1.7. Agreement must include whether the auction is absolute or with reserve and;

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

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

7.5. ADVERTISING

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

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

7.6. AUCTIONS – REQUIRED PROCEDURES - STANDARDS FOR AUCTION

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

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

7.6.3. Terms and Conditions. Terms and conditions of each auction must be announced at the beginning of the auction.

7.7. MAINTAINING RECORDS OF AUCTION. All auctioneers or auction house owners shall maintain records of the auctions for a period of three (3) years.

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

8. RECOVERY FUND

8.1. PAYMENT TO RECOVERY FUND. Each auctioneer shall pay to the Board, at the time of initial licensure and at each annual renewal, a recovery fund fee of one hundred (\$100.00) dollars, in addition to all other fees assessed. Payment of this fee shall continue until such time as the fund shall reach \$180,000.00. All applicants for renewal and all new licensees shall pay one hundred (\$100.00) dollars per year for a minimum of two years and shall continue to pay until such time as the recovery fund reaches \$180,000.00. At the time the fund balance falls to \$100,000.00, or below, each licensee shall pay a proportionate amount established by the Board until such time as the fund shall be restored to \$180,000.00.

8.2. PAYMENT OF DAMAGES. Damages from the recovery fund may be paid upon request only if, after ordering a licensee to pay a specified amount to an

aggrieved person(s), the licensee fails to do so within thirty (30) calendar days and the order has not been appealed.

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

8.3.1. Amount requested to be paid;

8.3.2. Name and address of payee;

8.3.3. Complaint number; and

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

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

8.5. PAYMENT LIMITED TO \$15,000.00. The Board shall not pay in excess of fifteen thousand dollars (\$15,000.00) for:

8.5.1. Any one (l) violation or continuing series of violations regardless of the number of licensees who participated in the violation or continuing series of violations; or

8.5.2. The acts of any one (l) licensee; or

8.5.3. Any group of related claims.

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

9. REQUIREMENTS AND QUALIFICATIONS FOR APPLICATION AND LICENSURE

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

9.2. REQUIREMENT TO KEEP CURRENT ADDRESS ON FILE. All auctioneers or auction house owners holding a license issued by the board are required to provide the board with written notice of any change in business address and/or primary mailing address within 30 days of the change. Upon receipt of a notice of change of address, the Board shall issue a new license for the unexpired period of time as required. Service of notices of hearing sent by mail will be addressed to the latest address on file with the board.

9.3. PRE-LICENSURE CRIMINAL BACKGROUND CHECK. Pursuant to Ark. Code Ann. § 17-3-103, an individual may petition for a pre-licensure determination of whether the individual's criminal record will disqualify the individual from licensure and whether a waiver may be obtained.

9.3.1. The individual must obtain the pre-licensure criminal background check petition from the Board.

9.3.2. The Board will respond with a decision in writing to the completed petition within a reasonable time.

9.3.3. The Board's response will state the reason(s) for the decision.

9.3.4. All decisions of the Board in response to a pre-licensure criminal background check petition are not subject to appeal.

9.3.5. The Board will retain a copy of the petition and response and it will be reviewed during the formal application process.

9.4. APPLICANT QUALIFICATIONS. Each applicant for a license shall make application to the Board upon a form and in such a manner as the Board may require at least thirty (30) days prior to the date of examination. Each applicant shall:

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

9.4.2. At least 18 years of age;

9.4.3. Provide a completed application;

9.4.4. Provide a completed Individual Record Check Form;

9.4.5. Provide a completed FBI Fingerprint Card;

9.4.6. Enclose a check or money order for an examination fee of \$100.00;

9.4.7. Enclose a check or money order for a license fee of \$100.00 (if applying for reciprocity see Section 4 below);

- 9.4.8. Enclose a check for in the appropriate amount as provided by the Board Office made payable to Arkansas Auctioneers Licensing Board for a state background check;
- 9.4.9. Enclose a check for in the appropriate amount as provided by the Board Office made payable to the Arkansas State Police for a federal background check;
- 9.4.10. Enclose a check or money order for the Recovery Fund fee of \$100.00;
- 9.4.11. Enclose a current photograph full-face, passport-type (2"x2") of head and shoulders taken within the past six months.
- 9.4.12. Submit to a Criminal Background Check. All individuals seeking initial licensure as an auctioneer or an individual seeking reinstatement of licensure as an auctioneer in the State of Arkansas shall submit to a State and Federal Criminal Background check.
- 9.4.13. Disqualifying Conviction. If an individual has been convicted of an offense listed in A.C.A. § 17-3-102, except those permanently disqualifying offenses found in subsection (e), the Board may waive disqualification of a potential applicant or revocation of a license based on the conviction if a request for a waiver is made by:
- 9.4.13.1.1. An affected applicant for a license; or
 - 9.4.13.1.2. An individual holding a license subject to revocation.
- 9.4.13.2. The Board may grant a waiver upon consideration of the following, without limitation:
- 9.4.13.2.1. The age at which the offense was committed;

- 9.4.13.2.2. The circumstances surrounding the offense;
- 9.4.13.2.3. The length of time since the offense was committed;
- 9.4.13.2.4. Subsequent work history since the offense was committed;
- 9.4.13.2.5. Employment references since the offense was committed;
- 9.4.13.2.6. Character references since the offense was committed;
- 9.4.13.2.7. Relevance of the offense to the occupational license; and
- 9.4.13.2.8. Other evidence demonstrating that licensure of the applicant does not pose a threat to the health or safety of the public.

9.4.13.3. A request for a waiver, if made by an applicant, must be in writing and accompany the completed application and fees.

9.4.13.4. The Board will respond with a decision in writing and will state the reasons for the decision.

9.4.13.5. An appeal of a determination under this section will be subject to the Administrative Procedures Act § 25-15-201 *et seq.*

9.5. Requirements for Licensing. In addition to providing a completed application and fees required by Section 9.4 herein, applicants must pass separate written and oral examinations. An applicant for an auctioneer license must pass each exam with a score of 70% or better. An applicant

for an auction house license must only take the written portion of the exam and pass it with a score of 70% or better.

9.6. AUCTIONEER LICENSE REQUIRED. If the owner of an auction house or the designated person of a corporation operating as an auction house and the auctioneer are one and the same, only one auctioneer's license need be obtained.

9.7. AUCTION HOUSE LICENSE. An auction house license shall be issued in the name of one person only. An auction house license does not authorize the named individual to "call" an auction. Continuing education hours for out of state corporations owning an auction house may be obtained by the general manager or designated person.

9.8. NONRESIDENT APPLICANTS. Every nonresident applicant shall file an irrevocable consent that actions may be commenced against the applicant in any court of competent jurisdiction in the State of Arkansas in addition to all requirements listed in this section.

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

9.10. DURATION OF APPLICATION.

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

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

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

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

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

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

10.RECIPROCAL REQUIREMENTS AND QUALIFICATIONS FOR APPLICATION AND LICENSE

10.1. RECIPROCAL APPLICANT. A person holding a license to engage in auctions issued to him/her by a proper authority of a state, territory, or

possession of the United States of America or the District of Columbia which other state has licensing requirements comparable to Arkansas may upon application be licensed without further examination.

10.2. **RECIPROCAL APPLICANT LICENSURE.** Each applicant for a license through reciprocity shall make application to the Board upon a form and in such a manner as the Board may require.

10.2.1.1. The Applicant shall hold a substantially similar license in another United States' jurisdiction.

10.2.1.1.1. A license from another state is substantially similar to an Arkansas Auctioneer's license if the other state's licensure requirements require a written examination demonstrating competency to act as an Auctioneer.

10.2.1.1.2. The applicant shall hold his or her Auctioneer license in good standing;

10.2.1.1.3. The applicant shall not have had a license revoked for an act of bad faith; or a violation of law, rules or ethics.

10.2.1.1.4. The applicant shall not hold a suspended or probationary license in a United States' jurisdiction;

10.2.1.2. The applicant shall be sufficiently competent to act as an Auctioneer; and

10.2.1.3. The applicant shall meet the requirements of Section 9.4 above.

10.2.2. **Required Documentation.** An applicant shall submit a fully-executed application, the required fee, and the documentation described below:

10.2.2.1. As evidence that the applicant's license from another jurisdiction is substantially similar to Arkansas's, the applicant shall submit the following information:

10.2.2.1.1. Evidence of current and active licensure in that state;
and

10.2.2.1.2. Evidence that the other state's licensure requirements match those listed in 10.2.1.1.1.

10.2.2.2. To demonstrate that the applicant meets the requirement in 10.2.1.1.2. through 10.2.1.1.4., the applicant shall provide the Board with:

10.2.2.2.1. The names of all states in which the applicant is currently licensed or has been previously licensed;

10.2.2.2.2. Letters of good standing or other information from each state in which the applicant is currently or has ever been licensed showing that the applicant has not had his license revoked for the reasons listed in 10.2.1.1.3. and does not hold a license on suspended or probationary status as described in 10.2.1.1.4;

10.2.2.2.3. And proof of having passed that state's competency exam.

10.3. **TEMPORARY AND PROVISIONAL LICENSE**

10.3.1. The Board shall issue a temporary and provisional license immediately upon receipt of the application, the required fee, and the documentation required under 10.2.2.

10.3.2. The temporary and provisional license shall be effective until the Board makes a decision on the application, unless the Board determines that the applicant does not meet the requirements in 10.2.1.1 and 10.2.1.2., in which case the temporary and provisional license shall be immediately revoked.

10.3.3. An applicant may provide the rest of the documentation required above in order to receive a license, or the applicant may only provide the information necessary for the issuance of a temporary and provisional license.

10.4. **RECIPROCAL AUCTIONEER LICENSE REQUIRED.** If the owner of an auction house or the designated person of a corporation operating as an auction house and the auctioneer are one and the same, only one auctioneer's license need be obtained.

10.5. **RECIPROCAL AUCTION HOUSE LICENSE.** An auction house license shall be issued in the name of one person only. An auction house license does not authorize the named individual to "call" an auction.

10.6. **RECIPROCAL LICENSE FEE.** The license fee applicable to a nonresident applicant from a state with which we have a Reciprocal Agreement shall be the same amount that such other reciprocal state charges

auctioneers/auction house owners who are residents of this state and who are duly licensed in this state to obtain a license to conduct an auction in such other state.

10.7. **SPECIAL PROCEDURES FOR ACTIVE DUTY MILITARY, RETURNING MILITARY VETERANS AND THEIR SPOUSES.** As used in this subsection, “returning military veteran” means a former member of the United States Armed Forces who was discharged from active duty under circumstances other than dishonorable.

10.7.1. The Board shall grant automatic licensure to an individual who holds a substantially equivalent license in another U.S. jurisdiction and is:

10.7.1.1. An active duty military service member stationed in the State of Arkansas;

10.7.1.2. A returning military veteran applying for licensure within one (1) year of his or her discharge from active duty; or

10.7.1.3. The spouse of a person under 10.6.1.1 or 10.6.1.2 above.

10.7.2. The Board shall grant automatic licensure upon receipt of all the below:

10.7.2.1. Payment of the initial licensure fee;

10.7.2.2. Evidence that the individual holds a substantially equivalent license in another state; and

10.7.2.3. Evidence that the applicant is a qualified applicant under Section 10.7.1.

11. DENIAL OF APPLICATION FOR LICENSURE.

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

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

12. ANNUAL LICENSE RENEWAL

12.1. **RENEWAL OF LICENSE.** All auctioneer licenses expire on June 30 of each year unless renewed. Notice of license renewal shall include notice of the penalty and requirements for late renewal. Applications for license renewal postmarked by June 30 shall include a license renewal fee of \$100.00 and proof of required Continuing Education.

12.2. **DENIAL OF APPLICATION FOR RENEWAL.** An application for renewal of license may be denied if the auctioneer has been convicted in a court of competent jurisdiction of this or any other jurisdiction of a criminal offense involving a felony listed under § 17-3-102 or any conduct which demonstrates bad faith, dishonesty, incompetency, untruthfulness, or deceptive practices or has failed to submit proof of the continuing education requirements.

- 12.3. **LATE RENEWAL. GRACE PERIOD.** Auctioneers who fail to renew their license by June 30 shall have a grace period of one hundred twenty (120) days to renew their license. Applications for license renewal postmarked by October 31 shall include a license renewal fee of \$100.00 and proof of required Continuing Education hours.
- 12.4. **LATE RENEWAL FINAL NOTICE:** The Board shall notify any auctioneer who fails to renew his license by September 1 that the grace period for renewal ends on October 31; that after that date they must cease and desist all auction activities; and, that the fee for reinstatement of the lapsed license after October 31 will be doubled to \$200.00. This notice shall be sent certified mail, return receipt requested.
- 12.5. **FAILURE TO RENEW LICENSE. LAPSED STATUS.** Any license not renewed on or before October 31 shall be considered lapsed. Auctioneers who fail to renew their license by October 31 shall be notified of their lapsed status; to cease and desist all auction activities; and, the process for reinstatement to active status. This notification shall be by regular first class mail.
- 12.6. **REINSTATEMENT FROM LAPSED STATUS.** A lapsed license may be reinstated for a period of two (2) months following the October 31st deadline for license renewal. The lapsed licensee will be reinstated upon payment the late renewal penalty of \$200.00 and submission of required continuing education hours.
- 12.7. **REVOCATION OF LAPSED LICENSE.** A license which has lapsed for two (2) months following the October 31 deadline shall be considered revoked

for nonrenewal. The Board will notify the auctioneer that the license has been revoked for nonrenewal effective December 31. The notice will be provided by certified mail, return receipt requested. The auctioneer shall be advised that he may request a hearing before the Board within thirty (30) days of receipt of the notice to contest the revocation. Following revocation for nonrenewal the auctioneer must reapply for licensure pursuant to the Rule for new applicants at the time of the new application for licensure.

12.8. LICENSE RENEWAL – SPECIAL CIRCUMSTANCES

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

12.8.2. Disaster Relief – Individuals, whose employment requires them to participate in disaster relief services, failing to renew due to disaster relief shall be entitled to renew for the current renewal period with no Continuing Education hours but will be required to obtain twelve (12) hours of Continuing Education during the next year prior to the next renewal.

13. CONTINUING EDUCATION

13.1. **CONTINUING EDUCATIONS REQUIREMENTS. GENERAL.** As a prerequisite to renewal of an auctioneer license, the licensee shall satisfactorily complete six (6) hours of continuing education from an auctioneer continuing education course approved by the Board. Correspondence courses may qualify

for continuing education credit. Such correspondence course must be approved by the board.

13.2. **VERIFICATION OF CONTINUING EDUCATIONS HOURS.** The Board may verify any information concerning continuing education that is submitted by the licensee as evidence supporting the course information. The board may require applicant(s) or licensee to provide information regarding the continuing education hours claimed on the individual's renewal. Failure to do so may lead to disciplinary action.

13.3. **EVIDENCE TO SUPPORT COURSES TAKEN.** It is the responsibility of each licensee to retain evidence to support the courses taken for a period of (12) months after the end of the renewal period for which the renewal application is submitted to the Board;

13.3.1. Course attendance verification by the sponsor.

13.3.2. Certificates of course completion.

13.3.3. Other evidence of support and justification

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

13.4. **APPLICATION FOR CONTINUING EDUCATIONS COURSE SPONSOR.**

Any request for Board approval of an auctioneer continuing education course sponsor shall be by written application on a form provided by the Board. Applicants for continuing education course sponsor shall submit the following information:

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

- 13.4.2. If the ownership of the course sponsor is a partnership, the names and addresses of the partners;
- 13.4.3. If the ownership of the course sponsor is a corporation, the names and addresses of the officers and directors;
- 13.4.4. If the ownership of the course sponsorship is a limited liability company, the names and addresses of the members and managers;
- 13.4.5. A course content outline describing the subjects to be offered during the approval period. All course sponsors are approved for a period of twelve (12) months;
- 13.4.6. A statement that each instructor meets the qualifications required by Sections 13.10 and 13.11 of this rule;
- 13.4.7. A statement that the course sponsor shall provide the licensee who successfully completes an approved course, a certificate of course completion that meets the requirements of Section 13.9 of this rule;
- 13.4.8. A copy of the certificate of course completion required under Section 13.9 of this rule;
- 13.4.9. And a statement that any facility utilized by the course sponsor shall be at a location approved by the Board.
- 13.5. **COURSE CURRICULUM APPROVAL REQUIRED.** All sponsors must submit a request for approval of speakers and an agenda to the Board for approval by May 15th each year. The curriculum should include at least one (1) hour of law. A minimum total of six (6) hours must be provided.

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

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

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

13.9. **APPROVED AUCTIONEER CONTINUING EDUCATION SPONSOR. CERTIFICATE REQUIREMENTS.** Upon completion of a continuing education course, the approved auctioneer continuing education sponsor shall provide all attendees a course completion certificate that must include the following information:

- 13.9.1. The name of the participant;
- 13.9.2. The license number of the participant;
- 13.9.3. The name, address, and signature of the sponsor;
- 13.9.4. The course title;
- 13.9.5. The course topic if not reflected in the course title;
- 13.9.6. The date and location of the course;

13.9.7. And the number of approved actual course hours.

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

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

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

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

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

13.11.4. Falsely certified hours of attendance or grades for any student; or

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

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

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

13.12.2. Ensure that order is maintained throughout the duration of the course;

13.12.3. Maintain the attendance sheets to assure their accuracy;

13.12.4. Verify the participant's signature upon the participant's entrance and exit;

13.12.5. Distribute course completion certificates to participants who have been physically present for duration of the course.

13.13. **INFORMATION MUST BE VERIFIED.** The Board may request verification of any information submitted by the licensee and may request the licensee to submit evidence supporting the course credit claimed. Failure to do so shall subject a licensee to non-renewal or suspension of license.

13.14. **FAILURE TO MEET CONTINUING EDUCATION PROVISIONS.** A licensee who does not obtain the required number of continuing education hours during a one (1) year licensure period may cure that deficiency by taking them prior to renewal whereby all penalties and fees will be due and payable to the Board prior to renewal.

13.15. **BOARD REVIEW OF CONTINUING EDUCATIONS COMPLIANCE.** If, as the result of an audit or other review, the Board determines that the continuing education hours a licensee has claimed do not meet the requirements of A.C.A. §17-17-311 and these rules, the Board shall notify the licensee of that determination.

13.16. LICENSEE MAY SUBMIT REASONS FOR FAILURE TO COMPLY. A

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

13.17. SEMINAR ATTENDANCE. Hours for continuing education may be obtained through attendance at seminars conducted by the following organizations:

13.17.1. National Auctioneers Association

13.17.2. National Auctioneers Automobile Dealers Association

13.17.3. Any state association convention

13.17.4. Certified Auctioneers Institute

13.17.5. Any State Auctioneers Licensing Board

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

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

14. COMPLAINTS

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

14.2.PROCEDURE FOR INITIATION OF COMPLAINT.

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

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

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

14.3.PROCEDURE FOR INVESTIGATION OF COMPLAINT.

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

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

14.3.3. Investigative Officer. The Investigative Officer shall be a person designated by the Chair of the Board. The Chair of the Board shall agree, or contract, to pay compensation to, or reimburse the expenses of, any person serving as investigative officer authorized by the Board.

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

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

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

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

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

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

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

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

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

15.ADJUDICATIVE HEARINGS

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

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

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

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

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

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

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

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

15.5. **NOTICE TO INTERESTED PARTIES.** If it appears that the determination of the rights of parties in a proceeding will necessarily involve a determination of the substantial interests of persons who are not parties, the presiding officer may enter an order requiring that an absent person be notified of the proceeding and be given an opportunity to be joined as a party of record.

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

15.7. **INITIATION & NOTICE OF HEARING.** An administrative adjudication is initiated by the issuance by the Board of a notice of hearing. The notice of hearing will be sent to the respondent by U.S. Mail, return receipt requested, restricted delivery to the named recipient or his agent. Notice shall be sufficient when it is so mailed to the respondent's latest address on file with

the Board. Notice will be mailed at least 30 days before the scheduled hearing. The notice will include:

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

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

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

15.8. **MOTIONS.** All requests for relief will be by motion. Motions must be in writing or made on the record during a hearing. A motion must fully state the action requested and the grounds relied upon. The original written motion will be filed with the Board. When time allows, the other parties may, within three (3) days of the service of the written motion, file a response in opposition. The presiding officer may conduct such proceedings and enter such orders as are deemed necessary to address issues raised by the motion. However, a presiding officer, other than the Board, will not enter a dispositive order unless expressly authorized in writing to do so.

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

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

15.11. **CONTINUANCES.** The Complaint Committee may grant a continuance of hearing for good cause shown. Requests for continuances will be made in writing. The request must state the grounds to be considered and be made as soon as practicable and, except in cases of emergencies, no later than five

(5) days prior to the date noticed for the hearing. In determining whether to grant a continuance, the Complaint Committee may consider:

- 15.11.1. Prior continuances;
- 15.11.2. The interests of all parties;
- 15.11.3. The likelihood of informal settlements;
- 15.11.4. The existence of an emergency;
- 15.11.5. Any objection;
- 15.11.6. Any applicable time requirement;
- 15.11.7. The existence of a conflict of the schedules of counsel, parties, or witnesses;
- 15.11.8. The time limits of the request; and
- 15.11.9. Other relevant factors.
- 15.11.10. The Complaint Committee may require documentation of any grounds for continuance.

15.12. HEARING PROCEDURES

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

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

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

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

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

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

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

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

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

15.13.4. Each witness must be sworn or affirmed by the presiding officer, or the court reporter, and be subject to examination and cross-examination as

well as questioning by the Board. The presiding officer may limit questioning in a manner consistent with the law.

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

15.14. EVIDENCE

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

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

15.14.3. Evidence in the proceeding must be confined to the issues set forth in the hearing notice, unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence outside the scope of the notice, over the objection of a party who did not have actual notice of those issues, that party, upon timely request, will receive a continuance sufficient to prepare for the additional issue and to permit amendment of pleadings.

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

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

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

15.14.7. Irrelevant, immaterial, and unduly repetitive evidence will be excluded. Any other oral or documentary evidence, not privileged, may be received if it is of a type commonly relied upon by reasonably prudent men and women in the conduct of their affairs.

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

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

15.16. SUBPOENAS

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

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

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

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

15.18. **FACTORS TO BE CONSIDERED IN IMPOSING SANCTIONS.** In addition to any other considerations permitted by Ark. Code Ann. § 17-17-101 et

seq., if applicable, the Board in imposing any sanction may consider the following:

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

15.18.2. The seriousness and circumstances surrounding this misconduct.

15.18.3. The loss or damage to clients or others.

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

15.18.5. The profit to the licensee.

15.18.6. The avoidance of repetition.

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

15.18.8. The deterrent effect on others.

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

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

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

15.19. **FINAL ORDER.** The Board will serve on the respondent a written order that reflects the action taken by the Board. The order will include a recitation of facts found based on testimony and other evidence presented and reasonable

inferences derived from the evidence pertinent to the issues of the case. It will also state conclusions of law and directives or other disposition entered against or in favor of the respondent. The order will be served personally or by mail on the respondent. If counsel represents respondent, service of the order on respondent's counsel shall be deemed service on the respondent.

16. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.

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

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

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

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

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

16.1.5. For failing to account for or remit, within ten (10) business days, any money belonging to others that comes into his/her possession and for commingling funds of others with his/her own or failing to keep such funds of others in an escrow or trustee account;

16.1.6. For conviction in a court of competent jurisdiction of this state or any other jurisdiction of a felony listed under § 17-3-102;

16.1.7. If the auctioneer/auction house owner demonstrates bad faith, dishonesty, incompetency or untruthfulness, or deceptive practices;

- 16.1.8. For any violation of this Act or of any rule of the Board;
 - 16.1.9. For a failure of a licensee to provide to the Board any change of business address within 30 days of such change; or
 - 16.1.10. For failure to renew a license within the one hundred twenty (120) day grace period;
 - 16.1.11. For failing to enter into a written contract with the seller and furnish voluntarily to the seller at the time of execution copies of all written instruments prepared by the auctioneer/auction house owner, including the contract;
 - 16.1.12. For any other conduct that constitutes improper, fraudulent, or dishonest dealings, to include falsely accusing any auctioneer or auction house owner;
 - 16.1.13. For failing to complete or submit the continuing education requirements as specified by this chapter and the rules adopted by the Board;
 - 16.1.14. Submitting false information as to the receipt of continuing education; or,
 - 16.1.15. For failure to comply with A.C.A. § 17-17-301 and Sections 9, 10 and 12 of these rules.
- 16.2. **SANCTIONS FOR FALSE INFORMATION.** A licensee who submits false information under these rules section shall be subject to the sanctions provided for under A.C.A. § 17-17-308.

17. SANCTIONS AND PENALTIES

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

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

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

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

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

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

17.3. SUSPENSION OF LICENSE PENDING PAYMENT OF PENALTY. Upon imposition of a penalty in lieu of suspension or revocation, the Board may require that the license be suspended until the penalty is paid.

17.4. CIVIL ACTION BY BOARD. If any person upon whom the Board has levied a civil penalty fails to pay the civil penalty within thirty (30) days of the Board's decision to impose the penalty, the amount of the fine shall be

considered to be a debt owed to the Board and may be collected by civil action by the Board.

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

17.6. **ADDITIONAL HOURS OF CONTINUING EDUCATION MAY BE REQUIRED.** The Board shall have the authority to require additional continuing education hours for auctioneer or auction house owner found in violation of the auctioneer law or these rules.

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

17.8. **RE-LICENSURE OF A REVOKED OR SURRENDERED LICENSE.** No individual who has had his or her license revoked or who has surrendered his or her license will be licensed, except on petition made to the Board. The application for re-licensure is not allowed until at least five (5) years after the revocation or surrender of license took effect. **EXCEPTION:** An individual or corporation whose auctioneer license or auction house license was revoked for non-renewal only, may make application for licensure at anytime pursuant to the rules for licensure in effect at the time of application.

17.8.1. The applicant bears the burden of proof that he is rehabilitated following the revocation or surrender of his license, that he can engage in

the conduct authorized by the license without undue risk to the public health, safety, and welfare, and that he is otherwise qualified for the license pursuant to Ark. Code Ann. §§ 17-17-101 et seq..

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

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

18. DISCLOSURE.

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

19. SEVERABILITY.

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