

## CHAPTER 19 AGRICULTURE

### ARTICLE 2C AUCTIONEERS

#### **§19-2C-1. Definitions.**

For the purposes of this article the following definitions shall prevail:

(a) The term "auctioneer" means and includes a person who sells goods or real estate at public auction for another on commission or for other compensation. The term "auctioneer" shall not include (1) persons conducting sales at auctions conducted by or under the direction of any public authority or pursuant to any judicial order or direction or to any sale required by law to be at auction, (2) the owner of any real or personal property when personally sold at auction by such owner and such owner has not personally conducted an auction within the previous twelve-month period, (3) persons conducting sales pursuant to a deed of trust or other security agreement, (4) fiduciaries of estates when selling real or personal property of such estate, and (5) persons conducting sales on behalf of charitable, religious, fraternal or other nonprofit organizations; and (6) persons properly licensed pursuant to the provisions of article twelve [47-12-1 et seq.], chapter forty-seven of this code when conducting an auction, any portion of which contains any leasehold or any estate in land whether corporeal or incorporeal, freehold or nonfreehold, when such person is retained to conduct an auction by a receiver or trustee in bankruptcy, a fiduciary acting under the authority of a deed of trust or will, or a fiduciary of a decedent's estate: Provided, that nothing contained in this article exempt persons conducting sales at public markets from the provisions of article two-A, chapter nineteen of this code, where the sale is confined solely to livestock, poultry and other agriculture and horticulture products.

(b) The term "public auction" means any public sale of real or personal property when offers or bids are made by prospective purchasers and the property sold the highest bidder.

(c) The term "commissioner" means the commissioner of agriculture of West Virginia.

(d) The term "department" means the West Virginia Department of Agriculture. [1973, c.11;1983, c.30; 1991, c.123;1995, c.205]

#### **§19-2C-2. License required.**

After the thirtieth day of June, one thousand nine hundred seventy-four, no person shall conduct an auction as an auctioneer in this State unless he shall have first obtained from the commissioner a license therefor. [1973, c.11.]

#### **§19-2C-3. Procedure for license; department of agriculture as statutory agent for licensees; fee.**

Any person who wishes to conduct an auction as an auctioneer may apply for a license on forms prescribed by the commissioner and containing such information as the commissioner may require by a legislative rule promulgated in accordance with article

three [29A-3-1 et seq.], chapter twenty-nine of this code. A nonreturnable application fee of fifty dollars shall accompany each application as well as a license fee of fifty dollars. All fees collected under this article shall be paid into a special revenue fund in the State Treasury to be used by the department of agriculture for the expressed purpose of administering and enforcing this article and for providing continuing education for auctioneers: Provided, That for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, fees collected under this article shall be paid into the state fund, general revenue.

In addition to the payment of fees, an applicant shall file with his or her application, a bond as required in section four [19-2C-4] of this article.

The commissioner shall, within thirty days after receipt of an application, notify, the applicant of his eligibility to be examined at the next regularly scheduled examination, as well as the date of such examination.

In the event the license is denied, the applicant shall be refunded the license fee submitted with the application.

Licenses issued shall expire on the thirty-first day of December of each year but shall be renewable upon the payment of the annual license fee within sixty days of the expiration date: Provided, That licenses issued for fiscal year 1990-1991 will be extended, at no additional fee, through the thirty-first day of December. Renewals received more than sixty days after the expiration date are subject to a late renewal fee of twenty-five dollars in addition to the annual renewal fee. The commissioner shall not renew licenses which have been expired for more than two years and the auctioneer or apprentice auctioneer shall take the written and oral examination and to pay the examination fee in order to renew his or her license. No renewal will be made unless the other requirements of this article are complied with.

Should a duplicate or replacement license or a license reflecting a change in information be required, the auctioneer or apprentice auctioneer must submit with such request a fee of five dollars.

The state department of agriculture is the agent for the purpose of service of process on any licensed auctioneer for any action occasioned by the performance of the duties of such auctioneer. Every licensed auctioneer, by virtue of his application for license, shall be considered to have consented to such statutory agency. [1973, c.11;1983, c.30;1991, c.123;1996, c.68.]

#### **§19-2C-4. Bond required.**

Every person applying for a license as an auctioneer, apprentice auctioneer or continuing to act as a licensed auctioneer or apprentice auctioneer, shall file with the commissioner and maintain in full effect a bond satisfactory to the commissioner and in form and amount as prescribed by the commissioner pursuant to the rules and regulations promulgated in accordance with this article: provided, that in no event shall the amount of such bond be less than ten thousand dollars for an auctioneer and in no event less than five thousand dollars for an apprentice auctioneer. The bond may include, at the option of the applicant, corporate surety bonding, collateral bonding (including costs and securities), establishment of an escrow account, an irrevocable letter of credit or a combination of these methods. If collateral bonding is used, the auctioneer may elect to deposit cash, or any of the following collateral securities or certificates: Bonds of the United States or its possessions, of the federal land bank, or of the homeowners' loan corporation; full faith and credit general obligation bonds of the state

of West Virginia, or other states, and of any county, district, or municipality of the state of West Virginia or other states; the certificates of deposit in a bank in this state which certificates shall be in the name of the department. The cash deposit or market value of such securities or certificates shall be equal to or greater than the sum of the bond. It shall be the duty of the applicant to insure the market value of such bonds is sufficient. The commissioner shall, upon receipt of any such deposits of cash, securities or certificates, promptly place the same with the treasure of the state of West Virginia whose duty it shall be to receive and hold the same in the name of the state in trust for the purpose for which the deposit is made when the license is issued. The applicant making the deposit shall be entitled from time to time to receive from the state treasurer, upon written approval of the commissioner, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with him in lieu thereof, cash or other securities or certificates of the classes herein specified having value equal to or greater than the sum of the bond. Such bond shall be conditioned upon the faithful compliance by the auctioneer with the provisions of this article and the payment of all required taxes, fees and penalties imposed by this State and its political subdivisions as well as the payment by any auctioneer of any final judgment obtained for damages arising out of his conduct or duties as an auctioneer. Such bond shall be open to public inspection.

[1973, c.11;1983, c.30;1991, c.123.]

#### **§19-2C-5. Requirements for license; rules and regulations; duties of licensee.**

(1) Each person seeking a license hereunder after the effective date of this section shall submit satisfactory evidence to the commissioner showing:

(a) That he or she has successfully completed the written and oral examinations provided for in this article;

(b) That he or she has a good reputation;

(c) That he or she is of trustworthy character;

(d) That he or she has met the apprenticeship requirements set forth in this article, if applicable;

(e) That he or she is a citizen of the United States; and

(f) That he or she has a general knowledge of the auctioneering profession and the principles involved in conducting an auction.

(2) The commissioner shall promulgate such reasonable rules and regulations as he or she considers necessary to carry out the intent and the administration and enforcement of this article, which said rules and regulations shall be promulgated in accordance with the applicable provisions of chapter twenty-nine-a [29A-1-1 et seq.] of this Code.

(3) Each licensee shall promptly produce for inspection such license at all sales conducted by or participated in by such licensee when requested to do so by any person and shall keep complete and accurate records of all transactions engaged in for a period of six months, which records shall be open to inspection by the commissioner or his authorized representative.

[1973, c.11; 1983, c.30;1991, c.123.]

#### **§19-2C-5a. Examinations of applicants; excuse for illness; fee renewal.**

Examinations shall be held in April and October of each year, at a time and place to be designated by the commissioner or his authorized representative.

Any individual auctioneer applicant may take the examination for auctioneer or apprentice auctioneer at the regularly scheduled time and place. The apprentice auctioneer's examination shall consist of a written examination. The auctioneer's examination will consist of both a written and oral examination. The passing grade for any written examination shall be seventy percent out of one hundred percent. The oral portion will be scored by the commissioner or his authorized representative. If the applicant fails either the written or oral portion of the examination no license will be issued and he or she shall not be administered the examination again until the next regularly scheduled examination date. A person who is qualified for a auctioneer's license as provided for in this article is considered to be a professional in his trade.

One notice only of the examination shall be mailed to the applicant at the address given on the application. If the applicant fails to appear for such examination, except as provided herein, a new application and a new fee shall be required. No fee shall be returned except when the applicant fails to take the examination because of illness evidence by a doctor's certificate sent to the commissioner. If excused because of illness the applicant shall be admitted to the next scheduled examination without paying an additional fee. No applicant shall be excused from taking the scheduled examination for any reason other than illness unless in the judgment of the commissioner, the applicant would suffer undue hardship by not being excused.

An examination fee, of fifty dollars in addition to any other fees required by this article, shall be collected from each person taking such examination. If the applicant has previously paid the examination fee and successfully completed the apprentice auctioneer's examination, no additional examination fee will be required to take the auctioneer's examination as provided for in this article.

If the commissioner determines that an applicant does not qualify for a license, he or she shall so notify the applicant by certified mail. The notice shall state the reason for refusal to grant a license and the applicant's right to appeal the commissioner's decision within twenty days of receipt of the notice.

An examination shall not be required for the renewal of any license unless such license has been revoked or suspended, in which case the applicant may be required, by the commissioner, to take and pass any written or oral examination required by the department. In cases where a license has been expired for more than two years and not been revoked or suspended, the applicant is required to take and pass any written and oral examinations required by the department. The commissioner is hereby authorized to promulgate rules as he or she considers necessary for the renewal of auctioneer licenses, including, but not limited to, requirements for continuing education of auctioneers.

[1983, c.30;1991, c.123.]

#### **§19-2C-6. Apprentice licenses; fees.**

The department of agriculture may grant apprentice auctioneers' licenses to those persons considered qualified by the commissioner. Every applicant for an apprentice auctioneers' license must take and pass a written examination relating to the skills and knowledge, and statutes and regulations governing auctioneers. Every applicant shall furnish to the commissioner on forms provided by the department, satisfactory proof of the following:

- (a) That he or she has a good reputation;
- (b) That he or she is a trustworthy character; and
- (c) That he or she is a citizen of the United States.

Any apprentice auctioneer may take the examination to become an auctioneer after serving a two-year apprenticeship under a licensed auctioneer: Provided, that if the apprentice auctioneer has attended a nationally accredited graduate school of auctioneering, approved by the commissioner, he or she shall serve an apprenticeship of only six months. Before an apprentice auctioneer may take the auctioneer's examination, the apprentice auctioneer shall conduct at least six auction sales under the direct supervision of the sponsoring auctioneer. The commissioner may waive the requirements of this section on an individual basis, upon the presentation of written evidence that the applicant has educational training or exceptional experience in the auctioneering profession and that the applicant has been unable to obtain sponsorship by a licensed auctioneer: Provided, however, That the commissioner shall promulgate rules and regulations setting forth education and experience qualifications which would entitle an individual to a waiver of the provisions of this section: Provided, further, That the commissioner shall not waive apprenticeship requirements for any applicant without the concurrence of the board of review.

When any apprentice auctioneer is discharged or terminates his employment with an auctioneer for any reason, the auctioneer shall immediately provide written notification to the commissioner. No discharged or terminated apprentice auctioneer shall thereafter perform any act under the authority of his license until such apprentice auctioneer receives a new license bearing the name and address of his new employer. No more than one license shall be issued to any apprentice auctioneer for the same period of time. The fee for the transfer of the license of an apprentice auctioneer to a new employer auctioneer is fifteen dollars.

The fee for the annual renewal of the apprentice auctioneer's license is fifty dollars. Bond requirements for an apprentice auctioneer shall be established by reasonable rules and regulations promulgated by the commissioner, and both the annual renewal fee and the bond must be filed with the department of agriculture: Provided. That the bond required by this section shall not be less than five thousand dollars. The department shall not issue an apprentice auctioneer's license until bond has been filed in accordance with this article. All apprentice auctioneer licenses expire the thirty-first day of December of each year but are renewable upon the payment of the annual fee. [1973, c.11; 1983, c.30; 1991, c.123.]

**Cross References.** Authority of commissioner to increase fees by rules or regulations, 19-1-4b.

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

The department of agriculture may, upon its own action, and shall upon the verified written complaint of any person, investigate the actions of any auctioneer, apprentice auctioneer, any applicant for an auctioneer's or apprentice auctioneer's license, or any person who assumes to act in that capacity, if the complaint, together with other evidence presented in connection with it, establishes probable cause.

Upon verification of the complaint, the department shall present the complaint to the board of review. The board of review shall consider all of the facts of the complaint and recommend a course of action to the commissioner.

The board of review shall be appointed by the governor, by and with the advice and consent of the Senate, and shall consist of three members, each appointed for a staggered three-year term. Two members of the board of review shall be licensed auctioneers in

West Virginia and residents of this state and shall have been licensed and been practicing the profession of auctioneering for five years immediately preceding their appointment. The third member shall be a lay person from the commercial or agricultural community who has utilized services of auctioneers for at least three years. No more than one board member shall be from any one congressional district and no more than two members shall be from the same political party. Board members shall receive no compensation for their service on the board, but shall be entitled to receive reimbursement for expenses in accordance with the department of agriculture travel regulations.

During the establishment of the board one member shall be appointed for a three-year term, one member for a two-year term and one member for a one-year term. The first year of each term expires on the first day of January, one thousand nine hundred ninety-two, and subsequently on the first day of January of each year. There shall be no limit on the number of consecutive terms a member may serve on the board. The governor is authorized to fill a vacancy when it occurs on the board for any reason. An appointment to fill a vacancy shall be for the remainder of the existing term of the vacant position.

[1983, c. 30; 1991, c.123.]

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

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

The sponsoring auctioneer is responsible for the actions of an apprentice auctioneer. It is his responsibility to insure adherence to this and all applicable section of state law. Provided: that if the apprentice auctioneer conduct auctions without the consent of his sponsor, only the apprentice auctioneer solely is subject to the penalties in section eight [19-2C-8] of this article.

[1991, c. 123.]

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

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

When an applicant's resident state has no licensing law for auctioneers or the applicant's resident state has no written or oral examination associated with its licensing requirements, the department of agriculture shall require proof that the applicant has been a practicing auctioneer for a period of two years preceding the date of application. The proof shall be in the form of sale bills, contracts, sale permits and other such evidence acceptable to the commissioner. Provided this qualification is met, and the applicant meets other requirements for licensing as required by the

statutes and regulations, the applicant shall be admitted to the next scheduled written and oral examination for auctioneers without being required to first serve an apprenticeship.  
[1991, c.123.]

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

Any order of the commissioner shall be served by him upon all persons affected thereby by registered mail. Within ten days of the receipt of such order any party adversely affected thereby may, in writing, request a hearing before the commissioner. Such hearing and any judicial review thereof shall be conducted in accordance with the applicable provisions of article five (§29A-5-1 et seq.) and six (§29A-6-1 et seq.), chapter twenty-nine-A of this Code as if the same were set fourth herein in extenso. The effect of any order shall be suspended during the course of any hearing or subsequent appeals.  
[1973, c.11.]

#### **§19-2C-8. Penalties for violation of article or rules and regulations.**

(a) *Criminal penalties.* - Any person, firm, association or corporation violating any of the provisions of this article, or of the rules and regulations adopted pursuant to the provisions thereof, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars nor more than two hundred dollars for the first offense, and not less than four hundred dollars nor more than one thousand dollars for the second and subsequent offenses. Magistrates have concurrent jurisdiction with circuit courts to enforce the provisions of this article.

(b) *Civil penalties.* - (1) Any person violating a provision of this article or any rule or regulation adopted hereunder may be assessed a civil penalty by the commissioner. In determining the amount of any civil penalty, the commissioner shall give due consideration to the history of previous violations of the person, the seriousness of the violation, and the demonstrated good faith of the person charged in attempting to achieve compliance with this article before and after written notification of the violation. (2) The commissioner may assess a penalty of not more than two hundred dollars for each first offense, and not more than one thousand dollars for a second and subsequent offense: and (3) The civil penalty is payable to the state of West Virginia and is collectible in any manner now or hereafter provided for collection of debt. If any person liable to pay the civil penalty neglects or refuses to pay the same, the amount of the civil penalty, together with interest at ten percent, is a lien in favor of the state of West Virginia upon the property, both real and personal, of such a person after the same has been entered and docketed to record in the county where such property is situated. The clerk of the county, upon receipt of the certified copy of such, shall enter same to record without requiring the payment of costs as a condition precedent to recording.

(c) Notwithstanding any other provision of law to the contrary, the commissioner may promulgate and adopt rules which permit consent agreements or negotiated settlements for the civil penalties assessed as a result of violation of the provisions of this article.

(d) No state court may allow for the recovery of damages for any administrative action taken, if the court finds that there was probable cause for such action.  
[1973, c.11;1991, c.123.]

### **§19-2C-8a. Revocation.**

In addition to the penalties in section eight [19-2C-8] of this article, the commissioner may, by order, suspend, deny, or revoke any license granted hereunder for any violation of this article or the rules and regulations promulgated hereunder or for any of the following reasons;

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

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

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

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

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

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

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

(h) Acting as an attorney for a client.

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

[1991, c.123.]

### **§19-2C-9. Written contracts; exception.**

No person shall act as auctioneer on the sale at public auction of any goods, wares, merchandise or of any other property, real or personal, until he or she has entered into a written contract in duplicate with the owner or consignor of the property to be sold, containing the terms and conditions upon which the licensee receives or accepts the property for sale at auction. No apprentice auctioneer shall be authorized to enter into a contract without the written consent of his or her sponsoring auctioneer. All contracts shall be in the name of and on behalf of the sponsoring auctioneer.

The commissioner may require by rule the following:

(a) That written contracts between the auctioneer and the seller be made in duplicate;

(b) That the original contract is to be retained by the auctioneer for a period of six months;

(c) That one copy of the contract is to be furnished to each person that entered into the contract;

(d) That an apprentice auctioneer may not contract directly with a client, but only through his or her sponsoring auctioneer;

(e) That an apprentice auctioneer may not engage in a sale with an auctioneer by whom he or she is not sponsored without first obtaining the written consent his or

her sponsoring auctioneer; and

(f) That on all contracts between an auctioneer and a seller there shall be a prominent statement indicating that the auctioneer is licensed by the department of agriculture and bonded in favor of the State of West Virginia.

[1983, c. 30; 1991, c.123.]

### **§19-2C-10. Advertising.**

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

Any apprentice auctioneer who advertises, as provided in this section, shall indicate in his advertisement the name of the sponsoring auctioneer under whom he or she is licensed.

The auctioneer's name and license number shall be displayed in equal prominence with the name of the apprentice auctioneer and license number in such advertisement.

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

[1983, c. 30; 1991, c. 123.]

### **19-2C-11.**

Repealed by Acts 1991, c.123.