WEST VIRGINIA CODE CHAPTER 19 ARTICLE 2C

WV Legislature

§19-2C-1. Definitions.

For the purposes of this article:

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

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

(c) "Commissioner" means the Commissioner of Agriculture of West Virginia.

(d) "Department" means the West Virginia Department of Agriculture.

(e) "Escrow account" means a separate custodial or trust fund account maintained by the auctioneer.

(f) "Estate auction" means the sale at auction of property of a specified deceased person or the property of a specified living person’s estate. Estate auctions may contain property other than that of the specified living or deceased person. However, the inclusion of additional property must be included in all advertising and auction announcements.

(g) "In this state" means that an auction satisfies one of the following criteria:

(1) The auctioneer performed the auction within the borders of the State of West Virginia;

(2) The auctioneer is selling items for a person located in the State of West Virginia;

(3) The auctioneer is auctioning real or personal property located in the State of West Virginia;

(4) The auctioneer delivers purchased property to a location in the State of West Virginia; or

(5) The auctioneer is otherwise subject to the laws, including taxation authority, of the State of West Virginia.

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

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

(a) Except as provided in subsection (b) of this section, no person shall conduct an auction as an auctioneer in this state unless he or she shall have first obtained from the commissioner a license therefor.

(b) The provisions of this section do not apply to:

(1) Persons conducting sales at auctions conducted by or under the direction of any public authority or pursuant to any judicial order or direction or to any sale required by law to be at auction;

(2) The owner of any real or personal property when personally sold at auction by the owner and the owner has not personally conducted an auction within the previous 12-month period;

(3) Persons conducting sales pursuant to a deed of trust;

(4) Fiduciaries of estates when selling real or personal property of the estate;

(5) Persons conducting sales without compensation on behalf of charitable, religious, fraternal, or other nonprofit organizations: Provided, That the commissioner shall promulgate rules to limit the number of charitable auctions an exempt person may perform in a 12-month period;

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

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

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

(a) An applicant for an auctioneer license shall:

(1) Apply on forms prescribed by the commissioner;

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

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

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

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

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

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

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

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

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§19-2C-3a. Rulemaking.

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

(1) Establish the license requirements for auctioneers and apprentice auctioneers, including the bond requirements;

(2) Set a fee schedule;

(3) Establish the renewal and expiration requirements for licenses;

(4) Establish the continuing education requirements for licensees;

(5) Establish waiver of examination requirements for apprentice auctioneers;

(6) Permit consent agreements or negotiated settlements for the civil penalties; and

(7) Implement the provisions of this article.

(b) The fees in effect on January 1, 2014, shall remain in effect until modified by legislative rule.

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§19-2C-3b. Special revenue fund.

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

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§19-2C-4. Bond required.

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

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

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

(1) Has successfully completed the written and oral examinations required by this article;

(2) Has a good reputation;

(3) Is of trustworthy character;

(4) Has met the apprenticeship requirements set forth in this article, if applicable;

(5) Is a citizen of the United States; and

(6) Has a general knowledge of the auctioneering profession and the principles involved in conducting an auction.

(b) A licensee shall:

(1) Promptly produce for inspection his or her license at all sales conducted by or participated in by the licensee when requested to do so by any person; and

(2) Keep complete and accurate records of all transactions engaged in for a period of three years from the date on which the sale was completed.

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

(1) Copies of signed contracts, including the names of buyers and their addresses;

(2) Clerk sheets showing items sold, including buyers numbers or names, and the selling prices; and

(3) Final settlement papers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Pursuant to a court order.

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

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

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

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

(h) If an applicant is disqualified for licensure, certification or registration because of a criminal conviction that has not been reversed, the commissioner shall afford the applicant the opportunity to reapply for licensure, certification or registration after the expiration of five years from the date of conviction or date of release from the penalty that was imposed, whichever is later, if the individual has not been convicted of any other crime during that period of time: Provided, That convictions for violent or sexual offenses or offenses shall subject an individual to a longer period of disqualification, to be determined by the

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individual board or licensing authority.

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

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

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

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

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

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

(1) Has a good reputation;

(2) Is a trustworthy character;

(3) Is a citizen of the United States; and

(4) Has taken and passed a written examination relating to the skills and knowledge of the statutes and rules governing auctioneers.

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

(1) Serving a two-year apprenticeship under a licensed auctioneer; or

(2) Attending a nationally accredited graduate school of auctioneering, approved by the commissioner, and serving an apprenticeship of six months.

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

(d) When an apprentice auctioneer is discharged or terminates his or her employment with an auctioneer for any reason, the auctioneer shall immediately provide written notification to the commissioner. No discharged or terminated apprentice auctioneer may thereafter perform any acts under the authority of his or her license until the apprentice auctioneer receives a new license bearing the name and address of his or her new employer. No more than one license may be issued to an apprentice auctioneer for the same period of time.

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

(f) A person cannot be licensed as an apprentice auctioneer for more than three years

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without applying for an auctioneer license. Should an apprentice auctioneer allow the three year limit to lapse, then the apprentice auctioneer shall be required to take the apprentice examination and meet all the requirements of this article.

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

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

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

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

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

(b) The sponsoring auctioneer is responsible for:

(1) The actions of an apprentice auctioneer to ensure adherence to state law; and

(2) Training the apprentice auctioneer in all aspects of practical business functions and duties related to the auctioneering profession.

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

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

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

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

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

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

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

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

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§19-2C-8. Penalties.

(a) Criminal penalties. — Any person, firm, association or corporation violating a provision of this article or the rules, is guilty of a misdemeanor and, upon conviction, shall be fined not less than $250 nor more than $500 for the first offense, and not less than $500 nor more than $1,000 for the second and subsequent offenses. Magistrates have concurrent jurisdiction with circuit courts to enforce the provisions of this article.

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

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

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

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

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

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§19-2C-8a. Revocation.

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

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

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

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

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

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

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

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

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

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

(j) Acting as an attorney for a client.

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

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§19-2C-9. Written contracts.

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

(b) The written contract shall:

(1) State the terms and conditions upon which the auctioneer receives or accepts the property for sale at auction;

(2) Be between the auctioneer and the seller;

(3) Be made in duplicate;

(4) Be retained by the auctioneer for a period of three years from the date of final settlement;

(5) Be furnished to each person that entered into the contract;

(6) State that an apprentice auctioneer may not contract directly with a client but only through his or her sponsoring auctioneer;

(7) State that an apprentice auctioneer may not engage in a sale with an auctioneer by whom he or she is not sponsored without first obtaining the written consent of his or her sponsoring auctioneer;

(8) Have a prominent statement indicating that the auctioneer is licensed by the Department of Agriculture and is bonded in favor of the State of West Virginia; and

(9) Include the following information:

(A) The name, address and phone number of the owner of the property to be sold or the consignor;

(B) The date of the auction or a termination date of the contract;

(C) The terms and conditions of the auction;

(D) The location of the auction;

(E) The date the owner or consignor is to be paid;

(F) A statement establishing the responsibility for bad checks, debts and unpaid auction

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items;

(G) A detailed list of all fees to be charged by the auctioneer, including commissions, rentals, advertising and labor;

(H) A statement of the auctioneer’s policy regarding absentee bidding;

(I) A statement above the owner’s signature line: "I have read and accept the terms of the contract"; and

(J) A statement indicating that an explanation of settlement of the auction, or settlement sheet, will be provided to the owner or consignor at the end of the auction.

(c) As a condition of entering into a contract, the auctioneer shall be provided with proof or certificate of ownership for all titled property, or assurances of ownership for all other property. The auctioneer shall have such proof or certificate or ownership with him or her at the time the auction is held.

(d) Notwithstanding the provisions of subsection (a) of this section, an auctioneer may conduct an auction on behalf of an auction house or other business entity without having entered into a contract directly with the seller of the auctioned goods, so long as the following conditions are satisfied:

(1) The auction house or business must have a written contract with both the seller of the goods and the auctioneer;

(2) The contract between the auction house or business entity must satisfy all the requirements set forth in subsection (b) of this section; and

(3) The auction house or business entity must file with the commissioner a bond satisfying the requirements of §19-2C-4 of this code.

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

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§19-2C-9a. Escrow accounts.

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

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§19-2C-10. Advertising.

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

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

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

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

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

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

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§19-2C-11.

Repealed.

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

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