

AUCTIONEERS

*Administrative Rules of the Texas Department of Licensing and Regulation
16 Texas Administrative Code, Chapter 67*

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67.1. Authority.

(Effective April 18, 1990, 15 TexReg 1959; amended effective April 17, 1992, 17 TexReg 2393; amended effective December 1, 2003, 28 TexReg 10456)

These rules are promulgated under the authority of the Texas Occupations Code, Chapter 1802, Auctioneers and the Texas Occupations Code, Chapter 51, Texas Department of Licensing and Regulation.

67.10. Definitions.

(January 27, 1993, 18 TexReg 301; amended effective June 1, 1993, 18 TexReg 3241; amended effective January 7, 1994, 18 TexReg 9928; amended effective February 13, 1995, 20 TexReg 564; amended effective December 1, 2006, 31 TexReg 9601; amended effective January 1, 2014, 38 TexReg 9507)

The following words and terms, when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

- (1) **Advertisement**--Any written, print, or broadcast commercial message that promotes the services of an auctioneer. For purposes of this chapter and the Texas Occupations Code, a general listing in a telephone directory that does not otherwise solicit auction business is not an advertisement.
- (2) **Auction listing contract**--An agreement executed by the auctioneer and the seller which authorizes the auctioneer to conduct the auction, identifies the property to be sold at auction, and sets out the terms of the agreement and the rights and responsibilities of each party. This includes seller and consignment contracts.
- (3) **Auction without reserve**--(also called Absolute Auction)--An auction in which property put up for sale is sold to the highest bidder, where the seller may not withdraw the property from the auction after the auctioneer calls for bids unless no bid is made in a reasonable time, and where the seller may not bid himself or through an agent.
- (4) **Auction with reserve**--An auction in which the seller or his agent reserves the right to establish a minimum bid, accept or reject any and all bids, and withdraw the property at any time prior to the announcement of the completion of the sale by the auctioneer.
- (5) **Operated**--To have fiduciary and operational responsibilities for an auction company's auctions conducted in Texas.

67.20. License Requirements--Auctioneer.

(Effective April 18, 1990, 15 TexReg 1959; amended effective April 17, 1992, 17 TexReg 2393; amended effective January 27, 1993, 18 TexReg 301; amended effective December 1, 2003, 28 TexReg 10456; amended effective December 1, 2006, 31 TexReg 9601; amended effective January 1, 2014, 38 TexReg 9507)

- (a) An applicant for licensure as an auctioneer must submit a completed application along with required fees.
- (b) To obtain a license as an auctioneer an applicant must:
 - (1) be at least 18 years of age;
 - (2) be a citizen of the United States or a legal alien;
 - (3) pass a written or oral examination provided by the department;
 - (4) hold a high school diploma or a high school equivalency certificate;
 - (5) not have been convicted of a felony within five years of the application date; and
 - (6) show proof of successful completion of at least 80 hours of classroom instruction at an auction school with a curriculum approved by the department.

67.22. License Requirements--Examinations.

(Effective January 27, 1993, 18 TexReg 301; amended effective June 1, 1993, 18 TexReg 3241; amended effective February 13, 1995, 20 TexReg 564; amended effective May 7, 1996, 21 TexReg 3607; amended effective December 1, 2006, 31 TexReg 9601)

If an applicant fails the examination twice during the one year application period, the application will be terminated and the applicant may not reapply until one year from the date of the second failure.

67.23. Pre-licensure Education.

(New section adopted effective December 1, 2006, 31 TexReg 9601)

- (a) Proprietary auction schools having a Certificate of Approval issued by the Texas Workforce Commission may obtain department approval by submitting an application for Auction School Registration along with the certification and payment of the curriculum review fee.
- (b) Other auction schools submitting an application for Auction School Registration will be reviewed on a case by case basis to assure that licensing applicants presenting credentials from the schools will have completed at least 80 hours of classroom instruction in courses relating to auctions.

67.24. License Renewal.

(New section adopted effective December 1, 2006, 31 TexReg 9601)

Licenses expire one year from the date of issuance and must be renewed by that date to avoid late renewal fees.

67.25. Continuing Education.

(Adopted effective June 1, 2005, 30 TexReg 3094; amended effective December 1, 2006, 31 TexReg 9601; amended effective April 30, 2012, 37 TexReg 3075; amended effective January 1, 2014, 38 TexReg 9507)

- (a) Terms used in this section have the meanings assigned by Chapter 59 of this title, unless the context indicates otherwise.
- (b) To renew a license as an auctioneer, a licensee must complete six hours of continuing education in courses approved by the department, including two hours of instruction in laws and rules that regulate the conduct of auctioneers.
- (c) The continuing education hours must have been completed within the term of the current license, in the case of a timely renewal. For a late renewal, the continuing education hours must have been completed within the one year period immediately prior to the date of renewal.
- (d) A licensee may not receive continuing education credit for attending the same course more than once.
- (e) A licensee shall retain a copy of the certificate of completion for a course for one year after the date of completion. In conducting any inspection or investigation of the licensee, the department may examine the licensee's records to determine compliance with this subsection.
- (f) To be approved under Chapter 59 of this title, a provider's course must be dedicated to instruction in one or more of the following topics:
 - (1) Texas Occupations Code, Chapter 1802, Auctioneers;
 - (2) Title 16, Texas Administrative Code, Chapter 67, Auctioneers Administrative Rules;
 - (3) other laws and rules that regulate the conduct of auctioneers;
 - (4) auction-related laws, such as the Uniform Commercial Code - Sales, Title 1, Chapter 2, Texas Business and Commerce Code §2.328 and the Deceptive Trade Practices-Consumer Protection Act, Chapter 17, Subchapter E, Texas Business and Commerce Code; or

- (5) business practices, such as insurance, auction ethics, contracts, maintenance of trust accounts, and marketing.
- (g) A licensee whose license has been placed on inactive status, pursuant to Texas Occupations Code, §51.4011 is not required to complete continuing education as required by this section until the licensee seeks to change to 'active' status.

67.30. Exemptions.

(New section effective January 1, 2014, 38 TexReg 9507)

- (a) A person is not engaged in the business of selling property at auction for purposes of Texas Occupations Code, §1802.002(4), if the person acquired the property at issue for reasons other than resale at auction.
- (b) For purposes of this chapter and Texas Occupations Code, Chapter 1802, the sale of real or personal property is not considered to be a competitive bid subject to this chapter if all of the material terms of the transaction other than price are not the same.

67.40. Auctioneer Education and Recovery Fund.

(Effective April 18, 1990, 15 TexReg 1959; amended effective April 17, 1992, 17 TexReg 2393; amended effective January 27, 1993, 18 TexReg 301; repealed effective April 3, 2001, 26 TexReg 2538; new section effective April 3, 2001, 26 TexReg 2539; amended effective December 1, 2006, 31 TexReg 9601; amended effective January 1, 2014, 38 TexReg 9507)

- (a) In each year in which the balance of the Auctioneer Education and Recovery Fund is less than \$350,000 the department will determine the fee that shall be paid by all license holders into the Auctioneer Education and Recovery Fund (the Fund).
- (b) The necessity for assessing the fee will be determined by the department based on the Fund balance on each December 31st. The fee shall be paid in addition to the renewal fee. The renewal notice sent by the department will reflect the fee due to the Fund.
- (c) Applicants for an auctioneer license shall pay the initial recovery fee to the Fund before a license will be issued.
- (d) If the department determines, either with the agreement of the auctioneer and claimant or at a hearing held on a disputed amount, that the auctioneer owes to the aggrieved person damages greater than the maximum of \$15,000 allowed under the Act, the auctioneer must pay the amount not paid by the department to the aggrieved party. If the department determines that the auctioneer owes damages to more than one aggrieved person arising out of one auction at one location, and the sum of all damages owed exceeds \$30,000, the department shall prorate \$30,000 from the Fund among the aggrieved persons, and the auctioneer must pay the amount not paid to each of the aggrieved persons.
- (e) The total payment from the Fund of claims against an auctioneer may not exceed \$30,000. If additional claims are filed before the auctioneer has reimbursed the Fund and repaid any amounts due an aggrieved party, the department shall hold a hearing to determine if the additional claims must be satisfied by the auctioneer before the department issues or renews a license, whether probated or not.
- (f) If a claim is paid against an auctioneer, and the auctioneer cannot immediately reimburse the Fund, the executive director may allow the auctioneer to sign an agreement with the department to reimburse the Fund at the applicable rate described below plus the interest accrued on the unpaid principal during the prior month at the rate of 8 percent per year.
- (g) If an amount is due an aggrieved party, and the auctioneer cannot immediately pay the aggrieved party, the executive director may allow the auctioneer to sign an agreement with the party to reimburse the aggrieved party at the applicable rate described below plus the interest accrued on the unpaid principal during the prior month at the rate of 8 percent per year.

(h) Reimbursement of the principal owed is to be paid in monthly installments determined by agreement between the department and the auctioneer with consideration given to input from any aggrieved party. If an agreement is not reached, monthly installments shall be determined as a percentage of the initial principal amount according to the following schedule:

- (1) \$0.01 - \$500.00--20%
- (2) \$500.01 - \$1,000--10%
- (3) \$1,000.01 - \$3,000.00--5%
- (4) \$3,000.01 and over--3%

67.65. Auctioneer Education Advisory Board.

(Effective January 7, 1994, 18 TexReg 9928; amended effective December 1, 2003, 28 TexReg 10456 ; amended effective December 1, 2006, 31 TexReg 9601; amended effective January 1, 2014, 38 TexReg 9507)

- (a) The board is established to advise the commission on educational matters, operational matters, and common practices within the auction industry, including those matters relating to use of the educational trust fund established with fees collected for the auctioneer education and recovery fund.
- (b) Recommendations of the board will be transmitted to the commission.
- (c) Board meetings are called by the presiding officer. Meetings in excess of one each calendar quarter shall be authorized by the commission or the commission's designee.
- (d) One member shall be the administrative head, or the administrative head's designee, of any state agency or office that is selected by the commission.

67.70. Requirements--Auctioneer.

(Effective January 27, 1993, 18 TexReg 301; amended effective September 30, 1994, 19 TexReg 7272; amended effective December 1, 2006, 31 TexReg 9601; amended effective January 1, 2014, 38 TexReg 9507)

- (a) An auctioneer must list his license number in any advertisement.
- (b) An auctioneer must furnish to the department the name, including assumed names, addresses, website, or social media pages, and phone numbers of all auction companies which he owns or operates.
- (c) A licensee may not allow any person who is not a licensed auctioneer to call bids at a sale.
- (d) A licensee may not knowingly use, or permit the use of false bidders at any auction.
- (e) Before beginning an auction, a licensee must ensure the announcement of, give notice, display notice or disclose:
 - (1) that the auctioneer conducting the sale is licensed by the department;
 - (2) the terms and conditions of the sale including whether a buyer's premium will be assessed; and
 - (3) if the owner, consignor, or agent thereof has reserved the right to bid.
- (f) If an auctioneer advertises an auction as "absolute" or "without reserve", no lots included may have a minimum bid. Advertising may include the wording, "many lots are without reserve"; however, the auction may not be titled, headed or called an "absolute" or "without reserve" auction unless all lots meet that criteria.

- (g) All auctioneers shall notify consumers and service recipients of the name, mailing address, website www.tdlr.texas.gov, and telephone number of the department for purposes of directing complaints to the department. The notification shall be included on any auction listing contract and on at least one of the following. This subsection is effective January 1, 2015.
- (1) A sign prominently displayed at the place of the auction or on any auction website;
 - (2) Bills of sale or receipt to be given to buyers; or
 - (3) On bidder cards.
- (h) An auctioneer who intends to charge a buyer's premium at an auction must state this condition and the amount of the buyer's premium in all advertising for the auction.
- (i) Any statement in an advertisement for an auction that alters the meaning of another statement in the advertisement must be in a type font at least as large as the type font of the statement it alters.
- (j) An auctioneer must report any change of address to the department within 30 days.
- (k) Each licensed auctioneer must:
- (1) maintain a separate trust or escrow account in a federally insured bank or savings and loan association, in which shall be deposited all funds belonging to others which shall come into the auctioneers possession;
 - (2) deposit all proceeds from an auction into his trust or escrow account within 72 hours of the auction unless the owner/consignor of the property auctioned is paid immediately after the sale or the written contract stipulates other terms, such as sight drafts;
 - (3) pay any public monies, including but not limited to state sales tax, received into the State Treasury at the times and as per the regulations prescribed by law; and
 - (4) pay all amounts due the seller within 15 banking days of the auction unless otherwise required by statute or a written contract between license holder and seller.
- (l) Each licensed auctioneer shall keep records relative to all auctions for at least two years from the date of the sale.
- (m) The records for each auction must state the name(s) and address of the owners of the property auctioned, the date of the sale, the name of the auctioneer and clerk for the sale, the gross proceeds, the location and account number of the auctioneer's trust or escrow account, an itemized list of all expenses charged to the consignor or seller, a list of all purchasers at the auction and a description and selling price for each item sold.
- (n) In addition, the auctioneer shall keep, as part of the records for each auction, all documents relating to the auction. These documents shall include, but are not limited to, settlement sheets, written contracts, copies of advertising and clerk sheets.

67.80. Fees.

(Effective April 18, 1990, 15 TexReg 1959; amended effective September 30, 1994, 19 TexReg 7272; amended effective December 1, 2004, 29 TexReg 11028; amended effective December 1, 2006, 31 TexReg 9601; amended effective November 1, 2008, 33 TexReg 8787; amended effective April 30, 2012, 37 TexReg 3075; amended effective January 1, 2014, 38 TexReg 9510)

- (a) The application fee for an auctioneer license is \$50.

- (b) The annual application fee to renew an auctioneer license is \$50.
- (c) Late renewal fees for licenses issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).
- (d) Inactive License Status--Auctioneer
 - (1) The fee to place a license on 'inactive' status--no charge.
 - (2) The fee to renew a license on 'inactive' status--renewal fee as stated in subsection (c) or (d).
 - (3) The fee to change from 'inactive' status to 'active status' is \$25.
- (e) Revised/Duplicate License/Certificate/Permit/Registration--\$25
- (f) A \$250 curriculum review fee will be assessed to all schools submitting their curriculum for review and approval by the department.
- (g) The initial recovery fund fee is \$50.
- (h) All fees are non-refundable.