

Auction Law - Code of Alabama, 1975  
CODE OF ALABAMA, 1975  
AUCTIONEER LICENSE ACT  
CHAPTER 4.

AUCTIONEERS.

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ARTICLE 1.  
GENERAL PROVISIONS.

**§34-4-1. Title**

This chapter shall be known and may be cited as the Auctioneers License Act.

Annotations

Related statutes. - Acts 1981, No. 81-378, p. 555, §3: Continuation of Board of Auctioneers pursuant to Sunset Act.

Acts 1984, No. 84-105: Continuation of state board of auctioneers, pursuant to Sunset Act.

Acts 1988, No. 88-138, § 2: Continuation of board of auctioneers, pursuant to Sunset Act.

Acts 1992, No. 92-119, § 2: "The existence and functioning of the Board of Auctioneers, created and functioning pursuant to Sections 34-4-1 to 34-4-54, inclusive, Code of Alabama 1975, is continued, and those code sections are expressly preserved."

Acts 1996, No. 96-277, § 2: "The existence and functioning of the State Board of Auctioneers, created and functioning pursuant to Sections 34-4-1 to 34-4-54, inclusive, Code of Alabama 1975, is continued, and those code sections are expressly preserved."

Cross references. - Memorandum of auctioneer, sufficiency as note of contract, § 8-9-3.

Public auctions, generally, § 8-14-1 et seq.

Public sales, consideration for bidding or not bidding, § 8-1-100.

Collateral references. - Am. Jur. 2d, Auctions and Auctioneers, § 1 et seq.

C.J.S. - C.J.S., Auctions and Auctioneers, § 1 et seq.

**§34-4-2. Definitions; generally**

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed by this section:

(1) Auctioneer. Any person who has graduated from an accredited auction school and has one year's experience as an apprentice auctioneer or has two years' experience as an apprentice auctioneer in bid calling, for a fee, commission or any other valuable consideration, or with the intention or expectation of receiving the same, by the means of or process of an auction or sale at auction, offers, negotiates or attempts to negotiate a listing contract, sale, purchase or exchange of goods, chattels, merchandise, real or personal property or of any other commodity which may lawfully be kept or offered for sale by or at public auction.

(2) Board. The State Board of Auctioneers.

(3) Apprentice auctioneer. Any person who for compensation or valuable consideration or otherwise is employed, directly or indirectly, by an auctioneer to deal or engage in any activity listed in subdivision (1) of this section.

(4) Goods. Any chattels, goods, merchandise, real or personal property or commodities

of any form or type which may lawfully be kept or offered for sale.

(5) Persons. Individuals, associations, partnerships and corporations, and the word "persons" shall also include the officers, directors and employees of a corporation.

(6) Auction business or Business of auctioneering. The performing of any of the acts of an auctioneer or apprentice auctioneer as defined in this section.

Annotations

Cross references. -This law is referred to in: §§ 34-4-3.

### **§34-4-3. Exemptions from chapter.**

The provisions of this chapter and the terms "auctioneer," "apprentice auctioneer," "auction business or business of auctioneering," as defined in Section 34-4-2, shall not apply to and shall not include any person acting as a receiver, trustee in bankruptcy, guardian, administrator or executor or any such person acting under order of any court, nor shall they include a trustee acting under a trust agreement, deed of trust or will, nor shall they include sales at auction conducted by or under the direction of any public authority or pursuant to any judicial order or decree.

### **§34-4-4. Enforcement of chapter.**

The Board of Auctioneers is hereby authorized and empowered to adopt, fix and establish all rules and regulations necessary for the proper administration and enforcement of this chapter.

Annotations

Ala. Admin. Code. - This agency's rules are codified in Chapter 150 of the Alabama Administrative Code.

### **§34-4-5. Actions for collection of compensation.**

No person engaged in the business of or acting in the capacity of an auctioneer or an apprentice auctioneer shall bring or maintain any action in the courts of this state for the collection of compensation for any services performed as an auctioneer or apprentice auctioneer without first alleging and proving that he was a duly licensed auctioneer or apprentice auctioneer at the time the alleged cause of action arose. No apprentice auctioneer shall have the right to institute an action in his own name for the recovery of a commission, fee or compensation for services as an apprentice auctioneer, but any such action shall be instituted and brought by the licensed auctioneer employing the apprentice auctioneer. Nothing contained herein shall be construed so as to prevent a licensed apprentice auctioneer from suing his employing auctioneer for any compensation, fees or commissions due him from such auctioneer.

### **§34-4-6. Limitations on authority of political subdivisions.**

No political subdivision of this state shall have the power or authority after September 5, 1973, to levy or collect any license tax from or to require the licensing in any manner of any auctioneer who has been licensed and bonded under this chapter in lieu of the license tax or license fee heretofore imposed by any political subdivision.

History

History: Acts 1998, No. 98-271.

Annotations

Effective date. - Acts 1998, No. 98-271, effective July 1, 1998, without governor's signature.

1998 amendments. Deleted "the provisions of " following "this chapter"; and made a nonsubstantive change.

#### CASE NOTES

Cited in *Womack v. Hyche* 503 So. 2d 832 (Ala. 1987).

#### **§34-4-7. Penalties.**

(a) Any person violating this chapter, shall, upon conviction, be guilty of a Class A misdemeanor, subject to a fine or imprisonment, or both.

(b) Any person, having previously been convicted for violating this chapter, who subsequently violates this chapter, shall, upon conviction for the subsequent violation, be guilty of a Class C felony, subject to a fine or imprisonment, or both.

History

History: Acts 1998, No. 98-271.

Annotations

Effective date. - Acts 1998, No. 98-271, effective July 1, 1998, without governor's signature.

1998 amendments. Rewrote (a) and added (b) and made nonsubstantive changes.

Cross references. - Public auctions, penalties, § 8-14-24.

#### ARTICLE 2. LICENSES.

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#### **§34-4-20. Required.**

It shall be unlawful for any person, partnership, association or corporation in any county of this state to act as an auctioneer or apprentice auctioneer, or directly or indirectly to engage or assume to engage in the auction business and act as either without first obtaining a license issued by the State Board of Auctioneers, under the provisions of this chapter.

It shall be unlawful for any person not licensed under the provisions of this chapter to advertise that he is in the auction business or to do anything to leave any impression upon the public that he is an auctioneer or is so engaged.

#### **§34-4-21. Applications; fees; qualifications of applicants; expiration; renewal; continuing education program; certificates; discharge of apprentice; changes of address.**

(a) Any person desiring to enter into the auction business and obtain a license as an auctioneer or apprentice auctioneer shall make written application for a license to the board. Each application shall be accompanied by an examination fee of an amount not to exceed one hundred dollars (\$100) which shall be collected from each applicant to defray the expenses of the examination. A fee of an amount not to exceed one hundred fifty dollars (\$150) shall also be collected from each nonresident applicant who seeks licensing by reciprocity. The application shall be submitted on forms prepared and furnished by the board.

(b) Each applicant for a license as an auctioneer shall be 19 years of age or over, and each applicant for a license as an apprentice auctioneer shall be 18 years of age or over and shall be a citizen of the United States. Each applicant for an auctioneer's license shall: (1) have completed a prescribed course of study at an accredited auctioneering school approved by the board; (2) have served one year as an apprentice auctioneer under a licensed auctioneer in this state; (3) have been the principal auctioneer in at least five auctions of either real or personal property during this period of time; and (4) furnish satisfactory proof of these requirements to the board. An application shall also be accompanied by a recommendation of an employing auctioneer. If an applicant has not completed a course of study at an accredited auctioneering school, then he or she shall be required to serve two years as an apprentice under a licensed auctioneer, and shall have been the principal auctioneer in at least 10 auctions of real or personal property.

(c) Any person who files an application with the board in the proper manner shall be entitled to take an oral and written examination to determine his or her qualifications. The board shall require applicants to take and pass a written and oral examination establishing in a manner satisfactory to the board that the applicant has a general knowledge of ethics, reading, writing, spelling, elementary arithmetic, elementary principles of land economics, and a general knowledge of the statutes of this state relating to the bulk sales, auctions, brokerage, and this chapter. The examination for an auctioneer's license shall be of a more exacting nature and scope than the examination for an apprentice auctioneer. The board shall, through application and examination, determine whether the applicant is of good repute, trustworthy, honest, and competent to transact the business of an auctioneer, or of an apprentice auctioneer, in a manner that safeguards the interest of the public. The board shall require, and it shall be the responsibility of any applicant for an initial, renewal, or reciprocal license to disclose any prior felony conviction, any prior misdemeanor conviction involving moral turpitude, any pending criminal arrest of any nature except misdemeanor traffic violations, and any prior or pending disciplinary proceedings against the applicant before a board of auctioneers or real estate commission in this or any other state. All auctioneers, apprentice auctioneers, and auction firms are under a continuing duty to report to the board any and all such criminal arrests, charges, convictions, or disciplinary proceedings which they may incur, as well as any civil suits involving them. The board must receive notice of any such arrest, charge, criminal conviction, or commencement of disciplinary proceedings within 30 days of its occurrence. Notice of the commencement of any civil suit must be received by the board within 30 days after service of the complaint upon the defendant in the action.

(d) The license fee for each auctioneer shall be an amount to be determined by the board, not to exceed two hundred fifty dollars (\$250), and the license fee for each apprentice auctioneer shall be an amount to be determined by the board, not to exceed one hundred dollars (\$100). The license fees for an auctioneer shall not be increased more than twenty-five dollars (\$25) in any given year.

(e) All licenses shall expire on September 30 of each year following issuance thereof and may be renewed upon payment of the appropriate license fee as required by this chapter. Renewal of a license may be effected at any time during the months indicated preceding the date of expiration. No examination shall be required for the renewal of

any license, unless the license has been revoked or suspended. If a licensee fails to renew his or her license by the deadline of each year, he or she may have his or her license renewed within 60 days after the expiration date, upon payment of the required fee and a late fee of twenty-five dollars (\$25) for apprentices and fifty dollars (\$50) for auctioneers. If a licensee elects not to pay the penalty and renew his or her license, he or she shall submit an application, pay the examination fee, and take the examination required for new licensees.

(f) The board shall adopt a program of continuing education for its licensees. No licensee shall have his or her license renewed unless, in addition to any other requirements of this chapter, the minimum annual continuing education requirements are met. The continuing education program shall not include testing or examination of the licensees in any manner. Any licensee 65 years of age or older shall be exempt from the continuing education requirement.

(g) The board shall prepare and deliver to each licensee a license certificate and pocket card. The certificate shall be displayed openly at all times in the office of the licensee. The certificate and the pocket card of the apprentice auctioneer shall contain his or her name as well as that of the auctioneer under whose supervision he or she is employed.

(h) When any auctioneer discharges an apprentice, or terminates his or her employment with the auctioneer for any reason, the auctioneer shall deliver or mail by registered or certified mail to the board the license of the discharged apprentice auctioneer. It shall be unlawful for any apprentice auctioneer to perform any of the acts contemplated by this chapter, either directly or indirectly under 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 shall be issued to any apprentice auctioneer for the same period of time.

(i) Written notice shall be given immediately to the board by each licensee of any change in his or her mailing address and the board shall issue a new license for the unexpired period. A change of mailing address without notification to the board shall automatically cancel the license previously issued. For changing a mailing address and issuance of a new license, the board shall collect a fee of five dollars (\$5). Each prior license shall be returned or accounted for to the board and be canceled before the issuance of the new license. The board may require other proof considered desirable with due regard to the paramount interest of the public in the issuance of the license.

(j) Pursuant to Sections 41-22-1 to 41-22-27, inclusive (the Alabama Administrative Procedure Act), the board may make and enforce any necessary and reasonable rules and regulations pursuant to the application for any license.

#### History

History: Acts 1981, No. 81-378; Acts 1988, No. 88-138; Acts 1992, No. 92-119; Acts 1998, No. 98-271.

#### Annotations

Effective date. - Acts 1998, No. 98-271, effective July 1, 1998, without governor's signature.

1998 amendments. In (a), in the second sentence, substituted "an amount not to exceed one hundred dollars (\$100)" for "\$70.00," in the next to last sentence, substituted "A fee of an amount not to exceed one hundred fifty dollars (\$150) shall also be" for "Also a fee of \$90.00 shall be"; deleted former (d); in present (d), in the first

sentence substituted "two hundred fifty dollars (\$250)" for "\$100.00," substituted "an amount to be determined by the board, not to exceed one hundred dollars (\$100)" for "\$45.00," in the last sentence substituted "twenty-five dollars (\$25)" for "\$10.00"; in present (f), in the first sentence, substituted "adopt a program" for "adopt an annual program," in the second sentence, substituted "No licensee" for "After that date, no licensee," and added the last sentence; in present (g), in the last sentence deleted "and address" preceding "as well"; and made nonsubstantive changes.

#### **§34-4-22. Register of applicants.**

The secretary of the board shall keep a register of all applicants for license, showing for each the date of application, name, place of business, place of residence and whether the license was granted or refused.

#### **§34-4-23. License as evidence of rights and privileges.**

The issuance of a license by the board shall be evidence that the person, partnership, association or corporation named therein is entitled to all the rights and privileges of an auctioneer or apprentice auctioneer while said license remains unrevoked or unexpired.

#### **§34-4-24. Bond required.**

Each application for an auctioneer's or apprentice auctioneer's license shall be accompanied by a bond in the amount of \$10,000.00. The bond shall be a cash bond or a surety bond and, if the latter, shall be executed by a surety company authorized to do business in this state. The bond shall be made payable to the board and conditioned upon the applicant conducting his business in accordance with the provisions and intent of this chapter. The bond shall be in a form approved by the board. No license may be issued until such a bond has been filed with the board.

History

History: Acts 1981, No. 81-378.

#### **§34-4-25. Licensing of nonresidents.**

A nonresident of this state may become an auctioneer or apprentice auctioneer in this state by conforming to the provisions of this chapter, or in the case of a nonresident from a nonlicensing state, such person may be licensed provided an examination is given and passed and the person has at least five years experience in the auction business. Provided further, that if a nonresident auctioneer or apprentice auctioneer has a lawsuit or other legal action filed and pending against him in this or any other state, the board shall not issue a license to him until final disposition of this action, and then only at the discretion of the board. The terms "auctioneer" and "apprentice auctioneer" shall include any individual, firm, company, partnership, association or corporation by whom such "auctioneer" or "apprentice auctioneer" shall be employed. The board may recognize a license issued by any other state to a nonresident auctioneer or apprentice auctioneer if the other state reciprocates with Alabama in like manner and if the licensing requirements of such state include the passing of an examination of equal or higher standards than those required by this state. Such nonresident licensee shall, however, be required to secure a license from the board which shall be issued upon application therefor, accompanied by payment of the license fee required by this

chapter and the filing of a certified copy of the applicant's license issued by such other state. Every nonresident applicant shall file an irrevocable consent that actions may be commenced against such applicant in the proper court in the county in this state in which a cause of action may arise, in which the plaintiff may reside, by service of any process or pleadings authorized by laws of this state on the board, or a deputy to be designated by it, said consent stipulating and agreeing that said service of such process or pleading shall be begun and held in all courts to be as valid and binding as if due service had been made upon said applicant in this state. The consent shall be duly acknowledged and, if made by a corporation, shall be authenticated by the seal of such corporation. In case of any process or pleadings mentioned in this chapter being served upon the board or upon a deputy to be designated by it, duplicated copies shall be made, one of which shall be filed in the office of the secretary of the board, and the other immediately forwarded by registered or certified mail to the main office of the applicant against which said process or pleadings are directed. No default in said proceedings or action shall be taken unless it shall be made to appear by affidavit of a member of the board, or a deputy designated by it, that a copy of the process or pleadings was mailed to the defendant as herein required. Judgment by default shall be taken in any such action or proceedings within 20 days after the date of the mailing of such process or pleadings to the nonresident defendant.  
History: Acts 1981, No. 81-378.

**§34-4-26. Mailing address.**

Each licensee must have a definite mailing address such as street name and number or RFD number. A post office box only will not be sufficient.

**§34-4-27. Privilege licenses.**

Each auctioneer shall annually pay one state license in an amount not to exceed two hundred fifty dollars (\$250). Each auctioneer shall also annually pay a county license of twenty-five dollars (\$25) in each county where he or she sells by auction. No privilege license shall be required for any apprentice auctioneer when he or she is listed as the principal auctioneer. No license shall be required for any auctioneer who conducts an auction, without compensation for himself or herself, where all proceeds from the auction go to the benefit of any charitable organization. The term "auctioneer" shall include any person selling real estate, goods, wares, merchandise, automobiles, livestock, or other things of value at public outcry. Sales at public outcry may be made for compensation without license involving any of the following:

- (1) Sales for the estate of a decedent.
- (2) Sales of property conveyed by deed of trust, mortgage, judgment, or ordered to be sold according to the mortgage, judgment, or order.
- (3) All sales under legal process.

History

History: Acts 1998, No. 98-271.

Annotations

Effective date. - Acts 1998, No. 98-271, effective July 1, 1998, without governor's signature.

1998 amendments. Divided the former first sentence into the first and second sentences

by inserting "Each auctioneer shall also annually pay," in the present first sentence inserted "annually," substituted "in an amount not to exceed two hundred fifty dollars (\$250)" for "of \$50,00 and in addition," in the present second sentence added "when he or she is listed as the principal auctioneer," in the third sentence deleted "and" following "where all," substituted "charitable" for "group or," in the next to last sentence substituted "include" for "be deemed to apply to," deleted "or" preceding "merchandise, automobiles" deleted "as herein provided" following "public outcry," in the last sentence, substituted "Sales at" for "In the following cases, sales at," and added "involving any of the following"; in (3) deleted "and" preceding "All sales"; and made nonsubstantive changes.

**§34-4-28. Authority under license not transferable; effect of license issued to corporation, associations or partnership.**

Authority to transact business as an auctioneer under any license issued by the board shall be restricted to the person named in such license and shall not inure to the benefit of any other person.

Where an auctioneer's license shall be issued to a corporation or association, authority to transact business thereunder shall be limited to one officer of such corporation or association to be designated in the application and named in the license. Each other officer of such association or corporation desiring to act as an auctioneer in connection with the business of the said association or corporation, or otherwise, shall be required to make application for and take out a separate license in his own name individually.

Where the licensee is a copartnership, the license issued to such copartnership shall confer authority to act as auctioneer upon one member of such copartnership only, who shall be designated in the application and named in the license. All the other members of the copartnership desiring to act as auctioneers in connection with the business of the partnership or otherwise shall be required to apply for and take out individual licenses in their own names.

**§34-4-29. Revocation or suspension – Procedure generally; grounds; notice and hearing required before denial, suspension or revocation; administrative fines.**

(a) The board may revoke or suspend licenses as provided in this section.

(b) The board may, upon its own motion, and shall, upon the verified complaint in writing of any person containing evidence, documentary or otherwise, that makes out a prima facie case, investigate the actions of any auctioneer, apprentice auctioneer, or any person who assumes to act in either capacity, and hold a hearing on the complaint.

(c) The board may suspend or revoke any license which has been issued based on false or fraudulent representations. The board may also suspend or revoke the license of any licensee for any of the following acts:

(1) Making any substantial misrepresentation.

(2) Pursuing a continued and flagrant course of misrepresentation or making false promises through agents, advertising, or otherwise.

(3) Accepting valuable consideration as an apprentice auctioneer for the performance of any of the acts specified in this chapter from any person other than his or her employer auctioneer.

(4) Failing to account for or remit, within a reasonable time, any money belonging to

others that comes into his or her possession, commingling funds of others with his or her own, or failing to keep funds of others in an escrow or trustee account.

(5) Paying valuable consideration to any person for services performed in violation of this chapter.

(6) Being convicted in a court of competent jurisdiction of this or any other state of a criminal offense involving moral turpitude or a felony.

(7) Violation of any rule or regulation promulgated by the board.

(8) Failure to furnish voluntarily at the time of execution copies of all written instruments prepared by the auctioneer or apprentice auctioneer.

(9) Any conduct of any auctioneer which demonstrates bad faith, dishonesty, incompetency, or untruthfulness.

(10) Any conduct of any auctioneer which demonstrates improper, fraudulent, or dishonest dealings.

(11) Failing prior to the sale at public auction to enter into a written contract with the owner or cosignee of any property to be sold containing the terms and conditions upon which the licensee received the property for sale.

(12) Failure by the auctioneer conducting an auction to show his or her name and state license number in the advertising of the auction.

(13) Presenting a worthless check to the board.

(d) Before denying an application for license or suspending or revoking any license, the board shall hold a hearing and shall, at least 21 days prior to the date set for the hearing, notify in writing the accused licensee of the charges made or the question to be determined, including notice of the time and place of the hearing, and afford the licensee an opportunity to be present, be heard in person or by counsel, and to offer evidence orally, or by affidavit or deposition. Written notice may be served by delivery of the notice personally to the applicant or licensee or by mailing the notice by registered or certified mail to the last known mailing address of the applicant or licensee. If the applicant or licensee is an apprentice auctioneer, the board shall also notify the auctioneer employing him or her, or whose employ he or she is about to enter, by mailing notice by registered or certified mail to the auctioneer's last known address. The hearing shall be held at a time and place prescribed by the board.

(e) In addition to the disciplinary powers granted in this section, the board may levy and collect administrative fines for serious violations of this chapter or the rules and regulations of the board of not less than \$200.00 or more than \$500.00 for each violation.

History

History: Acts 1992, No. 92-119.

Annotations

CASE NOTES

Cited in *Southern States Ford, Inc. v. Proctor* 541 So. 2d 1081 (Ala. 1989).

#### **§34-4-30. Revocation or suspension – Procedure for hearings; immunity of board.**

(a) The board may administer oaths and prescribe all necessary and reasonable rules for the conduct of a hearing. The board may take testimony of any person by deposition, with the same fees and mileage and in the same manner as prescribed by law in judicial procedure of courts of this state in civil cases. The fees and mileage shall be paid by the

party at whose request the witness is subpoenaed.

(b) If the board determines that the licensee is guilty under this chapter, his or her license may be suspended or revoked.

(c) The affirmative vote of a majority of the board shall be necessary to revoke or suspend a license.

(d) The board is declared to be a quasi judicial body, and the members or the employees of the board are granted immunity from civil liability and shall not be liable for damages therefrom when acting in the performance of their duties as described in this chapter.

History

History: Acts 1981, No. 81-378; Acts 1998, No. 98-271.

Annotations

Effective date. - Acts 1998, No. 98-271, effective July 1, 1998, without governor's signature.

1998 amendments. In (a), in the first and second sentences substituted "may" for "shall have power to," in the first sentence deleted "to" preceding "prescribe all," deleted "such" preceding "a hearing," in the second sentence deleted "such" preceding "person by"; in (b), substituted "determines" for "shall determine," deleted "the provisions of" following "guilty under," and deleted which read: "but in the event of an adverse decision, the accused shall have the right within 30 days to appeal therefrom to the circuit court of the county in which said violation may occur, where he shall be entitled to a trial de novo" preceding "or revoked"; in (d), substituted "board is" for "state board of auctioneers is," substituted "the employees of the board" for "its employees thereof," inserted "and shall not be liable for damages therefrom," deleted "good faith and in" preceding "the performance"; and made nonsubstantive changes.

#### **§34-4-31. Revocation or suspension – Resulting from judgment in damage action.**

Whenever any person, partnership, association or corporation claiming to have been injured or damaged by the gross negligence, incompetency, fraud, dishonesty or misconduct on the part of any licensee following the calling or engaging in the business herein described shall file an action upon such claim against such licensee in any court of record in this state and shall recover judgment thereon, such court may as part of its judgment in such case, if it deems it a proper case in which to do so, revoke the defendant's license, which shall not be reissued to such licensee except upon unanimous vote of all members of the board in favor of such reissuance and only then after the lapse of a period of 90 days from the date of such revocation.

#### **§34-4-32. Effect on license of apprentice auctioneer.**

The revocation of an auctioneer's license shall automatically suspend every apprentice auctioneer's license granted to any person by virtue of his employment by the auctioneer whose license has been revoked. The apprentice auctioneer may retain his license by transferring to the employment of another licensed auctioneer within 21 days.

**§34-4-33. Revocation or suspension – Notice of appeal; decision stayed; record and complaint filed; procedures; costs.**

(a) Findings of the board with regard to the suspension or revocation of a license or the imposition of an administrative fine shall be final unless within 30 days after the date of the final order of the board, the applicant, or otherwise known as the accused, whether an individual or a corporation registered in Alabama, files a notice of appeal in the Circuit Court of Montgomery County. A party appealing a decision shall post a two hundred dollar (\$200) appeal bond with the clerk of the circuit court. The circuit clerk shall notify the board of the appeal after the clerk has approved the appellant's bond.

(b) An appeal does not act as supersedeas, but the decision of the board may be stayed by the court pending the appeal.

(c) The board shall within 30 days of service of the notice of appeal, or within the additional time as the court may allow, file the record in the case with the circuit clerk. A complaint setting forth with particularity the issues raised on appeal shall be filed with the court and served on the board by the appealing party within 30 days after the notice of appeal is filed. The action shall be conducted in accordance with the Alabama Rules of Civil Procedure.

(d) The appeal shall be conducted by the court without a jury and shall be confined to the record made before the board. The decision of the board shall be taken as prima facie just and reasonable and the court shall not substitute its judgment for that of the board as to the weight of the evidence on questions of fact. The court shall affirm or reverse, in part or in whole, or modify the decision of the board. The court may remand the case to the board for further proceedings.

(e) If the decision of the board is affirmed in whole or in part, the cost of the appeal shall be taxed against the party taking the appeal. If the decision of the board is not affirmed, the court shall tax the costs of appeal against the board.

History

History: Acts 1998, No. 98-271.

Annotations

Effective date. - Acts 1998, No. 98-271, effective July 1, 1998, without governor's signature.

ARTICLE 3. BOARD OF AUCTIONEERS.

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BOARD OF AUCTIONEERS.

**§34-4-50. Appointment; composition; terms of office; officers; rules and regulations; expenses; administrator; seal; copies of records and paper as evidence; public inspection.**

(a) The Governor shall appoint a State Board of Auctioneers to be comprised of seven members. Except as otherwise provided by Act 98-271, all appointments and subsequent appointments by the Governor shall be for a term of five years, with each member appointed being a resident of a different congressional district. Within 60 days after July 1, 1998, the Governor shall appoint one additional member provided for herein for a term of two years and the other additional member provided for in Act 98-271 shall be appointed by the Governor for four years. Thereafter, subsequent appointments shall be for a term of five years. Appointments shall end on the

anniversary date of the original appointments, except appointments to fill a vacancy which shall be for the unexpired term only. No member shall serve more than two consecutive terms of office. Each member of the board and his or her successor shall have been a resident and citizen of this state for at least five years prior to his or her appointment. Each member of the board and his or her successor shall have been a licensed auctioneer in this state for at least five years. Each member shall hold office until his or her successor is appointed by the Governor. The board shall reflect the racial and gender composition of licensed auctioneers in the state.

(b) Each member of the board shall be of good moral character and shall have been licensed by the board and actively engaged in the auction business for at least 5 years prior to the appointment.

(c) On the appointment of a new board member, the board shall, at its next meeting, elect one of its members as chair, one member as vice-chair, one member as secretary, and any other officers deemed necessary. The board may do all things necessary and convenient for carrying into effect this chapter. The board may make bylaws, rules, and regulations not inconsistent with this chapter or other general laws of the state.

(d) The members of the board, its staff, and attorneys shall receive the same per diem and travel allowance paid to state employees for each day they meet to conduct the official business of the board.

(e) The board may employ an administrator who shall be exempt from the classified service of the state, and other staff members necessary to discharge its duties and administer this chapter. The administrator shall be employed on the basis of his or her education, experience, and skills in administration and management. The board shall determine the duties and fix the compensation of the administrator and other staff members, subject to the general laws of the state.

(f) The board shall adopt a seal by which it shall authenticate records and documents. On the seal shall be the words "State Board of Auctioneers." Copies of all records and documents in the office of the board that are duly certified and authenticated by the seal of the board shall be received in evidence in all courts equally and with the same effect as the original. All public records kept in the office of the board shall be open to public inspection during reasonable hours.

#### History

History: Acts 1981, No. 81-378; Acts 1988, No. 88-138; Acts 1992, No. 92-119; Acts 1998, No. 98-271.

#### Annotations

Effective date. - Acts 1998, No. 98-271, effective July 1, 1998, without governor's signature.

1998 amendments. Rewrote (a); in (c) in the first sentence added "On the appointment of a new board member," substituted "at its next meeting" for "meet within 30 days of the last appointment and," deleted "to serve two years" following "as secretary," substituted "deemed necessary" for "considered necessary," and deleted the last three sentences which read: "The board shall adopt a seal for its use, which shall bear the words "State Board of Auctioneers." The secretary of the board shall have care and custody of the seal. Copies of all records and papers in the office of the secretary shall be received in evidence in all courts and with the same effect as the originals"; and added (d) through (f); and made nonsubstantive changes.

Cross references. -This law is referred to in: §§ 41-20-3.

Boards and commissions, generally, § 41-9-20 et seq.

Ala. Admin. Code. - This agency's rules are codified in Chapter 150 of the Alabama Administrative Code.

**§34-4-51. Certificates of appointment to board; legal assistance; prosecution of complaints.**

Each member of the board shall receive a certificate of appointment from the Governor before entering upon the discharge of the duties of his office. The board, or any committee thereof, shall be entitled to the services of the state Attorney General, in connection with the affairs of the board, or may, on approval of the Attorney General, employ an attorney to assist or represent it in the enforcement of this chapter before any court of competent jurisdiction, and it may take the necessary legal steps through the proper legal officers of the state to enforce the provisions of this chapter and collect the penalties provided herein. Complaints shall be prosecuted in the name of the State Board of Auctioneers.

**§34-4-52. Meetings; quorum.**

The board shall meet at least four times each year, in January, April, July and October, for the purpose of transacting such business as may properly come before it. Special meetings of the board shall be held at such times as the board may provide in the bylaws it may adopt. Three members shall constitute a quorum at a board meeting. Due notice of each meeting and the time and place thereof shall be given each member in such manner as the bylaws may provide.

**§34-4-53. Compensation of members.**

Members of the board shall each receive the same per diem and travel allowance as is paid to state employees for each day spent on work made necessary by the provisions of this chapter.

History

History: Acts 1988, No. 88-138.

**§34-4-54. Record of proceedings; funds; audit.**

The secretary of the board shall keep a record of the proceedings of said board. Within 60 days after September 5, 1973, it shall be the duty of the board to select a depository in the same manner and form as now provided by law and deposit all funds received by said board, and all funds thereafter collected shall be so deposited and maintained, and disbursements shall be so made on checks signed by the secretary and countersigned by the chairman. Within 60 days following April 4, 1988, and thereafter, the board shall deposit all said funds of the board into the General Fund of the State Treasury into an account hereby established to be known as the "Board of Auctioneers Account."

History

History: Acts 1988, No. 88-138.