

ASBA *Newsline*

Volume III, Issue I

Spring 2005

ALABAMA STATE BOARD OF AUCTIONEERS

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Hope Paulene

ASBA Newsline is an official publication of the Alabama State Board of Auctioneers. This publication is intended for a wide audience to alert licensees to matters of possible procedural, legal, legislative, and regulatory interest. It should not be relied upon, nor is it intended to provide legal, insurance or accounting advice. Licensees should consult their own lawyers, insurance agents, and accountants before taking any action in response to this newsletter, as the opinions expressed herein may be completely altered by the licensees' actual facts.

Introducing New Executive Director Keith E. Warren



Keith Warren is the President of Warren & Co., Inc. – Management Solutions. Warren & Co., Inc. manages and administers several state agencies to ensure their operations are conducted professionally and appropriately.

Mr. Warren began his career as an intern with Mike Weeks and Associates in 1991. He later joined the firm on a full-time basis. He also began his licensing board experience in 1991 when he was named Executive Assistant to the Board of Electrical Contractors. Shortly thereafter he was named Administrator of the Board and assumed supervision of the Board's operations.

Mr. Warren serves as the Executive Director for the following: Alabama Board of Electrical Contractors; Alabama Board of Licensure for Professional Geologists; Alabama Massage Therapy Board; Alabama Board of Podiatry and the Alabama Drycleaning Environmental Response Trust Fund Board. He is responsible for the day-to-day operation of the Boards. Warren & Co., Inc. has also represented the Alabama Board of Interpreters & Transliterators; Alabama Board of Examiners in Marriage & Family Therapy Board and the Alabama Board of Home Medical Equipment Services Providers. Mr. Warren also served as the Executive Director of the Alabama Board of Cosmetology appointed by Governor Don Siegelman in 1999.

Mr. Warren is active in numerous civic and professional organizations. He earned lifetime membership in the Nationwide Register's *Who's Who in Executives and Business* in February 1999. Mr. Warren is also the Vice-President of the Alabama Association of Regulatory Boards

WE'RE ON THE WEB!
www.auctioneer.state.al.us

The Disciplinary Process

The Alabama Legislature has entrusted the Alabama State Board of Auctioneers with the responsibility of “determin[ing] whether [an] 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”, as described in Section 34-4-21(c), Code of Alabama (1975). Accordingly, the Legislature empowered the Board to suspend or revoke licenses issued by the Board, deny initial or renewal licenses to applicants, and/or impose fines or penalties on licensees who violate any provision of the Auctioneers License Act or on unlicensed individuals performing any of the acts of an auctioneer or apprentice auctioneer or creating the mistaken impression that they are properly licensed or engaged in the profession. An individual who allegedly violates any provision of the Act is entitled to a hearing before the Board pursuant to the procedures outlined under the Alabama Administrative Procedure Act, found at Sections 41-22-1 et seq., Code of Alabama (1975). The Board is also required to hold a hearing as described herein before denying an application for licensure, in accordance with Section 34-4-29(d), Code of Alabama (1975). In general, from start to finish, disciplinary actions proceed in the following manner.

Before the Board can initiate any disciplinary proceeding, a signed, written complaint must be filed with the Board – anonymous complaints are not accepted because every individual has a due process right to face his/her accuser, and a professional license is a property right that must be safeguarded by the Board. Anyone may file a written complaint, including a Board member or another licensee. The Executive Director reviews each complaint and assigns it to the Board’s investigator or his designee, who conducts an investigation as directed by the Executive Director, and on some occasions, as directed by the Board’s counsel. The investigation often includes, but is not limited to, interviews with the complainant, the respondent (that individual against whom the allegations have been directed), and other individuals as necessary. Upon completion of his investigation, the investigator files an investigative report with the Board office, which is reviewed by the Executive Director and Board counsel in order to make a preliminary determination as to whether there is sufficient evidence to support an allegation that a violation has occurred.

If the Executive Director and counsel require the assistance of a Board member having expertise in the practice of massage therapy to aid in the determination as to whether a violation has occurred, the Executive Director will generally appoint a Board member representing the congressional district in which the incident at issue allegedly occurred to this investigative committee.

If for some reason there is a potential conflict of interest concerning that particular Board member, that is, if that member has a personal relationship with the accused or has information or reason as to why he or she should not be involved with the investigation, the Director will appoint another Board member to serve on that committee.

If the evidence does not support an allegation of wrongdoing, or if the complaint is otherwise resolved between the parties to the complaint, the matter will be dismissed, and the Board will take no further action. The Board notifies all complainants in writing if their complaints are closed or resolved and the Board cannot take any further action on the complaint.

In those instances in which the investigative committee believes that there is sufficient evidence to substantiate that a violation of the Board’s laws, rules, and/or regulations has occurred, the Board will enumerate those charges and the essential facts and circumstances surrounding those charges in a letter to the respondent, entitled a Notice of Hearing. The Notice also apprises the respondent of the date and time set for hearing before the Board and is accompanied by an explanation of the respondent’s rights in the disciplinary

Continued from page 2

process and a proposed Consent Order, which offers the respondent a settlement with the Board in lieu of a formal hearing upon mutually acceptable terms and conditions. The respondent may accept the Board's offer of settlement and sign the Consent Order, which resolves the complaint, or he/she may refuse to sign it and proceed to a hearing. Consent Orders can include any provision that is acceptable to both parties, including requiring the respondent to pay a fine, seek remedial training, be placed on probation or suspended, or even voluntarily surrender his/her license. Consent Orders are public record. In the event that the respondent violates any terms or conditions of the Consent Order or any other provisions of the law, the Board may bring a new disciplinary action against the respondent for those purported violations.

Hearings are held in the Board office at regularly scheduled, public meetings. An administrative law judge (ALJ) presides over the hearings and makes evidentiary rulings during the course of the proceedings, and all testimony is taken under oath and on the record by a court reporter. If the respondent fails to appear without first notifying the Board that he/she will be unable to be present and his/her reasons therefore, the hearing may proceed in his/her absence. The complainant is also required to appear at this hearing and provide testimony regarding his/her original, written complaint. The Board's counsel acts as the prosecuting attorney on behalf of the Board, and the Board members sit to consider all of the testimony presented. Every respondent has the right to be represented by an attorney and to examine and cross-examine witnesses. At the conclusion of the hearing, the ALJ will take the matter under advisement and prepare a recommendation as to the proposed findings, any disciplinary action that should be taken, or a finding that the respondent is not guilty of the violations with which he/she has been charged. The Board may then adopt the ALJ's recommendation as its final order, modify it, or reject it in its entirety. An affirmative vote of a majority of the Board's members is required to revoke or suspend a license. Board members who serve on the investigative committee for a particular matter are not allowed to participate in either the deliberations or the final vote concerning that matter, and any other Board members who have conflicts due to a personal interest in or knowledge of the subject matter involved are also precluded from participating in the Board's discussions or its final vote.

The respondent receives a copy of the Board's final order by personal service or certified mail. Should he/she wish to appeal, the respondent may file an appeal with the circuit court of Montgomery County within thirty days of the date of the final order and must post a \$200 appeal bond with the clerk of the circuit court. Except for rare instances, the appeal is confined to a review of the record, and there is not a new trial or proceeding. The Board's final order is also a public document, and the Board may publish the findings contained in its final and consent orders in a legal notice in a newspaper of general circulation, in its newsletter, and/or on the Board's website. Disciplinary actions against licensees are also reported to licensing boards in other states and to national, accrediting agencies and may result in disciplinary action against the licensee in other states if he/she fails to report that any disciplinary action has been taken against him/her in any state. Disciplinary actions may even affect a Board's ability to provide reciprocal licensure to an individual who has been the subject of a disciplinary action or proceeding in another state.

Disciplinary actions are serious matters that may directly affect an individual's ability to practice his chosen profession and earn a livelihood. Should you ever have any questions regarding the legality of any aspect of the practice of auctioneering, please feel free to call the Board office or consult with an attorney of your own choosing. Thank you in advance for your continued observance of the laws, rules, and regulations regarding the practice of your profession in the State of Alabama.

**Dana Billingsley,
Board Counsel**

Disciplinary Action

Case # 02-10

Respondent: Wayne Miller

Date: July 2, 2004

Allegation: Mr. Wayne Miller was found guilty of violating § 34-4-20, Code of Alabama, 1975; §34-4-20, which states: "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."

Board Action: Mr. Wayne Miller was fined \$500.00, which was to be paid in the form of a cashier's check or money order, within sixty (60) days of July 2, 2004 and for a letter of reprimand to be sent to him. Also, the findings were to be recorded with the Judge of Probate in Cleburne County, which has been done. However, the fine has not been paid.

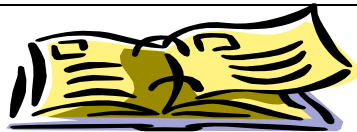
Congratulations to those who passed the exam January 18, 2005!

Auctioneer Exam

Scott Barnes
Phillip Christopher
Jeanie K.Green
Kenneth W. Hall
Ted Harper
Jonathan Ross Long
Milburn Long
Michael Sherwood
Dwight D. Wells

Apprentice Exam

Donald Gamble
Gary Gilbert
Ronald J. Hill
Chris Kilcrease
Sha'nah Martin



2005 Calendar of Events

BOARD MEETINGS

(9:00 a.m.—Tuesdays, Board Conference Room)

(Board Meetings Advertised in
Montgomery Advertiser,
ASBA Newsline,
and ASBA Web Site at www.auctioneer.state.al.us)

April 14, 2005

July 14, 2005

October 13, 2005

EXAMINATION DATES

Examinations are held at the Hilton Garden Inn-Montgomery
East in the Tallapoosa Room

April 19, 2005-Auctioneer Exam
(Deadline April 4, 2005)

July 19, 2005-Auctioneer Exam
(Deadline July 1, 2005)

October 18, 2005-Auctioneer Exam
(Deadline October 1, 2005)

Escrow Account

By Gene Motes, Vice Chair

Under Alabama Law, one who holds funds of others in a business transaction must place funds in an escrow or trustee account.

AUCTION LAW - CODE OF ALABAMA 1975

Auctioneer License Act 34-4-29 # 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.

STATE OF ALABAMA REAL ESTATE COMMISSION

34-27-36 (7.b) Failing to deposit and account for at all times all funds belonging to, or being held for others, in a separate federally insured account or accounts in a financial institution located in Alabama.

When conducting an auction on real estate or personal property, the proceeds must be placed in an escrow or

trustee account until the transaction is complete. This information should be spelled out in your terms, when selling real estate and the purchaser is paying a percentage of the bid price (earnest money), with the balance due on or before 30 days. The earnest money must be placed in your escrow account or the closing attorney's trustee account. Some companies use a title company for escrow. It is always wise to state in your terms who will be holding the earnest money. If you are selling personal property, the proceeds must be placed in an escrow account until settlement is made with the seller. At time of settlement the seller is paid from the escrow proceeds and the auction company's commission is paid at that time. If the auction company leaves his commission in the escrow account (not likely) that is call commingling. Auctioneers who freelance work for the auction company and is paid as sale day help, auctioneers, ringmen, etc. do not need an escrow account.

Escrow account records must be kept on file for three (3) years as required by the Alabama Real Estate Commission and the Alabama State Board of Auctioneers. Only one escrow account is required.



Listen Up! Continuing Education Hours are due with this year's renewal!

By: Hope Paulene, Executive Assistant

It is that time again. Continuing Education Hours will be required this year for the renewal of your license, which will be on Friday, September 30, 2005. Those who choose to renew after that time will have until Wednesday, November 30, 2005 to renew with a late fee. Please be aware that no licenses will be renewed after 11/30/05. The Board voted to change the required hours from eight (8) to six (6). The decision was made after the Board's researched the CE requirements of surrounding states and those that we reciprocate with.

Accepted Continuing Education Hours Criteria can be found in Rules and Regulations of the Alabama Board of Auctioneers, Chapter 150-X-1.15. After reading the accepted hours criteria, if you should need further interpretation, please contact me and I would be glad to assist you. Verifying whether a course or class is acceptable beforehand could save you valuable time

and money. Also, a list of Approved Continuing Education Providers can be found on our web site or you may contact the Board office for contact information. Please be aware that CE Providers may cancel or reschedule a class due to the lack of attendance or interest. Therefore, it is best to acquire your hours as soon as possible. Your CE status can be viewed on the Board's website.

Exemptions from acquiring Continuing Education Hours for license renewal purposes are the following:

- a) If you are of the age of sixty-five (65) as of 9/30/05.
- b) If you passed the Alabama Apprentice or Alabama Auctioneer Examination between 1/1/04 through 9/30/05.

Reciprocal Licensees—Typically, the Board recognizes the hours of the licensees home state; however, it has been brought to the Board's attention that some individuals are exempt from CE hours in his/her home state. The Board made the decision that if an individual is exempt from CE hours in his/her home state, he/she will have to fulfill the Continuing Education Requirements set forth by this Board.

Reciprocal States

Department of Business & Professional Regulation

Attn: Ms. Julie Malone
1940 North Monroe Street
Tallahassee, FL 32399-0750
Phone: 850-487-1395
FAX: 850-922-6959
E-Mail:
Julie.Malone@dbpr.state.fl.us
Web Address: www.myflorida.com

Georgia Auctioneers Commission

Attn: Ms. Linda Turner
237 Coliseum Drive
Macon, GA 31217
Phone: 478-207-1460
FAX: 478-207-1468
E-Mail: jjlyde@sos.state.ga.us
Web Address: www.sos.state.ga.us

Indiana Auctioneer Commission

Attn: Ms. Deborah Widemon
302 W. Washington Street, Rm E034
Indianapolis, IN 46204
Phone: 317-234-3040
FAX: 317-233-5559
E-Mail: pla11@pla.in.gov
Web Address: www.in.gov/pla/bandc/auction

Kentucky Board of Auctioneers

Attn: Ms. Janet McWilliams
9112 Leesgate Rd., Ste. 5
Louisville, KY 40222
Phone: 502-339-9453
FAX: 502-423-1854
E-Mail: auctioneers@ky.gov
Web Address: www.auctioneers.ky.gov

Mississippi Auctioneers Commission

Attn: Ms. Kam Remsen
P.O. Box 5088
Jackson, MS 39296
Phone: 601-364-2384
FAX: 601-364-2387
E-Mail: auction@netdoor.com
Web Address: None

State Board of Auctioneer Examiners

Attn: Ms. Tammy Radel
P.O. Box 2649
Harrisburg, PA 17105-2649
Phone: 7177833397
FAX: 7177055540
E-Mail: st-auctioneer@state.pa.us
Web Address:
www.dos.state.pa.us/auct

Louisiana Auctioneers Licensing Board

Attn: Ms. Sherry Wilkes
8017 Jefferson Hwy. Ste. A-2
Baton Rouge, LA 70809
Phone: 225-922-2329
FAX: 225-925-1892
E-Mail: auctionboard@eatel.net
Web Address: www.lalb.org

North Carolina Auctioneer Licensing Board

Attn: Mr. Robert ("Bob") A. Hamilton
602 Stellata Drive
Fuquay-Varina, NC 27526
Phone: 919-567-2844
FAX: 919-567-2865
E-Mail: bob@ncalb.org
Web Address: www.ncalb.org

Ohio Department of Agriculture Enforcement Division

Attn: Ms. Donna N. Brinker
8995 E. Main Street
Reynoldsburg, OH 43068-3399
Phone: 6147286240
FAX: 6147286328
E-Mail:
auctioneer@mail.agri.state.oh.us
Web Address:
www.ohioagriculture.gov

State of West Virginia Department of Agriculture

Attn: Ms. Janet Fisher
1900 Kanawha Blvd East
Charleston, WV 25305
Phone: 304-558-2201
FAX: 304-558-2203
E-Mail: jfisher@ag.state.wv.us
Web Address:
www.wvagriculture.org

Texas Department of Licensing & Regulation

Attn: Mr. William Kountz
P.O. Box 12157
Austin, TX 78711-2187
Phone: 512-463-6599
FAX: 512-475-2872
E-Mail: william.kountz@state.tx.us
Web Address:
www.license.state.tx.us

Tennessee Auctioneers Commission

Attn: Ms. Lynn McGill
500 James Robertson Pkwy, Ste 635--6th Floor
Nashville, TN 37243-1152
Phone: 615-741-3600
FAX: 615-741-1245
E-Mail: lmcgill@mail.state.tn.us
Web Address: www.state.tn.us/commerce/boards/auction

State of South Carolina Dept of Labor Licensing

Attn: Ms. Lenora Addison-Miles
P. O. Box 11329
Columbia, SC 29211-1329
Phone: 8038964853
FAX: 8038964484
E-Mail: addisonl@mail.llr.state.sc.us
Web Address: www.llr.state.sc.us

Office of Banks & Real Estate-Auction Division

Attn: Ms. Susan Sigourney
500 East Monroe Street
Springfield, IL 62701-1532
Phone: 217-785-9640
FAX: 217-782-2549
E-Mail: ssigourn@bre.state.il.us
Web Address: www.obre.state.il.us

Arkansas Auctioneers Licensing Board

Attn: Ms. King Betty King
101 E. Capitol- Ste 112B
Little Rock, AR 72201
Phone: 501-682-1156
FAX: 502-682-1158
E-Mail: betty.king@mail.state.ar.us
Web Address: www.arkansas.gov

**ALABAMA STATE BOARD OF
AUCTIONEERS**

610 South McDonough Street
Montgomery, Alabama 36104
Phone: 334.269.9990 FAX: 334.263.6115

E-mail us!
ALAUCBD@aol.com

Mailing Address Line 1
Mailing Address Line 2
Mailing Address Line 3
Mailing Address Line 4
Mailing Address Line 5

**EXPIRED LICENSES
RENEWAL YEAR 2004 (9/30/04)**

Name	License Number	Name	License Number
Howard N. Alpaugh	1408	Tommy Mason	1781
Dennis R. Ash	1726	Dusty Matthews	2630
Roger P. Ash	1727	William H. McDaniel	1291
Wayne Ashworth	1707	Edgar McFarlen	535
Joel Bohannon	2652	William T. McLemore	2559
Harvey Lavon Boyd	1298	Rudi Northington	2607
Larry Brandenburg	1648	Adron D. Phifer	1755
Richard Bush, Sr.	2586	Harry C. Puckett	81
Frank B. Carone	1486	Donald C. Puckett	1158
Wayne G. Clark	1015	Bronson M. Redditt, Sr.	1814
Allie J. Daniels	1638	George E. Russell	202
Ronnie Holloway	1488	J. Glenn Singleton	661
James O. Johnson	1136	William T. White	2399
Robert L. Lambert, Jr.	1641	Roy Williamson	2297
Roy Patrick Marlin	1766	Scotty R. Wilson	1355
Mary Lou Martin	1770	James F. Wilson	1690