



NewsLine

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Table of Contents

- Page One
 - Letter from the Chairman
 - Feature Commissioner: David Cole
- Page Two
 - Business Liquidation Auctions
 - How to Retire Your License
- Page Three
 - Closing a Business
 - Calendar of Events
- Page Four
 - Continuing Education, 10/10/11

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Mission Statement

The Mission of the Tennessee Auctioneers Commission is to protect the public and licensees by monitoring the auctioneer profession through licensure and regulation

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LETTER FROM THE CHAIRMAN

By David L. Cole

Greetings!

It gives me great pleasure to serve you as Chairman of the Auctioneer Commission in 2011-2012. My previous two years on the Commission have provided me with some insight into auctioneers and auction firms, as well as some of the frustrations facing our licensees. For example, we are receiving a number of complaints about unlicensed auction houses and unlicensed auctioneers. It seems that, in this down economy, some folks think they can make some quick and easy money by opening an auction house without regard for the laws and rules of the State of Tennessee and the Auctioneer Commission, which include proper licensure.

I can assure you that as soon as a complaint about unlicensed activity is reported, the Commission staff institutes an investigation into the complaint. The Auctioneer Commission has been successful in shutting down some auction houses that were actively operating and stopping others before they even held their first auction. Even if the auction house and/or auctioneer has no license, the Commission usually levies fines on the offending parties. Yes, it is hard to collect these fines, but should the unlicensed party apply for licensure at a later date, they would be required to pay the outstanding fines as part of the license approval process.

Thank you for your support, and good luck with all your auctions!

FEATURED COMMISSIONER DAVID L. COLE

Most licensees know that the Auctioneer Commission is made up of four auctioneers and one consumer member, but it is easy to forget these Commission members are working auctioneers, and are active in their communities. This issue, we are featuring our newest Chairman, David Cole.

David has an impressive resume: more than 33 years in real estate and more than 25 years in the auction business specializing in real estate. He works mostly with attorneys, lenders, bankruptcy, foreclosure and estate trustees. David holds five designations: CAI (Certified Auctioneer Institute), CES (Certified Estate Specialist), AARE (Accredited Auctioneer of Real Estate), CRS (Certified Residential Specialist), and GRI (Graduate Realtors Institute).

Business aside, David has a fantastic sense of humor. He enjoys spending time with his wife, Diana, and sending her flowers. He is also known to spoil his grandson, Eli. In addition to his family, David enjoys a good dog, the music of the Amazing Rhythm Aces, classic and vintage cars and the great outdoors.

David is a past-president of the Tennessee Auctioneers Association, and he is licensed in TN, NC, SC and VA.



David & Eli

WHEN YOUR CLIENT WANTS (or needs) TO LIQUIDATE

As the business world faces more liquidations, it is important to remember that there are a number of reasons why a business might decide to liquidate, and many of them have nothing to do with financial difficulty. For example: The owner may be restructuring, relocating, or retiring.

Frequently, when a company expands, either in its current market or into a different market, company assets may be displaced. In some cases, the company may decide to relocate or expand into a different market area. This may be due to sales volume, costs of operations, or easier access to distribution channels. In some cases, the company may be strapped for operating cash and enter into a voluntary liquidation to avoid a financial default or to fund the shutdown of their business operations.

For the auctioneer who will be working with a liquidation, the first step toward helping your client meet their auction objectives, is to understand the reason(s) for the liquidation or closure. Many businesses have a working business plan, but few have an exit plan. Auctioneers are professional exit strategists.

Auctioneers must also understand what they can and cannot sell. When an auctioneer is liquidating a company's assets, they need to be mindful of both the tangible and intangible assets. Tangible assets are those things that can be touched, seen or felt, such as desks and file cabinets. Intangible assets will include such things as leases, copyrights, trademarks, mailing/customers lists, recipes, licenses, permits, and patents.

It is worth noting, in most business liquidations, there are items that cannot be sold, such as leased equipment (copiers), licensed software applications that are issued to a single licensee (point-of-sale software), beverage and vending machines, and assets that are attached to the real estate (air conditioning units).

Some sellers will want the assistance of the auctioneer in developing the list of assets to be sold, while others will have an asset listing ready when they make their first contact with the auctioneer. In either event, a working knowledge of the Uniform Commercial Code and taking the time to check for UCC filings is an important step in managing a liquidation auction.

When you and your seller consider when to hold the auction, it will be beneficial to have an idea of who your target audience will be for this auction, and knowing what days of the week, or what times might attract the best crowd. For example, a hair salon that is open on the weekend might close on Monday, making it easier for the owner to attend a salon liquidation auction if scheduled on a Monday.

As a general rule, you will want to hold the auction on the premises; however, some circumstances may prevent this. More and more commercial and industrial auctions are being sold in an Internet simulcast or online-only venue, which may be an alternative to an on-site auction. Factors for your seller to consider will be the location of the likely buyers, any physical restrictions making an on-site auction difficult, and

the availability or access to an online platform for hosting the auction event. In addition, you will want to define clear policies on the removal of purchases after the auction.

Marketing can be another sensitive concern for your seller. Do they want people to know why they are having the sale? You will want to know who your target audience is for this auction and how to best reach them with information about the auction. Also, you will need to develop a plan for when the seller will need to shutdown operations to allow for the sale preparation. Defining the advertising budget is critical to the success of the auction. Most commercial sellers have a fairly realistic grasp of advertising and marketing costs, but their budgets might be limited. The liquidation auctioneer will work closely with the seller in the early stages of the auction process to define a solid auction marketing budget.

Finally, keep in mind it is not over until everything is cleaned up. Commercial auctioneers generally make some provisions for post-auction cleanup. They may arrange to have riggers and haulers available to assist buyers in the safe removal of their purchases, or they may provide a list of licensed and qualified removal experts for buyers to contact. Some auctions will require little more than a good sweeping of the floors, while others may require the services of a professional crew who can dispose of chemicals and close off any loose wires.

Developing a pre-auction and post-auction checklist will help you and your seller realize the financial rewards of a liquidation auction.

Reference SBA "Steps to Closing a Business" and "Business Liquidations" by Judd Grafe

How to Retire Your License

A few things you may have forgotten along the way!

From time to time, an auctioneer who thinks he has retired his license is surprised to learn that the license was never properly retired and is lapsed or inactive. The Tennessee Auctioneer Law and Rules and Regulations provide clear instructions on how to properly retire a license. Retiring a license allows the auctioneer to cease all auction activity, the license renewal fees, continuing education requirements and recovery account contributions until such time the licensee wishes to reinstate his license.

To reinstate the license, the retiree may be activated by submitting a written request to the commission, paying the appropriate fee, and providing proof of six (6) hours of continuing education obtained in the two-year period prior to the request to reinstate.

When a license is allowed to lapse instead of being placed in retirement, the licensee will have to start over with education and testing in order to obtain a new license.

What the auction law says:

An auctioneer or apprentice auctioneer may retire the auctioneer's or apprentice auctioneer's license by making such request in writing and paying the appropriate fees set by the commission. The written request must be accompanied by the license certificate and pocket card. The retiree shall be responsible for notifying the commission of any change in address. Only licenses that are current and in good standing with the commission may be retired.

Reference T.C.A. 62-19-112(13)(d) and Rule 06sd160-01-.23 Retirement of License

Closing a Business and the Tennessee Department of Revenue

If you are registered with the Department of Revenue for collection and payment of Tennessee taxes, you must notify the department if business ownership changes in any manner. This change could be:

- selling or closing the business,
- adding or changing partners,
- transferring or changing the ownership of the business, or
- changing corporate structure requiring a new charter or certificate of authority.

Also, you must notify the Department of Revenue if the business location changes. Failure to notify the department of such changes could result in assessment of your business for delinquent taxes, penalty, and interest after your business has actually ceased operations, creating avoidable inconvenience for the taxpayer and unnecessary expenditure of state funds and resources to resolve the assessment.

Franchise and Excise Taxes

Before you can terminate your charter, articles of organization, or certificate of limited partnership, or withdraw its certificate of authority or other similar document, a tax clearance certificate must be issued by the Department of Revenue. In order to receive a tax clearance certificate, you must file all returns to date and a final franchise, excise tax return through the date of liquidation or the date the taxpayer ceased operations in Tennessee. A schedule of liquidation, distribution, or disposition of all assets must accompany the final return. The final franchise tax will be determined by using the balance sheet values immediately preceding liquidation (Department of Revenue Rule 1320-6-1-.11). When these requirements have been met, the Department of Revenue will issue the tax clearance certificate for termination or withdrawal. The certificate will be mailed to your listed mailing address unless otherwise specified. To complete the termination or withdrawal process, you must contact the Tennessee Secretary of State's Office for that office's requirements. The tax clearance certificate is valid for 45 days from the date of issuance. It is the responsibility of the commissioner to collect the franchise and excise taxes due, plus any penalties and interest, from any officer, stockholder, partner, member, principal, or employee of a taxpayer that has ceased business without paying the tax, if the person has received property of the defunct business. The amount of tax that may be collected in this situation may not exceed the value of the property received by the person from whom collection is sought (Tenn. Code Ann. Section 67-4-2117). If you go out of business or otherwise cease to exist during a year, you are not entitled to prorate the excise tax liability due. Franchise tax proration is allowed only on:

1. an initial return or
2. a change of accounting period (See T.C.A. 67-4-2115).

How Do I Close My Account?

Most account closures can be handled by calling the Department of Revenue at (615) 253-0600. All closures will require that the business will have filed a final return and remittance of all taxes for which you are registered.

Disciplinary Auction Report

Respondent: Auction Services International
(c/o John D. Rice, Sr.)

Violation: Respondent engaged in conduct constituting operation of an auction in Tennessee without a valid Tennessee Auction Firm License.

Action: Civil Penalty of \$250

Calendar of Events:

October 3, 2011 - Board Meeting 9:00 a.m. (Central)

2nd Floor Conference Room
Andrew Johnson Building
710 James Robertson Parkway
Nashville, Tennessee

October 10, 2011 - CE Seminar 9:00 a.m. (Eastern)

Auditorium
University of Tennessee Conference Center
660 Henley Street
Knoxville, Tennessee

November 6, 2011 - End of Daylight Saving Time

Set your clocks back 1 hour at 2:00 a.m.

November 7, 2011 - Board Meeting 9:00 a.m. (Central)

2nd Floor Conference Room
Andrew Johnson Building
710 James Robertson Parkway
Nashville, Tennessee

A BRIEF HISTORY OF DAYLIGHT SAVING TIME

Daylight Saving Time: Some people like it, others don't, but twice a year we deal with it and it has an interesting history.

Benjamin Franklin was the first to propose a form of Daylight Saving Time (DST) in 1784 in his essay "An Economical Project," but the idea didn't begin to catch on until the early 1900s, when a British builder, William Willett, suggested backing up the clocks for 20 minutes a week during April and setting them forward by 20 minutes a week in September in his pamphlet "Waste of Daylight." It wasn't until Germany enacted a form of DST during World War I (1916), that the rest of the world began paying attention. The United States implemented DST in 1918, but it was practiced inconsistently around the country. In February 1942, Franklin Roosevelt instituted year-round DST (until September 1945), which was referred to as 'War Time.'

Today, many countries around the world practice DST and all the US States except Hawaii and Arizona practice DST. In 2005, the DST period was expanded to begin the 2nd Sunday in March (spring forward) and end the 1st Sunday of November (fall back).

When you change your clock, remember to change the battery in your smoke detector!

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Department of Commerce & Insurance
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Continuing Education Seminar
Monday, October 10, 2011

**University of Tennessee
Conference Center
600 Henley Street
Knoxville, Tennessee**



*Watch for your Notification Postcard
with information on Free Parking and Hotels*

Auction Law Review and Update

2 Hours

Featuring

Mark Green, Legal Counsel for the
Tennessee Auctioneers Commission
&

Judd Matheny, State Representative
and Speaker Pro Tempore
Tennessee House of Representatives

And.....

Insurance for Auctioneers

4 Hours

Featuring

John O. Eubank, Professional Insurance
Education, Inc.

***Please have your pocket card available
at registration***

We would like to thank Kenneth Dreaden for his service to the Tennessee Auctioneer Commission. Kenneth Dreaden was appointed in November 2005 to begin his second appointment on the Commission, and retired his appointment on August 31, 2011. Kenneth will be missed. Governor Bill Haslam has appointed Jeff Morris of Memphis to fill the seat vacated by Commissioner Dreaden. We welcome Jeff Morris to the Commission and will feature him in our next NewsLine.



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