



**TENNESSEE AUCTIONEER COMMISSION
500 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37243
615-741-1831**

**Commission Meeting Minutes for February 24, 2020
First Floor Conference Room 1-B
Davy Crockett Tower**

The Tennessee Auctioneer Commission met on February 24th, 2020 in the first-floor conference room of Davy Crockett Tower in Nashville, Tennessee. Chairman Thorpe called the meeting to order at 9:00 a.m. and the following business was transacted:

COMMISSION MEMBERS PRESENT: Jeff Morris, John Thorpe, Randy Lowe, and Kimball Sterling

COMMISSION MEMBERS ABSENT: None

STAFF MEMBERS PRESENT: Roxana Gumucio, Glenn Kopchak, Anna Matlock, Kristen Downey, Robert Hunter, and Angela Nelson

ROLL CALL

Chairman Thorpe called the meeting to order at 9:00 a.m. Director Kopchak took roll and established that a quorum was present.

NOTICE OF MEETING

Director Kopchak read the notice of the meeting into the record as follows: "Notice of the February 24, 2020 meeting of the Auctioneer Commission was posted to the website on February 18, 2020."

AGENDA

Chairman Thorpe requested that the Commission move the Rulemaking Hearing under New Business to account for the fact the hearing was not scheduled to begin until 10:00 a.m. Mr. Lowe made a motion to adopt the agenda as amended to move the Rulemaking Hearing. This was seconded by Mr. Morris. The motion carried by unanimous voice vote.

MINUTES

Mr. Morris made a motion to adopt the minutes from the November meeting as written. This was seconded by Mr. Lowe. The motion carried by unanimous voice vote.

EDUCATION REVIEW

Director Kopchak presented the Commission with the continuing education courses submitted by the Tennessee Auctioneers Association (TAA). Mr. Lowe motioned to approve the two (2) courses. This was seconded by Mr. Sterling. The motion carried by unanimous voice vote.

Director Kopchak presented the Commission with the continuing education courses submitted by the Nashville Auction School. Mr. Morris motioned to approve the "Business Practices: How We Handle Money, Taxes and Data" course. This was seconded by Mr. Lowe. The motion carried by unanimous voice vote. Mr. Morris then motioned to approve the "Preventing Sexual Harassment and Discrimination" course. This was seconded by Mr. Sterling. The motion carried by unanimous voice vote.

February 24, 2020 - Education Report

Course Provider	Course Name	Instructor(s)	Type	Hours	Recommendation
TAA	How to Determine a Quality Stand of Timber	David Mercker	CE	1	APPROVE
TAA	Identifying Poorly Drained Forested Areas	David Mercker	CE	1	APPROVE
Nashville Auction School	Business Practices: How We Handle Money, Taxes, & Data	Wendell Hanson and Rhessa Hanson	CE	3	APPROVE
Nashville Auction School	Preventing Sexual Harassment and Discrimination	Wendell Hanson and Rhessa Hanson	CE	3	APPROVE

APPLICATION REVIEW

Director Kopchak presented a request from a principal auctioneer residing out of state to sponsor an affiliate auctioneer located in Tennessee, pursuant to Rule 0160-01-.12(5) which states: "All sponsoring principal or public automobile auctioneers shall reside in the same state as his or her affiliate auctioneers. However, in appropriate cases, upon good cause being shown, the Commission may waive this rule." Mr. Morris expressed concern that the principal auctioneer did not provide enough information to justify the waiver. Director Kopchak stated that he would go back to the principal auctioneer and ask them to provide further support for their request.

DIRECTOR'S REPORT

Budget

Director Kopchak quickly reminded the board that they had discussed the budget through September at their last meeting so the budget discussion would primarily focus on the last three (3) months of October through December. Director Kopchak reviewed the revenue and expenses, explaining that the Commission had seen a reduction in licensing revenue, but nothing out of the ordinary. Mr. Morris asked if this reduction in revenue had anything to do with the elimination of the firm licenses. Director Kopchak stated that it could have had an impact, however, there is not enough data available at this time to determine the extent. Director Kopchak concluded that they are trending in the red for right now due to the law changes and revenue reductions, but with a few more months of data, the Commission will have a better picture of their fiscal health.

Election of Officers

Director Kopchak informed the Commission that with this being the first meeting of the year, they would need to elect their officers. Mr. Morris made a motion to elect Mr. Thorpe as Chairman and Mr. Lowe as Vice Chairman. This was seconded by Mr. Sterling. The motion carried by unanimous voice vote, with Mr. Thorpe abstaining.

NAA Conference

Director Kopchak informed the Commission that the NAA Conference will be taking place on July 14-18, 2020 in San Diego, CA. Mr. Lowe made a motion for Mr. Morris to attend the conference. This was seconded by Mr. Sterling. The motion carried by unanimous voice vote, with Mr. Morris abstaining.

LEGAL REPORT *(Presented by Kristen Downey)*

1. 2019099891

Opened: 12/11/2019

Type of License: Principal Auctioneer

First Licensed: 11/26/1990

Expires: 7/31/2021

History: None

Complainant is a Tennessee resident. Respondent is a licensed auctioneer.

Complainant states that they took items to Respondent to sell at auction. Respondent would not allow a minimum bid. Complainant believes that the money they received from the auction was inaccurate, but they have no way of confirming this. Complainant attached the auction contract, cosigner statement, check to Complainant, and pictures of the items.

Respondent filed a response stating that they informed Complainant that they did not do reserves on items of lesser value and Complainant was upset because of the amount that their items fetched. Respondent states that they paid Complainant for the items listed.

Recommendation: Dismiss. There is no evidence to support the Complainant's allegations. Complainant even admits that they have no way to prove the allegations.

Decision: The Commission voted to accept Counsel's recommendation.

2. 2019090631

Opened: 11/3/2019

Type of License: Principal Auctioneer, EXPIRED

First Licensed: 9/5/2007

Expires: 9/4/2019

History: None

Complainant is a Tennessee resident. Respondent is a Principal Auctioneer with an expired license at the time this complaint was filed.

Complainant alleges that they contacted Respondent to help them sell some items that they inherited. Complainant stated that they did not want to sell all of the items, so Respondent stated that they would post them to gain attention but would not sale them. Complainant agreed to this. One of Complainant's family members wanted to be a part of the auction/decision-making in what would be sold; however, Respondent would not allow this as they had contracted with Complainant and not the Complainant's family member. Complainant asked to see the contract, but Respondent did not provide them with a copy. Complainant and Respondent have not discussed which items will be sold at auction and Respondent has threatened to sue Complainant.

Respondent filed a response stating that they met with Complainant on October 27, 2019 to discuss the items and what they would like to sell. Respondent took pictures of these items and planned to use them as sampling photos to be posted on Facebook as "sneak peek" advertising. These particular items were marked with family members' names and indicated that they would not be auctioned. The Complainant and Respondent entered a contract for the items that would be sold. Respondent agreed to provide Complainant a copy of the contract at their next meeting on October 30, 2019. On October 30, 2019, Complainant texted Respondent stating that their family member would be taking over the decision-making for the items that would be sold. Later that same day Complainant contacted Respondent stating that they would like to cancel the contract. Respondent explained the consequences of cancelling the contract. Respondent then received a call from Complainant's family member apologizing for the Complainant cancelling the contract. This family member asked Respondent to contact another relative who lived in Alabama. Respondent contacted the relative who was very upset about the items that would be auctioned. Respondent attached a copy of the contract which includes the Complainant's and Respondent's signatures.

Recommendation: Civil penalty of \$500 for unlicensed activity. It does not appear that the Respondent made any violations in terms of the auction; however, the Respondent's license was in expired status during the transaction. Respondent's license expired on September 4, 2019 and was not renewed until January 10, 2020.

Decision: The Commission voted to issue a Letter of Warning to Respondent regarding licensing renewal.

3. 2019096481

Opened: 11/26/2019

Type of License: Firm

First Licensed: 6/7/1978

Expires: 9/30/2020

History: 2011 Letter of Warning

Complainant is a Tennessee resident. Respondent is an auctioneer firm.

Complainant alleges that they bid on three (3) properties at Respondent's auction and won. When Complainant went to claim their winnings, they were informed that two of the three properties were

sold to someone else because they offered \$1,000 more than Complainant. Complainant states that they were the highest bidder at the auction, so they asked about this. Respondent stated that they could have countered the bid with another \$1,000; however, Complainant did not know that the property was still being auctioned.

Respondent filed a response stating that they offered forty-eight tracts of property. The tracts were posted on a board for the purpose of grouping. The announced over the intercom system to keep everyone involved and informed when a bid was raised and who was outbid. The method was used to give the first-round bidder the opportunity to only bid on their intended lots without having to purchase a large group of property. There was a large audience around the board participating along with bids being announced every time someone was outbid. There were also ringmen assisting the bidders. Respondent attached a copy of pictures of the bidding board. Respondent states that they went over the process for bidding in the opening announcement. Respondent states that they talked to Complainant two to three weeks following the auction. Complainant stated that during the bidding they were sitting at the back of the facility and did not come forward to view the board and see how the process was working.

Complainant filed a rebuttal stating that the ringman never told them that they were outbid. The board method made no sense to the Complainant and Complainant believes they have been wronged.

Recommendation: Dismiss. The Complainant did not understand the multi-par bidding process.

Decision: The Commission voted to accept Counsel's recommendation.

4. 2019096841

Opened: 11/29/2019

Type of License: Principal Auctioneer

First Licensed: 7/7/1993

Expires: 5/31/2020

History: None

Complainant is an out-of-state resident. Respondent is a Principal Auctioneer.

Complainant states that Respondent posted items for sale online on November 29, 2019 for auction. Respondent bid on the items and won at a low bid. Respondent allegedly refused to sell the items to Complainant after Complainant arrived at Respondent's office to pick up the items.

Respondent filed a response stating that the auction was not an absolute auction and was not advertised as an absolute auction. Complainant approached Respondent about an item that the seller instructed them not to sell. Respondent explained this to Complainant. Complainant was upset by this information.

Recommendation: Dismiss. There does not appear to be any actionable violations.

Decision: The Commission voted to defer this complaint until the next meeting to obtain additional information from Respondent.

5. 2019100041

Opened: 12/13/2019

Type of License: Firm

First License Obtained: 12/8/2006

License Expiration: 12/7/2018

History: Final Order with \$500 civil penalty in 2014

Complainant is a Tennessee resident. Respondent is a licensed auction firm.

Complainant alleges that the minimum bid was never stated until the auction closed. The advertisement stated that the item would be sold to the highest bidder. Complainant states that they were the highest bidder and that Respondent is engaging in false advertising.

Respondent filed a response stating that the auction was conducted completely online and online auctions are not regulated by the Commission. There was no minimum bid for the items and the item was sold to the highest bidder without reserve. Respondent states that the Complainant has mistaken the minimum bid increment required with a minimum bid or reserve.

Recommendation: Dismiss. There do not appear to be any violations. Additionally, this complaint involves an internet auction, which the Commission has been enjoined from regulating in light of the recent litigation.

Decision: The Commission voted to obtain more information about the online auction and to place this complaint into litigation monitoring.

6. 2019101901

Opened: 12/21/2019

Type of License: Gallery

First Licensed: 6/6/2012

Expires: 6/5/2020

History: 2014 Consent Order with Civil Penalty

Complainant is a Tennessee resident. Respondent is a licensed gallery.

Complainant alleges that they bid on and won a spinning wheel. Respondent then stated that they could not sell the spin wheel for that amount. Complainant states that there was no mention any time of any reserves or minimums.

Respondent filed a response stating that all auctions are considered reserve auctions unless advertised or announced as an absolute auction. Respondent states that they probably started the bidding at \$100 or \$150. They did not receive a response to their asking prices, so Respondent

lowered their bid. There was an individual who wanted to start at \$10 or \$20 and Respondent did not agree to this and therefore did not honor the bid.

Complainant filed a rebuttal questioning whether auctions were automatically considered absolute if no reserve is mentioned by the auctioneer.

Recommendation: Discuss.

Decision: The Commission voted to dismiss this complaint.

7. 202000581

Opened: 1/3/2020

Type of License: Unlicensed

History: None

Complainant is a Tennessee resident. Respondent is an unlicensed firm.

Complainant alleges that Respondent sold them a counterfeit coin. Complainant attached a letter from a rare coins company which confirmed that the coin was counterfeit. The letter states that the coin contains absolutely no gold. Complainant has initiated a civil lawsuit against Respondent and another individual regarding the coin.

Respondent filed a response stating that Complainant contacted them asking to put a bid in on the coin. Complainant had not yet seen the coin, and Respondent informed Complainant that they did not know the grade of the coin. Respondent states that the Complainant did not purchase the coin from their auction, but actually purchased the coin from Respondent's friend. Respondent states that they only contacted the owner of the coin to let them know that Complainant was interested in purchasing the coin. Respondent had no concern about the coin's authenticity but does admit to not knowing the coin's grade. Complainant left with the coin and called the Respondent the next day saying that the coin was pot metal. Respondent states that they were sure the coin was real, and that Complainant is attempting to make money by making false accusations.

Recommendation: Dismiss. Counsel spoke with Respondent regarding the status of the civil lawsuit. Respondent stated that the lawsuit was dismissed because Complainant did not appear for the initial hearing. Respondent states that several other people had bought coins from the same individual and had no complaints.

Decision: The Commission voted to accept Counsel's recommendation.

8. 2020003211

Opened: 1/13/2020

Type of License: Principal Auctioneer

First Licensed: 5/11/2018

Expires: 5/10/2020

History: None

This complaint is related to 2020003281 and 2020003021.

Complainant is a licensed auctioneer. Respondent is a Principal auctioneer.

Complainant alleges that Respondent auctioned property without a real estate license. Complainant states that Respondent's name is listed as the auctioneer, but the Respondent was not on the premises during the auction.

Respondent filed a response stating that their firm operates a marketing and auction platform for foreclosure sales and REO assets. The auction that Complainant attended was a foreclosure sale auction. At these auctions, the firm employees and contractor act on behalf of the foreclosure trustee. Respondent states that T.C.A. § 62-19-103 does not require a foreclosure trustee to hold an auctioneer license and neither a foreclosure trustee, nor any individuals attending the foreclosure sale on the trustee's behalf is required to hold an active auctioneer license to conduct the foreclosure sale.

Recommendation: Dismiss. Counsel reviewed the Respondent's website and the properties listed for auction are shown as foreclosed properties. Respondent acted under the direction of the trustee which exempts them from licensure under T.C.A. § 62-19-103.

Decision: The Commission voted to accept Counsel's recommendation.

9. 2020003281

Opened: 1/13/2020

Type of License: Unlicensed

History: None

This complaint is related to complaint number 2020003211 and 2020003021.

This involves the same facts as 2020003211; however, the Complainant alleges that this Respondent is the individual who conducted the opening comments for the auction. Complainant alleges that Respondent is engaging in unlicensed activity.

Respondent provided the same response from 2020003211.

Recommendation: Dismiss for the reasons listed above.

Decision: The Commission voted to accept Counsel's recommendation.

10. 2020003021

Opened: 1/13/2020

Type of License: Firm

First Licensed: 5/11/2018

Expires: 5/10/2020

History: None

This complaint relates to complaint numbers 2020003211 and 2020003281.

Complainant alleges that the Respondent firm does not have a firm license.

Respondent filed the same response from complaint numbers 2020003211 and 2020003281.

Recommendation: Dismiss. Firms are not required to have a license; however, the Respondent firm is licensed with the Tennessee Auctioneer Commission.

Decision: The Commission voted to accept Counsel's recommendation.

11. 2020003701

Opened: 1/13/2020

Type of License: Principal Auctioneer

First Licensed: 3/22/2006

Expires: 3/21/2020

History: None

Complainant is a Tennessee resident. Respondent is a Principal Auctioneer.

Complainant states that they bid on a property online and won. Complainant received a call from Respondent who stated that the seller would not accept Respondent's winning bid amount because it was less than what the seller paid for the property.

Respondent filed a response stating that the property was not advertised as an absolute auction. Respondent states that it is common in the industry for bidding to start well below the seller's expectation. Respondent alleges that the terms of the auction provided that all bids are subject to seller confirmation unless noted as absolute.

Recommendation: Dismiss. The Respondent reserved the right to receive Seller's confirmation before any contract became binding.

Decision: The Commission voted to accept Counsel's recommendation.

12. 2019102771

Opened: 12/28/2019

Type of License: Unlicensed

History: None

Complainant is a licensed auctioneer. Respondent is an unlicensed gallery.

Complainant alleges that Respondent is engaging in unlicensed activity.

Respondent did not file a response; however, this complaint was sent out for investigation. The investigator discovered that the Respondent gallery is operated by a Principal Auctioneer. The

investigator spoke with the owner of the business. The business owner showed the investigator their business license and the license of the Principal Auctioneer.

Recommendation: Dismiss. The gallery has a licensed Principal Auctioneer with an active auctioneer license.

Decision: The Commission voted to issue a Letter of Instruction to the owner about including the license information of the auctioneer on all advertisements.

13. 2020002471

Opened: 1/10/2020

Type of License: Firm

First Licensed: 6/15/1977

Expires: 3/6/2020

History: 2018 Consent Order for failing to remit funds within a reasonable time, \$500 civil penalty

Complainant is a Tennessee resident. Respondent is a licensed firm.

Complainant alleges that they won a bid on three rugs. Complainant states that they went to pick up the rugs and no one was there. As of 1/9/2020, Complainant had not received the items from the November 24, 2019 auction.

Respondent filed a response stating that Complainant has picked up their items. Respondent alleges that they attempted to contact Complainant 2-3 times to setup a time for them to come get the items. Complainant went to the premises on the day after Thanksgiving; however, the Respondent was closed at this time. Complainant scheduled a time to come by following that visit but did not arrive at the agreed upon time and did not answer any phone calls from the Respondent's employee when they called to determine Complainant's estimated time of arrival.

Recommendation: Dismiss. It does not appear that there were any violations.

Decision: The Commission voted to accept Counsel's recommendation.

14. 2020004951

Opened: 1/21/2020

Type of License: Unlicensed

History: None

Complainant is a licensed auctioneer. Respondent is an unlicensed individual.

Complainant alleges that Respondent is engaging in unlicensed activity. Complainant alleges that Respondent has been pitching auction sales in Tennessee for over fifteen years. Complainant states that Respondent pitches the sale and signs their own contracts. Complainant states the Respondent holds themselves out to be a licensed auctioneer.

Respondent filed a response via their attorney stating that Complainant filed this complaint as a result of a complaint that was filed against Complainant by Respondent in which the Complainant wrongfully converted funds belonging to Respondent. Respondent further states that they own an auction company as a non-auctioneer owned firm in compliance with applicable law under a valid firm license. Respondent states that the firm license does not expire until May 19, 2021. Respondent states that Respondent's firm has always used a licensed auctioneer to conduct its auctions. Respondent states that they have never participated in an auction as an auctioneer.

Complainant filed a rebuttal stating that they withdraw their complaint.

Recommendation: Dismiss. Respondent has a licensed Principal Auctioneer with an active auctioneer license.

Decision: The Commission voted to accept Counsel's recommendation.

Legislative Update

Ms. Matlock let the Commission know that there were two (2) bills related to the Auctioneer Commission that have been generated by the legislature this session. The first bill (HB2633, SB2305) contains a provision for gallery owners to keep their licenses, even though the license type has been discontinued. These licensees must continue to renew their licenses in a timely manner in order to maintain them and if they do not renew correctly, they will not be issued a new one. The second bill (HB1945, SB1914) contains exemptions for the licensing requirements of several professions, including auctioneers. These exemptions would allow for unlicensed activity if there exists a written agreement between the two parties acknowledging that the individual providing the service is unlicensed. Ms. Matlock stated that these bills are currently in committee and have not been passed.

NEW BUSINESS

There was no new business presented.

*****The Commission took a break at 10:02 a.m. and reconvened at 10:15 a.m.*****

RULEMAKING HEARING

Ms. Matlock called the rule making hearing to order and relayed the purpose of the hearing for the record. Ms. Matlock explained the rule change process and the legislative and executive actions that must occur before any of the changes would take effect. Ms. Matlock then read all of the rule changes into the record. After her review of the rule changes, Ms. Matlock shared written comments that she received by email from the Nashville Auction School. Ms. Matlock clarified for the record that their statement regarding principal and/or public automobile auctioneers not being able to maintain a separate escrow or trustee account was incorrect. Per Rule 0160.01-.26, principal and/or public automobile auctioneers must maintain or have written authorization to access an escrow or trustee account.

Mr. Shane McCarrell and Mr. David Allen appeared before the Commission to share comments regarding Rule 0160.01-.26 and requested that clarification be provided to further explain the escrow account requirement. Ms. Matlock and the Commission discussed the rule language and agreed to make modifications to ensure that it was easily understood.

Mr. Morris moved to accept the rule making language as presented. This was seconded by Chairman Thorpe. The motion passed by unanimous roll call vote.

Mr. Morris moved to adopt the regulatory flexibility addendum and economic impact statement. This was seconded by Chairman Thorpe. The motion passed by unanimous roll call vote.

Mr. Morris moved to adopt the impact on local government statement. This was seconded by Mr. Sterling. The motion passed by unanimous roll call vote.

Mr. Morris moved to adopt the standards set by the Joint Government Operations Committee. This was seconded by Mr. Lowe. The motion passed by unanimous roll call vote.

The rule making hearing concluded at 11:38 a.m. A formal transcript of the proceedings will be available at a future date.

*****Please see the attached addendum entitled, "Rulemaking Hearing Rule(s) Filing Form"*****

ADJOURNMENT

Mr. Lowe made a motion to adjourn the meeting. This was seconded by Mr. Morris. The motion carried by unanimous voice vote. The meeting adjourned at 11:40 a.m.

Department of State Division of Publications 312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower Nashville, TN 37243 Phone: 615-741-2650 Email: publications.information@tn.gov	For Department of State Use Only Sequence Number: _____ Rule ID(s): _____ File Date: _____ Effective Date: _____
---	---

Rulemaking Hearing Rule(s) Filing Form - REDLINE

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Tennessee Auctioneer Commission
Division:	Regulatory Boards
Contact Person:	Anna D. Matlock
Address:	500 James Robertson Parkway
Zip:	37243
Phone:	(615) 741-3072
Email:	Anna.Matlock@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row).

Chapter Number	Chapter Title
0160-01	Regulations of Auctioneers
Rule Number	Rule Title
0160-01-.01	Duties of Auctioneer
0160-01-.02	Unlawful Rebates
0160-01-.05	Publication of Name
0160-01-.06	Dates of Examination
0160-01-.10	Auction Schools
0160-01-.11	Civil Penalties
0160-01-.12	Apprentices – Sponsors- Supervision
0160-01-.14	Fees
0160-01-.15	Nonresident Auctioneer
0160-01-.16	Non-Auctioneer Owned Firms
0160-01-.20	Advertising Guidelines
0160-01-.21	Disclosure of Buyer’s Premium
0160-01-.22	Late Renewal of License

Rules of Tennessee Auctioneer Commission

Chapter 0160-01 Regulations of Auctioneers; 0160-03 – Continuing Education

Rule 0160-01-.01, .02, .05, .06, .11, .12, .14, .15, .16, 20, .21, .22, .23, .24, .24, .26, & .27; Rule 0160-03-.01 & .03

0160-01-.23	Retirement of License
0160-01-.24	Notification of Change of Information
0160-01-.25	Public Automobile Auction and Public Automobile Auctioneer License
0160-01-.26	Escrow Account Requirement
0160-01-.27	Livestock Auction Sales

Chapter Number	Chapter Title
0160-03	Continuing Education
Rule Number	Rule Title
0160-03-.01	Definitions
0160-03-.03	Basic Requirements

Redline – Rulemaking Hearing
Tennessee Auctioneer Commission

Chapter 0160-01
Regulations of Auctioneers
Amendments

TABLE OF CONTENTS

0160-01-.01	Duties of Principal or Public Automobile Auctioneer	0160-01-.16	Non-Auctioneer Owned Firms Repealed
0160-01-.02	Unlawful Rebates	0160-01-.17	Charity Auction Exemption
0160-01-.03	Repealed	0160-01-.18	Electronic Media Auction License
0160-01-.04	Repealed	0160-01-.19	Types of Auctions Defined
0160-01-.05	Publication of Name	0160-01-.20	Advertising Guidelines
0160-01-.06	Dates of Examinations	0160-01-.21	Disclosure of Buyer's Premium
0160-01-.07	Repealed	0160-01-.22	Late Renewal of License
0160-01-.08	Repealed	0160-01-.23	Retirement of License
0160-01-.09	Assistants	0160-01-.24	Notification of Change of Information
0160-01-.10	Auction Schools	0160-01-.25	Public Automobile Auction and Public Automobile Auctioneer License
0160-01-.11	Civil Penalties		
0160-01-.12	Apprentice-Affiliates - Sponsors- Supervision	0160-01-.26	Escrow Account Requirement
0160-01-.13	Repealed	0160-01-.27	Livestock Auction Sales
0160-01-.14	Fees	0160-01-.28	Online Auctions
0160-01-.15	Non-resident Auctioneer	0160-01-.29	Military Applicants

Rule 0160-01-.01 is amended by deleting the text of the rule in its entirety and substituting instead language so that, as amended, Rule 0160-01-.01 shall read:

0160-01-.01 DUTIES OF [PRINCIPAL OR PUBLIC AUTOMOBILE AUCTIONEER](#).

- (1) The [principal or public automobile a](#)Auctioneer shall be responsible for the advertising and management of the sale and account for all proceeds therefrom and shall, over his or her signature, issue a closing statement to the seller or sellers.
- ~~(2) No licensed auctioneer shall accept offers for hire to call bids at any auction held by an auction house, auction barn, or auction gallery that is not either:~~
 - ~~(a) Owned and operated by a licensed auctioneer holding a valid firm license; or~~
 - ~~(b) Licensed as a gallery pursuant to the provisions of T.C.A. § 62-19-125.~~

Authority: ~~T.C.A. §§ 62-1906, 62-19-106, and 62-19-125.~~

Rule 0160-01-.02 is amended by deleting the text of the rule in its entirety and substituting instead language so that, as amended, Rule 0160-01-.02 shall read:

0160-01-.02 UNLAWFUL REBATES.

It shall be unlawful for ~~any~~ person licensed under the provisions of this act to rebate any part of his ~~or her~~ commission to any person or persons not holding ~~a~~ real estate license or ~~apprentice auctioneer license or any~~ auctioneer license.

Authority: T.C.A. § 62-19-106.

Rule 0160-01-.05 is amended by deleting the text of the rule in its entirety and substituting instead language so that, as amended, Rule 0160-01-.05 shall read:

0160-01-.05 PUBLICATION OF NAME.

- (1) All advertising of an auction sale must be made in the name ~~and license number~~ of the licensee who shall bear responsibility of the sale to the seller, general public and auctioneer commission.

- (2) All advertising ~~of an auction sale by an auction firm not owned by a licensed auctioneer~~ shall include the name of ~~its~~ the principal or public automobile auctioneer, and the principal or public automobile auctioneer shall attend all auction sales.

Authority: T.C.A. §§ 62-19-102, 62-19-106, and 62-19-111, ~~and 62-19-125~~.

Rule 0160-01-.06 is amended by deleting the text of the rule in its entirety and substituting instead language so that, as amended, Rule 0160-01-.06 shall read:

0160-01-.06 DATES OF EXAMINATIONS.

- ~~(1)~~ The Commission shall, in conjunction with the current contractor, administer the examination on the dates provided by the contractor five (5) days per week excluding holidays. Provided, however, ~~that~~ no examination shall be administered to an applicant who ~~lacks~~ is more than ~~ninety (90)~~ twenty-five (25) days short of completing the ~~two (2) year apprenticeship~~ six (6) months required for an affiliate auctioneer license.

Authority: T.C.A. §§ 62-19-106(b) and (e) and 62-19-111(b) and (c).

Rule 0160-01-.10 is amended by deleting the text of the rule in its entirety and substituting instead language so that, as amended, Rule 0160-01-.10 shall read:

0160-01-.10 AUCTION SCHOOLS.

- (1) In order to be approved by the Auctioneer Commission (for the purpose of providing instruction required by T.C.A. § 62-19-111 for an bid caller, affiliate apprentice, or principal auctioneer, ~~or firm~~ license), an auction school must:
- (a) Execute an application on the form prescribed by the Commission, accompanied by a description of the school's curriculum;
 - (b) Have a permanent business location;
 - (c) Conduct a minimum of ~~eighty (80)~~ fifty (50) hours of classroom or online instruction, including sixteen (16) hours in basic fundamentals, ~~including and~~ at least ~~forty (40)~~ twenty-five (25) hours under the supervision of a licensed auctioneer with at least ~~five (5)~~ three (3) years of experience;
 - ~~(d) For applicants applying for an upgrade from apprentice affiliate to principal auctioneer, conduct a minimum of thirty f (304) hours of instruction, including at least fifteen (15) seventeen (17) hours of instruction given by a licensed auctioneer with at least five (5) three (3) years of experience;~~
 - ~~(e)~~(d) Maintain a pass/fail grading system, with a supplementary "good/fair/poor" designation;
 - ~~(f)~~(e) Provide instruction in public speaking, bid calling, sales management, advertisements, contracts, closing statements, license law, the Uniform Commercial Code, bulk sales and firearms; and
 - ~~(g)~~(f) Demonstrate every two (2) years that it has met the requirements of the Tennessee Higher Education Commission (or the equivalent thereof in another state).
- (2) In order to be approved by the Auctioneer Commission (for the purpose of providing instruction required by T.C.A. § 62-19-111 for an automobile auctioneer license), an auction school must:

- (a) Execute an application on the form prescribed by the Commission, accompanied by a description of the school's curriculum;
- (b) Have a permanent business location;
- (c) Conduct a minimum of ~~thirty (30)~~ fifteen (15) hours of rigorous classroom or online instruction in automobile auctioneering, including instruction in ethics of automobile auctions, registration and licensing of motor vehicles, transfers of title and registration, and rules and statutes relating to public automobile auctions; and
- (d) Demonstrate every two (2) years that it has met the requirements of the Tennessee Higher Education Commission (or the equivalent thereof in another state).

Authority: T.C.A. §§ 62-19-106(b); and 62-19-111(b) ~~and (d)~~ and Public Chapter 724 of the Public Acts of 2008 §§ 3 and 8.

Rule 0160-01-.11 is amended by deleting the text of the rule in its entirety and substituting instead language so that, as amended, Rule 0160-01-.11 shall read:

0160-01-.11 CIVIL PENALTIES.

- (1) With respect to any person required to be licensed by the Commission, the Commission may assess a civil penalty against such person in accordance with the following schedule:

Violation	Penalty
T.C.A. § 62-19-102(a)(2)	0 - \$1,000
T.C.A. § 62-19-102(a)(3)	0 - \$1,000
T.C.A. § 62-19-102	0 - \$1,000
T.C.A. § 62-19-112(b)(1)	0 - \$1,000
T.C.A. § 62-19-112(b)(2)	0 - \$1,000
T.C.A. § 62-19-112(b)(3)	0 - \$1,000
T.C.A. § 62-19-112(b)(4)	0 - \$1,000
T.C.A. § 62-19-112(b)(5)	0 - \$1,000
T.C.A. § 62-19-112(b)(6)	0 - \$1,000
T.C.A. § 62-19-112(b)(7)	0 - \$1,000
T.C.A. § 62-19-112(b)(8)	0 - \$1,000
T.C.A. § 62-19-112(b)(9)	0 - \$1,000
T.C.A. § 62-19-112(b)(10)	0 - \$1,000
T.C.A. § 62-19-112(b)(11)	0 - \$1,000
T.C.A. § 62-19-112(b)(12)	0 - \$1,000
T.C.A. § 62-19-112(b)(13)	0 - \$1,000
T.C.A. § 62-19-125(a)	0 - \$1,000
T.C.A. § 62-19-125(b)	0 - \$1,000
T.C.A. § 62-19-128(b)	0 - \$1,000
T.C.A. § 62-19-128(c)	0 - \$1,000
T.C.A. § 62-19-128(d)	0 - \$1,000
T.C.A. § 62-19-128(e)	0 - \$1,000
T.C.A. § 62-19-128(f)	0 - \$1,000
Any Commission Rule or Order	0 - \$1,000

- (2) Each day of a continued violation under paragraph (1) constitutes a separate violation.
- (3) The Commission's administrative director and investigator, acting on behalf of the Commission, may issue citations to unlicensed individuals or entities in accordance with T.C.A. § 62-19-126

and the following schedule:

Violation	Penalty
T.C.A. § 62-19-102 (a) (1)	\$50-\$2,500
T.C.A. § 62-19-102 (a) (2)	\$50-\$2,500
T.C.A. § 62-19-102 (b)	\$50-\$2,500
T.C.A. § 62-19-125 (a)	\$50-\$2,500

- (4) In determining the amount of any penalty to be assessed pursuant to this rule, the Commission may consider such factors as the following:
- (a) Whether the amount imposed will be a substantial economic deterrent to the violator;
 - (b) The circumstances leading to the violation;
 - (c) The severity of the violation and the risk of harm to the public;
 - (d) The economic benefits gained by the violator as a result of non-compliance; and
 - (e) The interest of the public.

Authority: T.C.A. §§ 56-1-308, 62-19-106, ~~62-19-106(b)~~, 62-19-116, and 62-19-126, ~~Public Acts of 1989 Chapter 389, Section 1, and Chapter 724 of the Public Acts of 2008, § 8.~~

Rule 0160-01-.12 is amended by deleting the text of the rule in its entirety and substituting instead language so that, as amended, Rule 0160-01-.12 shall read:

0160-01-.12 APPRENTICES AFFILIATES - SPONSORS - SUPERVISION.

- (1) In order to be permitted to sponsor an apprentice affiliate auctioneer, a principal or public automobile auctioneer must ~~have been~~ licensed for at least ~~two (2)~~ one (1) years and be in good standing with the Commission.
- (2) Any apprentice affiliate auctioneer so sponsored shall be under the direct supervision of his/ or her sponsor or under the direct supervision of his/ or her non-sponsoring employer auctioneer if acting pursuant to paragraph (8).
- ~~(3) The number of apprentice auctioneers that an auctioneer may sponsor at any one time shall be limited to three.~~
- ~~(4)~~(3) A sponsoring principal or public automobile auctioneer is to be responsible and accountable for the auctioneering activities of any apprentice affiliate auctioneer associated with such auctioneer.
- ~~(5)~~(4) All sponsoring principal or public automobile auctioneers shall reside in the same state as their his/ her apprentice affiliate auctioneer(s). However, in appropriate cases, upon good cause being shown, the Commission may waive this rule.
- ~~(6)~~(5) Any legal document relative to conducting, or offering to conduct, any auction shall be executed by a principal or public automobile auctioneer, or by an apprentice affiliate auctioneer with the approval of his/ or her sponsor so noted on the document.
- ~~(7)~~(6) Any advertisement placed by an apprentice affiliate auctioneer must clearly and conspicuously identify the apprentice affiliate auctioneer as such, contain his/ or her license number, and the name and license number of his/ or her sponsor's ~~firm~~.

~~(8)~~(7) An ~~apprentice-affiliate~~ auctioneer may be employed by a licensed principal or public automobile auctioneer who is not designated as the ~~apprentice's affiliate's~~ sponsor if the following terms and conditions are met:

- (a) The ~~apprentice affiliate~~ auctioneer must first notify the eCommission of such employment on a form approved by the Commission. The form shall include the written permission of the ~~apprentice's affiliate's~~ sponsor and shall contain the notarized signatures of the ~~apprentice affiliate~~ auctioneer, the sponsoring principal or public automobile auctioneer and the non-sponsoring employer principal or public automobile auctioneer;
- (b) The non-sponsoring employer auctioneer must be currently licensed as a ~~an~~ principal or public automobile auctioneer in the State of Tennessee and must be in good standing with the Commission;
- (c) All non-sponsoring employer auctioneers shall reside in the same state as the ~~apprentice affiliate~~ auctioneer(s). However, in appropriate cases, upon good cause being shown, the Commission may waive this rule; and
- (d) Any violation of this rule shall subject the ~~apprentice affiliate~~ auctioneer, the sponsoring principal or public automobile auctioneer and/or the non-sponsoring employer principal or public automobile auctioneer to disciplinary action by the Commission.

~~(9)~~(8) An apprentice affiliate:

- (a) May not execute a contract to conduct an auction without the approval of his/ or her sponsor noted on the document, but ~~he/she~~ an affiliate may sign a contract in order to indicate he/ or she procured the client and the auction.
- (b) May not sign a closing statement or have an escrow or trust account in his/ or her name as a depository for auction proceeds, but he/ or she may take part in the closing and settlement proceedings of an auction. An ~~apprentice's affiliate's~~ sponsoring auctioneer is responsible for keeping the account of and dispersing money received at an auction.
- (c) May not call bids at an auction without the presence of his/ or her sponsor. An ~~apprentice's affiliate's~~ sponsor is responsible for all auctioning activities of the ~~apprentice affiliate~~ and must be physically present to monitor those activities.

~~(10)~~(9) An ~~apprentice-affiliate~~ shall provide the Tennessee Auctioneer Commission with sufficient proof that he/ or she has been active during ~~his/her apprentice the~~ the affiliateship. Each ~~apprentice~~ affiliate shall use a log as a means to keep track of his/ or her experience during the ~~two (2)-year~~ six (6) month ~~apprentice~~ affiliateship period. The log shall be completed and submitted with ~~his/her the~~ application for a principal or public automobile auctioneer license, at the conclusion of the ~~apprentice~~ affiliateship.

- (a) Points. An auction is divided into eight (8) parts. Each part has a point value assigned to it. Performance of any of the activities listed ~~on the Point System Chart in paragraph (10) of this rule~~ earns the ~~apprentice~~ affiliate the corresponding points. The details of these activities and their point values shall be included in an ~~apprentice's~~ affiliate's log. During the ~~two (2)-year~~ six (6) month ~~apprentice~~ affiliateship period, an ~~apprentice~~ affiliate shall obtain a minimum of 1,000 points in order to be eligible for a principal or public automobile auctioneer license. This is the substantial equivalent of working five (5) auctions from beginning to end.
- (b) Sponsor's Signature. A sponsoring principal or public automobile auctioneer shall acknowledge each auction activity recorded in his/ or her ~~apprentice's~~ affiliate's log, by signing and dating in the appropriate space after each entry of activity.
- (c) Accumulating Points. An ~~apprentice~~ affiliate should make every effort to obtain and log

experience in all phases of the auction business. An **apprentice** affiliate shall not submit a log with all of his/ or her experience concentrated in fewer than four (4) auction activities. The purpose of the log is to indicate to the Commission that the **apprentice** affiliate has been fully exposed to the auction business and has participated in as many areas of the auction process as possible.

~~(11)~~(10) **POINT SYSTEM CHART** An affiliate shall complete each of the following categories to receive points:

ACTIVITY	DESCRIPTION	POINTS
CONTRACT	Complete and execute a contract with a seller (In accordance with subparagraph (9)(a) of this rule).	20
ADVERTISING	Write inventory/create a newspaper ad/erect signs.	20
SALE PREPARATION	Prepare inventory for an auction or set up auction equipment.	20
BID CALLING	Call bids at an auction.	60
BID ASSISTANT/ WORKING RING	Work the ring at an auction for at least one (1) hour.	40
CLERKING/ CASHIERING	Clerk at least 30% of an auction or collect money for at least 30% of an auction.	20
CLOSING	Participate in balancing auction proceeds and assist in preparation of a closing statement.	20
TOTAL POINTS		200

- (a) Contracts: Complete and execute a contract with a seller (in accordance with subparagraph (8)(a) of this rule), twenty (20) points;
- (b) Advertising: Write an inventory/create a newspaper ad/erect signs, twenty (20) points;
- (c) Sale Preparation: Prepare an inventory for an auction or set up auction equipment, twenty (20) points;
- (d) Bid Calling: Call bids at an auction, sixty (60) points;
- (e) Bid Assistant/Working Ring: Work the ring at an auction for at least one (1) hour, forty (40) points;
- (f) Clerking/Cashiering: Clerk at least thirty percent (30%) of an auction or collect money for at least thirty percent (30%) of an auction, twenty (20) points; and
- (g) Closing: Participate in balancing auction proceeds and assist in preparation of a closing statement, twenty (20) points.

Authority: T.C.A. §§ 62-19-106, ~~62-19-106(b)~~, 62-19-111, and 62-19-112(b)(7), ~~and Public Acts of 1997 Chapter 91, 5.~~

Rule 0160-01-.14 is amended by deleting the text of the rule in its entirety and substituting instead language so that, as amended, Rule 0160-01-.14 shall read:

0160-01-.14 FEES

- (1) Each application for licensure shall be accompanied by a non-refundable application fee of fifty dollars (\$50.00).
- (2) Fees for the issuance of initial licensure and the renewal thereof shall be as follows:

~~Auctioneer License one hundred seventy-five dollars (\$175)
Apprentice Affiliate Auctioneer License..... one hundred twenty-five dollars (\$175)
Principal Office Firm License..... one hundred twenty-five dollars (\$125) Gallery License one hundred seventy-five dollars (\$175)
Auction Firm Branch License..... seventy-five dollars (\$75)
Gallery Branch License..... seventy-five dollars (\$75)
Auctioneer Education and Recovery Account Feefifty dollars (\$50)
Public Automobile Auctioneer License one hundred seventy-five dollars (\$175)
Public Automobile Auction License..... one hundred seventy-five dollars (\$175)~~

~~Licenses are valid for two (2) years from the date of their issuance and may be renewed within the sixty (60) days immediately preceding their date of expiration.~~

- (a) Principal Auctioneer License, one hundred seventy-five dollars (\$175.00);
- (b) Affiliate Auctioneer License, one hundred twenty-five dollars (\$125.00);
- (c) Bid Caller Auctioneer License, one hundred fifty dollars (\$150.00);
- (d) Public Automobile Auctioneer License, one hundred seventy-five dollars (\$175.00);
- (e) Public Automobile Auction License, one hundred seventy-five dollars (\$175.00);
- (f) Auctioneer Education and Recovery Account Fee, fifty dollars (\$50.00); and
- (g) Replacement license, thirty-five dollars (\$35.00).

- (3) Licenses are valid for two (2) years from the date of their issuance and must be renewed on or before their expiration date. However, the commission may, in its discretion, renew the license upon application within the sixty (60) days immediately preceding its date of expiration.

~~(3)~~(4) A licensee shall pay a one-time fee of one hundred fifty dollars (\$150.00) for the retirement of an principal auctioneer, ~~apprentice~~ affiliate auctioneer, or public automobile auctioneer license. An application for activation of a retired license shall be accompanied by an application fee of one hundred dollars (\$100.00), the applicable license fee and the Auctioneer Education and Recovery Account fee.

~~(4)~~(5) An applicant who fails a license examination shall pay a fee as set by contract with the Auctioneer Commission license examination administrator for each subsequent re-examination.

~~(5) The fee for a replacement license and pocket card is thirty-five dollars (\$35.00).~~

Authority: T.C.A. §§ 62-19-106(b), 62-19-111, and 62-19-116, ~~62-19-116(c), and Chapter 724 of the Public Acts of 2008, § 8.~~

Rule 0160-01-.15 is amended by deleting the text of the rule in its entirety and substituting instead language so that, as amended, Rule 0160-01-.15 shall read:

0160-01-.15 NON-RESIDENT AUCTIONEER

- (1) Disciplinary sanctions against a non-resident licensee imposed by the licensee's home state or any other state shall be grounds for disciplinary action by the Commission in accordance with T.C.A. § 62-19-112 and these rules.
- (2) Each application for a non-resident principal or public automobile auctioneer ~~firm~~ license shall be accompanied by documentation from a bank that includes the name and address of the bank, the account number of the non-resident the principal or public automobile auctioneer's ~~firm's~~ escrow account and the signature and title of the bank officer issuing the documentation. The documentation shall further include a statement ~~signed by an owner or other appropriate member of the auction firm,~~ authorizing the Tennessee Auctioneer Commission, or its agents, to audit the escrow account.

Authority: T.C.A. §§ 62-19-106, 62-19-112, and 62-19-117, ~~and Public Acts of 1990, Chapter 1026, Section 4.~~

Rule 0160-01-.20 is amended by deleting the text of the rule in its entirety and substituting instead language so that, as amended, Rule 0160-01-.20 shall read:

0160-01-.20 ADVERTISING GUIDELINES.

- (1) Advertising in any form that is designed to give notice of an upcoming auction must include the name and license number of the principal or public automobile auctioneer ~~firm or gallery~~ responsible for holding the sale.
- (2) False, deceptive, misleading and untruthful advertising is expressly prohibited. Any advertisement or advertising shall be deemed to be false, deceptive, misleading or untruthful, if it:
 - (a) Contains a misrepresentation of fact.
 - (b) Is misleading or deceptive because in its content or, in the context in which it is presented, it makes only a partial disclosure of relevant facts.
 - (c) Creates a false or unjustified expectation of the services to be performed.
 - (d) Contains any representation or claim that the advertising licensee in bad faith fails to perform.
 - (e) Advertises any auction using such descriptive words as "Urgent," "Emergency," "Distress," or any other word which connotes a liquidation of assets or that the buyers will, for some extraordinary reason, be in a position to reap some unusual bargain, without specifically disclosing, the reason that the sale is "urgent," the nature of the "emergency" or the cause of the "distress." In a written advertisement, the reason, nature, and cause shall be set forth in a print size equal to the descriptive word used.
 - (f) Advertises any auction using descriptive words such as "Seized," "Confiscated," "Forfeited," or any other word which connotes a governmental action; the sale of items seized or taken by a government department, agency or commission; or that buyers will for some governmental reason be in a position to reap some unusual bargain, without specifically disclosing the exact nature of the governmental action. In a written advertisement, the nature of the governmental action shall be set forth in a print size equal to the descriptive word used.

- (g) Advertises in bad faith an item for sale that the principal or public automobile auctioneer, ~~auction firm or gallery~~ does not intend to offer for sale at the auction being advertised.
- (3) Advertising for a sale at which some items will be auctioned with reserve and some items will be auctioned without reserve shall clearly and conspicuously indicate this fact to the public. In written advertisements for such a sale, the font size, style and case of the type used in publicizing the part of the sale ~~is~~ to be held without reserve shall not differ from the font size, style and case used to publicize the part of the sale to be held with reserve.
- (4) Any advertising or advertisement purporting or suggesting that an auction sale is being held in conjunction with or as a result of a bankruptcy proceeding, or that items to be sold at auction were previously purchased in connection with a bankruptcy proceeding, shall contain the bankruptcy court case number assigned by the court of jurisdiction for such proceeding.
- (5) An principal or public automobile auctioneer, ~~auction firm or gallery~~ shall not permit ~~its~~ his or her name or license number to appear on any advertisement not in compliance with Tennessee Code Annotated, Title 62, Chapter 19 et seq. (Auctioneer Licensing Law) and the Rules of the Tennessee Auctioneer Commission.

Authority: T.C.A. §§ 62-19-106 and 62-19-118(c)(2).

Rule 0160-01-.21 is amended by deleting the text of the rule in its entirety and substituting instead language so that, as amended, Rule 0160-01-.21 shall read:

0160-01-.21 DISCLOSURE OF BUYER'S PREMIUM.

- (1) An principal or public automobile auctioneer, ~~auction firm or gallery~~ shall disclose the existence and amount of any "buyer's premium," commission, or fee to be charged to buyers at an auction sale. Such disclosure shall be made in all advertising and orally announced immediately prior to the start of an auction.

Authority: T.C.A. §§ 62-19-106 and 62-19-118(c)(2).

Rule 0160-01-.22 is amended by deleting the text of the rule in its entirety and substituting instead language so that, as amended, Rule 0160-01-.22 shall read:

0160-01-.22 LATE RENEWAL OF LICENSE.

- (1) A licensee applying to renew a license after the date of expiration, but less than two (2) months ~~or less~~ after the expiration date thereof, shall pay, in addition to any fees required for renewal and satisfaction of any outstanding continuing education requirements, a penalty of fifty dollars (\$50.00).
- (2) A licensee applying to renew a license more than two (2) months after the expiration date thereof, but less than six months, shall ~~reapply~~ submit an application for licensure, satisfy any outstanding continuing education requirements, and pay a penalty of one hundred and fifty dollars (\$150.00).
- (3) A licensee applying to renew a license six months or more after the expiration date thereof, but less than ~~two (2)~~ one (1) years, shall ~~reapply~~ submit an application for licensure, satisfy any outstanding continuing education requirements and pay a penalty of two hundred dollars (\$200.00).
- (4) Upon written submission of good cause shown, the Commission may by a majority vote waive any or all of the penalties and requirements in paragraphs (1)-(3) of this rule, including but not limited to reexamination and additional education requirements, or in lieu thereof impose such other reasonable conditions or requirements as it deems appropriate.

- (5) A licensee delinquent in the renewal of a license for ~~two (2)~~ one (1) years or more shall reapply for licensure and satisfy all requirements for obtaining such license, including but not limited to re-examination and re-application.

Authority: T.C.A. §§ 62-19-106 and 62-19-111.

Rule 0160-01-.23 is amended by deleting the text of the rule in its entirety and substituting instead language so that, as amended, Rule 0160-01-.23 shall read:

0160-01-.23 RETIREMENT OF LICENSE.

- (1) Upon written request accompanied by the license certificate, pocket card and the appropriate fee as set forth in Rule 0160-01-.14 of these rules, an auctioneer or ~~apprentice~~ affiliate auctioneer may retire such auctioneer's or ~~apprentice~~ affiliate auctioneer's license.
- (2) Only a license that is current and in good standing with the Commission may be retired. For the purposes of T.C.A. § 62-19-112(d) and this rule, "current and in good standing" shall mean the license is valid and unexpired, all applicable fees and any outstanding penalties have been paid by the licensee, the licensee has met all applicable continuing education requirements, and the licensee e is not under any current disciplinary sanction.
- (3) Expired licenses renewed pursuant to Rule 0160-01-.22 shall be deemed valid and unexpired for the purposes of this rule.
- (4) No contribution to the Education and Recovery Account or continuing education shall be required of a licensee whose license is in retirement.
- (5) A retired license may be activated upon submission to the Commission of a written application, the payment of the appropriate fees as set forth in Rule 0160-01-.14 and proof that the applicant has obtained at least six (6) hours of continuing education in the two (2) year period immediately preceding the date of application.

Authority: T.C.A. §§ 62-19-106 and 62-19-112(d).

Rule 0160-01-.24 is amended by deleting the text of the rule in its entirety and substituting instead language so that, as amended, Rule 0160-01-.24 shall read:

0160-01-.24 NOTIFICATION OF CHANGE OF INFORMATION.

- ~~(1)~~ Within sixty (60) days of occurrence, a licensee shall notify the Commission in writing of any change in information previously submitted by the licensee to the Commission. Such information includes but is not limited to the licensee's business address, auction escrow account data and the employment, termination or resignation of any ~~apprentice~~ affiliate.
- ~~(2) Any firm must notify the Commission within ten (10) days of the death, resignation, termination or other extended absence of the firm's principal auctioneer. The firm shall have no longer than thirty (30) days from the death, resignation, termination or other extended absence within which to replace the principal auctioneer and must immediately notify the Commission in writing of the auctioneer's replacement.~~

Authority: T.C.A. §§ 62-19-106 and 62-19-111.

Rule 0160-01-.25 is amended by deleting the text of the rule in its entirety and substituting instead language so that, as amended, Rule 0160-01-.25 shall read:

0160-01-.25 PUBLIC AUTOMOBILE AUCTION AND PUBLIC AUTOMOBILE AUCTIONEER LICENSE.

- (1) Any individual desiring a license as a public automobile auctioneer shall submit an application on a form prescribed by the commission, accompanied by a nonrefundable application fee, along with satisfactory proof that the applicant has:
 - (a) Reached at least twenty-one (21) years of age;
 - (b) Served as an auctioneer for a period of two (2) years; and
 - (c) Successfully completed, in addition to the education required by T.C.A § 62-19-111(ab)(2), ~~thirty (30)~~ fifteen (15) hours of more rigorous classroom or online instruction in automobile auctioneering approved by the commission.
- (2) An applicant for a public automobile auction license shall submit an application on a form prescribed by the commission, accompanied by a nonrefundable application fee, and accompanied by satisfactory proof that:
 - (a) The public automobile auction has a letter of compliance with local ordinances from the local zoning authority;
 - (b) The public automobile auction has garage keeper's legal liability insurance in an amount not less than five hundred thousand dollars (\$500,000);
 - (c) The public automobile auction has a surety bond of fifty thousand dollars (\$50,000) issued by a licensed bonding company;
 - (d) The public automobile auction has a compiled financial statement prepared in accordance with generally accepted accounting principles by a certified public accountant or public accountant dated not earlier than twelve (12) months prior to the date of the application;
 - (e) The public automobile auction has a minimum net worth of one hundred thousand dollars (\$100,000);
 - (f) The public automobile auction has a business telephone number ~~land-line~~ in the public automobile auction's name;
 - (g) The public automobile auction has a permanently installed professional business sign with letters which are at least eight (8) inches in height;
 - (h) The public automobile auction has a current business tax license as required by local law;
 - (i) The public automobile auction has displayed on its premises a valid motor vehicle dealer license from the Tennessee Motor Vehicle Commission; and
 - (j) The public automobile auction has displayed on its premises a valid license from the Tennessee Auctioneer Commission.

Authority: T.C.A. §§ 62-19-106, 62-19-111, and 62-19-128 ~~and Chapter 724 of the Public Acts of 2008, §§ 3, 4, and 8.~~

Rule 0160-01-.26 is amended by deleting the text of the rule in its entirety and substituting instead language so that, as amended, Rule 0160-01-.26 shall read:

0160-01-.26 ESCROW ACCOUNT REQUIREMENT.

~~All licensed auction firms and galleries shall maintain an escrow or trustee account for all funds that belong to others coming into possession of the firm or gallery as a result of an auction sale.~~

(a) All principal and public automobile auctioneers shall maintain or have written authorization from a principal or public automobile auctioneer granting access to an escrow or trustee account for all funds that belong to others coming into possession as a result of an auction sale.

(b) All principal or public automobile auctioneers shall be responsible for all funds deposited into an escrow or trustee account.

Authority: T.C.A. §§ 62-19-106 and 62-19-112(b)(4).

Rule 0160-01-.27 is amended by deleting the text of the rule in its entirety and substituting instead language so that, as amended, Rule 0160-01-.27 shall read:

0160-01-.27 LIVESTOCK AUCTION SALES.

- (1) Pursuant to T.C.A. § 62-19-103(8), the provisions of title 62, chapter 19 do not apply to any livestock auction sale regulated by the United States Department of Agriculture Packers & Stockyards Administration, if the sale uses:
 - (a) The shipper's proceeds account required by federal regulations; and
 - (b) A ~~Tennessee~~ principal or public automobile auctioneer licensed ~~auctioneer~~ under T.C.A. §§ 62-19-101 et seq. and the rules promulgated thereunder.
- (2) Any operator of a livestock auction sale that is not registered with and regulated by the Packers & Stockyards Administration shall not qualify for ~~the firm or gallery~~ license exemption under T.C.A. § 62-19-103(8) and must be appropriately licensed.
- (3) Any person acting ~~as an auction firm or gallery~~ outside of a livestock auction regulated by the Packers & Stockyards Administration shall ~~hold a Tennessee auction firm or gallery~~ be a licensed principal or public automobile auctioneer and is subject to all statutes and rules of the Tennessee Auctioneer Commission notwithstanding such person's registration with the Packers & Stockyards Administration.
- (4) Nothing in this rule shall be construed as exempting any person acting as or advertising or representing to be an auctioneer or ~~apprentice~~ affiliate auctioneer from the licensure requirements of T.C.A. § 62-19-102.

Authority: T.C.A. §§ 62-19-102, 62-19-103, and 62-19-106.

Chapter 0160-03
Continuing Education
Amendments

Rule 0160-03-.01 is amended by deleting the text of the rule in its entirety and substituting instead language so that, as amended, Rule 0160-03-.01 shall read:

0160-03-.01 DEFINITIONS

- (+) As used in this chapter, unless the context otherwise requires, the following definitions~~;~~ are applicable:
- (a) "Commission" shall mean the Tennessee Auctioneer Commission.
 - (b) "License" shall mean a license issued by the Tennessee Auctioneer Commission in accordance with T.C.A. §62-19-111.
 - (c) "Licensee" shall mean any principal auctioneer, apprentice affiliate auctioneer, or public automobile auctioneer ~~or auction firm~~ licensed in accordance with T.C.A. § 62-19-111. As used in this chapter, this definition does not include bid caller auctioneers.
 - (d) "Personal identification number~~;~~" shall mean the number assigned to a continuing education program approved by the Commission.

Authority: T.C.A. §§ 62-19-106(b), 62-19-106(e), 62-19-~~4~~111, and 62-19-112(b)(7), ~~and Public Acts of 1997 Chapter 91, §5.~~

Rule 0160-03-.03 is amended by deleting the text of the rule in its entirety and substituting instead language so that, as amended, Rule 0160-01-.03 shall read:

0160-03-.03 BASIC REQUIREMENTS

- (1) All ~~licensees including auctioneer~~ licensees, ~~apprentice auctioneer licensees, gallery licensees, as well as non-auctioneers firm owners, except as otherwise provided by T.C.A. § 62-19-106(e) and these rules,~~ must obtain six (6) hours of continuing education per renewal cycle in order to renew a license, ~~except as provided for in T.C.A. §62-19-106(e)(2).~~
- (2) A licensee attending a continuing education program shall provide the licensee's name and license number~~(s)~~ to the sponsor education provider in writing on the sponsor education provider's registration form for any Commission-approved continuing education program. If the licensee fails to follow the aforementioned requirement, the licensee shall not receive credit for attending the program from the Commission. Licensees shall also personally maintain proof of completion of each continuing education course for two (2) renewal cycles.
- (3) A licensee who attends any continuing education program or engages in other continuing education activity which has not been approved by the Commission shall not be awarded credit by the Commission towards the continuing education requirement.
- ~~(4) — A licensed auctioneer or apprentice affiliate auctioneer who also is the holder of a firm license or gallery license need only obtain the number of hours of continuing education for the renewal of one (1) license in order for the Commission to renew both the auctioneer or apprentice affiliate auctioneer license and the firm license or gallery license.~~
- ~~(5) — Non-auctioneer gallery and non-auctioneer firm owners must obtain six (6) hours of continuing education per renewal cycle in order to renew their license, as set forth in Rule 0160-3-.03(1), except as provided for in T.C.A. § 62-19-106(e)(2).~~

Authority: T.C.A. §62-19-106(b) and (e).

Chapter 0160-01
General Provisions
Repeal

Rule 0160-01-.01 is amended by deleting the text of the rule in its entirety and substituting instead language so that, as amended, Rule 0160-01-.01 shall read:

0160-01-.16 ~~NON-AUCTIONEER OWNED FIRMS.~~ REPEALED.

- ~~(1) A non-auctioneer owned firm is an auction firm which is not owned in any part by a person who holds a Tennessee auctioneer's license.~~
- ~~(2) Every application by a business entity, including a limited liability company, corporation or partnership not principally engaged in the auction business, for an auction firm license or license renewal shall designate as the applicant a natural person who is an employee, owner, shareholder, partner, or member of the entity and meets the applicable requirements of T.C.A. § 62-19-111. The designated applicant shall be the individual responsible for the firm's license.~~
- ~~(3) A non-auctioneer owned firm must also designate in its auction firm license application one (1) licensed auctioneer who shall serve as the firm's principal auctioneer. The principal auctioneer shall attend and, along with the firm, shall accept responsibility for all auctions conducted by the firm.~~
- ~~(4) Any non-auctioneer owned firm must notify the Commission within ten (10) days of the death, resignation, termination or other extended absence of the firm's principal auctioneer. The firm shall have no longer than thirty (30) days from the death, resignation, termination or other extended absence within which to replace the principal auctioneer and must immediately notify the Commission in writing of the auctioneer's replacement. The firm shall not conduct any auctions until the Commission has received its designation of a new principal auctioneer.~~

~~**Authority:** T.C.A. §§ 62-19-102, 62-19-106, and 62-19-111.~~

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
John Thorpe	X				
Jeff Morris	X				
Randy Lowe	X				
Kimball Sterling	X				
Vacant					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Auctioneer Commission on February 24, 2020 and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: November 6, 2019

Rulemaking Hearing(s) Conducted on: (add more dates). February 24, 2020

Date: _____

Signature: _____

Name of Officer: Anna D. Matlock

Title of Officer: Associate General Counsel

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

Agency/Board/Commission: Tennessee Auctioneer Commission

Rule Chapter Number (s): 0160-01 Regulations of Auctioneers
 0160-03 Continuing Education

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

 Herbert H. Slatery III
 Attorney General and Reporter

 Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
Secretary of State

Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

Comment 1: Please accept the following comments regarding the proposed revised regulations for consideration by the Commission on Monday, February 24, 2020.

Nashville Auction School fully supports moving the proposed rules forward to avoid any further delay in having rules in place; however, we would like to be on the record for voicing our concern about the wording of two specific proposed rules. It is our opinion that the spirit and intent of these rules is correct; however, the language is not entirely clear to the intent. After reviewing with legal counsel, Ms. Anna Matlock, we are comfortable with the department's understanding and enforcement of these rules, as written.

Rule 0160-01-.20 Advertising Guidelines.

The language of this rule implies that a bid caller auctioneer may advertise an auction; however, because the law specifically limits the bid caller license, we understand this rule does not authorize the bid caller auctioneer to take responsibility for the conduct or advertising of an auction; and we will instruct our students accordingly.

Rule 0160-01-.26 Escrow Account Requirement.

The language of this rule may create confusion for auctioneers who are working under a company that holds an escrow or trustee account for auction funds generated from the company's auction contracts.

It is our understanding that all principal and/or public automobile auctioneers that are acting as sole proprietors or as the owners of a corporation or LLC are required to hold and maintain an escrow or trustee account.

We also understand and agree with legal counsel for the Commission that principal and/or public automobile auctioneers that are employed or affiliated with an established auction company holding an escrow or trustee account, cannot maintain a separate escrow or trustee account in their name.

We will instruct our students accordingly.

At this time, we are not requesting any change to the proposed rules. We respectfully request our comments on the following rules be added to the official record of this rulemaking hearing.

Response 1: As no changes or amendments of the proposed rules were presented in this comment, the Commission elected to not make a specific comment for this received written comment.

Comment 2: In regard to Rule 0160-01-.26 the issue that I see is that we have now made everyone a principal auctioneer and the rule says all principal auctioneers shall maintain an escrow or trust account. Under previous license structure firms would have multiple auctioneers that hung their licenses at one location. Consequently, those auctioneers would operate under that firm's commission-approved escrow account. There are multiple firm set-ups that will now dissolve that have fifteen (15) to twenty (20) auctioneers underneath them. Are those auctioneers required to have their own escrow account? It is very problematic in the state of Tennessee to get an escrow account if you don't have a business. I think there needs to be clarification because there are firms that have twenty (20) to thirty (30) auctioneers utilizing one escrow account. If we've tried to ease the barrier of entry

from the beginning what this rule is going to do is require hundreds of licensed auctioneers that are automatically going to go from under a firm to becoming a principal to now having to open their own business and basically be stand-alone auctioneers. I think that is opposite of the Task Force intent from the beginning, then nature of the law is good, but the rules need improvement. Rule 0160-01-.20 refers to advertising. I would like for there to be clarification regarding the responsible party. In Rule 0160-01-.05 it states just the individual's name. I would like clarification that the responsible party needs to have their name listed and as well as their license number.

Response 2: The Commission voted to accept the amended proposed changes. Specifically, Tenn. Comp. R. & Regs. 0160-01-.05 was amended to include the language "license number." Additionally, further information was provided for the escrow accounts in Tenn. Comp. R. & Regs. 0160-01-.26. The Commission decided to allow individuals to have the option of maintaining their own escrow account, or to have access to an escrow account with written permission stating such. The Commission also voted to maintain that all principal and automobile auctioneers are responsible for money that is placed into an escrow or trust account.

Comment 3: The trouble with what we are wrestling with is how "principal auctioneer" as defined and what that means in real world terms. What I am seeking is clarification in the rules, in the form of what the Task Force was trying to do when an affiliate auctioneer upgrades to a principal auctioneer. At the end of their affiliate time period, they will take the state test and upon passing become a principal auctioneer. Do new auctioneers have to declare that they are working for a specific firm or is there an assumption made they work under their sponsor? How do we treat the auctioneer after six (6) months when their affiliate period concludes? There needs to be something in the rules and regulations to allow them to work underneath someone, because we need to know who is responsible.

Response 3: No specific changes or amendments of the proposed rules were presented in this comment. However, the Commission did provide clarification. The Commission stated that if any auctioneer is working for a company or firm, even if as an independent contractor, then both the names of the individual and the company need to be placed on the contracts, escrow account, and the advertisements. The Commission also further clarified that principal or public automobile auctioneers need to have either their own escrow account or trust account, or written permission granting access to the account. The Commission clarified it is not regulating the company or firm, but the individual principal or public automobile auctioneer licensed with the Commission. Lastly, the number of individuals on a specific escrow account will not be regulated by the Commission and is not in its purview.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

The proposed rules do not affect small businesses directly. However, the rules may have an impact on small businesses directly related to the auctioneer industry. However, those impacts, if any, will be minimal as the main purpose of these rules is to implement statutory changes enacted by the General Assembly. The proposed amendments would benefit small businesses in auctioneer industry and its consumers. The rules streamline certain aspects of the industry and clarify standards and requirements for licensure, continuing education, and standards for the industry.

The Commission knows of no other less burdensome, less intrusive, or less costly alternative methods of achieving the purpose and objectives of the proposed rules. The various amendments would require minimal costs for compliance. Many of the states that regulate the auctioneer industry have very similar rules and regulations, thus making Tennessee rules consistent with other jurisdictions and allowing license portability easier for current and future licensees. The Commission foresees minimal, if any, impact to consumers with the promulgation of the proposed rules. An exemption for small businesses would not be beneficial.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The Tennessee Auctioneer Commission foresees no impact on any local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The proposed rules are in response to recent statutory changes made with the passage of Public Chapter 471 and signed into law on May 24, 2019 by Governor Bill Lee. These statutes were passed as a result of the findings from the Auctioneer Law Modernization Task Force. The proposed rules make amendments to two (2) different chapters and a total of twenty (20) different rules. Most of the rules update the new language provided in the Public Chapter, including the updated titles of affiliate auctioneer and principal auctioneer. Additionally, all references to galleries and firms were removed as those licenses were repealed. These rules also help clarify the requirements for licensure, continuing education, qualifying education, as well as, standards and regulations for auctioneers. The rules also include a new fee for bid caller licensees and remove the fee for pocket card licenses.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Public Chapter 471 was signed into law on May 24, 2019 by Governor Bill Lee. Following its passage, these rules were necessary to reflect the statutory changes. There is no known federal law or regulation mandating promulgation of such rule of establishing guidelines relevant.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The proposed rules would affect current licensees and future applicants. We believe that all affected would approve of the adoption of these rules because the proposed rules are beneficial to all industry members.

- (D)** Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

There are no known opinions of the Attorney General and Reporter or any judicial ruling that directly relate to this rule.

- (E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

With the promulgation of this rule the Commission foresees minimal impacts to state and local government revenues and expenditures. Specifically, the Commission anticipates a one-time cost of approximately three thousand two hundred dollars (\$3,200.00) in technological expenses to implement the rules as amended.

- (F)** Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Anna D. Matlock, Associate General Counsel of the Tennessee Auctioneer Commission
Roxana Gumucio, Executive Director of the Tennessee Auctioneer Commission

- (G)** Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Anna D. Matlock, Associate General Counsel of the Tennessee Auctioneer Commission

Roxana Gumucio, Executive Director of the Tennessee Auctioneer Commission

- (H)** Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Anna D. Matlock
500 James Robertson Parkway, Nashville, TN 37243
(615) 741-3072
Anna.Matlock@tn.gov

Roxana Gumucio
500 James Robertson Parkway, Nashville, TN 37243
(615) 532-7081
Roxana.Gumucio@tn.gov

- (I)** Any additional information relevant to the rule proposed for continuation that the committee requests.

There is no known additional relevant information.