



# NewsLine

The Official Publication of the Tennessee Auctioneers Commission Volume XLV—Winter 2013

## Table of Contents

Page One  
Auction Commission Report  
Legal Reminder: Get a signed contract

Page Two  
Absolute vs. Reserve Auctions  
To Winterize or Not to Winterize?  
Happy New Year - 2013

Page Three  
License Renewal Options Chart

Page Four  
Continuing Education, Oct. 2012

## Department, Members & Staff

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**Julie Mix McPeak, Commissioner C & I**

**Bobby Colson, Chairman**

Middle Tennessee Expires 08/31/2013

**Jeff Morris, Vice Chairman**

At-Large Member Expires 08/31/2014

**Gary W. Cunningham**

Consumer Member Expires 08/31/2013

**Marvin Alexander**

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**Howard Phillips**

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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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## AUCTIONEER COMMISSION REPORT

The Commission welcomes Howard Phillips to the board as the East Tennessee member. Commissioner Phillips served on the Auctioneer Commission from 2000 until 2009. He owns Powell Auction & Realty in Knoxville, which he operates with his wife, Barbara, and sons Kenny and Brian.

The Auctioneer Commission staff has identified an increase in the number of inquiries about reinstatement of delinquent and lapsed licenses. The Commission strongly encourages licensees to formally retire their license, as opposed to letting it lapse. The process for retirement is as follows:

1. Submit a letter to the auctioneer commission requesting that your license be retired;
2. Submit a fee of \$ 150.00;
3. Submit your current and valid license.

Once a license is placed into retirement, the licensee will not be required to obtain continuing education. The licensee may elect to reactivate a retired license by obtaining six (6) hours of continuing education and a completed application with the appropriate licensing fees.

Unfortunately, some auctioneers will allow their license to lapse to avoid paying the retirement fee.

In 2010, a chart was drawn to reflect the legal requirements established for auctioneer licenses in Tennessee. The chart addresses both on-time and late renewals. This chart was approved by the auctioneer commission and it is the definitive guide to license renewal issues.

Please take a moment to review this chart on **Page 3** of this newsletter.

The Commission meeting schedule for 2013 has been approved. Upcoming meetings are scheduled for:

February 4, 2013, March 4, 2013 and April 1, 2013. Meetings begin at 9:00 a.m. (CST). Some meetings may be cancelled 30 days prior to the actual meeting. Before planning to attend a meeting, please be certain the meeting is being held as originally scheduled.

**LEGAL REMINDER: 62-19-112. Denial, revocation or suspension of license by commission - Retirement of license.**

(b) The commission may suspend, revoke or refuse to renew any license issued under this chapter where such license has been obtained by false or fraudulent representations, or for any of the following causes:

.....(9) **Failing prior to the sale at public auction to enter into a written contract with the owner or consignee of any property to be sold, containing the terms and conditions upon which such licensee receives the property for sale; ...**

## **ABSOLUTE VS. RESERVE**

One of the most contentious topics of discussion in the auction industry centers around absolute auctions vs. reserve auctions. In the coming months, the TAC will be wrangling through discussions on these types of auctions to clarify the confusion that exist amongst auctioneers.

Commission Rule **0160-1-19 Types of Auctions Defined** gives us the following definitions:

(1) Absolute auction/auction without reserve - *An auction at which **property put up for sale is sold to the highest bidder, where the seller may not withdraw the property from the auction after the auctioneer calls for bids unless no bid is made in a reasonable time, where the seller may not bid himself or through an agent, and where the seller will deliver marketable title.*** [Emphasis added].

(2) At Auction/auction with reserve - *An auction at which **the seller or his agents reserves the right to establish a minimum bid, to accept or reject any and all bids, and to withdraw the property at any time prior to the completion of the sale by the auctioneer.*** [Emphasis added].

Confusion and disagreement on absolute vs. reserve generally arise over real estate auctions specific to contingencies on the property. The Sales Article (Section 2) of the Uniform Commercial Code lends some clarity for personal property auctions but the UCC does not apply to real estate transaction. Section 2-328(3) states:

*Such a sale (by auction) is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he announces the completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made in a reasonable time. In either case a bidder may retract his bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.*

Note: The UCC does not use the word **absolute**, but instead differentiates between **auctions with reserve** and **auctions without reserve**. TAC Rule 0160-1-19 connects the term **absolute auction** with **auction without reserve**, and connects the term **at auction** with the phrase **auction with reserve**.

As the Commission continues to discuss absolute vs. reserve auctions in Tennessee, licensees are reminded

of Rule 0160-1.20 (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.*

Licensees are encouraged to attend the commission meetings. If you cannot attend, you can view the meetings online at the "Public Meeting Calendars" tab .

### **To Winterize or not to Winterize?**

With winter upon us and the coldest days of the season still ahead of us, auctioneers with properties in the pipeline are considering whether their sellers need to winterize the property. Following are some helpful tips for winterizing a property.

1. Turning off the water to the property.
2. After the water is turned off, turn off the water heater and drain it. For a gas water heater, turn the temperature control to the Off position and turn off the gas valve. An electric water heater can be shut off at the breaker. Open a faucet to allow the air to flow into the water lines.
3. Drain the supply lines. Some water may remain in the pipes and may freeze. A professional winterization will include blowing out the pipes to prevent this.
4. Drain other appliances such as washing machines, dishwashers and ice makers.
5. Turn off electrical appliances at the breaker and post a reminder on the breaker box to turn the water on before restarting the water heater.
6. Flush toilets until empty and fill with a non-toxic RV type (pink) antifreeze.
7. Be sure to post signs that the property has been Winterized in the kitchen, bathrooms and other areas of the property.

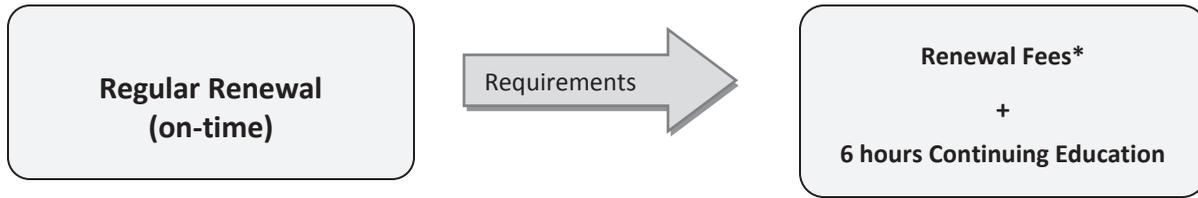
De-winterizing is a careful process as well. When warmer weather returns or when the property sells, reverse these actions. Of course, it is always recommended to use a professional plumber to winterize your property.

### **HAPPY NEW YEAR - 2013**

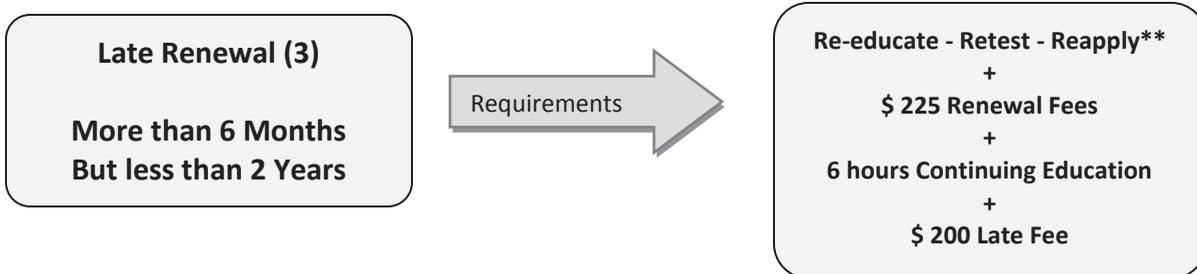
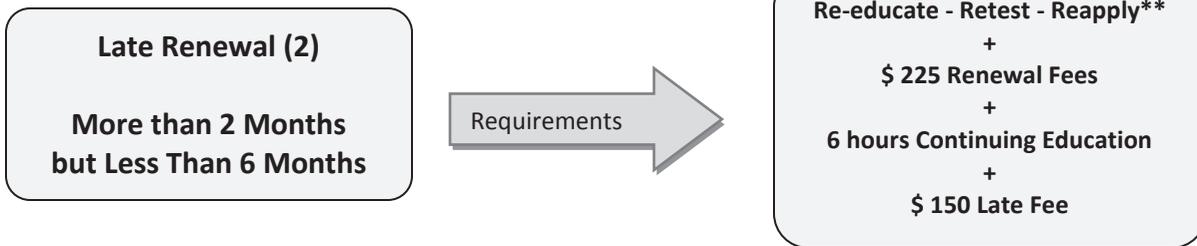
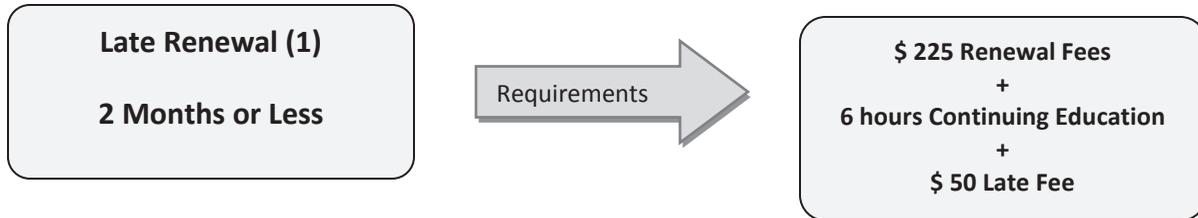
It was Julius Caesar who declared January 1st as the first day of the year. The month of January is named after Janus, the Roman god of beginnings. Janus had two faces - one to look forward into the future and the other to look back into the past.

*Best Wishes for health, happiness and prosperity in 2013*

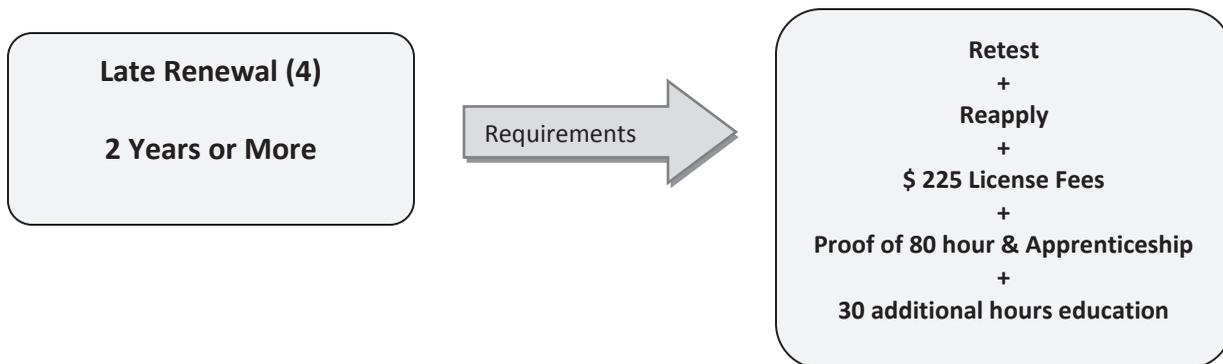
**Auctioneer License Renewal Options ++**  
**T.C.A. 62-19-111(i) and (j) (1) & (2) and Rule 0160-01-.22**



\*Renewal Fees = \$ 175 license + \$ 50 Education/Recovery Fund



\*\*Licensee may request a waiver from the Commission on Re-educate, Retest and Reapply for Late Renewals (2) & (3)



**Per Rule 0160-1-.22(4):** Upon written submission of good cause the Commission may waive penalty fees, re-examination & additional education requirements in Late Renewals (2) and (3) above. Requirements in Late Renewal (4) cannot be waived.

**++Similar standards will apply for Late Renewal of Apprentice, Gallery & Firm Licenses**

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## Continuing Education Seminar

*Monday, February 18, 2013*

*9:00 a.m. (Central)*

*Natchez Trace State Park*

24845 Natchez Trace Road

Wildersville, TN 38388

1-800-250-8616



**About Lunch:** The Park will be opening the dining room for lunch FOR CONFIRMED ATTENDEES only. Please call NAS at 800-543-7061 before February 1, 2013 to reserve a buffet lunch at the Park Restaurant.

## Selling Firearms at Auction

2 Hours

*Featuring*

**The Bureau of Alcohol, Tobacco, Firearms & Explosives**

Agent Bill Gallivan will be accompanied by agents from the East Tennessee office for this presentation.

*And.....*

**Contracts**

**and**

**The Uniform Commercial Code**

4 Hours

*Featuring*

**John Shultz**

John is a leading expert in how our use of technology in the auction industry is changing and how we handle contracts and UCC compliance.

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

*Remember to give a confirmation for lunch by Friday, February 1, 2013*

