



COMMONWEALTH OF KENTUCKY
KENTUCKY BOARD OF AUCTIONEERS
2819 RING ROAD, SUITE 200
ELIZABETHTOWN, KENTUCKY 42701
<http://auctioneers.ky.gov>
(270) 360-0736
FAX (270) 360-0917

INSTRUCTIONS FOR FILING A FORMAL COMPLAINT

1. Please type or print clearly. The complainant is the person filing the complaint and the respondent is the licensed auctioneer. **Complaints are filed against an individual licensee, not an auction company.**
2. State the date of the auction or misdeed. Please state specific subsections of KRS 330.110 which you feel have been violated, and the specific conduct of the licensee who you feel violated each subsection. Include names and addresses of witnesses, if any. Enclose copies of contract and any other pertinent documents pertaining to the transaction of the complaint.
3. The Complaint Form must be signed before a Notary Public.
4. A copy and any attachments will be sent to the Respondent Licensee. Copies of further pleadings, letters or information sent to the Board later concerning said complaint will also be sent to the Respondent licensee.
5. The original Complaint form with any attachments and one copy of the form with attachments must be returned to the Board office.
6. The complete KRS Chapter 330 (auctioneer law) is enclosed. It is recommended that the complete Kentucky Revised Statutes Chapter 330 be reviewed. Following this page are KRS 330.192 and KRS 330.110:
 - If KRS 330.192 (3)(f) is applicable, please call the Board office for a Proof of Loss form.
 - KRS 330.110 lists the specific violations that must be stated on the complaint form.
7. Once the Board receives the complaint, an answer form is sent to the licensee to be completed and returned to the Board within 20 working days. When the response is received by the Board, the case is assigned to a Compliance Officer. After investigation, it is presented to the Board at a monthly meeting for determination of further action. If you have any questions regarding the procedure, please contact Kenneth Hill at the Kentucky Board of Auctioneers' office.

******PLEASE DO NOT STAPLE ANY ITEMS******

330.110 License suspension, revocation, and other penalties -- Grounds.

The board may suspend for a period up to five (5) years or revoke the license of any licensee, or levy fines not to exceed two thousand dollars (\$2,000), with a maximum fine of five thousand dollars (\$5,000) per year arising from any single incident or complaint, against any licensee, or place any licensee on probation for a period of up to five (5) years, or require successful passage of any examination administered by the board, or require successful completion of any course of auction study or auction seminars designated by the board, or issue a formal reprimand, or order any combination of the above, for violation by any licensee of any of the provisions of this chapter, or for any of the following causes:

- (1) Obtaining a license through false or fraudulent representation;
- (2) Making any substantial misrepresentation;
- (3) Pursuing a continued and flagrant course of misrepresentation or intentionally making false promises or disseminating misleading information through agents or advertising or otherwise;
- (4) Accepting valuable consideration as an apprentice auctioneer for the performance of any of the acts specified in this chapter, from any person, except his or her principal auctioneer;
- (5) Failing to account for or remit, within a reasonable time, any money belonging to others that comes into the licensee's possession, commingling funds of others with the licensee's own funds, or failing to keep the funds of others in an escrow or trustee account;
- (6) Paying valuable consideration to any person for services performed in violation of this chapter, or procuring, permitting, aiding, or abetting any unlicensed person acting in violation of any of the provisions of this chapter;
- (7) Entering a plea of guilty, an Alford plea, a plea of no contest to, or being convicted of, any felony, and the time for appeal has passed or the judgment of conviction has been finally affirmed on appeal;
- (8) Violation of any provision of this chapter or any administrative regulation promulgated by the board;
- (9) Failure to furnish voluntarily at the time of execution, copies of all written instruments prepared by any licensee to each signatory of the written instrument;
- (10) Any conduct of a licensee which demonstrates bad faith, dishonesty, incompetence, or untruthfulness;
- (11) Any other conduct that constitutes improper, fraudulent, dishonest, or negligent dealings;
- (12) Failure to enter into a binding written auction listing contract with the seller or with the seller's duly authorized agent prior to advertising, promoting, or offering any real or personal property by or at auction;
- (13) Failure to provide a receipt to all persons consigning personal property with any licensee for auction;
- (14) Failure to establish and maintain, for a minimum of five (5) years from final settlement, complete and correct written or electronic records and accounts of all auction transactions, including:
 - (a) Listing contracts, including the name and address of the seller;
 - (b) Written purchase contracts;
 - (c) Descriptive inventory and final bid amounts of all items or lots offered;
 - (d) Buyer registration records; and
 - (e) Settlement records, including all moneys received and disbursed and escrow account activity;
- (15) Failure of any licensee to present any auction-related information, subsequent to a request by the board's executive director, a board compliance officer, or board counsel; or
- (16) Failure of a principal auctioneer to provide supervision to his or her apprentice auctioneers.

330.192 Auctioneer's education, research, and recovery fund -- Annual fees, charges, and assessments -- Purpose -- Use -- Statement of income and expenses -- Coverage of licensees.

- (1) (a) There is hereby created and established in the State Treasury the auctioneer's education, research, and recovery fund.
(b) In addition to the license fees established in KRS 330.070, and KRS 330.095, the board may assess each licensee a renewal recovery fee established by administrative regulations promulgated by the board in accordance with KRS Chapter 13A. Each initial applicant shall pay an initial recovery fee established by administrative regulations promulgated by the board in accordance with KRS Chapter 13A.
- (2) The purposes of the auctioneer's education, research, and recovery fund shall be as follows:
 - (a) When a licensee has been duly found guilty of violating one (1) or more of the provisions of this chapter, or one (1) or more of the administrative regulations duly promulgated by the board, and upon the conclusion of a final order entered by the board or by the courts, if appealed, the board is authorized to pay to the aggrieved party an amount not to exceed fifty thousand dollars (\$50,000) against any one (1) licensee, if the licensee has refused to pay the claim within twenty (20) days of entry of a final order and provided further that the amount or amounts of money in question are certain and liquidated.
 - (b) The board shall maintain a minimum of two hundred fifty thousand dollars (\$250,000) for recovery and guaranty purposes. These funds may be invested and reinvested in the same manner as funds of the State Employees' Retirement System and the interest from said investments shall be deposited to the credit of the research and recovery fund, or, in the discretion of the board, to the agency fund account as set out in KRS 330.050(6). Sufficient liquidity, however, shall be maintained so that money is available to satisfy all claims which may be processed through the board by means of administrative hearing as outlined in this chapter.
 - (c) The board may use funds in excess of two hundred fifty thousand dollars (\$250,000), whether from the auctioneer's education, research, and recovery fund fees or accrued interest thereon, for any of the following purposes:
 1. To advance education and research in the auction field for the benefit of those seeking an auctioneer license, those licensed under the provisions of this chapter and to improve and make more efficient the auction industry;
 2. To underwrite educational seminars, caravans, and other forms of educational projects for the general benefit of licensees;
 3. To establish an auction chair or courses at Kentucky state institutions of higher learning for the purpose of making college or university level courses available to licensees and the general public;
 4. To contract for a particular research project in the auction field for the Commonwealth of Kentucky;
 5. To sponsor, contract for, and to underwrite all other educational and research projects that contribute to the advancement of the auction field in Kentucky;
 6. To cooperate with associations of auctioneers and any other groups for the enlightenment and advancement of Kentucky licensees;
 7. To increase the level of the auctioneer's education research, and recovery fund above two hundred fifty thousand dollars (\$250,000); and
 8. To augment the regular trust and agency account of the board for the purposes of addressing cash flow shortfalls, budget deficits, and for reimbursement of personnel, administrative, operational, and capital expenses incurred by the trust and agency account pursuant to the purposes of the education, research, and recovery fund as provided in this section, an amount not to exceed two hundred fifty thousand dollars (\$250,000) annually.
 - (d) Within one hundred twenty (120) days after the end of each fiscal year, the board shall make public, through its Web site or other public media, a statement of income and expenses of the auctioneer's education, research, and recovery fund, the details of which are in accordance with state financial reporting requirements.
- (3) (a) If a licensee is found guilty of one (1) or more provisions of this chapter or of violating one (1) or more of the administrative regulations of the board, and if the amount of the money lost by the aggrieved party or parties is in dispute or cannot be determined accurately, then the amount of damages shall be determined by the Circuit Court in the county where the alleged violation took place, provided that the board has previously determined that a violation of the license laws or of the administrative regulations has occurred and a final order has been entered.
(b) If an order has been entered and the license rights of the licensee have been finally adjudicated, then the local Circuit Court shall determine the monetary damages due from the aforesaid violation or violations.

(c) When a final order has been entered by the Circuit Court, Court of Appeals, or Supreme Court, and upon certification to the board, the aggrieved party or parties shall be paid an amount not to exceed fifty thousand dollars (\$50,000) by the board, and the license held by the licensee against whom the claim was made by the aggrieved party shall be suspended at least until the licensee has reimbursed the auctioneer's education, research, and recovery fund for all amounts paid to the aggrieved party due to the violation of the licensee.

(d) When, upon the final order of the court, the board has paid from the auctioneer's education, research, and recovery fund any sum to the aggrieved party, the board shall be subrogated to all of the rights of the aggrieved party to the extent of the payment and the aggrieved party shall, to the extent of the payment, assign his right, title, and interest in the judgment to the board.

(e) All claims for monetary damages or relief from the auctioneer's education, research, and recovery fund shall be made in writing and submitted to the board within twelve (12) months of the act of the auctioneer giving rise to the loss. Failure to file a claim within the twelve (12) month period shall bar the claim. Additional evidence shall be submitted by the claimant if required by the board.

(f) Notwithstanding any other provisions of this chapter, no unreimbursed amount greater than fifty thousand dollars (\$50,000) shall be paid by the board on account of any one (1) licensee, no matter over how long a time, or for how many claims, individually or in the aggregate. Should the licensee reimburse the fund for all amounts paid, then future claims timely filed with the board concerning different matters may be received pursuant to this section.

(g) No claims shall be approved under this section for amounts which, in the aggregate exceed the maximum payable on account of any one (1) licensee in effect at the time of the act or acts of the licensee giving rise to the claims, except to the extent of said maximum. Statutory increases in the maximum set out in this section do not apply retroactively.

(4) All categories of licensees under this chapter are covered under the provisions of this section for the benefit and protection of the public.

(5) This section is not intended to substitute for, circumvent, or duplicate other remedies existing at law or otherwise for claimants or potential claimants, but constitutes a last resort for aggrieved persons who would not, but for the provisions of this section, be able to recover their losses by any other means available. The board shall have full discretion to require that claimants exhaust all other remedies prior to proceeding under this section, including but not limited to the remedy of obtaining a judgment by all diligent and appropriate means.

Signature of Complainant (Person completing this form)

(Please sign before a Notary Public)

NOTARY CERTIFICATION:

Sworn and subscribed before me this _____ day of _____, 20_____.

My commission expires: _____.

Notary Public

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