



KENTUCKY BOARD OF AUCTIONEERS SUMMER NEWSLETTER 2016



Kentucky Board of Auctioneers

“Where All Kentucky Auctions Begin”

DIRECT FROM THE DIRECTOR



Kenneth Hill
KBA Executive Director

Greetings from your Board Office. I hope our Summer Newsletter finds you well, and not too beaten down by the oppressive heat that has invaded the Commonwealth of late. Already, this has been a busy year. We began working on the bi-annual budget in early February, and by the time that wrapped up we were already well into the renewal season. We now turn our attention to the day-to-day business of the Board, as we constantly strive to find new ways to operate more efficiently, and serve you better.

In this Newsletter you will find various articles designed to keep you up-to-date on the latest information as well as informed about the Board. Please note the financial statement for the Auctioneer's Education, Research, and Recovery Fund. Even with the final \$50,000.00 sweep, left over from Governor Beshear's budget, we are nearly back to the statutory minimum in that account. Governor Bevin's budget did not include any transfers to the general fund, so we

should continue to grow our "rainy day" fund throughout the entire two year period. Having the funds on hand to survive a sudden downturn in licensees, or other unforeseeable emergency, is imperative to the proper operation of any business or government agency. I feel confident that we are on the proper track for financial stability.

I encourage each of you to call, email, or stop by our office if you have any questions about anything. I always welcome your thoughts and opinions. If there is a topic you would like to see discussed in the newsletter, give me a call.

New Board Member Sworn In

A smiling Cliff-Ed Irvin is shown taking the oath of office during the Board's August meeting.

Cliff-Ed is a 3rd generation auctioneer and the principal broker of Irvin Group Realtors & Auctioneers and Lincoln Realty & Auction which he owns with father, Danny. He lives in Lancaster, Kentucky with his wife, Melissa, son Cade, and daughter Camdyn.

He is a 1994 Graduate of World Wide College of Auctioneering, and holds a BBA and MBA in Finance from the University of Kentucky.

He is a "Life Member" of the National Auctioneers Association, and he has been a member of Kentucky Auctioneers Association since 1994, having served as President in 2006. He was inducted into the KAA Hall of Fame in 2016.

Cliff-Ed currently serves on the Board of Ephraim McDowell Hospital and Lancaster- Garrard IDA, is a member of Forks of Dix River Baptist Church, and enjoys golf, demolition derby, and the sporting events of his alma mater, the University of Kentucky.

Shortly after this photo was taken, the Board got down to business, and held their organizational meeting as required by statute. J. Randall "Randy" Bush will again serve as Chairman, with E. Glenn Birdwhistell filling the role of Vice-Chairman.



RENEWAL RESULTS

Another renewal cycle has come and gone. By the time the dust had settled, we renewed 1911 licenses through June 30, 2016. Even with all the notifications, some Licensees fail to make the deadline, and we have now added another 66 for a total of 1977. If you failed to renew your license before the June 30 deadline, you can do it now! Just use the renewal portal on our website

auctioneers.ky.gov. Enter your license number, and the last four (4) digits of your social security number to access the system. A few simple steps, and you will be renewed and off to another licensing year. Late fees will apply, but your license can be activated quickly to keep you on track. Contact our office if you have any questions about late license renewals.



FIREARMS SALES

By: Ken Hill

Over the past eight years I have written numerous articles, answered hundreds of questions, and traveled across the state teaching a three-hour course on selling firearms, but still, firearms sales continue to be one of most misunderstood areas in auctioneering. Many questions still remain. To be clear, there is not a single mention of firearms in KRS 330, or in any of our administrative regulations. Firearms sales are governed predominantly by federal law, and by a few additional state and local regulations. So, does that mean that our Board has no stake in the matter? Of course it doesn't! As a regulatory agency, whose mission is public protection, it is our duty to ensure that auctioneers follow ALL rules and regulations, not just those contained in our own statutes. There is certainly an element of "public protection" in making sure firearms sales are properly conducted.



The position of the Kentucky Board of Auctioneers is quite clear, and remains unchanged; we fully support the 2nd Amendment to the U.S. Constitution, but we also have a duty to ensure that auctioneers conform to existing federal laws when auctioning firearms. Violation of laws outside KRS 330 is addressed in the following subsections of KRS 330.110(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. The Board has concluded that the improper sale of firearms, in violation of federal law, demonstrates improper, incompetent, or negligent dealings.

The rules, as they have existed for many years, are as follows.

- Auctioneers, without a Federal Firearms License may assist an estate in disposing of firearms through the auction process.
- Auctioneers should not take possession of these firearms.
- Auctioneers, without a Federal Firearms License should not accept firearms on consignment.
- Auctioneers, who sell firearms through their auctions on a regular basis are presumed by Federal Law to be "in the business" of firearms sales, and must possess a license issued by the Bureau of

The following is excerpted directly from the ATF Website:

"Does an auctioneer who is involved in firearms sales need a dealer's license?"

Generally speaking, there are two types of auctions: estate-type auctions and consignment auctions. In estate-type auctions, the articles to be auctioned (including firearms) are being sold by the executor of the estate of an individual. The firearms belong to and are possessed by the executor. The firearms are controlled by the estate, and the sales of firearms are being made by the estate. The auctioneer is acting as an agent of the executor and assisting the executor in finding buyers for the firearms. In these cases, the auctioneer does not meet the definition of engaging in business as a dealer in firearms and would not need a license. An auctioneer who does have a license may perform this function away from his or her licensed premises.

In consignment-type auctions, an auctioneer often takes possession of firearms in advance of the auction. These firearms are generally inventoried, evaluated, and tagged for identification. The firearms belong to individuals who have entered into a consignment agreement with the auctioneer giving that auctioneer authority to sell the firearms. The auctioneer therefore has possession and control of the firearms. Under these circumstances, an auctioneer would generally need a license. If you are not sure if a license is needed in a particular consignment auction situation, contact your local ATF office." - Website BATF&E

This statement also appears to define an "estate" as being sold by an executor, which would rule out so-called "living estate" sales, which are little more than consignments in the first place.

Consignment auctions are obviously prohibited, and these recommendations have remained unchanged for many years.

Please take note - Further violations of the above-mentioned guidelines may be considered as Prima Facie evidence for an investigation by the Board, which may result in disciplinary action under KRS 330. Known violations will be also be reported directly to the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

WHO HANDLES YOUR PAPERWORK?

By: Ken Hill



During each renewal period Lavonne and I get to speak with a great many secretaries and wives of auctioneers. These dutiful helpers often call the Board to discuss problems with the renewal process. We try to provide the same help to these folks as we would if dealing directly with the Licensee, but we never divulge personal data. Obviously, anyone who knows your social security number and license number can complete the renewal process.

We know most auctioneers lead busy lives, and those who are blessed with a cheerful secretary, or an involved life partner are lucky indeed. We also know that many license renewals are handled entire by someone other than the actual Licensee. It's the real world; we get it. But, Licensees are urged to use great care when delegating this responsibility. Keep in mind that just because your wife or secretary knows your license number and the last four digits of your social security number, that does not mean they know enough about you to correctly complete this task. During the renewal process someone is going to be asked to "sign" the Licensee's name. That is done with a keyboard instead of a recognizable signature, but YOU, the Licensee, will be responsible for everything entered on your behalf. When delegating this responsibility, if you failed to disclose an action that was taken against another professional license, or that you forgot to pay a few installments on your student loan debt, the consequences could be quite serious if discovered. We highly recommend taking a few minutes to complete the renewal process yourself, or to at least be looking over the shoulder of the person to whom the responsibility is entrusted.

Financial Statement of Auctioneer's Education, Research and Recovery Fund (As required by KRS 330.192(2)(d))

Balance 7/1/15	250,003.00
Revenue FY 2015	36,090.00
Claims Paid	3360.00
Funds "Swept" to General Fund	50,000.00
Balance 6/30/16	232,733.00
Statutory Minimum Balance per KRS 330	250,000.00
Actual current balance 8/29/16	247,162.00



From the Chairman

J. Randall Bush, KBA Chairman



As the Chairman of the Board I preside over the meetings as the Board reviews complaints filed against auctioneers. For some reason it seems that similar complaints seem to come in droves. Lately, several complaints have been filed that involve auctioneers adding items to auctions. This practice is nothing new, and it is not illegal, if some basic guidelines are followed. Below are a list of things that should be considered:

- Has the addition been approved by the seller, to whose auction the items will be added? This should be the first step, and the original contract should be updated to include the client's approval. A full listing of items should be provided to the original client, and his/her acceptance should be clearly stated in the contract. The original client should also be told if the added seller(s) will be paying a portion of the advertising or other associated fees.
- Do you have a separate contract for the added items? You must have a contract for any items auctioned, and that includes those 3, or 4 items added into another sale.
- Have you added more than 25% to the original auction? If so, the auction can no longer be called "the estate of..., or the Living estate of...". In other words, if you add more than 25% of items to "The Estate of John Doe", you can no longer advertise the auction as "the Estate of John Doe". Simple.
- Firearms should NEVER be added to ANY auction! Unless a Federal Firearms Licensee is involved in the transaction, there is no way to add a firearm to an auction without violating Federal Law.
- Should you inform the crowd? KRS 330.230(7)(b) requires that the wording "With Additions" be added to all advertising if a **single item** is added. Although it is not specifically stated in the statute, it is fraudulent to add items to an auction without informing the buyers. Local residents often know what their neighbors own, and "mystery items" can have a chilling effect on the auction. If they saw "Farmer Joe" drive that single, faded, old Farmall Tractor day and night, they will often suspect fraudulent activity when they see a field full of nice equipment they have never before seen. Some bidders will be interested in certain items solely because of a familial or friendly connection, or because of the popularity or name recognition of the previous owner. Buyers will often pay a premium price based solely on such factors. Imagine their surprise when they learn that the item purchased at "Cousin Eddie's Estate Sale" was actually owned by someone they didn't know, and has no connection to "Cousin Eddie" at all. Such discoveries can definitely affect your business and reputation, and will undoubtedly lead to complaints.
- Another factor to consider is whether the added items will detract from your original client's sale? If you are auctioning two beat-up, faded old farm tractors for your original client, the addition of a shiny, barn-kept, John Deere will only serve to make his old tractors look worse. Even if your primary seller has given his/her approval for additions, your fiduciary responsibilities to him/her might be affected. We once had a complaint where a seller was not happy with the prices an auctioneer had attained for many items. He particularly complained that two pickup trucks, added to the sale without his permission, had more crowd interest and brought more money than his own trucks. He might have been happy with the sale of his own trucks, if he had not been given such an obvious means of comparison. It didn't help matters that the owners of the added trucks paid no portion of the advertising, and the complainant knew nothing of their addition until they were sitting in his yard on the morning of his on-site auction.

There is much to be considered before a decision is made to add items to any auction. There are legal requirements that MUST be met, as well as practical matters that should be carefully weighed. There are plenty of problems just waiting to happen, don't create extra problems for yourself. Give it some thought, and do the right thing every time.

As always, I appreciate the opportunity to serve you. - Randy

Core Course Completes 1st Cycle - Only Cycle for Some

By; Ken Hill

The Kentucky Core Course has completed its' first four-year cycle, and by any measure it has been a great success. Serving as a "refresher" course on Kentucky auction law, regulations, ethics, contracts, and general knowledge, the Core Course has a little something for everyone.

During the first two years of the cycle, I taught the Core Course in live classes, and often bore the brunt of complaints from "seasoned" auctioneers, some of whom had never before taken a single education class. I listened intently to their pleadings, and then asked each to fairly evaluate the course throughout the day, and to tell me later if they picked up any useful information. Almost without exception, everyone learned something useful, or they remembered something they had previously learned, and then forgotten.

For auctioneers licensed before January 01, 1980, there will be no repeat of the four-year cycle. When KRS 330 was re-fitted in 2014 the General Assembly added language that exempted Licensees with 25 years of continuous service from the Core Course. This change will return those pre-1980 Licensees to fully exempt status. EVERYONE, licensed after January 01, 1980, will still be required to attend CE, but the Board cannot require they attend the Core Course. Most will still choose to attend the Core Course, since it is some of the best training available, and it will be updated before the next renewal period.

None of us are so smart, or so well accomplished that there isn't room for growth and improvement. The Core Course challenged each of us to give a little of ourselves, in order that we might gain much in return. An occasional reminder of the proper methods of doing business, and a gentle nudge in the right direction is good for this industry, and great for Consumers. The Core Course has now served as that "nudging reminder" for four years, and we look forward to the next four for MOST Licensees.

Most Contracts are Insufficient

By; Ken Hill

We have now completed one full cycle of the Core Course, so every licensee in the Commonwealth has been instructed that all "absolute" auction contracts must include a binding requirement as stated in KRS 330.220(3)(c). That section states: "No auction shall be advertised as "absolute"...unless...the auction listing contract contains a binding



requirement that the seller, or anyone acting upon behalf of the seller, shall not bid at the absolute auction, or otherwise participate in the bidding process." This section of the statute is clear, and unambiguous; the acknowledgement must be in the contract. So why have the last five (5) written complaints revealed absolute auction contracts without the acknowledgement?

All auctioneers should immediately review their listing contracts, and include this language into the contract. This can be done as an addendum, until new contracts can be printed, but it must be done. This acknowledgement should include appropriate space for the seller to sign and date, indicating their understanding and acceptance of the absolute auction acknowledgement. Not having a proper "absolute" auction contract is grounds for disciplinary action, even if the complaint which led to the discovery is dismissed.

The Information Gap

By; Ken Hill

Let me begin by saying, "thanks to everyone, who takes the time to open, and read this newsletter". The Board believes strongly that keeping you informed is one of the most important functions of this agency, and I fully agree.



During a recent conversation, an auctioneer actually said, in explaining why he did not attend continuing education before the end of the licensing year, "you know as well as I do that emails, newsletters and correspondence are seldom read..." Unfortunately, he is right' but, as I told him, that does not relieve one of the responsibility to follow such directives. I had to also tell him that the late CE penalty is \$300.00.

With the price of postage rising all the time, the days of paper newsletters are behind us. In fact, as a government agency we are required to reduce printing and mailing costs through the digital distribution of most written text. For that reason we urge all Licensees to keep their email addresses updated with our Office. There is no charge to change an email address. Well informed auctioneers are happy auctioneers, especially when they are saving money and staying out of trouble. Stay informed!

Converting Auctions in Midstream

By; Ken Hill

Recently, I had a request from an auctioneer for an article explaining the pros and cons of auctions being changed to "absolute" in the middle of the event.



Most of us who have been around auctions for any time have heard an auctioneer interrupt his

normal bid calling to announce to the crowd that we "now have ourselves an absolute auction". Some auctioneers do this when a reserve price is reached, or the seller communicates his/her intent to sell the property at the current bid. Is this legal? Is it advisable? Well, the answer, quite simply, is "no" and "no". Here are just a few reasons why the Board recommends auctioneers avoid such actions.

1. Do you have a proper contract for an absolute auction? If the original contract called for a reserve, seller confirmation, or anything other than selling to the highest bid, odds are that same contract is insufficient to allow an auctioneer to even utter the word "absolute" from the podium.
2. Before making that statement from the podium did you take the time to explain to your seller that he, nor no one on his/her behalf can bid on the property? Did you obtain the seller's signature that he was aware of the requirements of an absolute auction, and that he/she fully understood those requirements?
3. Did your seller already bid on the property? That could open all sorts of new problems.
4. What if the last bidder suddenly retracts his/her bid?
5. Is the bidder acceptable to your buyer? All absolute auctions must be sold, regardless of the bid amount, or the identity of the bidder. It is rare that a seller would refuse a sale based solely on the identity of the bidder, but once the auction is converted, your seller no longer has an option to refuse for any reason.

As you can see, there are many potential problems that are created once the word "absolute" is introduced, and there is little to be gained at that point in the auction. If your seller has agreed, you can announce when the reserve price has been met, which will have the same effect without all the additional requirements having to be met. There is; however, no requirement that anything be announced when a reserve price is reached.

The Most Frequently Asked Questions

Q: I renewed my license in early June. Why has the Board Office not mailed my license?

A: Nothing will be mailed. All online renewal must print their own license through the online system. Many failed to complete this process. There is still time. Just log back into the system, click on the "Download License" icon, which should be visible as soon as you enter the system. This will cause the license file to be "dropped" into the bottom tray of your computer. Click on the file to open, and print. Click [HERE](#) to print your license.



Our next Board Meeting is scheduled for September 14, 2016.

The next exam date is September 15, 2016.

WE ARE OPEN MONDAY - FRIDAY, FROM 8:30 A.M. - 4:30 P.M.

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**Compliance Division
Officer Larry Mahoney
Officer Dennis Benningfield**

Our Compliance Officers are currently investigating several complaints, and attempting to locate unlicensed auction operations for the protection of consumers. Your tips and information are always appreciated. Contact the Board Office if you have information.





DISCIPLINARY ACTIONS

16-006 Board of Auctioneers vs.
Walter Wesley, A-518 and Jerry D. Ham, P-1728

Wesley, an Apprentice Auctioneer was found to be auctioneering for an unlicensed auction house, in violation of KRS 330.110(6), which prohibits accepting valuable consideration for anyone operating outside the statute. Wesley acknowledged that his conduct was a violation of law, and agreed to a \$500.00 fine.

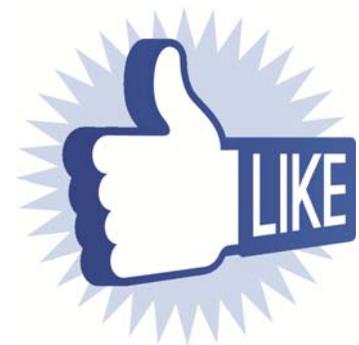
Wesley's Principal Auctioneer, Jerry D. Ham, agreed to a \$250 fine for a violation of KRS 330.110(16) - failing to supervise an Apprentice.

The auction house that was the subject of the original inspection is now properly licensed.

13-1276 Feeney v. Tim Tingle, P-3403 - In 2013 Feeney filed a complaint alleging that Tingle had improperly handled her auction, and failed to remit payment for items sold. In late 2014 Tingle agreed to a \$250.00 fine and the complaint was considered complete. Later, Feeney re-contacted the Board to report that checks issued by Tingle had been returned due to insufficient funds in Tingle's account. A payment of \$1894.20 was made to Feeney from the Recovery Fund. Tim Tingle did not renew his auction license. Under KRS 330, Licensees must fully reimburse the Recovery Fund before their license can be considered for renewal or reinstatement.

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Our Facebook Page provides us with a means of instant communication with Licensees and Consumers. We post regular updates, and respond to questions and comments. We also ask that you share our page with your Facebook Friends.



THE LAST WORD...

"To avoid criticism, say nothing, do nothing, be nothing." - Fred Shero

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