



## DIRECT FROM THE DIRECTOR



Kenneth Hill  
KBA Executive Director

Greetings from YOUR Board Office. This is the Winter Newsletter, but take heart, Spring appears to be just around the corner. Neither Punxsutawney Phil, nor Pierre C. Shadeau (the giant rat from Louisiana) saw their shadows, so swimming season must be headed our way quickly.

As I write this I am also preparing to attend the Kentucky Auctioneers Association Convention. This will be my 7th Convention, and it is always a great time. I look forward to seeing everyone, catching up with old friends, and being available to hear your concerns and answer your questions. At last year's convention my wife was suffering from the flu, and I spent most of the weekend driving between Bowling Green and my home. I missed all of the fun events, so I have some catching up to do. If you have never attended the convention, I highly recommend it. Auctioneers can fulfill their education requirements, learn new skills, and have a lot of fun in the process. Being a KAA member gives auctioneers a greater voice in government as it is the Association that chooses prospective Board Members, and submits the list to the Governor, who makes the appointments. Visit their website for more information, or to register. [Kentucky Auctioneers.org](http://KentuckyAuctioneers.org)

Our 2016-2018 budget has been submitted, and has been approved by Governor

Bevin. As promised in the Governor's speech, there are no "sweeps" in his proposed budget. Let me repeat, "no sweeps"! In other words, none of our funds are being confiscated and dumped into the general fund. We also avoided the cuts that many agencies have to make. This is more of a common sense statement by the Governor. In the past, anytime government agencies were forced to make cuts, we were included in those directives. Telling a self-funded agency to make cuts to their budget is a bit like getting an overdraft notice from your bank, and then telling your neighbor he needs to cut back on his spending. Anything our agency saved from the cuts did not help fund the other agencies, and only made it difficult to manage our own finances. Our budget is as lean as we can possibly make it to begin with, and as always, we try to spend even less than our allotment. When submitting a budget, most government agencies are basically telling the government how much money they need from the general fund, and detailing the ways they plan to spend the requested funds. Our budget is a statement of our proposed spending, but we must either have the necessary funds on hand, or plan to raise an amount at least equal to our budgetary needs. Thanks to the hard work of the Board, we are in a much better financial situation now. Our operating account is fully funded to take us into the upcoming fiscal year, and we are optimistic that we can build up our accounts, so that we can more easily survive sudden drops in licensure, or unexpected expenses. Losing almost \$900,000.00 over the past 15 years took its' toll on our ability to weather any storms that might pop up on the horizon. That amount is equal to almost 2-1/2 years of our budget, which would have given us that amount of time to make adjustments when changes arose. Again, we are pleased that no money was taken over the next two years.

The 2016 General Assembly is underway, but we have no legislation proposed. We are tracking a few bills that might affect our agency, but the effects would be minor, and would be virtually unnoticed by our Licensees. Several of the bills we are watching would make it easier for previously convicted felons to obtain licenses through the Commonwealth, and would establish more stringent appeal provisions. As an agency, we take no official position on any of these proposals. Our Board currently reviews any applicant with prior convictions, and rarely denies applications. We believe in the power of redemption, and give each case full consideration. We try to be fair to all applicants, while at the same time upholding our duties as protectors of the consumer.

Auctioneer and State Representative, David Meade has proposed a measure that would force State Medicaid Boards to accept a public auction, conducted by a licensed auctioneer, as a determiner of "fair market value". We believe there is no better way to determine value than with an auction, and we certainly support Representative Meade's House Bill #197. This matter has come to the Board's attention in the past, and a reprint of an article from our Fall 2014 newsletter is included below.

We will be gearing up for the renewal period which is just around the corner. Make sure you, and everyone in your office, keep their email addresses updated with our office, so we can keep you informed.

If you need us, you know where we are. Our doors are open, the computers are logged on, and our phones are at the ready.

Ken

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### UPCOMING BOARD MEETINGS

Our next Board Meeting will be held Sunday, February 7, 2016, at 12:00 Noon, in the Luersen Room of the [Crowne Plaza Hotel](#), at 830 Phillips Lane, Louisville, KY.

Afterwards, there will be a Q&A session at 3:00 P.M. in the Taylor/Whitley Rooms of the hotel. Both of these meeting are open to the public. Membership in the KAA is not required for attendance. Contact us if you would like more information.



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### 50 Miles Not as Far as it Once Was

**By: Ken Hill**

As most everyone knows, there are definite requirements on how far an Apprentice Auctioneer can live from his sponsoring Principal Auctioneer. 201 KAR 3:055 states; "In the absence of a showing of special circumstances satisfactory to the board, no principal auctioneer shall sponsor an apprentice whose residence is located outside a fifty (50) mile radius of the principal auctioneer's main or branch office." While I am unsure when this regulation was put into place, I am certain that technology has improved a great deal since that time. With today's communication options, and the universal acceptance of "digital" signatures on all, but a few major documents, the ability to oversee the work product of any employee is virtually without physical limit. The Board recognizes that a competent Principal Auctioneer, with the proper tools in place, can manage an Apprentice across the county, or across the country, and they regularly approve most requests to sponsor Apprentices well beyond the 50 mile boundary. Since this regulation is still on the books, the Board must weigh each request, and render an opinion, but a competent monitoring plan is usually enough to show "special circumstances" as required in the regulation. Principal Auctioneers, who wish to sponsor someone beyond the 50 mile rule are must submit a request to the Board. The request should include the name of the prospective apprentice auctioneer, the approximate distance involved, and the methods available for monitoring. Requests may be submitted via email to [auctioneers@ky.gov](mailto:auctioneers@ky.gov) The Board considers such requests during each scheduled Board Meeting, and if approved, the Apprentice is cleared to take the examination, if all other criteria has been met. Don't let this old rule dissuade you from bringing a quality Apprentice in the auction industry. Submit those requests as soon as possible.



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## YOUR BOARD

Happy 2016 from the Board. We look forward to seeing everyone at the Kentucky Auctioneers Association Convention, February 6&7 in Louisville. We will have a Board Meeting at the Crowne Plaza Louisville Airport Hotel on Sunday, from 12-2 P.M., in the Luersen Board Room. Afterwards, we will participate in a Q&A session from 3-4 P.M. in the Taylor/Whitney Rooms. We welcome your questions.



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### Steve Lewis Announces Retirement from Board

Our longest serving Board Member, Mr. Stephen D. Lewis has announced his retirement from the Board, and indicated he would not seek re-appointment when his current term expires on June 30, 2016. Commissioner Lewis has served the Board since his appointment in 1985. He is a Past-President of the Kentucky Auctioneers Association, a Member of the Kentucky Auctioneers Hall of Fame, a Member of the National Auctioneers Hall of Fame, as well as being a past member of the NAA Board of Directors, former NAA Treasurer, and past NAA Convention Chairman. These impressive accomplishments are only a small portion of a much longer list that includes an abundance of public, and charitable service to the Commonwealth, and his community. Steve is a fair-minded, intelligent Board Member with an encyclopedic knowledge of our auction laws, and the ideas behind the formation of those laws. He will be greatly missed by the Board and the Board Office. We wish him well in all his future endeavors. He has served this body, and Auctioneers across the Country, with honor and distinction.



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### From the Chairman J. Randall Bush, KBA Chairman

2016 is well underway, and I hope this communication finds you well, and full of anticipation of a prosperous year. I look forward to seeing many of you at the upcoming KAA Convention which provides us with a unique opportunity to listen to your concerns, and determine the steps our agency can take to improve the lives of our Licensees without sacrificing our chief duty of protecting the citizen consumers of the Commonwealth. Together, we have come far, but there is always something new on the horizon, and together, we can meet those new challenges



head-on.

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

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## **Firearms Sales**

By: Ken Hill

We are now receiving calls from folks wanting to know how the Presidential Executive Orders affect the sale of firearms by auctioneers. To be clear, the Executive Order has not been issued, but though the President's speech, and subsequent White House Briefings, we know changes are coming. Much of the action seems to be focused on the sale of firearms by unlicensed dealers, or even private individuals, and the lack of a proper background check in those sales. Since only a licensed firearms dealer has access to the NICS background check system, we assume the Order will place a great emphasis on obtaining background checks for all sales. Since this is only possible through the use of a licensed dealer, we recommend employing the services of a dealer for all firearm sales. We have always maintained that the best protections are afforded to the Auctioneer who is also a licensed firearms dealer, or who employs the services of a dealer. Only with a proper background check can one truly know that the person purchasing the firearm is not barred from owning and possessing it. Auctioneers, who are not licensed firearms dealers can employ the services of a Federally Licensed Dealer, who can take possession of the guns, and oversee the proper transfer to the buyer. Licensed Firearms Dealers are only licensed for their business location, so all transfers must occur at their place of business. This can be cumbersome for on-site auctions, but many auctioneers are already doing this. Oftentimes, the Licensed Dealer will transport the guns to the site for viewing and will then return them to his business location for pickup. Payment for the guns can still be made at the auction site. Most dealers are glad to help for a fee. Prices vary, so shop around.



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**Reprinted in its' entirety from the "Fall 2014 Newsletter". House Bill 197 is directly related to the content of this article.**

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## **New Ruling levels the playing field for Auctioneers**

By: Ken Hill

As our population ages, more and more elderly citizens are choosing long term care facilities, in which to live out their final years. This decision usually coincides with the sale of most worldly possessions, which cannot be easily carted to the new abode, and oftentimes includes the sale of a lifelong residence. While many people have private insurance to cover the costs of the care facility, others are forced to rely upon Medicaid.

When applying for assistance under the State's Medicaid System, the applicant is required to disclose all recent sales, and report selling prices. The Medicaid Agency closely scrutinizes all transfers of assets in determining eligibility for assistance. Acting under Kentucky's Administrative Regulation, 907 KAR 1:650, which states: "the disposal of a resource, at less than fair market value



shall be presumed to be for the purposes of establishing eligibility unless the individual shows the transfer was in accordance with 42 U.S.C. 1396p(c)(2)(B) or (C) or presents convincing evidence that the disposal was exclusively for some other purpose, the Agency would often deny claims if it determined properties had sold for less than their value.

While all this sounds very confusing, the simple translation is that Medicaid basically required all assets to be sold at "Fair Market Value", and anything selling for less was often cited as a reason for denying, delaying, or reducing benefits to applicants. The problem for auctioneers was that Medicaid chose to use the assessed taxable value of the property as the "Fair Market Value", so in order to avoid jeopardizing a seller client's Medicaid eligibility the auction had to reach the local Property Valuation Administrator's assessment, or that of a private appraiser. As most any auctioneer knows, it is nearly impossible to estimate the final sale price of real estate, and with certain property values tumbling over the past few years, many auctions do not reach the value stated on the local tax books. These facts often forced many auctioneers to refuse clients; which created a situation generally deemed unfair for both the auctioneer and their perspective client.

Based on these facts, auctions were simply not an option for many seniors out of the very real fear that any sale, which failed to meet this minimum price, would result in dire consequences for the seller, well beyond the loss of value in their property.

All this recently changed when Kentucky's Appeal Board for Public Assistance issued Appeal Board Action No. 12-018. This ruling was in response to an appeal from a single, elderly applicant, who had been denied assistance because her home had been sold at auction for less than the assessed taxable value.

In July of 2009, an unnamed female was admitted into the Masonic Home long term care facility. In April, 2010 her home, with an assessed taxable value of \$26,300.00, sold at auction for \$10,100.00, of which she received \$9,803.50. Later, that same month, she filed an application for Medicaid Long Term Care benefits, and was promptly denied, with the agency citing a "prohibited transfer" as the basis for the denial. The elderly lady, with the help of Attorney's for Louisville, Kentucky based ElderLaw, PLLC appealed the Agency decision, and in May, 2012, the Kentucky Appeal Board for Public Assistance reversed the decision.

In its' reversal, the Appeal Board noted that the Agency had "incorrectly denied the application for benefits by incorrectly determining a transfer of resources to be prohibited". The Board went on to state the applicant had "sold a property at public auction, which is perhaps one of the truest estimators of fair market value".

This important legal decision levels the playing field for auctioneers across the Commonwealth, and should help to once again place auctions at the forefront as the best, fairest, and fastest way to sell both real and personal property in all situations. Now, auctioneers can resume the practice of helping elderly clients liquidate their assets, without placing them into an even worse situation, with the possible denial of crucial benefits.

The Kentucky Board of Auctioneers wishes to thank Kentucky ElderLaw for their work on behalf of elderly clients, and for providing information regarding the Appeal Board's decision.

## The Most Frequently Asked Questions

**Q:** Where and when are the CE classes being held?

**A:** We don't have a full schedule from our providers. Since most Licensees do not begin thinking about CE until the Spring, most providers are just now finalizing their schedules. As soon as we receive the information we will post it on our website. Online courses can be taken anytime before June 30 as well.



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**WE ARE OPEN MONDAY - FRIDAY, FROM 8:30 A.M. - 4:30 P.M.**  
Our office will be closed on Friday, February 5th, and Monday, February 8th for the KAA Convention.



**Kentucky Board of Auctioneers**  
**2819 Ring Road, Suite 200**  
**Elizabethtown, KY 42701**  
**Office - (270) 360-0736**  
**Fax - (270) 360-0917**

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



With all the new Continuing Education offerings coming our way, our Compliance Officers have been reviewing all submissions from providers. A full review by the Officers helps to guarantee that you get a quality CE product that actually teaches needed content, and that you don't waste your money on inferior products. Good work guys!



## DISCIPLINARY ACTIONS

Auctioneer Bobby McMain, P-3632 was fined \$250.00, ordered to attend the Auction Basics CE Course, and to reimburse the complainant \$500.00 for a violation of KRS 330.110(11) - Conduct that constitutes improper, fraudulent, dishonest, or negligent dealings. These actions were taken after a formal complaint accused McMain of improperly charging for a tent rental that was not included in the listing contract. McMain had been previously fined and suspended for a near-identical complaint; however, this complaint occurred prior to the date of the earlier complaint.

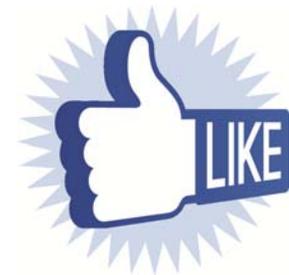
Auctioneer Bradley Harris, P-3759 was fined \$250.00 for a violation of KRS 330.110(6) - Permitting, aiding or abetting an unlicensed auction house operator acting in violation of Kentucky Auction Law. (Working for an unlicensed auction house.) Harris' actions were discovered through a routine inspection by Board Compliance Officers.

The Board authorized a payment of \$1466.25 from the Recovery Fund to satisfy a **Proof of Claim** filed due to the actions of Debra Davis, AHO-3689. Davis closed her Louisville area auction house without notice, and without paying some of her consignors. Davis is not currently licensed, and will be required to reimburse the Recovery Fund before applying for another license.

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**"Like" us on Facebook at**  
[Kentucky Board of Auctioneers](#)

**Our new Facebook Page will provide us with a means of instant communication with Licensees and Consumers. We will post regular updates, and respond to questions and comments.**



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## THE LAST WORD...

"Twenty years from now you will be more disappointed by the things that you didn't do than by the ones you did do, so throw off the bowlines, sail away from safe harbor, catch the trade winds in your sails. Explore, Dream, Discover." -Mark Twain

VISIT OUR WEBSITE

(270) 360-0736  
auctioneers@ky.gov  
<http://auctioneers.ky.gov>



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| 2819 Ring Road | Elizabethtown | KY | 42701