

AUCTIONEERS

*Administrative Rules of the Texas Department of Licensing and Regulation
16 Texas Administrative Code, Chapter 67
(Effective February 15, 2016)*

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67.1. Authority.

(Effective April 18, 1990, 15 TexReg 1959; amended effective April 17, 1992, 17 TexReg 2393; amended effective December 1, 2003, 28 TexReg 10456)

These rules are promulgated under the authority of the Texas Occupations Code, Chapter 1802, Auctioneers and the Texas Occupations Code, Chapter 51, Texas Department of Licensing and Regulation.

67.10. Definitions.

(January 27, 1993, 18 TexReg 301; amended effective June 1, 1993, 18 TexReg 3241; amended effective January 7, 1994, 18 TexReg 9928; amended effective February 13, 1995, 20 TexReg 564; amended effective December 1, 2006, 31 TexReg 9601; amended effective January 1, 2014, 38 TexReg 9507)

The following words and terms, when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

- (1) **Advertisement**--Any written, print, or broadcast commercial message that promotes the services of an auctioneer. For purposes of this chapter and the Texas Occupations Code, a general listing in a telephone directory that does not otherwise solicit auction business is not an advertisement.
- (2) **Auction listing contract**--An agreement executed by the auctioneer and the seller which authorizes the auctioneer to conduct the auction, identifies the property to be sold at auction, and sets out the terms of the agreement and the rights and responsibilities of each party. This includes seller and consignment contracts.
- (3) **Auction without reserve**--(also called Absolute Auction)--An auction in 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, and where the seller may not bid himself or through an agent.
- (4) **Auction with reserve**--An auction in which the seller or his agent reserves the right to establish a minimum bid, accept or reject any and all bids, and withdraw the property at any time prior to the announcement of the completion of the sale by the auctioneer.
- (5) **Operated**--To have fiduciary and operational responsibilities for an auction company's auctions conducted in Texas.

67.20. License Requirements--Auctioneer.

(Effective April 18, 1990, 15 TexReg 1959; amended effective April 17, 1992, 17 TexReg 2393; amended effective January 27, 1993, 18 TexReg 301; amended effective December 1, 2003, 28 TexReg 10456; amended effective December 1, 2006, 31 TexReg 9601; amended effective January 1, 2014, 38 TexReg 9507; amended effective February 15, 2016, 41 TexReg 799)

- (a) An applicant for licensure as an auctioneer must submit a completed application along with required fees.
- (b) To obtain a license as an auctioneer an applicant must:
 - (1) be at least 18 years of age;
 - (2) be a citizen of the United States or a legal alien;
 - (3) either:
 - (A) pass a written or oral examination provided by the department; or
 - (B) provide proof of employment and licensure as an associate auctioneer for at least two (2) years, and of having participated in at least (10) auctions, as described in §67.72(c).
 - (4) hold a high school diploma or a high school equivalency certificate;

- (5) not have been convicted of a felony during the five (5) years preceding the application date; and
- (6) show proof of successful completion of at least eighty (80) hours of classroom instruction at an auction school with a curriculum approved by the department.

67.21. License Requirements--Associate Auctioneers.

(Effective February 15, 2016, 41 TexReg 799)

An applicant for licensure as an associate must:

- (1) submit a completed application along with required fees;
- (2) be employed under the direct supervision of an auctioneer licensed under this chapter; and
- (3) either be a citizen of the United States or a legal alien.

67.22. License Requirements--Examinations.

(Effective January 27, 1993, 18 TexReg 301; amended effective June 1, 1993, 18 TexReg 3241; amended effective February 13, 1995, 20 TexReg 564; amended effective May 7, 1996, 21 TexReg 3607; amended effective December 1, 2006, 31 TexReg 9601)

If an applicant fails the examination twice during the one year application period, the application will be terminated and the applicant may not reapply until one year from the date of the second failure.

67.23. Pre-licensure Education.

(New section adopted effective December 1, 2006, 31 TexReg 9601)

- (a) Proprietary auction schools having a Certificate of Approval issued by the Texas Workforce Commission may obtain department approval by submitting an application for Auction School Registration along with the certification and payment of the curriculum review fee.
- (b) Other auction schools submitting an application for Auction School Registration will be reviewed on a case by case basis to assure that licensing applicants presenting credentials from the schools will have completed at least 80 hours of classroom instruction in courses relating to auctions.

67.24. License Renewal.

(New section adopted effective December 1, 2006, 31 TexReg 9601)

Licenses expire one year from the date of issuance and must be renewed by that date to avoid late renewal fees.

67.25. Continuing Education.

(Adopted effective June 1, 2005, 30 TexReg 3094; amended effective December 1, 2006, 31 TexReg 9601; amended effective April 30, 2012, 37 TexReg 3075; amended effective January 1, 2014, 38 TexReg 9507; amended effective February 15, 2016, 41 TexReg 799)

- (a) Terms used in this section have the meanings assigned by Chapter 59 of this title, unless the context indicates otherwise.
- (b) To renew a license as an auctioneer or associate auctioneer, a licensee must complete six hours of continuing education in courses approved by the department, including two hours of instruction in laws and rules that regulate the conduct of auctioneers and associate auctioneers.
- (c) The continuing education hours must have been completed within the term of the current license, in the case of a timely renewal. For a late renewal, the continuing education hours must have been completed within the one year period immediately prior to the date of renewal.
- (d) A licensee may not receive continuing education credit for attending the same course more than once.

- (e) A licensee must retain a copy of the certificate of completion for a course for one year after the date of completion. In conducting any inspection or investigation of the licensee, the department may examine the licensee's records to determine compliance with this subsection.
- (f) To be approved under Chapter 59 of this title, a provider's course must be dedicated to instruction in one or more of the following topics:
 - (1) Texas Occupations Code, Chapter 1802, Auctioneers;
 - (2) Title 16, Texas Administrative Code, Chapter 67, Auctioneers Administrative Rules;
 - (3) other laws and rules that regulate the conduct of auctioneers and associate auctioneers;
 - (4) auction-related laws, such as the Uniform Commercial Code - Sales, Title 1, Chapter 2, Texas Business and Commerce Code §2.328 and the Deceptive Trade Practices-Consumer Protection Act, Chapter 17, Subchapter E, Texas Business and Commerce Code; or
 - (5) business practices, such as insurance, auction ethics, contracts, maintenance of trust accounts, and marketing.
- (g) A licensee whose license has been placed on inactive status, pursuant to Texas Occupations Code, §51.4011 is not required to complete continuing education as required by this section until the licensee seeks to change to 'active' status.

67.30. Exemptions.

(Effective January 1, 2014, 38 TexReg 9507; amended effective February 15, 2016, 41 TexReg 799)

- (a) An auction of property by live bid call, if the property is solely bid upon through the internet, is not subject to this chapter or Texas Occupations Code, Chapter 1802 and is exempt under §1802.002(4).
- (b) For purposes of this chapter and Texas Occupations Code, Chapter 1802, the sale of real or personal property is not considered to be a competitive bid subject to this chapter if all of the material terms of the transaction other than price are not the same.
- (c) This chapter does not apply to a person providing an online platform to facilitate an auction.

67.40. Auctioneer Education and Recovery Fund.

(Effective April 18, 1990, 15 TexReg 1959; amended effective April 17, 1992, 17 TexReg 2393; amended effective January 27, 1993, 18 TexReg 301; repealed effective April 3, 2001, 26 TexReg 2538; new section effective April 3, 2001, 26 TexReg 2539; amended effective December 1, 2006, 31 TexReg 9601; amended effective January 1, 2014, 38 TexReg 9507)

- (a) In each year in which the balance of the Auctioneer Education and Recovery Fund is less than \$350,000 the department will determine the fee that shall be paid by all license holders into the Auctioneer Education and Recovery Fund (the Fund).
- (b) The necessity for assessing the fee will be determined by the department based on the Fund balance on each December 31st. The fee shall be paid in addition to the renewal fee. The renewal notice sent by the department will reflect the fee due to the Fund.
- (c) Applicants for an auctioneer license shall pay the initial recovery fee to the Fund before a license will be issued.
- (d) If the department determines, either with the agreement of the auctioneer and claimant or at a hearing held on a disputed amount, that the auctioneer owes to the aggrieved person damages greater than the maximum of \$15,000 allowed under the Act, the auctioneer must pay the amount not paid by the department to the aggrieved party. If the department determines that the auctioneer owes damages to more than one

aggrieved person arising out of one auction at one location, and the sum of all damages owed exceeds \$30,000, the department shall prorate \$30,000 from the Fund among the aggrieved persons, and the auctioneer must pay the amount not paid to each of the aggrieved persons.

- (e) The total payment from the Fund of claims against an auctioneer may not exceed \$30,000. If additional claims are filed before the auctioneer has reimbursed the Fund and repaid any amounts due an aggrieved party, the department shall hold a hearing to determine if the additional claims must be satisfied by the auctioneer before the department issues or renews a license, whether probated or not.
- (f) If a claim is paid against an auctioneer, and the auctioneer cannot immediately reimburse the Fund, the executive director may allow the auctioneer to sign an agreement with the department to reimburse the Fund at the applicable rate described below plus the interest accrued on the unpaid principal during the prior month at the rate of 8 percent per year.
- (g) If an amount is due an aggrieved party, and the auctioneer cannot immediately pay the aggrieved party, the executive director may allow the auctioneer to sign an agreement with the party to reimburse the aggrieved party at the applicable rate described below plus the interest accrued on the unpaid principal during the prior month at the rate of 8 percent per year.
- (h) Reimbursement of the principal owed is to be paid in monthly installments determined by agreement between the department and the auctioneer with consideration given to input from any aggrieved party. If an agreement is not reached, monthly installments shall be determined as a percentage of the initial principal amount according to the following schedule:
 - (1) \$0.01 - \$500.00--20%
 - (2) \$500.01 - \$1,000--10%
 - (3) \$1,000.01 - \$3,000.00--5%
 - (4) \$3,000.01 and over--3%

67.65. Auctioneer Advisory Board.

(Effective January 7, 1994, 18 TexReg 9928; amended effective December 1, 2003, 28 TexReg 10456 ; amended effective December 1, 2006, 31 TexReg 9601; amended effective January 1, 2014, 38 TexReg 9507; amended effective February 15, 2016, 41 TexReg 799)

- (a) The board is established to advise the commission on educational matters, operational matters, and common practices within the auction industry, including those matters relating to use of the educational trust fund established with fees collected for the auctioneer education and recovery fund.
- (b) Recommendations of the board will be transmitted to the commission.
- (c) Board meetings are called by the presiding officer. Meetings in excess of one each calendar quarter shall be authorized by the commission or the commission's designee.
- (d) One member shall be the administrative head, or the administrative head's designee, of any state agency or office that is selected by the commission.

67.70. Auctioneer Standards of Practice.

(Effective February 15, 2016, 41 TexReg 799)

- (a) Advertising
 - (1) All advertisements designed to solicit auction business, including the advertisement of an auction, shall include the auctioneer's name as it appears on the license and the license number.

- (2) If an auctioneer advertises an auction as “absolute” or “without reserve”, no lots included may have a minimum bid. Advertising may include the wording “many lots are without reserve”; however, the auction may not be titled, headed or called an “absolute” or “without reserve” auction unless all lots meet the criteria.
 - (3) An auctioneer who intends to charge a buyer’s premium at an auction must state this condition and the amount of the buyer’s premium in all advertising for the auction.
 - (4) An auctioneer may not make a false or misleading statement in an advertisement.
- (b) Recordkeeping
- (1) An auctioneer must furnish to the department the name, including assumed names, addresses, website, or social media pages, and telephone numbers of all auction companies that the auctioneer owns or operates.
 - (2) An auctioneer must report any changes of address to the department in writing within thirty (30) days of the change.
 - (3) Each licensed auctioneer shall keep records relative to all auctions for a minimum of two (2) years from the date of the sale.
 - (4) The records for each auction must state the name(s) and address of the owners of the property auctioned, the date of the sale, the name of the auctioneer and clerk of the sale, the gross proceeds, the location and account number of the auctioneer’s trust or escrow account, an itemized list of all expenses charged to the consignor or seller, a list of all purchasers at the auction and a description and selling price for each item sold.
 - (5) The auctioneer shall keep, as part of the records for each auction, all documents relating to the auction. These documents shall include, but are not limited to, settlement sheets, written contracts, copies of advertising and clerk sheets.
 - (6) These documents include records and documents online.
 - (7) Each licensed auctioneer must:
 - (A) Maintain a separate trust or escrow account in a federally insured bank or savings and loan association, in which shall be deposited all funds belonging to others which come into the auctioneer’s possession and control.
 - (B) Deposit all proceeds from an auction into the trust or escrow account within seventy two (72) hours of the auction unless the owner or consignor of the property auctioned is paid immediately after the sale or the written contract stipulates other terms, such as sight drafts.
 - (C) Pay any public monies, including, but not limited to state sales tax, received into the State Treasury at the times and as per the regulations prescribed by law; and
 - (D) Pay all amounts due the seller or consignor within fifteen (15) banking days of the auction unless otherwise required by statute or a written contract between license holder and seller.
 - (8) A licensed auctioneer shall cooperate with the department in the performance of an investigation. This includes, but is not limited to responding to requests from the department, including producing requested documents or other information, within thirty (30) days of request.

- (9) The failure of a licensed auctioneer to timely pay a consignor may subject the licensed auctioneer to a claim under the Auctioneer Education and Recovery Fund.
- (c) At auction
- (1) Before beginning an auction, a licensee must ensure the announcement of, give notice, display notice or disclose:
 - (A) that the auctioneer conducting the sale is licensed by the department;
 - (B) the terms and conditions of the sale including whether a buyer's premium will be assessed; and
 - (C) if the owner, consignor, or agent thereof has reserved the right to bid.
 - (2) A licensee may not allow any person who is not either a Texas licensed auctioneer or associate auctioneer who is directly supervised by a licensed auctioneer, to call bids at a sale.
 - (3) A licensee may not knowingly use or permit the use of false bidders at any auction.
 - (4) All licensed auctioneers shall notify consumers and service recipients of the department's name, mailing address, telephone number and website "www.tdlr.texas.gov" for purposes of directing complaints to the department. The notification shall be included on any auction listing contract and on at least one of the following:
 - (A) A sign prominently displayed at the place of the auction or on any auction website;
 - (B) Bills of sale or receipt to be given to buyers; or
 - (C) Bidder cards.

67.71. Requirements--Sponsoring Auctioneer.

(Effective February 15, 2016, 41 TexReg 799)

- (a) There must be a legitimate employee-employer relationship between an associate auctioneer and the sponsoring auctioneer or between the associate and an auction company operated by a licensed auctioneer that employs the sponsoring auctioneer.
- (b) A sponsoring auctioneer must be on the premises and directly supervising an associate auctioneer when the associate is bid calling.
- (c) A sponsoring auctioneer is responsible for supervision of an associate auctioneer as the associate performs the items listed in §67.72(c).
- (d) An auctioneer who terminates the sponsorship of an associate auctioneer must:
 - (1) within thirty (30) days notify the department in writing; and
 - (2) provide signed documentation to the associate auctioneer showing:
 - (A) the beginning and ending date of sponsorship;
 - (B) date and location of up to ten (10) auctions bid called by the associate;
 - (C) items listed in 67.72(c), that the associate has performed.

67.72. Requirements--Associate Auctioneers.

(Effective February 15, 2016, 41 TexReg 799)

- (a) An associate auctioneer shall provide auction services only when under the supervision of the licensed Texas auctioneer whose name is on file with the department as the associate's sponsoring auctioneer.
- (b) When bid calling, an associate auctioneer must be under the direct on-premises supervision of the sponsoring auctioneer.
- (c) In order to be eligible for licensure as an auctioneer without taking the examination, an associate auctioneer must participate in all aspects of the auction business involving the laws of this state, in at least ten (10) auctions including but not limited to:
 - (1) appraising;
 - (2) inventorying;
 - (3) advertising;
 - (4) property make ready;
 - (5) site selection and preparation;
 - (6) lotting;
 - (7) registration;
 - (8) clerking;
 - (9) cashiering;
 - (10) bid-calling;
 - (11) ring working;
 - (12) property check out;
 - (13) security;
 - (14) accounting; and
 - (15) escrow account procedures.
- (d) An associate auctioneer must report any change of address to the department within thirty (30) days.
- (e) When a sponsoring auctioneer terminates the sponsorship of an associate auctioneer, the associate may not provide auction services until an agreement with a new sponsoring auctioneer, whose name and signature are on file with the department, has been made.

67.80. Fees.

(Effective April 18, 1990, 15 TexReg 1959; amended effective September 30, 1994, 19 TexReg 7272; amended effective December 1, 2004, 29 TexReg 11028; amended effective December 1, 2006, 31 TexReg 9601; amended effective November 1, 2008, 33 TexReg 8787; amended effective April 30, 2012, 37 TexReg 3075; amended effective January 1, 2014, 38 TexReg 9510; amended effective February 15, 2016, 41 TexReg 799)

- (a) The application fee for an auctioneer license is \$50.
- (b) The application fee for an associate auctioneer license is \$25.
- (c) The annual application fee to renew an auctioneer license is \$50.
- (d) The annual fee to renew an associate auctioneer license is \$25.
- (e) Late renewal fees for licenses issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).
- (f) Inactive License Status--Auctioneer
 - (1) The fee to place a license on 'inactive' status--no charge.
 - (2) The fee to renew a license on 'inactive' status--renewal fee as stated in subsection (c) or (d).
 - (3) The fee to change from 'inactive' status to 'active status' is \$25.
- (g) Revised/Duplicate License/Certificate/Permit/Registration--\$25
- (h) A \$250 curriculum review fee will be assessed to all schools submitting their curriculum for review and approval by the department.
- (i) The initial recovery fund fee is \$50.
- (j) All fees are non-refundable.