

## **CHAPTER 51-05.1 AUCTIONEERS' AND CLERKS' LICENSES**

### **51-05.1-01. Auctioneering or clerking without a license prohibited.**

No person may conduct a sale as an auctioneer or clerk unless licensed by the public service commission.

#### **51-05.1-01.1. Auctioneer's license - Clerk's license - Fees - Bonds.**

1. The initial and renewal application for an annual auctioneer's or clerk's license must be submitted on forms designated by the commission, and must show the name, residence, and address of the applicant. The fee for the annual license or renewal is fifty dollars and must accompany the application. The name and license number must appear on all advertising of sales conducted by an auctioneer or clerk. Renewals that are not received by December thirty-first must be assessed an additional twenty-five dollar fee.
2. Before a license is issued to an auctioneer or clerk, the applicant must file a corporate surety bond with the commission. This bond must provide annual coverage of not less than five thousand dollars for an auctioneer or ten thousand dollars for a clerk, must run to the state of North Dakota, and must be for the benefit of any person injured by the licensee's improper conduct. Bonds may not be canceled on less than sixty days' written notice to the commission. When notice of cancellation is received by the commission, the commission, without hearing, shall revoke the license for which the bond was issued effective with the effective date of the cancellation, unless the licensee files a new bond or evidence that the bond will be reinstated before the effective date of the cancellation. The size of the licensee's bond must be clearly and prominently stated in all contracts with sellers.

#### **51-05.1-01.2. Exemptions.**

A license under this chapter is not required for the following:

1. Sale of an estate by an executor or an administrator.
2. Sale by a sheriff or other person under court order.
3. Sale by a public official acting in an official capacity.
4. Sale of purebred or registered livestock.

A bond is not required for a federally insured financial institution to clerk a sale. Persons exempt from licensing or bonding under this section shall comply with all other provisions of this chapter.

#### **51-05.1-02. License standards.**

1. Licenses may be granted only to persons who bear a good reputation for honesty, truthfulness, and fair dealing and who are competent to transact the business of an auctioneer or a clerk.
2. An applicant for a license must be at least eighteen years of age. Every applicant for a license as an auctioneer shall:
  - a. Have been actively engaged as a licensed auctioneer for a period of at least one year preceding the date of application; or
  - b. Furnish proof of satisfactory completion of an approved course of study relating to auctioneers.
3. The commission may request a first-time applicant for a license to pass a criminal background check. An applicant shall pay the costs associated with the performance of a criminal background check.

#### **51-05.1-02.1. Conviction not bar to licensure - Exceptions.**

Conviction of an offense does not disqualify a person from licensure under this chapter unless the public service commission determines that the offense has a direct bearing upon a person's ability to serve the public as an auctioneer, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

**51-05.1-03. Investigation - Grounds for refusal, suspension, or revocation of license - Hearing on appeal.**

1. The public service commission upon its own motion may, and upon the verified complaint in writing of any person shall, investigate the activities of any licensee or any person who shall assume to act in such capacity within the state and shall have the power to suspend or revoke a license when the licensee, in performing or attempting to perform any of the acts included within the scope of this chapter, has performed one or more of the following:
  - a. Made a material false statement in the licensee's application for a license or in any information furnished to the commission.
  - b. Made a substantial and willful misrepresentation relating to an auction sale which injures the party for which the licensee acts as agent.
  - c. Made any false promise of a character such as to influence, persuade, or induce a party to an auction sale to that party's injury or damage.
  - d. Failed to account for or to remit, within a reasonable time, not exceeding thirty days, any moneys coming into the licensee's possession belonging to another, commingled funds of others with the licensee's own, failed to keep such funds or others in an escrow or trust account with a bank or other recognized depository in this state, or failed to keep records relative to the deposits, which must contain such information as prescribed by the rules of the commission.
  - e. Pled guilty or nolo contendere before, or been convicted by, any federal court or a court of competent jurisdiction in this or any other state of an offense determined by the commission to have a direct bearing upon a person's ability to serve the public as an auctioneer, or the board determines, following conviction of any offense, that the person is not sufficiently rehabilitated under section 12.1-33-02.1.
  - f. Failed or refused upon demand to produce any document, book, or records in the licensee's possession or under the licensee's control, concerning any auction sale under investigation by the commission.
  - g. Failed to deliver to the seller in every auction sale a complete, detailed closing statement showing all the receipts and disbursements handled by such licensee for the seller and to retain true copies of such statements in the licensee's files for two years.
  - h. Violated any provisions of this chapter or chapter 41-02, 51-12, or 51-15, or rule or regulation promulgated by the commission.
2. If the public service commission declines or fails to approve an application submitted to it, it shall immediately give notice of that fact to the applicant, and upon request from such applicant filed within twenty days after the receipt of such notice, shall fix a time and place for a hearing, of which twenty days' notice must be given to such applicant and to other persons interested or protesting, to offer such evidence relating to the application. In such cases the commission shall fix the time for such hearing on a date within sixty days from receipt of the request for the particular hearing, provided the time of hearing may be continued from time to time with the consent of the applicant. As a result of such hearing, the commission may either approve the application if all of the applicable provisions of this chapter have been met, or it may sustain its prior decision refusing to approve the application.
3. No license may be revoked or suspended except after hearing before the public service commission with a copy of the charges having been duly served upon the licensee and upon sustaining the charges for suspension or revocation. The provisions of chapter 28-32, including but not limited to procedures for service of process, hearing, rules, evidence, findings, and appeals, apply to and govern all proceedings for suspension or revocation of license, except when inconsistent with this chapter.

#### **51-05.1-04. Definitions - Exceptions.**

1. Except as provided in subsection 5, an auctioneer within the meaning of this chapter is a person who, for a compensation or valuable consideration, sells or offers for sale either real or personal property at public auction as a whole or partial vocation.
2. Except as provided in subsection 5, a clerk within the meaning of this chapter is any person, firm, partnership, copartnership, association, corporation, or limited liability company who, for a compensation or valuable consideration, is employed either directly or indirectly by an owner while the sale is in progress to record each item offered for sale, its selling price, and the buyer's name or number; to collect all proceeds of said sale; to pay all expenses connected with the sale; to prepare a full closing statement of all receipts and disbursements; and to make settlement thereon to parties properly entitled thereto within a reasonable length of time.
3. "Internet auction" means the selling or offering for sale either real or personal property at public auction exclusively via the internet.
4. "Seller" means the owner or consignor of property to be sold at auction.
5. A person performing a single act or an isolated transaction in the selling of property at auction for another does not constitute the person performing, offering, or attempting to perform any of the acts enumerated in this section, and that person is not an auctioneer or clerk within the meaning of this chapter. A person conducting, or employed by a person conducting, an internet auction is not an auctioneer or clerk within the meaning of this chapter.
6. Notwithstanding subsection 5, a person in this state engaged in the auto auction business via the internet must be licensed as a motor vehicle dealer as provided for in section 39-22-23.

#### **51-05.1-04.1. Written contracts.**

An auctioneer may not sell the property of another at auction without a prior written contract with the seller which sets forth the terms and conditions upon which the auctioneer will sell the property. A similar contract governing the activities of the auction clerk is required between the auction clerk and the seller. The licensee must retain a copy of each contract for at least two years after the auction. This section does not apply to consignment sales when the value of the seller's property is less than five hundred dollars or to livestock markets. The contract must contain:

1. The licensee's name, trade or business name, state license number, business address, and business telephone number.
2. A general description of the property to be sold at auction, any restrictions, and a statement identifying whether or not the licensee is authorized to purchase at the auction.
3. A description of the services to be provided and the consideration for the services. The description must state which party is responsible for advertising and other expenses.
4. The date or dates when the items will be sold at auction.
5. A disclosure of the amount of bond that the licensee has on file with the commission and the commission's address and telephone number.

#### **51-05.1-04.2. Buyer's premium.**

A successful bidder may not be required to pay an amount in excess of the successful bid and governmental fees and taxes, unless before bidding the bidder has signed a statement which clearly describes the additional amount and states how the actual amount due will be determined.

#### **51-05.1-05. Handling of funds by clerk of auction sale.**

Every clerk of an auction sale, at all times, shall maintain in the clerk's name or firm name, a separate trust account designated as such in a federally insured bank or other federally insured depository in this state in which the clerk immediately shall deposit all funds not the clerk's own, including funds in which the clerk may have some future interest or claim. A federally insured

depository located outside the state but licensed as a clerk in this state is not required to deposit funds in a depository in this state if auction sale funds are deposited in a separate trust account designated as such in the licensee's depository. A clerk may not commingle the clerk's personal funds or other funds in a trust account except that a clerk may deposit and keep a sum of one thousand dollars in such account from the clerk's personal funds, which sum must be specifically identified and deposited to cover service charges related to the trust account. In conjunction with such account, the clerk shall maintain at the clerk's usual place of business books, records, and other documents so that the adequacy of such account may be determined at any time. Trust accounts and other records must be open to inspection by the public service commission and its duly authorized agents at all times during regular business hours at the clerk's usual place of business.

**51-05.1-06. License list.**

Repealed by S.L. 2001, ch. 440, § 2.

**51-05.1-07. Penalty.**

Any person violating any of the provisions of this chapter is guilty of a class B misdemeanor.