

APPENDIX II-C

**RULEMAKING NOTICE FORM**

**NOTE: ADDITIONAL NOTICE**

See page one of the instructions regarding additional notice, especially notice to standing policy committees under circumstances described in RSA 541-A:10, I.

Notice Number \_\_\_\_\_ Rule Number Auc 200-500

<p>1. Agency Name &amp; Address:</p> <p><b>NH Board of Auctioneers Office of the Secretary of State State House Room 204 107 North Main Street Concord NH 03301</b></p>	<p>2. RSA Authority: <u><b>RSA 311-B:3; RSA 541-A:16, I(b) (2), (c), &amp; (d)</b></u></p> <p>3. Federal Authority: _____</p> <p>4. Type of Action:</p> <p>Adoption <u><b>X</b></u></p> <p>Amendment _____</p> <p>Repeal _____</p> <p>Readoption _____</p> <p>Readoption w/amendment _____</p>
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5. Short Title: **Complaints and Hearing Procedures, Licensing Requirements, Continued Status, and Ethical Standards**

6. (a) Summary of what the rule says and of any proposed amendments:

**The Board of Auctioneers is proposing to adopt the following rule chapters, which expired 1-1-06: CHAPTER Auc 200 COMPLAINTS AND HEARING PROCEDURES; CHAPTER Auc 300 LICENSING REQUIREMENTS; CHAPTER Auc 400 CONTINUED STATUS; and CHAPTER Auc 500 ETHICAL STANDARDS.**

**The adoption of the Auc 200-500 rules include changes from the expired Auc 200-500 rules as a result of the RSA 311-B changes made in 2011.**

**The 200 chapter of the rules is amended to provide a more in-depth procedure for the complaint and hearing process.**

**The 300 chapter provides changes to the license requirements including qualification, criminal history, recommendations, apprenticeships, auctioneering school & standards, state examination, and fee changes. Also, the license period changed and is currently in use as a result of the amendment to RSA 311-B in 2011.**

**The 400 chapter provides changes to the continued status including renewal qualification, criminal history, addition of continuing education and approval of courses, and fee changes. Also, the license period changed and is currently in use as a result of the amendment to RSA 311-B in 2011.**

**The 500 chapter provides changes to the ethical standards including standards of conduct, conduction of auctions & records, and advertising.**

6. (b) Brief description of the groups affected:

**Licensed Auctioneers.**

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

<b>Rule</b>	<b>Statute</b>
Auc 201.01 - Auc 201.02	RSA 311-B:11, RSA 311-B:11-a
Auc 201.03	RSA 311-B:11; RSA 541-A:30-36
Auc 201.04 - Auc 201.05	RSA 311-B:3,I(f); RSA 311-B:3,I(g); RSA 311-B:11; RSA 311-B:11-a
Auc 202.01 - Auc 202.02	RSA 311-B:3,I(f); RSA 311-B:3,I(g); RSA 311-B:11; RSA 311-B:11-a
Auc 203.01 - Auc 203.20	RSA 311-B:3,I(f); RSA 311-B:3,I(g); RSA 311-B:11; RSA 311-B:11-a; RSA 311-B:12
Auc 204.01 - Auc 204.04	RSA 311-B:3; RSA 541-A:16,I(e)
Auc 301.01 - Auc 301.02	RSA 311-B:3; RSA 311-B:5; RSA 311-B:6; RSA 311-B:8; RSA 311-B:10
Auc 302.01 - Auc 302.02	RSA 311-B:3; RSA 311-B:5; RSA 311-B:6; RSA 311-B:8; RSA 311-B:10
Auc 302.03	RSA 311-B:3; RSA 311-B:5; RSA 311-B:6; RSA 311-B:10
Auc 303.01 - Auc 303.03	RSA 311-B:3; RSA 311-B:5; RSA 311-B:6
Auc 304.01 - Auc 304.03	RSA 311-B:3; RSA 311-B:5; RSA 311-B:6; RSA 311-B:10
Auc 305.01	RSA 311-B:3
Auc 401.01 - Auc 401.03	RSA 311-B:3; RSA 311-B:8; RSA 311-B:10
Auc 402.01 - Auc 402.07	RSA 311-B:3; RSA 311-B:10
Auc 501.01 - Auc 501.02	RSA 311-B:11; RSA 358-G
Auc 502.01	RSA 311-B:11; RSA 358-G
Auc 503.01	RSA 311-B:11; RSA 358-G

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name:	<b>Kaley Dion</b>	Title:	<b>Business Administrator I</b>
Address:	<b>State House Room 201 107 North Main Street Concord NH 03301</b>	Phone #:	<b>603-271-3242</b>
		Fax#:	<b>603-271-6316</b>
		E-mail:	<b>kaley.dion@sos.nh.gov</b>
		TTY/TDD Access:	<b>Relay NH 1-800-735-2964 or dial 711 (in NH)</b>

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **October 7, 2016**

Fax

E-mail

Other format (specify):

9. Public hearing scheduled for:

Date and Time: **October 3, 2016 9:30 a.m.**  
Place: **Legislative Office Building  
Room 307  
33 North State Street  
Concord NH 03301**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # 16:088 , dated 5/18/16

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

**The proposed rules do not violate Part I, Article 28-a of the N.H. Constitution. The proposed rules do not require any local expenditure by political subdivisions.**

**Adopt Auc 200, previously effective 1-1-98 (DOC #6658), and expired 1-1-06, to read as follows:**

CHAPTER Auc 200 COMPLAINTS AND HEARING PROCEDURES

PART Auc 201 INITIATION OF PROCEEDINGS

Auc 201.01 Commencement of Proceedings. Disciplinary proceedings pursuant to RSA 311-B:11 shall be commenced upon the receipt of a complaint of any person as provided in Auc 201.02, or upon the initiative of the board as provided in Auc 201.03.

Auc 201.02 Complaints.

- (a) All complaints shall be in writing and shall be filed in the board's office.
- (b) The complaint shall contain:
  - (1) The name and current address of the complainant;
  - (2) The specific facts or circumstances giving rise to the complaint; and
  - (3) The particular action or conduct complained of.
- (c) Documents that do not conform to Auc 201.02(b) shall not be acted upon by the board until the complainant provides all information specified in Auc 201.02(b).

Auc 201.03 Initiation of Disciplinary Proceedings by the Board. Upon receipt of information that any licensee has violated RSA 311-B or these rules, the board shall initiate disciplinary proceedings hereunder pursuant to RSA 311-B:11 and RSA 541-A.

Auc 201.04 Investigation.

(a) Upon receipt of a complaint, the Board shall review the complaint to determine if the allegations therein are sufficient to justify an investigation by the Board. If an investigation is authorized by the Board, the chairman shall appoint a member of the board, or some other person, to act as an investigator and, if applicable, prosecutor in the particular case. The chairman shall forthwith notify in writing both the respondent licensee and the complainant of that appointment.

(b) Upon commencing an investigation, the Board shall serve a copy of the written complaint upon the respondent by prepaid certified mail, return receipt requested.

(c) The investigator in an investigation shall perform the following duties:

- (1) Contact and question individually the licensee against whom the complaint is registered and the complainant individually about the complaint, and take such other actions as the investigator deems appropriate to investigate the charges;
- (2) Interview any other person, as the investigator deems appropriate;
- (3) Upon completing the investigation, the investigator shall report to the board, in writing, a summary of the evidence that, in the opinion of the investigator, could be proved at a disciplinary hearing;

- (4) Distribute copies of the investigative report to each member of the board; and
  - (5) Beyond the written report and communications concerning procedural issues, the investigator shall have no ex parte communication with the board concerning the subject complaint.
  - (6) If the investigator is a board member, the investigator shall not vote on any decision as to whether to proceed with further disciplinary action on a complaint.
- (d) Upon receipt of the written report, the Board shall determine whether to proceed with a disciplinary hearing on the complaint.
- (e) When a pre-hearing conference and disciplinary hearing shall be conducted, the board shall provide a copy of the investigative report to the complainant and the respondent to the proceeding.
- (f) In the event that the complainant and the respondent agree to waive a pre-hearing conference and disciplinary hearing, the board shall notify the licensee and complainant of the board's decision.

Auc 201.05 Notice.

- (a) Whenever a disciplinary hearing shall be conducted, the hearing shall be scheduled and notice of the hearing shall be given to the respondent licensee and the complainant(s) at least 14 days prior to the scheduled hearing, by prepaid certified mail, return receipt requested.
- (b) Notices of hearing shall include:
- (1) A statement of the time, place and the nature of the hearing;
  - (2) A statement of legal authority under which the hearing is to be held;
  - (3) A reference to the particular sections of the statutes and rules involved;
  - (4) A short and plain statement of the issues involved;
  - (5) The fact that the complainant may intervene as a party in the hearing pursuant to Auc 203.08.
  - (6) The fact that the complainant and the respondent may be represented by counsel at the hearing; and
  - (7) The fact that the complainant and the respondent may present the testimony of witnesses.
  - (8) A docket number assigned by the Board.
  - (9) The fact that any party may request a pre-hearing conference pursuant to Auc 202.01.
  - (10) Identify the prosecutor that has been appointed by the Chairman to present the complaint.
  - (11) The specific provisions of RSA 311-B and/or the rule which the licensee is alleged to have violated.

PART Auc 202 PRE-HEARING PROCEDURES

Auc 202.01 Pre-hearing Conferences.

(a) Whenever a disciplinary hearing shall be conducted, the complainant or the respondent may request a pre-hearing conference. Such conference shall also be scheduled in cases where the board determines that such a conference will lead to a more expeditious resolution of the dispute or of the issues before the board. A notice of the conference shall be given to the respondent licensee and the complainant(s) at least 14 days prior to the scheduled conference by prepaid certified mail, return receipt requested.

(b) The board shall designate a member of the board or some other person to act as the Board at the pre-hearing conference.

(c) When scheduled, the pre-hearing conference shall be concerned primarily with the following matters:

- (1) Any pending motions before the board;
- (2) Pre-hearing discovery;
- (3) Stipulations, admissions and settlement possibilities;
- (4) Identification, clarification and simplification of the issues before the board;
- (5) Identification or limitations on the number of witnesses or exhibits which each party seeks to introduce at the disciplinary hearing or both;
- (6) Setting any additional preliminary pre-hearing conference dates that the parties may feel necessary;
- (7) Determination of a realistic date of the exchange of names and addresses of expert witnesses, if necessary; and
- (8) Any other matter that the board or counsel for the licensee or complainant feel will expedite pre-hearing discovery and the disciplinary hearing.

(d) Following each pre-hearing conference, the Board shall issue a pre-hearing order, pursuant to RSA 541-A:31,V(d).

Auc 202.02 Discovery.

(a) The complainant and the respondent may request of each other materials and/or documents relative to the subject matter involved.

(b) If either party fails or refuses to provide the requested materials and/or documents, the party that has been unable to acquire the materials and/or documents may make a motion to the board for discovery.

(c) Any party may make a motion requesting that the Board order the parties to comply with information requests. The motion shall be filed at least 30 days before the date scheduled for the hearing, or within 10 days after receiving the notice of hearing if such notice is issued less than 30 days in advance of the hearing.

(d) The moving party's motion shall:

- (1) Set forth in detail those factors which it believes justify its request for information; and
- (2) List with specificity the information it is seeking to discover.

(e) When a party has demonstrated that such requests for information are necessary for a full and fair presentation of the evidence at the hearing, the Board shall grant the motion.

#### PART Auc 203 HEARINGS - RECORD, PROOF, EVIDENCE AND DECISIONS

Auc 203.01 Date of Issuance or Filing. All written documents governed by these rules shall be rebuttably presumed to have been issued on the date noted on the document and to have been filed with the agency on the actual date of receipt by the agency, as evidenced by a date stamp placed on the document by the agency in the normal course of business.

#### Auc 203.02 Format of Documents

(a) All correspondence, pleadings, motions or other documents filed under these rules shall:

- (1) Include the title and docket number of the proceeding, if known;
- (2) Be typewritten or clearly printed on durable paper 8 1/2 by 11 inches in size;
- (3) Be signed by the party or proponent of the document, or, if the party appears by a representative, by the representative; and
- (4) Include a statement certifying that a copy of the document has been delivered to all parties to the proceeding in compliance with Auc 203.03.

(b) A party or representative's signature on a document filed with the agency shall constitute certification that:

- (1) The signer has read the document;
- (2) The signer is authorized to file it;
- (3) To the best of the signer's knowledge, information and belief there are good and sufficient grounds to support it; and
- (4) The document has not been filed for purposes of delay.

Auc 203.03 Delivery of Documents

(a) Copies of all petitions, motions, exhibits, memoranda, or other documents filed by any party to a proceeding governed by these rules shall be delivered by that party to all other parties to the proceeding.

(b) All notices, orders, decisions or other documents issued by the presiding officer or agency shall be delivered to all parties to the proceeding.

(c) Delivery of all documents relating to a proceeding shall be made by personal delivery or by depositing a copy of the document, by first class mail, postage prepaid, in the United States mail, addressed to the last address given to the agency by the party.

(d) When a party appears by a representative, delivery of a document to the party's representative at the address stated on the appearance filed by the representative shall constitute delivery to the party.

Auc 203.04 Computation of Time

(a) Unless otherwise specified, all time periods referenced in this chapter shall be calendar days.

(b) Computation of any period of time referred to in these rules shall begin with the day after the action which sets the time period in motion, and shall include the last day of the period so computed.

(c) If the last day of the period so computed falls on a Saturday, Sunday or legal holiday, then the time period shall be extended to include the first business day following the Saturday, Sunday or legal holiday.

Auc 203.05 Motions; Objections

(a) Motions shall be in written form and filed with the Board, unless made in response to a matter asserted for the first time at a hearing or on the basis of information which was not received in time to prepare a written motion.

(b) Oral motions and any oral objection to such motions shall be recorded in full in the record of the hearing. If the Board finds that the motion requires additional information in order to be fully and fairly considered, the Board shall direct the moving party to submit the motion in writing, with supporting information.

(c) Objections to written motions shall be filed within 10 days of the date of the motion;

(d) Failure by an opposing party to object to a motion shall not in and of itself constitute grounds for granting the motion.

(e) The Board shall rule upon a motion after full consideration of all objections and other factors relevant to the motion.

Auc 203.06 Appearances and Representation

(a) A party or the party's representative shall file an appearance that includes the following information:

- (1) A brief identification of the matter;
- (2) A statement as to whether or not the representative is an attorney and if so, whether the attorney is licensed to practice in New Hampshire; and
- (3) The party or representative's daytime address and telephone number.

Auc 203.07 Withdrawal of Board Member

(a) Upon his or her own initiative or upon the motion of any party, a Board Member shall, for good cause withdraw from any hearing.

(b) Good cause shall exist if the Board Member:

- (1) Has a direct interest in the outcome of a proceeding, including, but not limited to, a financial or family relationship, within the third degree of relationship, with any party; or
- (2) Has made statements or engaged in behavior which objectively demonstrates that he or she has prejudged the facts of a case; or
- (3) Personally believes that he or she cannot fairly judge the facts of a case.

(c) Mere knowledge of the issues, the parties or any witness shall not constitute good cause for withdrawal.

Auc 203.08 Intervention

(a) A non-party, including, but not limited to, the original complainant, may intervene in a matter pending before the Board, by filing a motion stating facts demonstrating that the non-party's rights or other substantial interests might be affected by the proceeding or that the non-party qualifies as an intervener under any provision of law.

(b) If the Board determines that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the hearing, the Board shall grant the motion for intervention.

(c) Except as limited by the Board under RSA 541-A:32, III, an intervener shall be entitled to participate in a hearing as a party.

Auc 203.09 Postponements

(a) Any party to a hearing may make an oral or written motion that a hearing be postponed to a later date or time.

(b) If a postponement is requested by a party to the hearing, it shall be granted if the Board determines that good cause has been demonstrated. Good cause shall include the unavailability of parties, witnesses or attorneys necessary to conduct the hearing, the likelihood that a hearing will not be necessary because the parties have reached a settlement or any other circumstances that demonstrate that a postponement would assist in resolving the case fairly.

(c) If the later date, time and place are known at the time of the hearing that is being postponed, the date, time and place shall be stated on the record. If the later date, time and place are not known at the time of the hearing that is being postponed, the Board shall issue a written scheduling order stating the date, time and place of the postponed hearing as soon as practicable.

Auc 203.10 Failure to Attend Hearing. If any party, to whom notice has been given in accordance with Auc 201.05, fails to attend a hearing, the Board shall declare that party to be in default and shall either:

(a) Dismiss the case, if the party with the burden of proof fails to appear; or

(b) Hear the testimony and receive the evidence offered by a party, if that party has the burden of proof in the case.

Auc 203.11 Record of the Hearing

(a) The Board shall record the hearing by electronic recording or other method that will provide a verbatim record.

(b) If any person requests a transcript of the taped record, the Board shall cause a transcript to be prepared and, upon receipt of payment for the cost of the transcription, shall provide copies of the transcript to the requesting party.

(c) At the request of a party to any proceeding, the record of the proceeding shall be made by a certified shorthand court reporter provided by the Board at the requesting party's expense. A request for a certified shorthand court reporter shall be filed at least 10 days prior to the hearing.

Auc 203.12 Standard and Burden of Proof. The party asserting a proposition shall bear the burden of proving the truth of the proposition by a preponderance of the evidence.

Auc 203.13 Testimony; Order of Proceeding

(a) Any person offering testimony, evidence or arguments shall state for the record his or her name, and role in the proceeding. If the person is representing another person, the person being represented shall also be identified.

(b) Testimony shall be offered in the following order:

(1) The party or parties bearing the burden of proof and such witnesses as the party may call;  
and

(2) The party or parties opposing the party who bears the overall burden of proof and such witnesses as the party may call.

(c) The Board shall have the discretion to allow witnesses to testify by electronic means, such as video or telephone. The party wishing to present witness testimony by electronic means may file a motion with the Board in advance of the hearing requesting that the Board allow the testimony via electronic means. Any such Motion shall provide specific reasons supporting the request to allow a specific witness to testify electronically. The party wishing to present electronic testimony shall bear all costs associated with presenting the testimony by the chosen electronic means.

Auc 203.14 Evidence

(a) Receipt of evidence shall be governed by the provisions of RSA 541-A:33.

(b) All documents, materials and objects offered as exhibits shall be admitted into evidence unless excluded by the Board as irrelevant, immaterial, unduly repetitious or legally privileged.

(c) All objections to the admissibility of evidence shall be stated as early as possible in the hearing, but not later than the time when the evidence is offered.

(d) Transcripts of testimony and documents or other materials, admitted into evidence shall be public records unless the Board determines that all or part of a transcript or document is exempt from disclosure under RSA 91-A:5 or applicable case law.

Auc 203.15 Witnesses

(a) All witnesses appearing before the board shall testify under oath or affirmation. Oaths or affirmations shall be administered by the Board.

Auc 203.16 Proposed Findings of Fact and Conclusions of Law

(a) Any party may submit proposed findings of fact and conclusions of law to the Board prior to or at the hearing.

(b) Upon request of any party, or if the Board determines that proposed findings of fact and conclusions of law would serve to clarify the issues presented at the hearing, the Board shall specify a date after the hearing for the submission of proposed findings of fact and conclusions of law

(c) In any case where proposed findings of fact and conclusions of law are submitted, the decision shall include rulings on the proposals.

Auc 203.17 Closing the Record

(a) After the conclusion of the hearing, the record shall be closed and no other evidence shall be received into the record, except as allowed by paragraphs (b) of this section and Auc 203.18.

(b) Before the conclusion of the hearing, a party may request that the record be left open to allow the filing of specified evidence not available at the hearing. If the other parties to the hearing have no objection or if the Board determines that such evidence is necessary to a full consideration of the issues raised at the hearing, the Board shall keep the record open for the period of time necessary for the party to file the evidence.

Auc 203.18 Reopening the Record. At any time prior to the issuance of the decision on the merits, the Board, on the Board's own initiative or on the motion of any party, shall reopen the record to receive relevant, material and non-duplicative testimony, evidence or arguments not previously received, if the Board determines that such testimony, evidence or arguments are necessary to a full and fair consideration of the issues to be decided.

Auc 203.19 Decisions

(a) A Board member shall not participate in making a decision unless he or she personally heard the testimony in the case, unless the matter's disposition does not depend on the credibility of any witness and the record provides a reasonable basis for evaluating the testimony.

(b) Any decision by the board on matters considered at a disciplinary hearing shall be by majority vote. Upon issuance, the chairman or secretary shall transmit the decision or order, in writing, to the complainant and the respondent.

(c) In the event of suspension or revocation, a copy of the board's order shall be sent to the National Auctioneer License Law Officials Association (NALLOA).

(d) If the board's decision or order is to order disciplinary action against a licensee, then:

(1) The board shall promptly prepare a notice setting forth the full name of the licensee, his or her professional address as it appears in the records of the board, and the fact that discipline has been imposed.

(2) The notice prepared pursuant to (1) above shall include one of the following:

(a) That the license has been revoked or voluntarily surrendered pursuant to Auc 203.08;

(b) That the license has been suspended, and the time during which the suspension shall, be in effect;

(c) That a reprimand has been issued; or

(d) That the license has been limited or restricted, and shall state the terms of the limitation or restriction, to the extent that said terms relate to the time, place or manner in which the licensee may practice.

(3) In no event shall the notice contain information that is confidential and privileged by law.

(e) Paragraph (d) shall apply to disciplinary actions taken both with and without the agreement of the licensee.

(f) The Board shall keep a decision on file in its records for at least 5 years following the date of the final decision or the date of the decision on any appeal, unless the director of the division of records management and archives of the department of state sets a different retention period pursuant to rules adopted under RSA 5:40.

Auc 203.20 Motion for Rehearing

(a) The rules in this part are intended to supplement any statutory provisions, including RSA 541, that require or allow a person to request a rehearing of a decision of an agency prior to appealing the decision.

(b) The rules in this part shall apply whenever any person has a right under applicable law to request a rehearing of a decision prior to filing an appeal of the decision with the court having appellate jurisdiction.

(c) A motion for rehearing shall be filed within 30 days of the date of an agency decision or order.

(d) A motion for rehearing shall:

(1) Identify each error of fact, error of reasoning, or error of law which the moving party wishes to have reconsidered;

(2) Describe how each error causes the Board's decision to be unlawful, unjust or unreasonable, or illegal in respect to jurisdiction, authority or observance of the law, an abuse of discretion or arbitrary, unreasonable, or capricious;

(3) State concisely the factual findings, reasoning or legal conclusion proposed by the moving party; and

(4) Include any argument or memorandum of law the moving party wishes to file.

(e) A motion for rehearing in a case subject to appeal under RSA 541 shall be granted if it demonstrates that the Board's decision is unlawful, unjust or unreasonable.

(f) The Board shall grant or deny a motion for rehearing, or suspend the order or decision pending further consideration within 30 days of the filing of the motion for rehearing.

PART Auc 204 RULEMAKING & DECLARATORY RULINGS

Auc 204.01 Petition for Rulemaking.

(a) Any person may request the board to commence a proceeding for the purpose of adopting, amending, or repealing a rule by filing a written petition that contains:

(1) A statement of the petitioner's request for the proposed rule;

(2) The text of the proposed rule or a statement of the particular results intended by the petitioner's interest in the subject matter of the proposed rule;

- (3) An identification of the particular rule sought to be amended or repealed;
- (4) Any data or argument the petitioner believes would be useful to the board in deciding whether to commence a rulemaking proceeding; and
- (5) Name, address, signature of petitioner and date.

Auc 204.02 Disposition of Petitions for Rulemaking.

(a) The board shall request additional information or argument from the petitioner for rulemaking or from others if such additional information or argument is required to reach a reasoned decision.

(b) The board shall grant the petition for rulemaking unless the adoption, amendment or repeal sought would result in:

- (1) A rule that is not within the rulemaking authority of the board;
- (2) Duplication of a rule or of a statutory provision;
- (3) Inconsistency between the existing rules and the statutory mandate of the board;
- (4) Inconsistency of administrative rules one with another; or
- (5) Excessive burden upon the board in terms of cost or a reduction in efficiency or effectiveness.

(c) Within 30 days of receipt of a sufficient petition the board shall dispose of it in the following manner:

- (1) By notifying the petitioner that the petition is granted and beginning rulemaking proceedings as required by RSA 541-A:4; or
- (2) By notifying the petitioner in writing that the petition is denied and the reasons for its denial.

(d) The denial of a petition for rulemaking shall not entitle the petitioner to a hearing.

Auc 204.03 Petition for Declaratory Ruling.

(a) Any person may request a declaratory ruling from the board on matters within its jurisdiction by filing an original and 5 copies of a petition consistent with this section.

(b) Such a petition shall also set forth the following information:

- (1) The exact ruling being requested;
- (2) The statutory and factual basis for ruling, including any supporting affidavits or memoranda of a law; and

(3) A statement as to how and why the issuance of a ruling on this subject would benefit the petitioner.

Auc 204.04 Action on Petitions.

(a) The petitioner shall provide such further information or participate in such evidentiary or other proceedings as the board shall direct after reviewing the petition and any replies received.

(b) Upon review and consideration, the board shall within 90 days respond to the petition giving its decision in writing.

**Adopt Auc 300, previously effective 1-1-98 (DOC #6658), and expired 1-1-06, to read as follows:**

CHAPTER Auc 300 LICENSING REQUIREMENTS

PART Auc 301 APPLICATION

Auc 301.01 Required Information.

(a) Each applicant for a New Hampshire auctioneer's license under RSA 311-B shall submit an application form containing the following information about the applicant:

- (1) Name, date of birth.
- (2) Residence and business address, telephone numbers, email and website address.
- (3) Places of employment and occupations for the last 5 years, including employer(s) name, address, telephone number, dates of employment, job title(s), and job duties;
- (4) Whether licensed as an auctioneer in other states, and if so, copies of those current licenses.
- (5) Whether ever refused or denied an auctioneer's license in any state, , and if so, the details of the refusal or denial including:
  - (a) The reason(s) for the refusal or denial;
  - (b) The name of each state licensing authority that refused or denied issuing the applicant a license; and
  - (c) The date(s) of refusal or denial;
- (6) Whether there has been any disciplinary action taken against the auctioneer in any state, and if so, provide a copy of the order and details of the disciplinary action including:
  - (a) The reason(s) for the disciplinary action(s);
  - (b) The name of each state licensing authority that has issued the disciplinary action;
  - (c) The docket number of the order;
  - (d) The date(s) of disciplinary proceedings;
  - (e) The penalties imposed, including, but not limited to, fines, and dates of sanctions;
- (7) Whether ever convicted of any felony or misdemeanor involving theft, fraud, deceit, misrepresentation or other breaches of fiduciary duties, and, if so, the details including:
  - (a) The type of offense;

- (b) The date of conviction;
  - (c) The docket or case number for each conviction or plea of guilty;
  - (d) The name and address of the court(s) issuing the decision(s);
  - (e) Each resulting sentence, penalty and/or fine imposed;
  - (f) A description of each offense and the disposition of each such case;
  - (g) Whether all terms of the sentence, penalty or fine have been fulfilled, and if not, an explanation of why the terms have not been fulfilled;
- (8) Whether there are, or have been, any suits in any court involving theft, fraud, deceit, misrepresentation or other breaches of fiduciary duties, to which the applicant is a party, and if so, the details including:
- (a) The date of the suit/proceeding(s);
  - (b) The type of action(s);
  - (c) The docket or case number(s);
  - (d) The name and address of the court(s) for the proceeding(s);
- (9) Shall have reached the age of 18 years of age by the date the board receives the application.
- (10) Copy of a current government issued photo ID.
- (11) A certified copy of the applicants criminal history record issued within the 90 prior to the date of the application.
- (b) The bond, extending at least for the term of the license, required by RSA 311-B:8 shall be attached to the license application form.
- (c) Each applicant shall submit recommendations from 2 business references (i.e.: Banker, Accountant, Attorney, etc.) certifying the applicant is trustworthy and competent to auction real, personal and mixed property in such a manner as to safeguard the interests of the public. For any applicant relying on reciprocity under RSA 311-B:6, the recommendations shall come from two other licensed auctioneers in the State(s) where the applicant is currently licensed, or New Hampshire.
- (d) The reference shall have an acquaintance of at least 3 months duration with the applicant, be familiar with past business experience dealings of the applicant, and shall not be related to the applicant.
- (f) The recommendations shall include the length of time the individual has known the applicant, a description of past business dealings and experiences with the applicant, and any other background information about the applicant known to the individual who is making the recommendation.

- (g) Each recommendation shall contain the following information:
  - (1) Name, address and telephone number of the reference;
  - (2) Extent of the sponsor's acquaintanceship with the applicant;
  - (3) Familiarity with the past business experience and dealings of the applicant; and
  - (4) Such other knowledge of the applicant and the applicant's background upon which the recommendation is founded.
  
- (h) The applicant shall submit proof of competence in one of the following three forms:
  - (1) An affidavit from the supervising auctioneer or auctioneers certifying that the applicant has served as an apprentice auctioneer for said auctioneer or auctioneers for a total period of not less than 6 months and had participated in all phases of auctioneering over the course of not less than a total of 10 auctions under said auctioneer or auctioneer; or
  - (2) A certificate of graduation from an approved auctioneering school; or
  - (3) For Non-Resident applicants only, a certified copy of a valid current auctioneer's license, held by the applicant from any other state whose laws are sufficient for reciprocity under RSA 311-B:6, issued by the appropriate state agency, a letter of good standing from said agency, and an affidavit proving licensure for at least 6 months and conduct of at least 10 auctions within the 5 year period of time immediately prior to the application.
  
- (i) The apprenticeship affidavit shall contain the following information:
  - (1) Name and address of both the applicant and the supervising auctioneer;
  - (2) The specific dates of auctions worked;
  - (3) A description of the responsibilities of the apprentice during the apprenticeship;
  - (4) A description of the responsibilities of the apprentice at the specific auctions worked; and
  - (5) A statement of competency established through the apprenticeship.
  
- (j) The phases of auctioneering an auctioneer on apprenticeship shall participate in include the following categories:
  - (1) Bid caller;
  - (2) Cashier;
  - (3) Scribe;
  - (4) Runner;
  - (5) Dealing with consignors;

- (6) Preparation of flyers and advertising;
- (7) Auction set up;
- (8) Tagging; and
- (9) Lotting.

(k) For purposes of determining reciprocity under RSA 311-B:6, the Board shall maintain a Reciprocity List of states which the Board has determined have licensing requirements which are substantially equivalent to or higher than the requirements under RSA 311-B and these rules. At the request of any applicant for a license, the Board may review the requirements of any specific state(s) not on the Reciprocity List to determine whether said state(s) should be added to this list. If the Board determines that any State's licensing requirements no longer meet the requirements of RSA 311-B:6, the Board may remove said state from the Reciprocity List.

(l) If required by Auc 303.01, the applicant shall submit a copy of the examination results from the board of auctioneer's examination taken within 6 months of the application date.

(m) All forms shall be complete and shall be signed and dated by the applicant in ink and notarized. All affidavits shall also be signed and dated by the writer and notarized. Incomplete or nonnotarized forms or applications submitted without the recommendations, bonds, fees, or other necessary attachments will be returned to the applicant. All applications and information therein shall be current.

#### Auc 301.02 Non-Resident Information.

(a) The non-resident application shall have the same information as the resident application with the addition of a power-of-attorney.

### PART Auc 302 QUALIFICATION

Auc 302.01 Apprenticeships. For an affidavit of apprenticeship to be accepted by the board under Auc 301.01(h)(1), an apprenticeship shall be served under one or more auctioneers for a period of not less than 6 months, with participation in all phases of auctioneering, as described in Auc 301.01(j) over the course of not less than 10 auctions under said auctioneers.

#### Auc 302.02 Auctioneering Schools.

(a) For the purposes of this section, an "instructional hour" means at least 50 minutes of classroom instruction.

(b) For a certificate of graduation from an auction school to be accepted by the board under Auc 301.01(h)(2), the applicant shall have successfully completed the program of an auction school with:

- (1) A minimum of 80 hours of required classroom instruction including a minimum of 50 hours devoted to core curriculum subject matter. The remaining hours may be devoted to optional subject matter;
  - (2) Core curriculum subject matter includes bid calling, ethics, advertising, accounting procedures, auction law, uniform commercial code, contracts and legal matters, closing statements and settlements. All of these subjects must be included and covered in the core curriculum.
  - (3) Optional subject matter, related to auctioneering, includes, but is not limited to, subjects such as, antiques and furniture, real estate, environmental issues, computers, firearms, bankruptcy sales, art, rugs and jewelry, body language, sale preparation, heavy equipment and farm machinery, automobiles, livestock, public speaking, estate auctions, personal appearance, auction bid assisting and appraising.
- (c) The applicant shall pass a written examination, given by the school, with a minimum passing score of 75% to receive a certificate of graduation.

Auc 302.03 Standards for Approval of Auctioneering Schools

In order to qualify as a board certified auctioneering school, the auctioneering school shall demonstrate that:

- (a) The school requires a minimum number of hours of course work in each of the following core curriculum subject areas as indicated:
  - (1) Auctioneer ethics, 10 hours;
  - (2) Auction-related principles of contract law, 4 hours;
  - (3) Auction-related provisions of the uniform commercial code, 2 hours;
  - (4) Auction closing statements and accounting practices, 6 hours;
  - (5) Auctioneer presentation and bid calling skills, 10 hours;
  - (6) Auction advertising strategies, 6 hours;
  - (7) Auction logistics, 6 hours; and
  - (8) Starting and operating an auction business; 6 hours.
- (b) The school offers the following course work on an elective basis:
  - (1) Sales of antiques and furniture, firearms, art, rugs, jewelry, automobiles, heavy equipment, farm machinery, estates and computers;
  - (2) Business liquidations, including real estate and foreclosures, industrial and small business liquidations, and farm and livestock liquidations;

- (3) Auction related environmental issues;
  - (4) Bankruptcy sales;
  - (5) Auction business practices including sale preparation, appraising;
  - (6) Personal attributes of auctioneers such as body language, public speaking and personal appearance; and
  - (7) Auction bid assistance
- (c) The board shall approve the school if it determines that:
- (1) The school demonstrates compliance with (a)-(b) above;
  - (2) The courses are led by instructors with sufficient experience in and mastery of the subject matter of the course;
  - (3) The school provides a history of the school and its qualifications as well as a list of intended instructors and their qualifications; and
  - (4) The school provides a course curriculum and schedule.

#### PART Auc 303 EXAMINATION

##### Auc 303.01 Written Examination.

(a) In addition to the requirements of RSA 311-B:5, each applicant, excluding applicants granted reciprocity under RSA 311-B:6 and Auc 301.01(h)(3), shall pass a written examination in the following subject areas:

- (1) State and federal statutes and administrative rules relative to auctioneering, including but not limited to the following:
  - (a) RSA 311-B;
  - (b) RSA 358-A:2, relative to deceptive acts and practices;
  - (c) RSA 358-G, relative to regulation of auctions;
  - (d) RSA 444:1, relative to liens on personal property;
  - (e) RSA 382-A:2-328, Uniform Commercial Code Sale by Auction; and
  - (f) NH Code of Administrative Rules Auc 100 through 500.
- (2) Generally accepted accounting practices for buyer and seller, including, but not limited to, an explanation of methods of recording sales, making lists of items sold, consignor boards, costs, and net sales; and

- (3) Auctioneering mathematics including calculating boards, premiums, consignor settlements, and costs of sales.
- (b) The board shall administer the written examination at least 4 times each year, with the dates to be established at the November meeting.
- (c) The board shall publish printed material including but not limited to the examination dates for the current calendar year, the examination registration form, tips for preparing for the license examination, study materials and sample questions.
- (d) The passing grade on the written examination shall be at least 75% correct.
- (e) The examination shall be taken only after the completion of one of the following requirements:
  - (1) An apprenticeship of at least 6 months with a minimum of 10 auctions, as described in Auc 302.01; or
  - (2) Successful completion of an auctioneering school as described in Auc 302.02; or

Auc 303.02 Written Examination Registration.

- (a) Applicants shall register in writing to be scheduled to take the written examination. The registrations for the examination, including the \$75 examination fee, shall be submitted to the board at least 2 weeks prior to the examination date. Qualifying applicants shall be mailed an admission ticket at least one week prior to the examination date. There will be no entry to the examination without this admission ticket and photo identification.
- (b) The registration form for admission to the examination shall contain the following information:
  - (1) Name, address, telephone number email address of the applicant;
  - (2) Auctioneering school attended, if applicable;
  - (3) Name, address and telephone number of supervising auctioneers for applicant's apprenticeship, if applicable; and
  - (4) Requested examination date.
- (c) Applicants who fail to attend an examination for which they are scheduled shall be required to submit a new examination registration form and fee if they desire to be rescheduled unless the applicant furnishes written proof of inability to attend.
- (d) Applicants who do not receive a passing grade for the examination shall submit a new examination registration form and fee if they desire to be rescheduled.

Auc 303.03 Notice of Results. The board shall notify each applicant, in writing only, of the results of said examination by section within 14 days of the examination. Results shall not be released by telephone. License application shall be within 6 months of passing of the examination; otherwise the examination shall be retaken.

PART Auc 304 FEES

Auc 304.01 License Fees.

(a) The fee for a New Hampshire auctioneer's license shall be \$200.00 per two (2) year term.

Auc 304.02 Renewal Fees.

(a) The fee for renewal of a New Hampshire auctioneer's license shall be \$200.00 per two (2) year term.

(b) For any renewal submitted after the expiration date as allowed by Auc 401.03, there shall be an additional late fee of \$100.00.

Auc 304.03 Examination Fee. The fee for registration for the New Hampshire auctioneer's licensing examination shall be \$75.00. This fee includes the provision of a copy of the auctioneer licensing bulletin. Copies of pages of this document may also be obtained separately by paying the per page copying fee specified in Auc 104.03.

PART Auc 305 ISSUING OF LICENSE

Auc 305.01 License Number.

(a) On issuance of a New Hampshire auctioneer's license, each licensee shall receive a license number which the licensee shall retain as long as licensed and said license is renewed pursuant to Auc 401.

(b) A license number shall not be assigned to anyone other than to the person to whom it was originally issued.

**Adopt Auc 400, previously effective 1-1-98 (DOC #6658), and expired 1-1-06, to read as follows:**

CHAPTER Auc 400 CONTINUED STATUS

PART Auc 400 RENEWAL

Auc 401.01 Renewal Form.

(a) Each licensee seeking renewal shall submit a renewal form containing the following information about the licensee, prior to the license expiration date:

- (1) Name, date of birth.
- (2) Residence and business address and telephone numbers, and, if existing, email and website addresses.
- (3) Whether licensed as an auctioneer in other states, and if so, copies of those current licenses;
- (4) Whether ever refused an auctioneer's license in any state, and if so, the details of the refusal or denial including:
  - (d) The reason(s) for the refusal or denial;
  - (e) The name of each state licensing authority that refused or denied issuing the applicant a license; and
  - (f) The date(s) of refusal or denial;
- (5) Whether there has been any disciplinary action taken against the auctioneer in any state, and if so, provide a copy of the order and details of the disciplinary action including:
  - (f) The reason(s) for the disciplinary action(s);
  - (g) The name of each state licensing authority that has issued the disciplinary action;
  - (h) The docket number of the order;
  - (i) The date(s) of disciplinary proceedings;
  - (j) The penalties imposed, including, but not limited to, fines, and dates of sanctions;
- (6) Whether, in the time since the last renewal application was submitted, the licensee has been convicted of any felony or misdemeanor involving theft, fraud, deceit, misrepresentation or other breaches of fiduciary duties, and, if so, the details including:
  - (a) The type of offense;
  - (b) The date of conviction;

- (c) The docket or case number for each conviction or plea of guilty;
- (d) The name and address of the court(s) issuing the decision(s);
- (e) Each resulting sentence, penalty and/or fine imposed;
- (f) A description of each offense and the disposition of each such case;
- (g) Whether all terms of the sentence, penalty or fine have been fulfilled, and if not, an explanation of why the terms have not been fulfilled;

(7) Whether, in the time since the last renewal application was submitted, there are, or have been, any suits in any court involving theft, fraud, deceit, misrepresentation or other breaches of fiduciary duties, to which the licensee is a party, and if so, the details including:

- (a) The date of the suit/proceeding(s);
- (b) The type of action(s);
- (c) The docket or case number(s);
- (d) The name and address of the court(s) for the proceeding(s);

(8) Certificates of completion for Continuing Education courses which the Auctioneer has completed in order to meet the requirements of Auc 402.

(b) The bond, extending at least for the term of the license, required by RSA 311-B:8 shall be filed with the board before a renewal is issued.

(c) All forms shall be complete and shall be signed and dated by the applicant in ink and notarized. Incomplete forms submitted without the bonds, fees, or other necessary attachments shall be returned to the licensee.

(d) The non-resident renewal form shall have the same information as the resident renewal form with the addition of a power-of-attorney.

Auc 401.02 Notice of Expiration. A renewal form shall be mailed to each licensee's address of record at least 30 days in advance of the expiration of his license.

Auc 401.03 Reinstatement Licensure.

(a) If a license is not renewed before the expiration date, then the license is deemed to have expired, and a license may renew an expired license up to 6 months after its expiration date by complying with the requirements of RSA 311-B:10 and Auc 401.01 and by submitting the required late fee as established by the board under Auc 304.02(b).

(b) If an expired license is not renewed within 6 months under paragraph I, then the license is deemed to have lapsed and such person may obtain a license only by qualifying anew as an original applicant. However, the board may renew a lapsed license within a reasonable time from the date of lapse for good cause shown.

(c) If a license expires or lapses as a result of a person being ordered to active duty with the armed forces, the 6-month time period for complying with the requirement of RSA 331-A:19 shall begin upon the licensee's date of discharge or release from active duty, and the late fee shall be waived.

(d) The rights of the licensee under such expired or lapsed license shall be terminated. It shall be unlawful to act or attempt or offer to act in any matter as an auctioneer under an expired or lapsed license.

#### PART Auc 402 CONTINUING EDUCATION

Auc 402.01 Purpose. The purpose of continuing education requirements is to ensure that the auctioneer participates in a program that maintains and increases his or her skill, knowledge and competency in auctioneering.

Auc 402.02 Specific Renewal Requirements. To be eligible for renewal of an auctioneer license , the applicant shall take the equivalent of at least 12 class hours of instruction in courses or seminars during the two (2) year period preceding the renewal. Continuing education credit shall not be recognized for any repeat program attended or completed within an auctioneer's two (2) year continuing education cycle.

#### Auc 402.03 Credit.

(a) Credit toward meeting the continuing education requirement for renewal shall be granted only for courses which meet the requirements for board approval as set forth in Auc 402.07.

(b) Up to one half of an individual's continuing education requirement may also be granted for participation, other than as a student, in auctioneering educational processes and programs. Credit for instructing any given course or seminar shall be awarded only once during a continuing education cycle.

(c) A certificate of completion shall be delivered to the student upon successful completion of the course. The certificate shall state at a minimum, the student's name, the course name, the name of the provider, the completion date and the credit hours awarded.

#### Auc 402.04 Record Keeping.

(a) The licensee shall maintain records to be used to support credits claimed.

(b) Records required shall contain a log showing the type of activity claimed, sponsoring organization, location, instructor's or speaker's name, and continuing education credits earned.

(c) Attendance verification records shall be in the form of completion certificates or other documents supporting evidence of attendance such as:

(1) Signed attendance completion certificates; or

(2) Completed continuing education transcript from a board approved provider.

(d) The licensee shall retain attendance verification records for a period of at least 4 years. Such documentation shall be made available to the board for random audit and/or verification purposes. Documentation shall support continuing education hours claimed. Failure to provide documentation for audit verification shall result in disciplinary action.

Auc 402.05 Extension of Continuing Education Deadlines.

(a) No waiver or deferral shall be granted to a licensee who fails to meet the continuing education requirements, except as specifically set forth herein.

(b) Notwithstanding (a) above, deferrals shall be granted to individuals returning from active military duty. Such individuals shall be permitted to be placed on active status for up to 90 days pending completion of all continuing education requirements.

Auc 402.06 Distance Education.

(a) No more than 50% of a renewing auctioneer's required continuing education hours may be obtained via distance education or on-line programs.

Auc 402.07 Standards for Approval of Continuing Education Courses.

(a) Continuing education credit shall be granted only for courses approved by the board. A list of currently approved courses shall be provided by the board upon request.

(b) Any course which is offered by any national auctioneer's association, state auctioneer's association, any auctioning school approved to offer courses under the provisions of these rules, or any course which has been approved for continuing education credits in any other state shall be approved for purposes of continuing education credits under these rules without the filing of an application for approval with this Board.

(c) Credit towards the continuing education hour requirements shall be granted only where the length of the educational offering is at least 2 hours.

(d) Any Course provider not listed in Auc 402.07(b), shall submit an application for approval provided by the board, including as attachments all additional materials listed in that application.

(e) The board shall approve continuing education courses if it determines that:

- (1) The application demonstrates compliance with (c) – (d) above;
- (2) The course is led by an instructor with sufficient experience in and mastery of the subject matter of the course;
- (3) The course is sponsored by a group or individual possessing the intent and ability to produce a course of sufficient quality to improve or establish an auctioneer's competence;
- (4) The course covers a subject matter which is relevant to improving or establishing an auctioneer's competence in the field of auctioneering; and
- (5) The course is organized in such a way as to fulfill the objectives of the course and the overall purpose of continuing education.

**Adopt Auc 500, previously effective 1-1-98 (DOC #6658), and expired 1-1-06, to read as follows:**

CHAPTER Auc 500 ETHICAL STANDARDS

PART Auc 501 ETHICAL STANDARDS

Auc 501.01 Obligation To Obey. The ethical standards set forth in this part shall bind all licensees, and violation of any such standard shall be a basis for imposing disciplinary sanctions. Conduct proscribed by these ethical standards, when performed by an unlicensed person or during a prior period of licensure, shall also be a basis for denying a license application.

Auc 501.02 Standards of Conduct.

(a) A licensee shall submit only truthful and correct information in any application or other document filed with or statement made to the board.

(b) A licensee shall inform the board of a principal business address to which all official board communications should be directed. The establishment of a business address or the change or abandonment of a business address shall be reported to the board within 30 days.

(c) If challenged by any person(s) prior to or after an auction, the auctioneer shall show the identification card with his license number, issued by the Board of Auctioneers, as evidence of licensure at any auction he is conducting. The Auctioneer of record shall at all auctions post conspicuously at registration and check out his/her full name and official license number, the name, address and telephone number of the Board of Auctioneers, and an 8.5" x 11" copy of his/her Auctioneers License as issued by the Board.

(d) The responsible auctioneer shall pay consignors all sums due them for goods sold at auctions conducted by said auctioneer within 15 calendar days or at some other time mutually agreed upon in writing by both parties. The only exceptions to this are:

(1) A subsequent written agreement signed by both parties may alter a payment schedule initially established between the parties, but a licensee who does not pay in accordance with a payment schedule which was in effect at the time payment was due shall be subject to misconduct sanctions even if the consignor later consents to a modification of the schedule.

(2) If a third party claims or disputes the ownership of the goods sold, the monies shall be placed in an escrow account, with an independent escrow agent pending resolution of the claim.

(3) If a third party brings legal action against the auctioneer for payment to the consignor, the monies shall be placed in an escrow account with an independent escrow agent pending resolution of the claim.

(e) The responsible auctioneer shall provide to the consignor an accounting of each lot sold at auctions conducted by said auctioneer within 15 calendar days or at some other time mutually agreed upon in writing by both parties. "Lot" means the object or group of objects offered by an auctioneer for one money.

(f) All auction advertisements shall include the name and license number, as shown on their license, of the responsible auctioneer who plans to conduct the auction.

(g) Except when participating in auctions exempted by RSA 311-B:13, any licensed New Hampshire auctioneer, who in any manner and to any extent, represents in New Hampshire an auctioneer who is not licensed in New Hampshire, shall meet the following requirements:

(1) The New Hampshire licensed auctioneer shall become the responsible auctioneer and shall include his/her own name and license number in all advertisements for such auction; and

(2) The New Hampshire licensed auctioneer shall be fully responsible for any representation, act, or failure to act on the part of the auctioneer who is not licensed in New Hampshire; including, but not limited to, providing an accounting, as described in Auc 501.02(d), to consignors and payment of all consignors.

(h) Any person attempting to subvert the purpose of RSA 311-B by "buying" property for auction so as not to be literally "selling for another" shall be required to comply with the licensing provisions of RSA 311-B:4. Any advertisement of such unlicensed auction shall be prohibited pursuant to RSA 358-G:2(I).

(i) The responsible auctioneer listed in auction advertisements shall be physically present at said auction. If the responsible auctioneer cannot, for whatever reason, be present at the auction, another New Hampshire licensed auctioneer shall be designated as the agent of the responsible auctioneer and be present throughout the auction. The responsible auctioneer shall still be the licensee fully responsible for the conduct of the auction. However, the designated agent shall be also held responsible for his own actions at the auction, but this does not relieve the liability of the responsible auctioneer.

(j) Consignor's unsold property shall be returned or made available to the owner of record within 15 calendar days of the completion of the auction, unless otherwise agreed upon by both consignor and the responsible auctioneer, or unless a dispute arises regarding ownership of said property.

(k) The term "estate" shall only be used in the heading of an advertisement when the majority of lots or property being offered for sale during the auction is property of a deceased person or persons or property of one or more persons whose decision making is being performed by a guardian or conservator.

(l) The responsible auctioneer shall keep such records as to enable reconstruction of an auction in the event of a complaint. Said records shall be kept for a minimum of two (2) years.

(m) The stated starting bid or stated minimum bids in any public advertisement shall be no less the reserve amount.

(n) Any item advertised or conducted as an absolute auction, an auction without reserve, or on any similar basis in which there is no reserve or minimum bid set for the items shall comply with the requirements of Auc 102.01(a).

(o) The owner of property being auctioned and any designated person acting on behalf of the owner may only cast a total of one bid on the property. The identity of the owner or the designated person, and the intent to offer a bid on the property, must be disclosed to all registered bidders at the auction, prior to the property being auctioned. The owner or any designated person may not bid on property in an absolute auction. An auctioneer shall not conduct an auction in violation of this rule.

(p) The owner of property being auctioned may do only one of the following: (1) give notice that the auction is being conducted without reserve, (2) give notice that the owner or a designated person may cast one bid on the property as set forth in Auc 501.02(o), or (3) give notice that the owner reserves the right to reject all bids. In an absolute auction, the owner may not use any of these three techniques. An auctioneer shall not conduct an auction in violation of this rule.

(q) For purposes of RSA 358-G:1(II), a bid is considered fictitious if the person procuring it has the legal authority to release the bidder from the obligation incurred by his/her bid.

(r) Licensees may bid on their own behalf provided that this has been fully disclosed to the bidders and the licensee has the intention to buy the item.

(s) If a bid is made 'while the hammer is falling' in acceptance of a prior bid, the auctioneer may reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

(t) Regardless of the type of auction, a bidder can always retract his/her bid at any time before an item sells (before the hammer falls). A bidder's retraction does not revive any previous bid.

(u) An auctioneer, at his/her discretion, can accept or refuse bids from anyone who lacks contractual legal capacity such as a minor, an intoxicated person, or someone who is mentally incompetent.

(v) An auctioneer may reject or refuse to accept bids that are considered trifling increases over the preceding bid.

(w) An auctioneer shall not call an item "sold" unless he or she has a good faith belief that title to the property will transfer to the successful bidder upon payment of the auction price.

(x) Any violation of these Standards of Conduct, or any violation of New Hampshire statutes, included but not limited to RSA 311-B or RSA 358-G shall constitute unprofessional conduct, or dishonorable conduct unworthy of, and affecting the practice of, the profession under RSA 311-B:11(II)(d).

## PART Auc 502 CONDUCT OF AUCTION; RECORDS.

### Auc 502.01 Conduct of Auction; Records

(a) No licensee shall accept an item for sale at an auction without first having a written agreement with the owner or authorized agent of any property to be sold. The agreement must contain the terms and conditions upon which the auctioneer received the goods for sale, including but not limited to the auctioneer's board rate, the auction date, an itemized list of items accepted, and any minimum bids applicable to the auction. The licensee shall provide the owner with a signed copy of the agreement and shall keep at least one copy for his own records for two years from the date of the agreement. Copies of all contracts shall be made available to the Board or its designated agent upon request.

(b) Each licensee shall maintain consignment records and enter in them, upon receipt of goods for auction and before sale, the name and addresses of the person who employed the licensee to sell the goods at auction and the name and address of the owner of the goods to be sold. The consignment record shall contain an adequate description of the goods to be sold and shall be sufficient to reasonably identify the items. Consignment records shall be available for inspection by the Board or its designated agent upon request.

(c) Each licensee shall maintain sales records, which identify the purchaser of all goods sold by name, address, and when possible, telephone number. The sales records shall contain an adequate description of the items sold and must be sufficient to positively identify the owner of the property. Sales records shall be maintained for a period of not less than two years from the date of sale. Sales records shall be available for inspection by the Board or its designated agent upon request.

## PART Auc 503 ADVERTISING

### Auc 503.01 Advertising

(a) It shall be a violation of these Rules to advertise a "Bankruptcy Sale" unless the item(s) offered for sale, whether real or personal, are from an active bankruptcy action. Before conducting an auction as a "bankruptcy sale," the majority of the items in the sale shall come from the bankruptcy of one or more parties. Other items not related to or from a bankruptcy action may be sold with items from a bankruptcy action if specifically disclosed at or before the time of the auction.

(b) It shall be a violation of these Rules to advertise any auction using such descriptive words as "Urgent," "Emergency," "Distress" or any other word which connotes liquidation of assets or that the buyers will, for some extraordinary reason, be in a position to reap some unusual bargain without specifically disclosing, in the written advertisement in a print size equal to the descriptive word, the reason that the sale is "urgent," the nature of the "emergency" or the cause of the "distress," etc.

(c) It shall be a violation of these Rules to advertise any auction using such descriptive words as "Seized," "Confiscated," "Forfeited" or any other word which connotes a governmental action whereby items are seized or taken by a government department, agency or board and released or sold or that the buyers will, for some governmental reason, be in a position to reap some unusual bargain without specifically disclosing, in the written advertisement in a print size equal to the descriptive word, the exact nature of the government action.

(d) It shall be a violation of these Rules to advertise any items as being from an "estate" or a "bankruptcy," or from an "urgent," "emergency," "distress," "seized," "confiscated," "forfeited" or similar sale, unless the consignor of the item(s) to be sold is the original owner of the item(s), the designated representative of the owner, or a federal, state or local department, agency or board charged with disposing of the item(s), and consigned the item(s) directly to the advertised sale.

(e) It shall be a violation of these Rules to:

(1) Reference the U.C.C. or any other uniform act or federal or state law in any advertisement unless such act or law is required, by law, to be referenced;

(2) Reference or mention any federal, state or local department, agency or board in any advertisement unless specifically required by law to do so or unless prior written approval is received from such department, agency or board; or

(3) Otherwise connote in any advertisement that the auction is under the auspices of, at the direction of or required by federal or state law or act or a federal, state or local agency or board and that the buyers will, for some legal or governmental reason, be in a position to reap some unusual bargain.

(f) It shall be a violation of these Rules to advertise for sale items which the auctioneer/firm does not intend to offer for sale at the advertised auction.

(g) It shall be a violation of these Rules for an auctioneer or auction firm to permit its name or license number to appear on any advertisement for an auction without reviewing the content

<b>Rule</b>	<b>Statute</b>
Auc 201.01 - Auc 201.02	RSA 311-B:11, RSA 311-B:11-a
Auc 201.03	RSA 311-B:11; RSA 541-A:30-36
Auc 201.04 - Auc 201.05	RSA 311-B:3,I(f); RSA 311-B:3,I(g); RSA 311-B:11; RSA 311-B:11-a
Auc 202.01 - Auc 202.02	RSA 311-B:3,I(f); RSA 311-B:3,I(g); RSA 311-B:11; RSA 311-B:11-a
Auc 203.01 - Auc 203.20	RSA 311-B:3,I(f); RSA 311-B:3,I(g); RSA 311-B:11; RSA 311-B:11-a; RSA 311-B:12
Auc 204.01 - Auc 204.04	RSA 311-B:3; RSA 541-A:16,I(e)
Auc 301.01 - Auc 301.02	RSA 311-B:3; RSA 311-B:5; RSA 311-B:6; RSA 311-B:8; RSA 311-B:10
Auc 302.01 - Auc 302.02	RSA 311-B:3; RSA 311-B:5; RSA 311-B:6; RSA 311-B:8; RSA 311-B:10
Auc 302.03	RSA 311-B:3; RSA 311-B:5; RSA 311-B:6; RSA 311-B:10
Auc 303.01 - Auc 303.03	RSA 311-B:3; RSA 311-B:5; RSA 311-B:6
Auc 304.01 - Auc 304.03	RSA 311-B:3; RSA 311-B:5; RSA 311-B:6; RSA 311-B:10
Auc 305.01	RSA 311-B:3
Auc 401.01 - Auc 401.03	RSA 311-B:3; RSA 311-B:8; RSA 311-B:10
Auc 402.01 - Auc 402.07	RSA 311-B:3; RSA 311-B:10
Auc 501.01 - Auc 501.02	RSA 311-B:11; RSA 358-G
Auc 502.01	RSA 311-B:11; RSA 358-G
Auc 503.01	RSA 311-B:11; RSA 358-G