

VIRGINIA AUCTIONEERS BOARD



REGULATIONS

Last Updated October 1, 2009

STATUTES

Title 54.1, Chapter 6

Excerpts from § 54.1-2103 and the Uniform Commercial Code



Department of Professional and Occupational Regulation

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NOTICE
SUMMARY OF SIGNIFICANT CHANGES

Included in this document are relevant excerpts from the Virginia Administrative Code. Please note that the Virginia Auctioneers Board is responsible for promulgating regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), and the Virginia Code Commission is responsible for compiling and codifying all of the administrative regulations of state agencies into the Virginia Administrative Code.

It is your responsibility to stay informed and follow all regulations and statutes governing your profession or occupation. As a regulant of the Board, you should read and become familiar with all regulations applicable to your profession or occupation. You can stay informed of regulatory actions that may result in changes to the regulations at Virginia Regulatory Town Hall (www.townhall.virginia.gov).

This document is a complete, edited (unofficial) copy of the October 1, 2009 Regulations (18VAC25-21). Please refer to the Virginia Administrative Code for an official copy of the regulations applicable to your profession or occupation. You can access the Virginia Administrative Code online at <http://leg1.state.va.us/000/reg/TOC.HTM>.

The following list summarizes significant revisions to the regulations effective October 1, 2009, but does not include all changes that were made to the Auctioneers Regulations.

- Board regulation 18VAC25-21-150 was amended to allow proceeds which are paid via credit cards to be deposited into an auction escrow account upon receipt from the credit card issuer.

STATEMENT OF PURPOSE

This booklet contains the information you will need to obtain your Auctioneers license. The law that governs your profession is found in the *Code of Virginia*, 1950, as amended, in Title 54.1, Chapter 6. That law permits the Department of Professional and Occupational Regulation to issue regulations that tell you more about what is expected of you in your profession. This booklet contains a copy of the law and regulations that you will need to know and obey to get and keep your license. **BE SURE YOU READ AND UNDERSTAND THE STANDARDS OF PRACTICE AND CONDUCT. YOUR FAILURE TO OBEY THESE STANDARDS COULD RESULT IN A MONETARY PENALTY OR THE LOSS OF YOUR LICENSE.**

It is the goal of the Department of Professional and Occupational Regulation to provide you with the information you need to comply with the law and regulations. If you have a question and cannot find the answer to it in this booklet, please write to:

Auctioneers Board
Department of Professional and Occupational Regulation
9960 Mayland Drive, Suite 400
Richmond, Virginia 23233

or call the Agency at (804) 367-8512.

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**PART I.
DEFINITIONS.**

18VAC25-21-10. Definitions.

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

"Owner" means the bona fide owner of the real or personal property being offered for sale; in the case of a corporation, partnership, or other entity, except a sole proprietorship, an authorized officer, director, or partner may be deemed to be "owner" of the real or personal property being offered for sale, provided such entity is licensed to do business in the Commonwealth of Virginia.

Historical Notes:

Derived from VR150-01-2:1 §1.1, eff. August 1, 1995; amended, Virginia Register Volume 18, Issue 7, eff. February 1, 2002.

**PART II.
ENTRY REQUIREMENTS.**

18VAC25-21-20. Licensure.

All persons or firms as defined in § 54.1-600 of the Code of Virginia who conduct auctions or offer their services to sell at auction in the Commonwealth are required to file a licensure application and pay the specified fee to the board. Applicants for individual licensure shall meet the following requirements:

1. Be at least 18 years of age.
2. Shall not have been previously found by any regulatory board or agency to have violated any applicable regulations or laws in the course of performing auctioneer duties or been convicted or found guilty, regardless of the manner of adjudication, in any jurisdiction of the United States of a misdemeanor involving moral turpitude or any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. A certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order shall be admissible as prima facie evidence of such conviction or discipline. Applicants for licensure who do not meet requirements set forth in this section may be approved for licensure following consideration by the board in accordance with § 54.1-204 of the Code of Virginia.
3. Successfully complete a course of study at a school of auctioneering that has obtained course approval from the board, or an equivalent course and has passed the Virginia Licensed Auctioneer's Examination administered by the Auctioneers Board or its designee.

Historical Notes:

Derived from VR150-01-2:1 §2.1, eff. August 1, 1995; amended, Virginia Register Volume 18, Issue 7, eff. February 1, 2002; Volume 25, Issue 7, eff. February 1, 2009.

18VAC25-21-30. Bond required.

All applicants shall submit evidence that a surety bond, executed by a surety company authorized to do business in the Commonwealth and in at least the amount of \$10,000, has been obtained. Proof of current bond must be submitted in order to obtain or renew the license. The bond must commence no later than the effective date of the license and shall expire no sooner than the date of expiration of the license.

Historical Notes:

Derived from VR150-01-2:1 §2.2, eff. August 1, 1995; amended, Virginia Register Volume 18, Issue 7, eff. February 1, 2002.

18VAC25-21-40. License by reciprocity.

The board may issue a license to any individual applicant, holding a license in any state, territory, or possession of the United States, with whom the board has established an act of reciprocity provided the requirements and standards under which the license was issued are substantially equivalent to those established by the board. At the time of application for licensure, the applicant must be currently licensed in the state in which reciprocity is established with the Commonwealth of Virginia. The board may deny an application if the licensed auctioneer has been found guilty (i) by any regulatory board or agency to have violated any applicable regulations or laws in the course of performing auctioneering duties or (ii) by a court of any criminal offense or material misrepresentation in the course of performing auctioneering duties. A certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order shall be admissible as prima facie evidence of such conviction or discipline.

Nonresident applicants shall also file with the board an irrevocable consent that service of process upon the director is valid and binding as the service of process upon the applicant.

Historical Notes:

Derived from VR150-01-2:1 §2.3, eff. August 1, 1995; amended, Virginia Register Volume 18, Issue 7, eff. February 1, 2002; Volume 25, Issue 7, eff. February 1, 2009.

18VAC25-21-50. Application.

A. All applicants seeking licensure by reciprocity or examination shall submit a fully executed application with the appropriate fee or fees attached. Applicants will be notified if their application is incomplete.

Applications for licensure by examination must comply with the requirements of the board's designee as to the deadline for submission of the application to the board's designee.

B. 1. If a corporation, limited liability company, or other entity, the application shall include copies of the certificate of incorporation or certificate of organization issued by the

Virginia State Corporation Commission, articles and bylaws.

2. If a foreign corporation, foreign limited liability company, or other entity, the application shall include copies of the certificate of authority to conduct business issued by the Virginia State Corporation Commission, which shall be required in lieu of the certificates as required by subdivision 1 of this subsection.

3. Any firm applicant shall not have been previously found by any regulatory board or agency to have violated any applicable regulations or laws in the course of performing auctioneer duties or been convicted or found guilty, regardless of the manner of adjudication, in any jurisdiction of the United States of a misdemeanor involving moral turpitude or any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. A certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order shall be admissible as prima facie evidence of such conviction or discipline. Applicants for licensure who do not meet requirements set forth in this section may be approved for licensure following consideration by the board in accordance with § 54.1-204 of the Code of Virginia.

C. All applications will be reviewed by the Auctioneers Board staff, or the board's designee, to determine eligibility for examination and licensure within 30 days of receipt at the offices of the Department of Professional and Occupational Regulation or the board's designee. However, failure to review an application within 30 days of receipt shall not imply or result in the automatic approval of the application. No applicant will be approved for licensure unless all requirements of this part of this chapter are met.

Historical Notes:

Derived from VR150-01-2:1 §2.4, eff. August 1, 1995; amended, Virginia Register Volume 18, Issue 7, eff. February 1, 2002; Volume 25, Issue 7, eff. February 1, 2009.

18VAC25-21-60. Examination.

The examination shall test the applicant's knowledge of the following:

1. The auction business including fundamentals of auctioneering, elementary principles of real estate, preparation of contracts, advertising, final settlement statements, arithmetic and percentages, and ethics.

2. The Virginia statutes entitled Auctioneers' Licensure Act, Chapter 6 (§ 54.1-600 et seq.) of Title 54.1 of the Code of Virginia; bulk transfers, §§ 8.6A-101 through 8.6A-

110 and 8.2-328 of the Code of Virginia; sales tax laws, Title 58.1 of the Code of Virginia; and the regulations of the board.

Historical Notes:

Derived from VR150-01-2:1 §2.5, eff. August 1, 1995; amended, Virginia Register Volume 18, Issue 7, eff. February 1, 2002; Volume 25, Issue 7, eff. February 1, 2009.

18VAC25-21-70. Fees.

Fees are nonrefundable and shall not be prorated. The following fees shall apply:

1. Individual auctioneer license - \$25.
2. Auctioneer firm license - \$55.
3. Examination - \$40.
4. Reexamination fee - \$40.
5. Renewal for individual auctioneer's license - \$55.
6. Renewal for firm or corporation license - \$65.
7. Late renewal for an individual auctioneer's license - \$80.
8. Late renewal for an auction firm or corporate license - \$90.
9. Reinstatement of the individual auctioneer's license - \$105.
10. Reinstatement of the firm or corporate license - \$115.

Historical Notes:

Derived from VR150-01-2:1 §2.6, eff. August 1, 1995; amended, Virginia Register Volume 14, Issue 11, eff. April 1, 1998; Volume 15, Issue 26, eff. November 1, 1999; Volume 18, Issue 7, eff. February 1, 2002; Volume 26, Issue 22, eff. November 1, 2006.

PART III.
RENEWAL/REINSTATEMENT.

18VAC25-21-80. Notice of renewal.

The Department of Professional and Occupational Regulation will mail a renewal notice to the licensee outlining the amount due and procedures for renewal. Failure to receive this notice shall not relieve the individual or firm licensee of the obligation to renew.

Licenses issued under these regulations shall be issued for a two-year period. Each license holder, corporation or firm shall be required to renew the license by submitting the proper fee made payable to the Treasurer of Virginia, with verification of current surety bond coverage as detailed in 18 VAC 25-21-30 of these regulations. In addition, individual license holders applying for renewal are required to certify that they comply with the continuing education requirements as contained in this chapter.

Historical Notes:

Derived from VR150-01-2:1 §3.1, eff. August 1, 1995; Volume 23, Issue 21, eff. August 1, 2007.

18VAC25-21-90. Failure to renew.

A. Any individual or firm licensee who fails to renew a license within 30 days after the license expires, shall be required to pay a late renewal fee.

B. Any individual or firm licensee, including individuals initially licensed pursuant to § 54.1-603 A of the Code of Virginia, who fails to renew his license within six calendar months after the expiration date of the license shall be required to apply for reinstatement of the license. The applicant shall submit to the Department of Professional and Occupational Regulation a reinstatement application and fee and comply with the following paragraph:

If the license has expired for six months or more, but less than two years, the applicant shall be required to submit a reinstatement application, which shall be evaluated by the board to determine if the applicant meets the renewal requirements. In addition, individual license holders applying for reinstatement are required to provide evidence of compliance with the continuing education requirements as contained in this chapter. A license that is reinstated shall be deemed as having been continuous without interruption. Nothing in these regulations shall divest the board of its authority to discipline a license holder for a violation of the law or regulation during the period of time for which the regulant was licensed

C. If the license has expired for two years or more, the applicant shall be required to submit a

new application and meet current entry requirements that are in effect as of the date the application is received by the board office. The applicant shall be required to submit the examination fee and sit for and pass the Virginia Licensed Auctioneer's Examination or comply with the provisions contained in 18 VAC 25-21-40. Any auctioneering activity conducted between the time the previous license expired and the effective date of the new license shall be considered unlicensed activity.

D. The date the complete renewal application, including fees and all required documentation, is received by the Department of Professional and Occupational Regulation or its agent will determine whether a license will be renewed without penalty or will be subject to reinstatement requirements.

E. Auctioneer individual and firm licenses issued under this regulation shall expire 24 months from the last day of the month in which the license was issued. The expiration date of the license will be indicated on the license.

Historical Notes:

Derived from VR150-01-2:1 §3.2, eff. August 1, 1995; amended, Virginia Register Volume 18, Issue 7, eff. February 1, 2002; Volume 23, Issue 21, eff. August 1, 2007.

**PART IV.
STANDARDS OF PRACTICE.**

18VAC25-21-100. Advertising.

A. All advertising must be truthful. Advertising shall contain no false, misleading or deceptive statements, with respect to types or conditions of merchandise offered at auction, why merchandise is being sold, who has ownership, where the merchandise was obtained, or the terms and conditions of the auction and sale.

B. In all advertisements relating to an auction, the auctioneer's name and Virginia license number or the auction firm's name and Virginia license number shall be clearly displayed.

Historical Notes

Derived from VR150-01-2:1 §4.1, eff. August 1, 1995.

18VAC25-21-110. Contracts.

A. When an auctioneer or auction firm agrees to conduct an auction, a contract shall be drawn setting forth the particulars of the terms and conditions under which the auctioneer or auction firm received the real or personal property for auction and particulars for the disbursement of the proceeds. Each contract for auction shall include the following:

1. a. A detailed list of the real or personal property received for sale with adequate descriptions of the property so that the personal property can be readily identified. If a list cannot be made at the time of signing of the contract, then a list must be made a part of the contract (and attached) prior to auction of the real or personal property for that day; or

b. If the auctioneer or auction firm enters into a contract to sell items on a consignment basis where the total value of all the items to be sold at any one auction does not exceed \$500, and the owner of the items agrees to waive this requirement in writing on a document separate from, but made a part of, the contract, then the requirement contained in subdivision 1 a of this subsection is not applicable.
2. The name, address, telephone number, and license number of the Virginia auctioneer or auction firm.
3. The name, address and telephone number of the owner.

4. The date, time and place of the auction or auctions at which the real or personal property is scheduled to be auctioned. The date by which the property is to be returned if it is not sold.
5. The fee or percentage of gross sales the auctioneer or auction firm will charge the owner and what services are included in the fee, such as preparation, travel, labor, advertising and any other auction related expenses.
6. By what date the owner is to be paid and who is responsible for disbursing the funds.
7. A statement that the clerk sheets, or other evidence to properly account for all items sold, shall be given or made available for inspection by the owner on a daily basis.
8. The following statement above the owner's signature line: "I have read and accepted the terms of this contract."

B. A legible executed copy of the contract shall be given to the owner at the time of execution.

Historical Notes:

Derived from VR150-01-2:1 §4.2, eff. August 1, 1995; amended, Virginia Register Volume 18, Issue 7, eff. February 1, 2002; Volume 25, Issue 7, eff. February 1, 2009.

18VAC25-21-120. Conduct at auctions.

No auctioneer or auction firm shall attempt to escalate bidding through false bids, or through collusion with another (shills). The auctioneer or auction firm shall not bid on the owner's behalf nor knowingly accept a bid made by the owner or made on the owner's behalf unless notice has been given that liberty for such bidding has been reserved. The auctioneer or auction firm shall not bid on his own behalf nor knowingly accept a bid made on his behalf unless notice has been given that such bidding will be permitted.

Historical Notes:

Derived from VR150-01-2:1 §4.3, eff. August 1, 1995; Volume 25, Issue 7, eff. February 1, 2009.

18VAC25-21-130. Display of license.

Auctioneers shall carry their pocket cards on their person and shall produce them upon request. Auction firms shall display their license in a conspicuous location at the address of record. The address of record shall not be a post office box as detailed in 18 VAC 25-21-170.C.

Historical Notes:

Derived from VR150-01-2:1 §4.4, eff. August 1, 1995.

18VAC25-21-140. Documentation.

Upon completion of the auctioneer's or auction firm's service, each owner shall be given legible copies of bills of sale, clerk sheets, consignment sheets, settlement papers, balance sheets or other evidence to properly account for all items sold at auction.

Historical Notes:

Derived from VR150-01-2:1 §4.5, eff. August 1, 1995.

18VAC25-21-150. Escrow funds.

A. Proceeds of a personal property auction not disbursed to the owner on auction day shall be deposited in an auction escrow account by the auctioneer/auction firm no later than the next banking day following the date of auction or sale of the goods, whichever occurs first.

B. Notwithstanding the provisions of subsection A of this section, for proceeds which are paid via credit card, the payment of such proceeds from the credit card issuer shall be deposited into an auction escrow account upon receipt from the credit card issuer.

C. Auctioneers/auction firms shall use federally insured depositories in the Commonwealth of Virginia.

D. Proceeds due from the sale of goods other than real property shall be disbursed to the owner no later than 30 days after the date of each auction.

E. Funds from a real estate auction shall be held in escrow until settlement in accordance with the agreement of sale.

F. If the owners' goods are not sold in a single auction, proceeds due shall be disbursed to the owner within 30 days after each auction for goods other than real property, or in accordance

with the agreement of sale for the sale of real property. Notice must be given to the owner of tentative date of auction, or date of return to the owner, of the remaining goods.

G. The auction escrow account shall be used solely for the preservation and guarantee of auction proceeds until disbursed at settlement. Funds for any other purpose shall not be commingled with the auction escrow account. Contingency accounts established to guarantee checks accepted on the owner's behalf shall not be considered commingling of funds. Moneys due to the licensee shall not be withdrawn from the auction escrow account until final settlement is made with the owner.

H. The balance in the escrow accounts shall be sufficient at all times to account for all funds that are designated to be held by the licensee. A licensee shall not disburse or cause to be disbursed moneys from an escrow account unless sufficient money is on deposit in that account to the credit of the individual client or property involved.

I. Funds to be deposited in the escrow account may include moneys that shall ultimately belong to the licensee for incidental expenses per the terms of the contract. Such moneys shall be separately identified in the escrow account records and shall be paid to the licensee by a check drawn on the escrow account when the funds become due to the licensee. The fact that an escrow account contains money that may ultimately belong to the licensee does not constitute "commingling of funds" provided that there are periodic withdrawals of said funds at intervals of not more than six months, and that the licensee can at all times accurately identify the total funds in that account that belong to the licensee.

J. On funds placed in an account bearing interest, written disclosure in the contract of sale or lease at the time of contract or lease writing shall be made to the principals to the transaction regarding the disbursement of interest.

Historical Notes:

Derived from VR150-01-2:1 §4.6, eff. August 1, 1995; Volume 25, Issue 7, eff. February 1, 2009; Volume 25, Issue 24, eff. October 1, 2009.

18VAC25-21-160. Records.

The contract drawn with each owner; auction records, including but not limited to lists of buyers and their addresses; and clerk sheets showing the items sold including the buyers' numbers or names and the selling prices and the final settlement papers shall be retained for a period of four years from the date of settlement. These business records shall be available for inspection by the board or its designees as deemed appropriate and necessary.

Historical Notes:

Derived from VR150-01-2:1 §4.7, eff. August 1, 1995.

18VAC25-21-170. Change of address.

A. An auctioneer's or auction firm's license shall not be transferable and shall bear the same name and physical address as the business. Upon dissolution or change in the form of the business entity of an auction firm, the auction firm license shall become void.

B. Written notice shall be given within 30 days to the board by each individual or firm licensee of any change of physical business address or location, whereupon the board shall issue an amended license without fee for the unexpired portion of the biennial period.

C. A post office box is not an acceptable physical business address.

Historical Notes:

Derived from VR150-01-2:1 §4.8, eff. August 1, 1995; Volume 25, Issue 7, eff. February 1, 2009.

**PART V.
STANDARDS OF CONDUCT.**

18VAC25-21-180. Discipline.

The board has the power to fine any individual or firm licensee, or to suspend or revoke any license issued under the provisions of Chapter 6 (§ 54.1-600 et seq.) of Title 54.1 of the Code of Virginia and the regulations of the board pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) if it finds that:

1. The license was obtained, renewed or reinstated through fraud or misrepresentation;
2. The licensed auctioneer or firm has been convicted or found guilty, regardless of the manner of adjudication, in any jurisdiction of the United States of a misdemeanor involving moral turpitude or any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Review of prior criminal convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. A certified copy of a final order, decree or case decision by a court with the lawful authority to issue such order shall be admissible as prima facie evidence of such conviction or discipline;
3. The licensed auctioneer or firm has been found by any regulatory board or agency, or jurisdiction where licensed to have had a license or registration suspended, revoked or surrendered in connection with a disciplinary action, who has been the subject of discipline in another jurisdiction or to have violated any applicable regulations or laws in the course of performing auctioneer duties. A certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order shall be admissible as prima facie evidence of such conviction or discipline;
4. The licensed auctioneer or firm has not demonstrated reasonable care, judgment, or application of his knowledge and ability in the performance of auctioneering duties;
5. The licensed auctioneer or firm violated or induced another person to violate any provisions of Chapters 1, 2, 3, or 6 of Title 54.1 of the Code of Virginia, or any provision of this chapter; or
6. The licensee fails to comply, or misrepresents any information pertaining to his compliance, with any of the continuing education requirements as contained in this chapter.

Historical Notes:

Derived from VR150-01-2:1 §5.1, eff. August 1, 1995; amended, Virginia Register Volume 18, Issue 7, eff. February 1, 2002; Volume 23, Issue 21, eff. August 1, 2007; Volume 25, Issue 7, eff. February 1, 2009.

18VAC25-21-185. Cooperation with Board.

A. The licensee shall, upon request or demand, produce to the board, or any of its agents, within 10 days any plan, document, book, record or copy thereof in his possession concerning a transaction covered by this chapter, and shall cooperate in the investigation of a complaint filed with the board.

B. A professional who has direct knowledge that any individual, including himself, or firm may be violating any of these provisions, or the provisions of Chapters 1 (§ 54.1-100 et seq.) through 3 (§ 54.1-300 et seq.) or Chapter 6 (§ 54.1-600 et seq.) of Title 54.1 of the Code of Virginia, shall immediately inform the secretary of the board in writing and shall cooperate in furnishing any further information or assistance that may be required.

C. The board, in its discretion, may refuse to grant the renewal or reinstatement of a license of any person for any of the reasons specified in subsection A of this section.

Historical Notes:

Derived from Virginia Register Volume 25, Issue 7, eff. February 1, 2009.

**PART VI.
SCHOOLS OF AUCTIONEERING.**

18VAC25-21-190. Application for course approval.

Schools seeking approval of their courses shall file a request with the board. The request shall include the following information:

1. Name and address of the school;
2. Locations where classes will be held;
3. Length of the course and total number of hours of instruction;
4. Subjects covered together with number of instruction hours assigned;
5. Names and qualifications of instructors (area of expertise and experience).

Historical Notes:

Derived from VR150-01-2:1 §6.1, eff. August 1, 1995.

18VAC25-21-200. Requirements for course approval.

To receive course approval the institution must offer to Virginia candidates a minimum of 80 hours of classroom and field instruction in the conduct of auction business to include fundamentals of auctioneering, elementary principles of real estate, brokerage, contract drawing, advertising, sale preparation, bid calling, settlement statements, ethics and exposure to the current rules and regulations of the Virginia Auctioneers Board. There must be at least five instructors who have been licensed auctioneers for at least five years and who specialize in different fields of the auction business.

Historical Notes:

Derived from VR150-01-2:1 §6.2, eff. August 1, 1995; amended, Virginia Register Volume 18, Issue 7, eff. February 1, 2002.

18VAC25-21-210. Amendments and changes.

Any change in the information provided by the school to the board as required by 18VAC25-21-

190, 18VAC25-21-200 or 18VAC25-21-220 shall be reported to the board in writing within 30 days of such an occurrence.

Historical Notes:

Derived from Virginia Register Volume 18, Issue 7, eff. February 1, 2002.

18VAC25-21-220. Periodic requalification for continued course approval.

At times established by the board, the board may require that schools that have previously obtained course approval provide the board with evidence, in a form set forth by the board, that they continue to comply with the requirements of 18VAC25-21-190 and 18VAC25-21-200. Failure to continue to comply with the board's requirements or respond to such a request may result in the board withdrawing its approval.

Historical Notes:

Derived from Virginia Register Volume 18, Issue 7, eff. February 1, 2002.

PART VII.
CONTINUING EDUCATION REQUIREMENTS.

18VAC25-21-230. Application and criteria for course approval.

A. Course providers seeking approval of their continuing education course shall file an application with the board office. All continuing education course providers shall obtain approval from the board office prior to offering to provide, or providing, a course which is advertised or represented as being eligible to comply with the continuing education provisions of this chapter. Retroactive approval of continuing education courses shall not be permitted.

Continuing education courses shall be approved provided the following criteria are met:

1. Course subjects must be related to the current practice of auctioneering and have defined learning objectives.
2. At the end of the course each attendee must be assessed to verify that they have achieved the defined learning objectives.
3. The course curriculum must be consistent with the defined learning objectives.
4. The method of instruction must be consistent with the defined learning objectives of the course.
5. Course instructors must be competent in the subject being taught, either by education or experience, and in instructional techniques.
6. Fifty contact minutes shall equal one continuing education credit hour. No credit shall be awarded for partial continuing education credit hours or partial completion of the course. In addition, attendees who fail to demonstrate successful completion of the defined learning objectives of the course shall not be awarded credit for the course. For courses in which individual segments are less than 50 minutes, the sum of the segments shall be totaled for computation of continuing education credit hours.
7. The course provider certifies that the laws, regulations, and industry practices that will be taught or utilized in the course are up-to-date and that any subsequent changes in laws, regulations, or industry practices will be incorporated into the course curriculum as they occur.
8. The course provider certifies that they will comply with provisions of this chapter in administering and providing the approved course.

B. Pursuant to § 54.1-603.1 A of the Code of Virginia, continuing education courses completed by an auctioneer pursuant to a requirement of the Certified Auctioneer's Institute or participation in the educational programs sponsored by the National Auctioneer's Association or Virginia Auctioneer's Association are approved.

Historical Notes:

Derived from Virginia Register Volume 23, Issue 21, eff. August 1, 2007.

18VAC25-21-240. Administration of courses.

A. Approved course providers shall comply with the requirements of this chapter when providing approved courses. Failure of a course provider to comply with the board's requirements contained in 18VAC25-21-230 or any other provision of this chapter at any time after receiving approval from the board may result in the board withdrawing its approval for a course or a specific offering or offerings of the course.

B. Course approval is not transferable from the course provider to whom it was originally issued.

C. The approved course providers shall award a certificate of completion to those attendees who successfully complete the course that includes the sponsor identification number of the course provider issued by the board office, name of the course, number of continuing education credit hours awarded, and the date of the course. Course providers shall only award continuing education credit hours in the amount as approved.

D. Attendance must be verified and documented at the beginning and end of the course and monitored during the course. No credit may be awarded to attendees who arrived late, left early, or missed a portion of the course or failed to accomplish the learning objectives of the course. Further, such individuals shall not be awarded a certificate of completion by the course provider.

E. At the end of each course, the course provider shall solicit feedback from the attendees to assess the effectiveness of the course, course content, course curriculum, instructor, and method of instruction. The course provider shall monitor the feedback from the attendees and make adjustments as warranted.

F. All records related to an approved course must be maintained for four years from the date of the course and such records shall be provided to the board or its duly authorized agents upon request. Records which must be maintained include, but are not limited to, the following: time, date and location of the course; course materials; course curriculum; instructor; instructor qualifications; learning objectives; assessment of attendees for verification of achievement of the

learning objectives; end of course feedback from attendees; attendance rosters; and records of those attendees who successfully completed the course and those who did not and reasons why attendees noted as not successfully completing the course did not successfully complete the course.

Historical Notes:

Derived from Virginia Register Volume 23, Issue 21, eff. August 1, 2007.

18VAC25-21-250. Continuing education requirements for renewal or reinstatement.

- A. Individuals whose licenses expire, or apply to reinstate, after February 1, 2008, shall be required to comply with the continuing education provisions of this chapter.
- B. Individuals are required to complete at least six continuing education credit hours of board-approved continuing education courses for any license renewal or reinstatement.
- C.
 - 1. Each individual applying for renewal shall certify that he has met the continuing education requirements of this chapter. Only continuing education courses completed during the license period immediately prior to the expiration date of the license shall be acceptable in order to renew the license.
 - 2. Individuals shall maintain records of completion of continuing education credit hours for two years from the date of expiration of the license for which the continuing education credit hours are being used to renew the license. Individuals shall provide such records to the board or its duly authorized agents upon request.
 - 3. Continuing education credit hours utilized to satisfy the continuing education requirements to renew a license shall be valid only for that renewal and shall not be accepted for any subsequent renewal cycles or reinstatement.
- D.
 - 1. Each individual applying for reinstatement shall provide, as part of his reinstatement application, evidence of compliance with the continuing education requirements of this chapter. The completion date of continuing education courses submitted in support of a reinstatement application shall not be more than two years old as of the date a complete reinstatement application is received by the board.
 - 2. Continuing education credit hours utilized to satisfy the continuing education requirements in order to reinstate a license shall be valid only for that reinstatement and shall not be accepted for any subsequent renewal cycles or reinstatement.

E. Notwithstanding the provisions of subsection C of this section, continuing education hours earned during a licensing renewal cycle to satisfy the continuing education requirements of the preceding licensing renewal cycle shall be valid only for that preceding license renewal cycle and shall not be accepted for any subsequent renewal cycles or reinstatement.

Historical Notes:

Derived from Virginia Register Volume 23, Issue 21, eff. August 1, 2007.

18VAC25-21-260. Exemptions and waivers.

Pursuant to § 54.1-603.1 B of the Code of Virginia, as amended, the board may grant exemptions or waive or reduce the number of continuing education hours required in cases of certified illness or undue hardship. However, such exemptions, waivers, or reductions shall not relieve the individual of his obligation to comply with any other requirements of this chapter, including but not limited to the provisions of 18VAC25-21-80 or 18VAC25-21-90.

Historical Notes:

Derived from Virginia Register Volume 23, Issue 21, eff. August 1, 2007.

18VAC25-21-270. Amendments and changes.

Any change in the information provided by a course provider to the board as required by 18 VAC 25-21-230 A, or 18 VAC 25-21-280 or change in ability to comply with the requirements of 18 VAC 25-21-240 shall be reported to the board in writing within 10 days of such an occurrence. In instances of noncompliance with the provisions of this chapter, the approval of the course is automatically suspended until such time as the course provider corrects the deficiency and notifies the board in writing that such deficiency has been corrected.

Historical Notes:

Derived from Virginia Register Volume 23, Issue 21, eff. August 1, 2007.

18VAC25-21-280. Periodic requalification for continued course approval.

At times established by the board, the board may require that course providers that have previously obtained course approval provide the board with evidence, in a form set forth by the board, that they continue to comply with the requirements of 18VAC25-21-230 A and 18VAC25-21-240. Failure to continue to comply with the board's requirements or respond to such a request may result in the board withdrawing its approval.

Historical Notes:

Derived from Virginia Register Volume 23, Issue 21, eff. August 1, 2007.

Included in this booklet are relevant excerpts from the *Code of Virginia*. Please note that the Virginia General Assembly is responsible for creating and amending the *Code*, not the Auctioneers Board. The version contained herein contains all changes, if any, that have been made by the General Assembly through the 2008 session. Any changes made during the 2008 session became effective July 1, 2008, unless otherwise noted. It is your responsibility to stay informed of revisions to the regulations and the statutes governing your profession or occupation. Please consult the General Assembly or your local library for annual changes.

AUCTIONEERS LICENSE ACT, §§ 54.1-600 THROUGH 54.1-607

§ 54.1-600. Definitions.

As used in this chapter, unless the context requires a different meaning:

"*Absolute auction*" means an auction where at the time of the auction sale the real or personal property to be sold will pass to the highest bidder regardless of the amount of the highest and last bid.

"*Auction*" means the sale of goods or real estate by means of exchanges between an auctioneer and members of his audience, the exchanges consisting of a series of invitations for offers made by the auctioneer, offers made by members of the audience, and acceptance by the auctioneer of the highest or most favorable offer.

"*Auction firm*" means any corporation, partnership or entity, except a sole proprietorship, performing any of the acts of an auctioneer as defined in this section.

"*Auctioneer*" means any person who conducts or offers to conduct an auction.

"*Board*" means the Auctioneers Board.

"*Director*" means the Director of the Department of Professional and Occupational Regulation.

"*Goods*" means any chattels, merchandise, real or personal property, or commodities of any form or type which may be lawfully kept or offered for sale.

"*Person*" means any natural person, association, partnership, or corporation, and the officers, directors, and employees of a corporation.

"*Virginia licensed auctioneer*" means any auctioneer who meets the requirements for licensure as prescribed by the Board.

§ 54.1-601. Exemptions.

The provisions of this chapter and the terms "Virginia licensed auctioneer," "auctioneer" or "auction firm," as defined in § 54.1-600, shall not apply to:

1. Any person who auctions his own property, whether owned or leased, provided his regular business is not as an auctioneer;
2. Any person who is acting as a receiver, trustee in bankruptcy, guardian, conservator, administrator, or executor, or any person acting under order of a court;
3. A trustee acting under a trust agreement, deed of trust, or will;

4. An attorney-at-law licensed to practice in the Commonwealth of Virginia acting pursuant to a power of attorney;
5. Sales at auction conducted by or under the direction of any public authority, or pursuant to any judicial order or decree;
6. Sale of livestock at a public livestock market authorized by the Commissioner of Agriculture and Consumer Services;
7. Leaf tobacco sales conducted in accordance with the provisions of § 3.1-336;
8. Sale at auction of automobiles conducted under the provisions of § 43-34 or by a motor vehicle dealer licensed under the provisions of Chapter 15 (§ 46.2-1500 et seq.) of Title 46.2;
9. Sale at auction of a particular brand of livestock conducted by an auctioneer of a livestock trade association;
10. Sales conducted by and on behalf of any charitable, religious, civic club, fraternal, or political organization if the person conducting the sale receives no compensation, either directly or indirectly, therefor and has no ownership interest in the merchandise being sold or financial interest in the entity providing such merchandise;
11. Sales, not exceeding one sale per year, conducted by or on behalf of a civic club or organization; or
12. Sales of collateral, sales conducted to enforce carriers' or warehousemen's liens, bulk sales, sales of goods by a presenting bank following dishonor of a documentary draft, resales of rightfully rejected goods, resales of goods by an aggrieved seller, or other resales conducted pursuant to Titles 8.1 through 8.10 and Chapter 23 (§ 55-416 et seq.) of Title 55.

§ 54.1-602. Auctioneers Board; membership, meetings and powers.

A. The Auctioneers Board shall be composed of five members as follows: three shall be Virginia licensed auctioneers and two shall be citizen members. Board members shall serve four-year terms.

The Board shall meet at least twice each year for the purpose of transacting business. Special meetings of the Board may be held at the discretion of the Director.

B. The Board shall have the following authority and responsibilities:

1. Establish regulations to obtain and retain licensure of auctioneers.
2. Make all case decisions regarding eligibility for initial licensure and renewal thereof.
3. To fine, suspend, deny renewal or revoke for cause, as defined in regulation, any license.
4. To examine auctioneers for licensure.

§ 54.1-603. License required; requirements for licensure; nonresident applicants.

A. Unless exempted by § [54.1-601](#), no person or firm shall sell at auction without being licensed by the Board.

B. Any auctioneer desiring to obtain a license may apply to the Board and shall establish to the satisfaction of the Board that he:

1. Is a resident of Virginia and meets the application fee requirements set by the Board;
2. Is covered by a surety bond, executed by a surety company authorized to do business in this Commonwealth, in a reasonable amount to be fixed by the Board, conditioned upon the faithful and honest conduct of his business or employment;

3. Has successfully completed a course of study at a school of auctioneering which has obtained course approval from the Board or an equivalent course; and

4. Has passed the Virginia Licensed Auctioneer's Examination, administered by the Auctioneers Board.

C. A nonresident of the Commonwealth may be licensed as an auctioneer by meeting one of the following requirements: (i) conform to the provisions of this chapter and regulations of the Board with reference to resident auctioneers or (ii) hold a valid auctioneer's license or certificate in another state with which reciprocity has been established by the Board.

Nonresident applicants shall also file with the Board an irrevocable consent that service of process upon the Director is as valid and binding as service of process upon the applicant.

Any process or pleading served upon the Director shall be filed by the Director in his office and a copy thereof immediately forwarded by registered mail to the main office of the auctioneer at the last known address.

§ 54.1-603.1. Continuing education.

A. The Board shall promulgate regulations governing continuing education requirements for auctioneers licensed by the Board. Such regulations shall require the completion of the equivalent of at least six hours of Board-approved continuing education courses for any license renewal or reinstatement. The Board shall establish criteria for continuing education courses including, but not limited to (i) content and subject matter of continuing education courses, (ii) curriculum of required continuing education courses, (iii) standards and procedures for the approval of courses, course sponsors, and course instructors, (iv) methods of instruction for continuing education courses, and (v) the computation of course credit. Any continuing education courses completed by an auctioneer pursuant to a requirement of the Certified Auctioneer's Institute or participation in the educational programs sponsored by the National Auctioneer's Association or Virginia Auctioneer's Association shall satisfy the continuing education requirement of this section.

B. The Board may grant exemptions or waive or reduce the number of continuing education hours required in cases of certified illness or undue hardship.

§ 54.1-604. Repealed by Acts 1991, c. 299.

§ 54.1-605. Taxation of auctioneer.

An auctioneer may not have a local license tax imposed by any county, city, or town except that in which his office is maintained. If a branch office is maintained elsewhere in Virginia, a local license tax may be imposed by the county, city or town in which the branch office is located, pursuant to §§ 58.1-3707 and 58.1-3709.

§ 54.1-606. Unlawful to advertise as an auctioneer.

It shall be unlawful for any person not licensed under the provisions of this chapter to advertise that he is in the auction business or to hold himself out to the public as an auctioneer.

§ 54.1-607. Advertising; absolute auctions involving real property.

A. No advertisements for any auction sale of personal or real property shall contain false, misleading, or deceptive statements, with respect to types or conditions of merchandise offered at auction, why merchandise is being sold, who has ownership, where the merchandise was obtained, or the terms and conditions of the auction and sale.

B. No auctioneer shall advertise an auction sale of real property as "absolute" unless all lots included in the sale meet that criteria.

AUCTIONEERS EXEMPTION FROM REAL ESTATE LICENSING, § 54.1-2103.A.8

NOTE: This statute is from the Real Estate license law and exempts licensed auctioneers from obtaining a real estate license under the following circumstances -

§ 54.1-2103. Exemptions from chapter.

A. The provisions of this chapter shall not apply to: ...

8. Any auctioneer licensed in accordance with Chapter 6 (§ 54.1-600 et seq.) of this title selling real estate at public auction when employed for such purpose by the owner of the real estate and provided the bidding at such auction is held open for no longer than forty-eight hours. An auctioneer shall not advertise that he is authorized to sell real estate. An auctioneer may advertise for sale at public auction any real estate when employed to do so as herein provided, and may advertise that he is authorized to auction real estate at public auction.

UNIFORM COMMERCIAL CODE - SALE BY AUCTION, § 8.2-328

§ 8.2-328. Sale by auction.

- (1) In a sale by auction if goods are put up in lots each lot is the subject of a separate sale.
- (2) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.
- (3) Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.
- (4) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at his option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale.

UNIFORM COMMERCIAL CODE - BULK SALES, §§ 8.6A-101 THROUGH 8.6A-110

§ 8.6A-101. Short title.

This title shall be known and may be cited as Uniform Commercial Code - Bulk Sales.

§ 8.6A-102. Definitions and index of definitions.

- (1) In this title, unless the context otherwise requires:
 - (a) "*Assets*" means the inventory that is the subject of a bulk sale and any tangible and intangible personal property used or held for use primarily in or arising from the seller's business and sold in connection with that inventory, but the term does not include:
 - (i) Fixtures as described in subdivision (a) (41) of § 8.9A-102, other than readily removable factory and office machines;
 - (ii) The lessee's interest in a lease of real property; or
 - (iii) Property to the extent it is generally exempt from creditor process under nonbankruptcy law.
 - (b) "*Auctioneer*" means a person whom the seller engages to direct, conduct, control, or be responsible for a sale by auction.
 - (c) "*Bulk sale*" means:
 - (i) In the case of a sale by auction or a sale or series of sales conducted by a liquidator on the seller's behalf, a sale or series of sales not in the ordinary course of the seller's business of more than half of the seller's inventory as measured by value on the date of the bulk sale agreement, if on that date the auctioneer or liquidator has notice, or after reasonable inquiry

would have had notice, that the seller will not continue to operate the same or a similar kind of business after the sale or series of sales; and

(ii) In all other cases, a sale not in the ordinary course of the seller's business of more than half the seller's inventory, as measured by value on the date of the bulk-sale agreement, if on that date the buyer has notice, or after reasonable inquiry would have had notice, that the seller will not continue to operate the same or a similar kind of business after the sale.

(d) "*Claim*" means a right to payment from the seller, whether or not the right is reduced to judgment, liquidated, fixed, matured, disputed, secured, legal, or equitable. The term includes costs of collection and attorney's fees only to the extent that the laws of this state permit the holder of the claim to recover them in an action against the obligor.

(e) "*Claimant*" means a person holding a claim incurred in the seller's business other than:

(i) An unsecured and unmatured claim for employment compensation and benefits, including commissions and vacation, severance, and sick leave pay;

(ii) A claim for injury to an individual or to property, or for breach of warranty, unless:

(A) A right of action for the claim has accrued;

(B) The claim has been asserted against the seller; and

(C) The seller knows the identity of the person asserting the claim and the basis upon which the person has asserted it; and

(iii) A claim for taxes owing to a governmental unit.

(f) "*Creditor*" means a claimant or other person holding a claim.

(g) "*Date of the bulk sale*" means:

(A) If the sale is by auction or is conducted by a liquidator on the seller's behalf, the date on which more than 10 percent of the net proceeds is paid to or for the benefit of the seller; and

(B) In all other cases, the later of the date on which:

(i) More than 10 percent of the net contract price is paid to or for the benefit of the seller; or

(ii) More than 10 percent of the assets, as measured by value, are transferred to the buyer.

(iii) For purposes of this subsection:

(A) Delivery of a negotiable instrument (§ 8.3A-104 (a)) to or for the benefit of the seller in exchange for assets constitutes payment of the contract price pro tanto;

(B) To the extent that the contract price is deposited in an escrow account, the contract price is paid to or for the benefit of the seller when the seller acquires the unconditional right to receive the deposit or when the deposit is delivered to the seller or for the benefit of the seller, whichever is earlier; and

(C) An asset is transferred when a person holding an unsecured claim can no longer obtain through judicial proceedings rights to the asset that are superior to those of the buyer arising as a result of the bulk sale. A person holding an unsecured claim can obtain those superior rights to a tangible asset at least until the buyer has an unconditional right, under the bulk sale agreement, to possess the asset, and a person holding an unsecured claim can obtain those superior rights to an intangible asset at least until the buyer has an unconditional right, under the bulk sale agreement, to use the asset.

(h) "*Date of the bulk sale agreement*" means:

(i) In the case of a sale by auction or conducted by a liquidator (subsection (c) (i)), the date on which the seller engages the auctioneer or liquidator; and

(ii) In all other cases, the date on which a bulk sale agreement becomes enforceable between the buyer and the seller.

(i) "*Debt*" means liability on a claim.

(j) "*Liquidator*" means a person who is regularly engaged in the business of disposing of assets for businesses contemplating liquidation or dissolution.

(k) "*Net contract price*" means the new consideration the buyer is obligated to pay for the assets less:

(i) The amount of any proceeds of the sale of an asset to the extent that the proceeds are applied in partial or total satisfaction of a debt secured by the asset; and

(ii) The amount of any debt to the extent it is secured by a security interest or lien that is enforceable against the asset before and after it has been sold to a buyer. If a debt is secured by an asset and other property of the seller, the amount of the debt secured by a security interest or lien that is enforceable against the asset is determined by multiplying the debt by a fraction, the numerator of which is the value of the new consideration for the asset on the date of the bulk sale and the denominator of which is the value of all property securing the debt on the date of the bulk sale.

(l) "*Net proceeds*" means the new consideration received for assets sold at a sale by auction or a sale conducted by a liquidator on the seller's behalf less:

(i) Commissions and reasonable expenses of the sale;

(ii) The amount of any proceeds of the sale of an asset, to the extent that the proceeds are applied in partial or total satisfaction of a debt secured by the asset; and

(iii) The amount of any debt to the extent it is secured by a security interest or lien that is enforceable against the asset before and after it has been sold to a buyer. If a debt is secured by an asset and other property of the seller, the amount of the debt secured by a security interest or lien that is enforceable against the asset is determined by multiplying the debt by a fraction, the numerator of which is the value of the new consideration for the asset on the date of the bulk sale and the denominator of which is the value of all property securing the debt on the date of the bulk sale.

(m) A sale is "*in the ordinary course of the seller's business*" if the sale comports with usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices.

(n) "*United States*" includes its territories and possessions and the Commonwealth of Puerto Rico.

(o) "*Value*" means fair market value.

(p) "*Verified*" means signed and sworn to or affirmed.

(2) The following definitions in other titles apply to this title:

(a) "*Buyer*" - § 8.2-103 (1) (a);

(b) "*Equipment*" - § 8.9A-102 (a) (33);

(c) "*Inventory*" - § 8.9A-102 (a) (48);

(d) "*Sale*" - § 8.2-106 (1);

(e) "*Seller*" - § 8.2-103 (1) (d).

(3) In addition, Title 8.1A contains general definitions and principles of construction and interpretation applicable throughout this title.

§ 8.6A-103. Applicability of title.

- (1) Except as otherwise provided in subsection (3), this title applies to a bulk sale if:
- (a) The seller's principal business is the sale of inventory from stock; and
 - (b) On the date of the bulk sale agreement the seller is located in this state or, if the seller is located in a jurisdiction that is not a part of the United States, the seller's major executive office in the United States is in this state.
- (2) A seller is deemed to be located at his or her place of business. If a seller has more than one place of business, the seller is deemed located at his or her chief executive office.
- (3) This title does not apply to:
- (a) A transfer made to secure payment or performance of an obligation;
 - (b) A transfer of collateral to a secured party pursuant to § 8.9A-609;
 - (c) A disposition of collateral pursuant to § 8.9A-610;
 - (d) Retention of collateral pursuant to § 8.9A-620;
 - (e) A sale of an asset encumbered by a security interest or lien if (i) all the proceeds of the sale are applied in partial or total satisfaction of the debt secured by the security interest or lien or (ii) the security interest or lien is enforceable against the asset after it has been sold to the buyer and the net contract price is zero;
 - (f) A general assignment for the benefit of creditors or to a subsequent transfer by the assignee;
 - (g) A sale by an executor, administrator, receiver, trustee in bankruptcy, or any public officer under judicial process;
 - (h) A sale made in the course of judicial or administrative proceedings for the dissolution or reorganization of an organization;
 - (i) A sale to a buyer whose principal place of business is in the United States and who:
 - (i) Not earlier than twenty-one days before the date of the bulk sale, (A) obtains from the seller a verified and dated list of claimants of whom the seller has notice three days before the seller sends or delivers the list to the buyer or (B) conducts a reasonable inquiry to discover the claimants;
 - (ii) Assumes in full the debts owed to claimants of whom the buyer has knowledge on the date the buyer receives the list of claimants from the seller or on the date the buyer completes the reasonable inquiry, as the case may be;
 - (iii) Is not insolvent after the assumption; and
 - (iv) Gives written notice of the assumption not later than thirty days after the date of the bulk sale by sending or delivering a notice to the claimants identified in subparagraph (ii) or by filing a notice in the office of the clerk of the circuit court of the county or city where the seller's business is located;
 - (j) A sale to a buyer whose principal place of business is in the United States and who:
 - (i) Assumes in full the debts that were incurred in the seller's business before the date of the bulk sale;
 - (ii) Is not insolvent after the assumption; and
 - (iii) Gives written notice of the assumption not later than thirty days after the date of the bulk sale by sending or delivering a notice to each creditor whose debt is assumed or by filing a

notice in the office of the clerk of the circuit court of the county or city where the seller's business is located;

(k) A sale to a new organization that is organized to take over and continue the business of the seller and that has its principal place of business in the United States if:

(i) The buyer assumes in full the debts that were incurred in the seller's business before the date of the bulk sale;

(ii) The seller receives nothing from the sale except an interest in the new organization that is subordinate to the claims against the organization arising from the assumption; and

(iii) The buyer gives written notice of the assumption not later than thirty days after the date of the bulk sale by sending or delivering a notice to each creditor whose debt is assumed or by filing a notice in the office of the clerk of the circuit court of the county or city where the seller's business is located;

(l) A sale of assets having:

(i) A value, net of liens and security interests, of less than \$10,000. If a debt is secured by assets and other property of the seller, the net value of the assets is determined by subtracting from their value an amount equal to the product of the debt multiplied by a fraction, the numerator of which is the value of the assets on the date of the bulk sale and the denominator of which is the value of all property securing the debt on the date of the bulk sale; or

(ii) A value of more than \$25 million on the date of the bulk-sale agreement; or

(m) A sale required by, and made pursuant to, statute.

(4) The notice under subsection (3) (i) (iv) must state: (i) that a sale that may constitute a bulk sale has been or will be made; (ii) the date or prospective date of the bulk sale; (iii) the individual, partnership, or corporate names and the addresses of the seller and buyer; (iv) the address to which inquiries about the sale may be made, if different from the seller's address; and (v) that the buyer has assumed or will assume in full the debts owed to claimants of whom the buyer has knowledge on the date that the buyer receives the list of claimants from the seller or completes a reasonable inquiry to discover the claimants.

(5) The notice under subsections (3) (j) (iii) and (3) (k) (iii) must state: (i) that a sale that may constitute a bulk sale has been or will be made; (ii) the date or prospective date of the bulk sale; (iii) the individual, partnership, or corporate names and the addresses of the seller and buyer; (iv) the address to which inquiries about the sale may be made, if different from the seller's address; and (v) that the buyer has assumed or will assume the debts that were incurred in the seller's business before the date of the bulk sale.

(6) For purposes of subsection (3) (l), the value of assets is presumed to be equal to the price the buyer agrees to pay for the assets. However, in a sale by auction or a sale conducted by a liquidator on the seller's behalf, the value of assets is presumed to be the amount the auctioneer or liquidator reasonably estimates the assets will bring at auction or upon liquidation.

§ 8.6A-104. Obligations of buyer.

(1) In a bulk sale as defined in § 8.6A-102(1) (c) (ii) the buyer shall:

(a) Obtain from the seller a list of all business names and addresses used by the seller within three years before the date that the list is sent or delivered to the buyer;

- (b) Unless excused under subsection (2), obtain from the seller a verified and dated list of claimants of whom the seller has notice three days before the seller sends or delivers the list to the buyer and including, to the extent known by the seller, the address of and the amount claimed by each claimant;
 - (c) Obtain from the seller or prepare a schedule of distribution (§ 8.6A-106(1));
 - (d) Give notice of the bulk sale in accordance with § 8.6A-105;
 - (e) Unless excused under § 8.6A-106(4), distribute the net contract price in accordance with the undertakings of the buyer in the schedule of distribution; and
 - (f) Unless excused under subsection (2), make available the list of claimants (subsection (1) (b)) by:
 - (i) Promptly sending or delivering a copy of the list without charge to any claimant whose written request is received by the buyer no later than six months after the date of the bulk sale;
 - (ii) Permitting any claimant to inspect and copy the list at any reasonable hour upon request received by the buyer no later than six months after the date of the bulk sale; or
 - (iii) Filing a copy of the list in the office of the clerk of the circuit court of the county or city where the seller's business is located no later than the time for giving a notice of the bulk sale (§ 8.6A-105(5)). A list filed in accordance with this subparagraph must state the individual, partnership, or corporate name and a mailing address of the seller.
- (2) A buyer who gives notice in accordance with § 8.6A-105(2) is excused from complying with the requirements of subsections (1) (b) and (1) (f).

§ 8.6A-105. Notice to claimants.

- (1) Except as otherwise provided in subsection (2), in order to comply with § 8.6A-104(1) (d) the buyer shall send or deliver a written notice of the bulk sale to each claimant on the list of claimants (§ 8.6A-104(1) (b)) and to any other claimant of whom the buyer has knowledge at the time that the notice of the bulk sale is sent or delivered.
- (2) A buyer may comply with § 8.6A-104(1) (d) by filing a written notice of the bulk sale in the office of the clerk of the circuit court of the county or city where the seller's business is located if:
 - (a) On the date of the bulk sale agreement the seller has 200 or more claimants, exclusive of claimants holding secured or matured claims for employment compensation and benefits, including commissions and vacation, severance, and sick leave pay; or
 - (b) The buyer has received a verified statement from the seller stating that, as of the date of the bulk sale agreement, the number of claimants, exclusive of claimants holding secured or matured claims for employment compensation and benefits, including commissions and vacation, severance, and sick leave pay, is 200 or more.
- (3) The written notice of the bulk sale must be accompanied by a copy of the schedule of distribution (§ 8.6A-106(1)) and state at least:
 - (a) That the seller and buyer have entered into an agreement for a sale that may constitute a bulk sale under the laws of the State of ...;
 - (b) The date of the agreement;
 - (c) The date on or after which more than ten percent of the assets were or will be transferred;

- (d) The date on or after which more than ten percent of the net contract price was or will be paid, if the date is not stated in the schedule of distribution;
 - (e) The name and a mailing address of the seller;
 - (f) Any other business name and address listed by the seller pursuant to § 8.6A-104(1) (a);
 - (g) The name of the buyer and an address of the buyer from which information concerning the sale can be obtained;
 - (h) A statement indicating the type of assets or describing the assets item by item;
 - (i) The manner in which the buyer will make available the list of claimants (§ 8.6A-104(1) (f)), if applicable; and
 - (j) If the sale is in total or partial satisfaction of an antecedent debt owed by the seller, the amount of the debt to be satisfied and the name of the person to whom it is owed.
- (4) For purposes of subsections (3) (e) and (3) (g), the name of a person is the person's individual, partnership, or corporate name.
- (5) The buyer shall give notice of the bulk sale not less than forty-five days before the date of the bulk sale and, if the buyer gives notice in accordance with subsection (1), not more than thirty days after obtaining the list of claimants.
- (6) A written notice substantially complying with the requirements of subsection (3) is effective even though it contains minor errors that are not seriously misleading.
- (7) A form substantially as follows is sufficient to comply with subsection (3):

Notice of Sale

- (1), whose address is, is described in this notice as the "seller."
- (2), whose address is, is described in this notice as the "buyer."
- (3) The seller has disclosed to the buyer that within the past three years the seller has used other business names, operated at other addresses, or both, as follows:
- (4) The seller and the buyer have entered into an agreement dated ..., for a sale that may constitute a bulk sale under the laws of the State of
- (5) The date on or after which more than ten percent of the assets that are the subject of the sale were or will be transferred is, and, if not stated in the schedule of distribution, the date on or after which more than ten percent of the net contract price was or will be paid is
- (6) The following assets are the subject of the sale:
- (7) If applicable, the buyer will make available to claimants of the seller a list of the seller's claimants in the following manner:
- (8) If applicable, the sale is to satisfy \$ of an antecedent debt owed by the seller to
- (9) A copy of the schedule of distribution of the net contract price accompanies this notice.

§ 8.6A-106. Schedule of distribution.

- (1) The seller and buyer shall agree on how the net contract price is to be distributed and set forth their agreement in a written schedule of distribution.
- (2) The schedule of distribution may provide for distribution to any person at any time, including distribution of the entire net contract price to the seller.
- (3) The buyer's undertakings in the schedule of distribution run only to the seller. However, a buyer who fails to distribute the net contract price in accordance with the buyer's undertakings in the schedule of distribution is liable to a creditor only as provided in § 8.6A-107(1).
- (4) If the buyer undertakes in the schedule of distribution to distribute any part of the net contract price to a person other than the seller, and, after the buyer has given notice in accordance with § 8.6A-105, some or all of the anticipated net contract price is or becomes unavailable for distribution as a consequence of the buyer's or seller's having complied with an order of court, legal process, statute, or rule of law, the buyer is excused from any obligation arising under this title or under any contract with the seller to distribute the net contract price in accordance with the buyer's undertakings in the schedule if the buyer:
 - (a) Distributes the net contract price remaining available in accordance with any priorities for payment stated in the schedule of distribution and, to the extent that the price is insufficient to pay all the debts having a given priority, distributes the price pro rata among those debts shown in the schedule as having the same priority;
 - (b) Distributes the net contract price remaining available in accordance with an order of court;
 - (c) Commences a proceeding for interpleader in a court of competent jurisdiction and is discharged from the proceeding; or
 - (d) Reaches a new agreement with the seller for the distribution of the net contract price remaining available, sets forth the new agreement in an amended schedule of distribution, gives notice of the amended schedule, and distributes the net contract price remaining available in accordance with the buyer's undertakings in the amended schedule.
- (5) The notice under subsection (4) (d) must identify the buyer and the seller, state the filing number, if any, of the original notice, set forth the amended schedule, and be given in accordance with subsection (1) or (2) of § 8.6A-105, whichever is applicable, at least fourteen days before the buyer distributes any part of the net contract price remaining available.
- (6) If the seller undertakes in the schedule of distribution to distribute any part of the net contract price, and, after the buyer has given notice in accordance with § 8.6A-105, some or all of the anticipated net contract price is or becomes unavailable for distribution as a consequence of the buyer's or seller's having complied with an order of court, legal process, statute, or rule of law, the seller and any person in control of the seller are excused from any obligation arising under this title or under any agreement with the buyer to distribute the net contract price in accordance with the seller's undertakings in the schedule if the seller:
 - (a) Distributes the net contract price remaining available in accordance with any priorities for payment stated in the schedule of distribution and, to the extent that the price is insufficient to pay all the debts having a given priority, distributes the price pro rata among those debts shown in the schedule as having the same priority;
 - (b) Distributes the net contract price remaining available in accordance with an order of court;

- (c) Commences a proceeding for interpleader in a court of competent jurisdiction and is discharged from the proceeding; or
- (d) Prepares a written amended schedule of distribution of the net contract price remaining available for distribution, gives notice of the amended schedule, and distributes the net contract price remaining available in accordance with the amended schedule.
- (7) The notice under subsection (6) (d) must identify the buyer and the seller, state the filing number, if any, of the original notice, set forth the amended schedule, and be given in accordance with subsection (1) or (2) of § 8.6A-105, whichever is applicable, at least fourteen days before the seller distributes any part of the net contract price remaining available.

§ 8.6A-107. Liability for noncompliance.

- (1) Except as provided in subsection (3), and subject to the limitation in subsection (4):
 - (a) A buyer who fails to comply with the requirements of § 8.6A-104(1) (e) with respect to a creditor is liable to the creditor for damages in the amount of the claim, reduced by any amount that the creditor would not have realized if the buyer had complied; and
 - (b) A buyer who fails to comply with the requirements of any other subsection of § 8.6A-104 with respect to a claimant is liable to the claimant for damages in the amount of the claim, reduced by any amount that the claimant would not have realized if the buyer had complied.
- (2) In an action under subsection (1), the creditor has the burden of establishing the validity and amount of the claim, and the buyer has the burden of establishing the amount that the creditor would not have realized if the buyer had complied.
- (3) A buyer who:
 - (a) Made a good faith and commercially reasonable effort to comply with the requirements of § 8.6A-104(1) or to exclude the sale from the application of this title under § 8.6A-103(3); or
 - (b) On or after the date of the bulk sale agreement, but before the date of the bulk sale, held a good faith and commercially reasonable belief that this title does not apply to the particular sale is not liable to creditors for failure to comply with the requirements of § 8.6A-104. The buyer has the burden of establishing the good faith and commercial reasonableness of the effort or belief.
- (4) In a single bulk sale the cumulative liability of the buyer for failure to comply with the requirements of § 8.6A-104(1) may not exceed an amount equal to:
 - (a) If the assets consist only of inventory and equipment, twice the net contract price, less the amount of any part of the net contract price paid to or applied for the benefit of the seller or a creditor; or
 - (b) If the assets include property other than inventory and equipment, twice the net value of the inventory and equipment less the amount of the portion of any part of the net contract price paid to or applied for the benefit of the seller or a creditor which is allocable to the inventory and equipment.
- (5) For the purposes of subsection (4) (b), the "net value" of an asset is the value of the asset less (i) the amount of any proceeds of the sale of an asset, to the extent the proceeds are applied in partial or total satisfaction of a debt secured by the asset and (ii) the amount of any debt to the extent it is secured by a security interest or lien that is enforceable against the asset before and after it has been sold to a buyer. If a debt is secured by an asset and other property

of the seller, the amount of the debt secured by a security interest or lien that is enforceable against the asset is determined by multiplying the debt by a fraction, the numerator of which is the value of the asset on the date of the bulk sale and the denominator of which is the value of all property securing the debt on the date of the bulk sale. The portion of a part of the net contract price paid to or applied for the benefit of the seller or a creditor that is "allocable to the inventory and equipment" is the portion that bears the same ratio to that part of the net contract price as the net value of the inventory and equipment bears to the net value of all of the assets.

(6) A payment made by the buyer to a person to whom the buyer is, or believes he is, liable under subsection (1) reduces pro tanto the buyer's cumulative liability under subsection (4).

(7) No action may be brought under subsection (1) (b) by or on behalf of a claimant whose claim is unliquidated or contingent.

(8) A buyer's failure to comply with the requirements of § 8.6A-104(1) does not (i) impair the buyer's rights in or title to the assets, (ii) render the sale ineffective, void, or voidable, (iii) entitle a creditor to more than a single satisfaction of his claim, or (iv) create liability other than as provided in this title.

(9) Payment of the buyer's liability under subsection (1) discharges pro tanto the seller's debt to the creditor.

(10) Unless otherwise agreed, a buyer has an immediate right of reimbursement from the seller for any amount paid to a creditor in partial or total satisfaction of the buyer's liability under subsection (1).

(11) If the seller is an organization, a person who is in direct or indirect control of the seller, and who knowingly, intentionally, and without legal justification fails, or causes the seller to fail, to distribute the net contract price in accordance with the schedule of distribution is liable to any creditor to whom the seller undertook to make payment under the schedule for damages caused by the failure.

§ 8.6A-108. Bulk sales by auction; bulk sales conducted by liquidator.

(1) Sections 8.6A-104, 8.6A-105, 8.6A-106, and 8.6A-107 apply to a bulk sale by auction and a bulk sale conducted by a liquidator on the seller's behalf with the following modifications:

(a) "Buyer" refers to the auctioneer or liquidator, as the case may be;

(b) "Net contract price" refers to net proceeds of the auction or net proceeds of the sale, as the case may be;

(c) The written notice required under § 8.6A-105(3) must be accompanied by a copy of the schedule of distribution (§ 8.6A-106(1)) and state at least:

(i) That the seller and the auctioneer or liquidator have entered into an agreement for auction or liquidation services that may constitute an agreement to make a bulk sale under the laws of the State of ...;

(ii) The date of the agreement;

(iii) The date on or after which the auction began or will begin or the date on or after which the liquidator began or will begin to sell assets on the seller's behalf;

(iv) The date on or after which more than ten percent of the net proceeds of the sale were or will be paid, if the date is not stated in the schedule of distribution;

- (v) The name and a mailing address of the seller;
 - (vi) Any other business name and address listed by the seller pursuant to § 8.6A-104(1) (a);
 - (vii) The name of the auctioneer or liquidator and an address of the auctioneer or liquidator from which information concerning the sale can be obtained;
 - (viii) A statement indicating the type of assets or describing the assets item by item;
 - (ix) The manner in which the auctioneer or liquidator will make available the list of claimants (§ 8.6A-104(1) (f)), if applicable; and
 - (x) If the sale is in total or partial satisfaction of an antecedent debt owed by the seller, the amount of the debt to be satisfied and the name of the person to whom it is owed; and
- (d) In a single bulk sale the cumulative liability of the auctioneer or liquidator for failure to comply with the requirements of this section may not exceed the amount of the net proceeds of the sale allocable to inventory and equipment sold less the amount of the portion of any part of the net proceeds paid to or applied for the benefit of a creditor which is allocable to the inventory and equipment.
- (2) A payment made by the auctioneer or liquidator to a person to whom the auctioneer or liquidator is, or believes he is, liable under this section reduces pro tanto the auctioneer's or liquidator's cumulative liability under subsection (1) (d).
- (3) A form substantially as follows is sufficient to comply with subsection (1) (c):

Notice of Sale

- (1), whose address is, is described in this notice as the "seller."
- (2), whose address is, is described in this notice as the "auctioneer" or "liquidator."
- (3) The seller has disclosed to the auctioneer or liquidator that within the past three years the seller has used other business names, operated at other addresses, or both, as follows:
- (4) The seller and the auctioneer or liquidator have entered into an agreement dated, for auction or liquidation services that may constitute an agreement to make a bulk sale under the laws of the State of
- (5) The date on or after which the auction began or will begin or the date on or after which the liquidator began or will begin to sell assets on the seller's behalf is, and [if not stated in the schedule of distribution] the date on or after which more than ten percent of the net proceeds of the sale were or will be paid is
- (6) The following assets are the subject of the sale:
.....
- (7) If applicable, the auctioneer or liquidator will make available to claimants of the seller a list of the seller's claimants in the following manner:
- (8) If applicable, the sale is to satisfy \$ of an antecedent debt owed by the seller to

(9) A copy of the schedule of distribution of the net proceeds accompanies this notice.

(4) A person who buys at a bulk sale by auction or conducted by a liquidator need not comply with the requirements of § 8.6A-104(1) and is not liable for the failure of an auctioneer or liquidator to comply with the requirements of this section.

§ 8.6A-109. What constitutes filing; duties of filing officer; information from filing officer.

(1) Presentation of a notice or list of claimants for filing and tender of the filing fee or acceptance of the notice or list by the filing officer constitutes filing under this title.

(2) The filing officer shall:

(a) Mark each notice or list with a file number and with the date and hour of filing;

(b) Hold the notice or list or a copy for public inspection;

(c) Index the notice or list according to each name given for the seller and for the buyer; and

(d) Note in the index the file number and the addresses of the seller and buyer given in the notice or list.

(3) If the person filing a notice or list furnishes the filing officer with a copy, the filing officer upon request shall note upon the copy the file number and date and hour of the filing of the original and send or deliver the copy to the person.

(4) The fee for filing and indexing and for stamping a copy furnished by the person filing to show the date and place of filing is ten dollars.

(5) Upon request of any person, the filing officer shall issue a certificate showing whether any notice or list with respect to a particular seller or buyer is on file on the date and hour stated in the certificate. If a notice or list is on file, the certificate must give the date and hour of filing of each notice or list and the name and address of each seller, buyer, auctioneer, or liquidator.

(6) The filing officer shall keep each notice or list for two years after it is filed.

§ 8.6A-110. Limitation of actions.

(1) Except as provided in subsection (2), an action under this title against a buyer, auctioneer, or liquidator must be commenced within one year after the date of the bulk sale.

(2) If the buyer, auctioneer, or liquidator conceals the fact that the sale has occurred, the limitation is tolled and an action under this title may be commenced within the earlier of (i) one year after the person bringing the action discovers that the sale has occurred or (ii) one year after the person bringing the action should have discovered that the sale has occurred, but no later than two years after the date of the bulk sale. Complete noncompliance with the requirements of this title does not of itself constitute concealment.

(3) An action under § 8.6A-107(11) must be commenced within one year after the alleged violation occurs.



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