

Auctioneer Program Update and Recent Law Change
Donna Brinker Potter, Ohio Department of Agriculture

At the end of each fiscal year, the auctioneer program reviews the investigations for the prior year to determine trends or areas of concerns. During the course of fiscal year 2013, the department investigated sixty-six complaints. Of the sixty-six complaints, thirteen resulted in no further action by the department for such reasons as failure to allege a violation of the auctioneer law, voluntary compliance, insufficient evidence to support the allegations in the complaint, or lack of jurisdiction. In thirty-one cases, the department found areas of concern that warranted a letter of instruction but did not require formal disciplinary action. Finally, in ten cases, the department determined that formal disciplinary action was warranted and issued formal notices of opportunity for hearing. Five of these cases were resolved through settlement agreements; three failed to request a hearing, resulting in one license suspension, one civil penalty, and one license denial; and the final matter is awaiting hearing. During the year, there was one recovery fund payout, and two matters involving unlicensed activity were referred for criminal prosecution. There are eight cases that are still under investigation.

Looking back over the complaints received in the past fiscal year, the top four disciplinary issues noted by the department were the following: 1. Trust account violations/commingling of funds; 2. Aiding unlicensed persons/unlicensed activity; 3. Contract issues -- either a failure to have a written contract, or a contract that failed to meet the minimum requirements under R.C. 4707.20; and 4. Failing to timely remit funds or property. Of particular concern is an increase in the number of violations involving trust accounts and the commingling of funds. If you are not certain how to properly utilize and maintain your client trust account, it is recommended that you consult with your legal counsel to make sure that you are in compliance.

Effective September 29, 2013, there is some changes to the auction law that will be taking effect. R.C. 4707.02 was amended to add two new exemptions to the licensure requirement. The new language is listed below, the new language is underlined>.

Sec. 4707.02. (A) No person shall act as an auction firm, auctioneer, apprentice auctioneer, or special auctioneer within this state without a license issued by the department of agriculture. No auction shall be conducted in this state except by an auctioneer licensed by the department. The department shall not issue or renew a license if the applicant or licensee has been convicted of a felony or crime involving fraud or theft in this or another state at any time during the ten years immediately preceding application or renewal.

(B) Division (A) of this section does not apply to any of the following:

- (1) Sales at auction that either are required by law to be at auction, other than sales pursuant to a judicial order or decree, or are conducted by or under the direction of a public authority;
- (2) The owner of any real or personal property desiring to sell the property at auction, provided that the property was not acquired for the purpose of resale;
- (3) An auction mediation company;
- (4) An auction that is conducted in a course of study for auctioneers that is approved by the state auctioneers commission created under section 4707.03 of the Revised Code for purposes of student training and is supervised by a licensed auctioneer;
- (5)(a) An auction that is sponsored by a nonprofit or charitable organization that is registered in this state under Chapter 1702. or Chapter 1716. of the Revised Code,

respectively, if the auction only involves the property of the members of the organization and the auction is part of a fair that is organized by an agricultural society under Chapter 1711. of the Revised Code or by the Ohio expositions commission under Chapter 991. of the Revised Code at which an auctioneer who is licensed under this chapter physically conducts the auction; or

- (b) Sales at an auction sponsored by a charitable, religious, or civic organization that is tax exempt under subsection 501(c)(3) of the Internal Revenue Code, or by a public school, chartered nonpublic school, or community school, if no person in the business of organizing, arranging, or conducting an auction for compensation and no consignor of consigned items sold at the auction, except such organization or school, receives compensation from the proceeds of the auction. As used in division (B)(5)(b) of this section, "compensation" means money, a thing of value other than participation in a charitable event, or a financial benefit.
- (6) A person licensed as a livestock dealer under Chapter 943. of the Revised Code who exclusively sells livestock and uses an auctioneer who is licensed under this chapter to conduct the auction;
- (7) A person licensed as a motor vehicle auction owner under Chapter 4517. of the Revised Code who exclusively sells motor vehicles to a person licensed under Chapter 4517. of the Revised Code and who uses an auctioneer who is licensed under this chapter to conduct the auction;
- (8) A person who sells real or personal property by means of the internet;
- (9) A bid calling contest that is approved by the commission and that is conducted for the purposes of the advancement or promotion of the auction profession in this state, provided that no compensation is paid to the sponsor of or participants in the contest other than a prize or award for winning the contest;
- (10) An auction at which the champion of a national or international bid calling contest appears, provided that both of the following apply:
 - (a) The champion is not paid a commission.
 - (b) The auction is conducted under the direct supervision of an auctioneer licensed under this chapter in order to ensure that the champion complies with this chapter and rules adopted under it.
- (C)(1) No person shall advertise or hold oneself out as an auction firm, auctioneer, apprentice auctioneer, or special auctioneer without a license issued by the department of agriculture.
- (2) Division (C)(1) of this section does not apply to an individual who is the subject of an advertisement regarding an auction conducted under division (B)(5)(b) of this section.

A current version of the law is always available on our web page at: www.agri.ohio.gov/auction, click on Auctioneer Guide. New license law booklets will be mailed to all licensees in the fall.

Last call, license renewal season is winding down. There are 192 licensees who have not renewed their licenses; they have until August 31, 2013 to submit their license renewal application with a late fee. Failure to renew prior to September 1, 2013 will cause the license to lapse and the licensee will have to reapply as if initial licensure this may include testing and providing a bond. As of July 30, 2013 total number of active licensees is 3,127.