



SPONSOR: Rep. Lee & Sen. Simpson
Reps. Lavelle, Hocker, Hudson, Manolakos, Peterman,
Ramone, D. Short, Bolden, Carson, Mitchell, Mulrooney

HOUSE OF REPRESENTATIVES
146th GENERAL ASSEMBLY

HOUSE BILL NO. 361

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE CREATING THE DELAWARE AUCTION AND AUCTIONEER LICENSING ACT AND TO REAL ESTATE SERVICES, BROKERS, ASSOCIATE BROKERS, AND SALESPERSONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

1 Section 1. Amend Title 24, Delaware Code by making insertions as shown by underlining to add a new chapter to
2 read as follows:

3 CHAPTER 56. AUCTIONEER AND AUCTION FIRM LICENSING ACT.

4 Subchapter I. General Provisions.

5 § 5601. Title.

6 This Act shall be known and may be cited as the “Delaware Auctioneer and Auction Firm Licensing Act”.

7 § 5602. Legislative intent.

8 The General Assembly finds that, without legislation, this State does not have the ability to evaluate the
9 competency of persons engaged in the business of auctioneering or to regulate the auction industry for the protection of the
10 public. The General Assembly further finds that this State does not have the ability, without legislation, to enter into
11 reciprocal agreements with other states to allow Delaware residents to practice as auctioneers in other states. Therefore, the
12 purpose of this chapter is to license auctioneers and auction firms and to regulate the business of auctioneering.

13 § 5603. Preemption.

14 A political subdivision of this State may not levy on or collect from an auctioneer or auction firm a license tax or
15 fee as a regulatory or revenue measure or require additional licensing, if the auctioneer or auction firm holds a license under
16 this chapter and is in compliance with this chapter.

17 § 5604. Definitions.

18 As used in this chapter:

19 (1) “Absolute auction” means an auction where real or personal property is sold to the highest qualified
20 bidder with no limiting conditions or amount. The seller may not bid personally or through an agent on real or personal
21 property to be sold at an absolute auction. In an absolute auction, after the auctioneer calls for bids on real or personal
22 property, the property offered cannot be withdrawn unless no bid is made within a reasonable time.

(2) “Applicant” means a person applying for an auctioneer or auction firm license under this chapter.

(3) “Auction” means the public sale of real or personal property, or both, in which the sale price of the property offered is increase by competitive bids until the highest accepted bidder becomes the purchaser.

(4) “Auctioneer” means an individual licensed under this chapter who engages in, or who, by advertising or otherwise, holds himself or herself out as being available to engage in the calling for, the recognition of, and the acceptance of competitive bids for the purchase of real or personal property at an auction, or who otherwise engages in the business of auctioneering.

(5) “Auctioneering” or “business of auctioneering” means, in addition to the actual calling, recognition, and acceptance of competitive bids, the following:

a. Contracting for an auction;

b. Accepting consignments of real or personal property for sale at auction;

c. Advertising an auction, but not beyond the day of the auction;

d. Offering real or personal property for sale at auction;

e. Accepting payment or disbursing monies for real or personal property sold at auction; and

f. Otherwise soliciting, arranging, sponsoring, or managing an auction, or holding oneself out as an auctioneer or auction firm;

(6) “Auction firm” means a sole proprietorship, corporation, or LLC of which the owner is not a licensed auctioneer, or a partnership, association, corporation, or other legal entity that sells, either directly or through agents, real or personal property at auction, or that arranges, sponsors, manages, conducts, or advertises auctions, or otherwise engages in the business of auctioneering. This definition applies whether or not an owner or officer of the business acts as an auctioneer.

(7) “Calling for bids” means crying the auction, the chant, and asking the audience at an auction for bids.

(8) “Commission” means the Auctioneer Licensing Commission created by this chapter.

(9) “Consignment” means the act of delivering or transferring real or personal property, in fact or constructively, to an auctioneer or the auctioneer’s agent in trust for the purpose of resale at auction, whereby title does not pass to the buyer until the auctioneer declares the real or personal property sold. For the purpose of this chapter, consignment may also mean a bailment for sale.

(10) “Conviction” means a verdict of guilty by the trier of fact, whether judge or jury, or a plea of guilty or a plea of nolo contendere accepted by the Court.

(11) “Designated person” means a person approved by the Commission to have the authority to transact business for an auction firm.

(12) “Division” means the Division of Professional Regulation.

(13) "Fund" means the Recovery Fund established under this chapter.

(14) "Person" means an individual or a legal entity, including a partnership, corporation, limited liability company, or association.

(15) "Personal property" includes goods, wares, chattels, merchandise, domestic animals, and farm products.

(16) "Real property" means land, improvements upon the land, and all the rights that accompany owning the land and its improvements.

(17) "Reserve auction" means an auction in which the seller retains the right to establish a minimum price, to accept or decline any and all bids, or to withdraw the property at any time prior to the announcement of the completion of the sale by the auctioneer. An auction is a reserve auction unless the property is, in explicit terms, put up without reserve for an absolute auction.

(18) "State" means the State of Delaware.

§ 5605. "Grandfather" licensing provision.

(a) Upon the effective date of this chapter and for a period of one (1) year thereafter, a person, including non-residents, who has engaged in the business of auctioneering in this State for at least three (3) years immediately prior to the enactment of this chapter and who has held a valid Delaware auctioneer business license for that time may apply for an auctioneer license under this chapter without taking and successfully completing the examination set forth in § 5608(e) of this chapter. The requirements for an application for an auctioneer's license under this subsection are as follows:

(1) Submit an application to the Commission on the form provided by the Division;

(2) Submit an affidavit with the application stating that the applicant has been a practicing auctioneer for at least three (3) years immediately prior to the enactment of this chapter and that the applicant has actually called for bids in six (6) sales in the past twelve (12) months. The applicant must identify the places involved and any other information necessary to confirm the affidavit information, as required by the Commission;

(3) Submit with the application the license fee of \$200;

(4) Submit the applicant's initial contribution to the Recovery Fund in the sum of \$200, if the application is accepted.

(b) Upon verification of the information contained in the application, if the individual is found to be otherwise qualified, the Commission shall issue the applicant an auctioneer license without examination.

Subchapter II. Licensing Provisions.

§ 5606. Auctioneer license.

It is unlawful for a person to conduct an auction, to engage in the business of auctioneering, to provide an auction service, to hold himself or herself out as an auctioneer, or to advertise his or her services as an auctioneer in this State

without an auctioneer license issued pursuant to the provisions of this chapter, unless the auction sale is exempt under § 5607 of this chapter.

§ 5607. Exemptions.

The license requirements contained in §§ 5605 and 5606 of this chapter do not apply to any of the following types of auction sales:

(1) A sale conducted by the owner of all of the real or personal property being offered by a sheriff or constable, or by an attorney representing the owner, unless the owner's regular course of business includes the business of auctioneering, or unless the owner originally acquired the real or personal property for the purpose of resale at auction;

(2) A sale of livestock conducted by a person who specializes in the sale of livestock, provided that the sale is regulated by the federal Packers and Stockyards Act (7 U.S.C. 181 et. seq.) and the auctioneer is bonded by the United States Department of Agriculture;

(3) A sale of real or personal property conducted by any charitable, religious, or civic organization that has a tax-exempt status. The exemption to the license requirement in this subsection does not apply if the person engaged in the business of organizing, arranging, or conducting the auction receives compensation or if consignments are sold at auction and the consignor receives any proceeds from the sale;

(4) A sale of real or personal property conducted by an agent, officer, or employee of the State, any political subdivision, or a federal agency in the conduct of his or her official duties;

(5) A sale of real or personal property required by law or ordered by a court of competent jurisdiction to be sold at auction.

§ 5608. Requirements for auctioneer license.

An applicant for an auctioneer license under this chapter must possess the following minimum qualifications:

(1) The applicant must have attained the age of eighteen (18) years by the date that the Commission receives the application;

(2) The applicant must have obtained, at a minimum, a high school diploma, a General Equivalency Diploma (G.E.D.), or its equivalent;

(3) The applicant must prepare a written application on forms provided by the Division;

(4) The applicant must have successfully completed at least 80 hours, as set forth in the Commission's rules and regulations, of a prescribed course of study at an educational institution or auctioneering school approved by the Commission, and must also have called for bids at a minimum of 15 auctions over a consecutive 2-year period under the supervision of a licensed auctioneer;

(5) The applicant must take and successfully complete a written examination, as prescribed by the Commission. The examination must include questions on ethics, reading comprehension, writing, elementary arithmetic, elementary principles of land economics, general knowledge of bulk sales law, contracts of sale, agency, leases, and brokerage, knowledge of real or personal property commonly sold at auction, ability to call for bids, knowledge of sale preparation, proper sale advertising, and sale summary, as well as knowledge of the provisions of this chapter and the Commission's rules and regulations. The Commission shall ensure that the various forms of the test remain secure;

(6) To defray the cost of administration of the examination, the applicant taking the examination must pay a reasonable examination fee to be set by the Division, but not to exceed the Commission's cost of administering the examination, or of having a third party administer it;

(7) The applicant must pay a licensing fee, not to exceed \$200, in an amount established by the Division;

(8) The applicant must pay an assessment fee of not less than \$200 nor more than \$300, as set forth in § 5672(a) of this chapter, in an amount established by the Division for the Recovery Fund;

(9) Within the last five (5) years the applicant must not have had a conviction for an act of forgery or theft that would constitute grounds for disciplinary action under the law, or for a felony that has a direct bearing on his or her ability to practice competently;

(10) The applicant must not have been disciplined concerning his or her auctioneering activities, auctioneer license, or auction firm license in any jurisdiction;

(11) A Delaware individual or business firm that conducts auctions online via the internet of real or personal property located in Delaware must be licensed as an auctioneer or auction firm.

§ 5609. Issuance of auctioneer license.

(a) Upon the receipt of a completed application for an initial or a renewal auctioneer license, the Commission shall examine the application and verify the information and attachments contained therein.

(b) The Commission shall issue an auctioneer license, in such form as it may prescribe, to an applicant who meets all of the requirements for licensing.

(c) An auctioneer license is valid for 2 years. A license must be renewed by an auctioneer biennially before midnight on June 30 of the year in which the license expires.

(d) If a license has expired, it may be reactivated within three (3) months immediately following its expiration. A license may be reactivated by filing an application for renewal, showing that all requirements for licensing have been met, including completion of continuing education, and by paying a late filing fee to be established by the Division, but not to exceed \$50, along with other required fees.

(e) If a license has not been reactivated within three (3) months of its expiration date, the license holder must file an application and comply with § 5608 of this chapter, except for the 80 hours of a prescribed course of study requirement in § 5608(d).

149 § 5610. Continuing education.

150 (a) An auctioneer who applies for a renewal of an auctioneer license under § 5611 of this chapter must have
151 completed the continuing education requirements, as set forth in the Commission's rules, from course providers that are
152 approved by the Commission for each 2-year licensing period.

153 (b) The Commission may grant to an auctioneer who applies for a renewal of an auctioneer license under
154 § 5611 of this chapter a one-year waiver from all or part of the continuing education requirement, if the auctioneer was not
155 able to fulfill the requirements due to a hardship that resulted from any of the following conditions:

156 (1) active service in the armed forces of the United States;

157 (2) an incapacitating illness or injury; or

158 (3) other circumstances acceptable to the Commission.

159 § 5611. Maintaining an auctioneer license.

160 When filing an application for the renewal of an auctioneer license, the individual licensed as an auctioneer must:

161 (1) File with the Commission a completed application on the form prescribed by the Commission. Online
162 renewal may also be used;

163 (2) File with the Commission a certificate in the form prescribed by the Commission, stating under oath that
164 the auctioneer has completed all of the continuing education requirements set forth in § 5610; and

165 (3) Pay the license fee and other fees established by the Division pursuant to § 5608 of this chapter.

166 § 5612. Real property auctions.

167 A licensed auctioneer is not required to possess a real estate or broker's license under chapter 29 of this title if he
168 or she is employed only to call for bids at an auction of real property. A licensed auctioneer must present to a seller of real
169 property a signed contract of sale within 10 days of conclusion of the advertised auction days from a bidder who was
170 registered for and attended the auction in person or electronically where bids were called for that property, or the auction is
171 null and void. A licensed auctioneer may not advertise that he or she is authorized to sell real property. A licensed
172 auctioneer may advertise real property that is for sale at public auction when employed to do so pursuant to this chapter,
173 and may advertise that he or she is authorized to auction real property at a public auction. However, property not sold on
174 the day of auction may no longer be advertised by the auctioneer unless another auction day is scheduled. If a contract of
175 sale is not signed until after the day of auction and within the permitted 10-day period, an affidavit verifying that the bidder
176 was registered and attended the auction in person or electronically where bids were called for that property must be signed
177 by the buyer and auctioneer, with copies retained by the auctioneer, buyer, and settlement attorney for as long as the
178 settlement statement is retained.

179 § 5613. Nonresident auctioneer reciprocity.

180 (a) An individual holding a license to engage in auctioneering issued to him or her under the authority of a
181 state, territory, or possession of the United States of America or the District of Columbia that has licensing requirements
182 equal to or substantially equivalent to the requirements of this State, and who otherwise meets the requirements of this
183 chapter, may obtain a license under this chapter without examination, provided that:

184 (1) The Commission has entered into a valid reciprocal agreement with the authority of the state,
185 territory, or possession of the United States of America or the District of Columbia from which the nonresident
186 applicant has a valid license;

187 (2) The applicant provides the Commission with sufficient proof of his or her license in another
188 state or in a territory or possession of the United States of America, or in the District of Columbia, and proof of his
189 or her residency in the place where he or she is licensed;

190 (3) The applicant provides the Commission with sufficient proof of his or her residency in the
191 location where he or she is licensed;

192 (4) The applicant provides the Commission with a completed application containing the same
193 information as that required of resident applicants;

194 (5) The applicant establishes that he or she satisfies the provisions of § 5608, other than § 5608(e)
195 and (f) of this chapter.

196 (6) The applicant pays all applicable fees required under this chapter.

197 (b) A nonresident applicant shall file an irrevocable consent with the Commission stating that action may be
198 commenced against the applicant or nonresident auctioneer in a court of competent jurisdiction in this State by service upon
199 the Vice Chairman of the Commission, of summons, process, or other pleadings authorized by the law. The consent must
200 stipulate that service of the summons, process, or pleading upon the Vice Chairman of the Commission is taken and held by
201 all courts to be valid and binding as if actual service had been made upon the applicant in this State. A summons, process,
202 or other pleading served upon the Vice Chairman of the Commission must be by duplicate copies, one of which must be
203 retained by the Commission and the other, which must be forwarded immediately by certified or registered mail to the last
204 known business address of the applicant or nonresident auctioneer against whom the summons, process, or other pleading is
205 directed.

206 § 5614. Auction firm license.

It is unlawful for a person to engage in the business of auctioneering, to provide an auction service, to hold itself out as an auction firm, or to advertise services as an auction firm in this State without an auction firm license, unless the sale is exempt under § 5615 of this chapter.

§ 5615. Exemptions.

The license requirement contained in § 5614 of this chapter does not apply to any of the following types of auction sales:

(1) A sale conducted by the owner of all of the real or personal property being offered, or an by attorney representing the owner, unless the owner's regular course of business includes engaging in the business of auctioneering or unless the owner originally acquired the real or personal property for the purpose of resale at auction.;

(2) A sale of livestock conducted by a person who specializes in the sale of livestock, provided that the sale is regulated by the federal Packers and Stockyards Act (7 U.S.C. 181 et. seq.) and the auctioneer is bonded by the United States Department of Agriculture;

(3) A sale of real or personal property conducted by a charitable, religious, or civic organization that has a tax-exempt status. The exemption to the license requirement in this subsection does not apply if the person engaged in the business of organizing, arranging, or conducting the auction receives compensation or if consignments are sold at auction and the consignor receives any proceeds from the sale;

(4) A sale of real or personal property conducted by an agent, officer, or employee of the State, any political subdivision of the State, or a federal agency in the conduct of his or her official duties;

(5) A sale of real or personal property required by law or ordered by a court of competent jurisdiction to be sold at auction.

§ 5616. Requirements for auction firm license.

An applicant for an auction firm license under this chapter must possess the following minimum qualifications:

(1) The applicant must have attained the age of eighteen (18) years by the issuance date of the license;

(2) The applicant must have obtained at a minimum a high school diploma, a General Equivalency Diploma (G.E.D.), or its equivalent;

(3) The applicant must prepare a written application on forms provided by the Commission;

(4) The applicant must pay a licensing fee in an amount established by the Division. The fee may not exceed \$200;

(5) The applicant must pay an assessment, as set forth in § 5672(a) of this chapter, to be determined by the Division, to participate in the Recovery Fund;

(6) Within the last five (5) years the applicant must not have a conviction for an act that would constitute grounds for disciplinary action under the law, or a felony that has a direct bearing on his or her ability to practice competently as an auctioneer or auction firm;

(7) The applicant must not have been disciplined relating to his or her auctioneering activities, auctioneer license, or auction firm license, or an equivalent license, and must not have had such licenses revoked by any jurisdiction;

(8) The applicant must provide the Commission with documentation from the Secretary of State's Office establishing that the auction firm is authorized to transact business in this State, unless the auction firm is a sole proprietorship;

(9) The applicant must identify at least one potential designated person to have authority to transact business for the auction firm. The potential designated person must take and successfully complete a written examination as prescribed by the Commission. The Commission shall ensure that the various forms of the test remain secure. The potential designated person of the applicant is not required to take the written examination if he or she is licensed as an auctioneer under this chapter;

(10) In order to defray the cost of administering the examination, an applicant or potential designated person taking the examination must pay a reasonable examination fee to be set by the Division, but not to exceed the Commission's cost of administering the examination, or of having a third party administer it.

§ 5617. Issuance and renewal of auction firm license.

(a) Upon the receipt of a completed application for the initial or a renewal auction firm license, the Commission shall examine the application and verify the information and attachments contained therein.

(b) The Commission shall issue an auction firm license, in such form as it may prescribe, to an applicant or to the applicant's designated person who meets all of the requirements for licensing.

(c) An auction firm license is valid for two (2) years. A license must be renewed by an auction firm biennially before midnight on June 30 of the year in which the license expires.

(d) If a license has expired, it may be reactivated within three (3) months immediately following its expiration. A license may be reactivated by filing an application for renewal, showing that all requirements for licensing have been met and by paying a late filing fee to be established by the Division, but not to exceed \$50, along with other required fees.

(e) If a license has not been reactivated within three (3) months of its expiration date, the license holder must file an application and comply with § 5616 of this chapter.

§ 5618. Maintaining an auction firm license.

When filing an application for the renewal of an auction firm license, each person licensed as an auction firm must:

(1) File with the Commission a completed application on the form prescribed by the Commission;

(2) Provide the Commission with documentation from the Secretary of State's Office establishing that the auction firm is authorized to transact business in this State, unless the auction firm is a sole proprietorship; and

(3) Pay the license renewal fee, not to exceed \$200, established by the Division for an auction firm license.

Subchapter III. Business Practices Provisions.

§ 5625. Written agreements.

(a) A licensed auctioneer may not conduct an auction in this State without first having a written agreement with the owner of the real or personal property to be sold. The agreement must contain the terms and conditions upon which the auctioneer received the real or personal property for sale. The auctioneer shall provide the owner with a signed copy of the agreement and shall keep at least one copy for his or her own records for two (2) years from the date of the agreement. Copies of all written agreements must be made available to the Commission or to its designated agent upon request and with reasonable notice.

(b) A licensed auction firm may not engage in the business of auctioneering without first having a written agreement with the owner of the real or personal property to be sold. The agreement must contain the terms and conditions of the transaction, sale (either directly or through agents), and/or work to be completed by the auction firm. The licensed auction firm shall provide the owner with a signed copy of the agreement and shall keep at least one copy for his or her own records for two (2) years from the date of the agreement. Copies of all written agreements must be made available to the Commission or to its designated agent upon written request and with reasonable notice.

§ 5626. Agency.

A licensed auctioneer is the agent for the seller in the performance of the auctioneer's duties.

§ 5627. Auctioneer's authority from the seller.

A licensed auctioneer, in the absence of special authorization provided in a written agreement to the contrary, has authority from the seller, only as follows:

(1) to sell by public auction to the highest bidder;

(2) to bind the seller pursuant to the written agreement;

(3) to sell for cash only;

(4) to prescribe reasonable rules and terms of sale;

(5) _____ to deliver the real or personal property sold, upon payment of the price;
(6) _____ to collect the price; and
(7) _____ to do whatever else is necessary, or is proper and usual in the ordinary course of business, for effecting
these purposes.

§ 5628. Auctioneer's authority from the bidder.

A licensed auctioneer may bind a successful bidder at an auction by preparing a written memorandum in lieu of a contract of sale. The memorandum must include a statement that the auctioneer is an agent of the seller.

§ 5629. Performance by auctioneer.

In performing the duties of an auctioneer, the auctioneer shall follow the reasonable requests of the owner or consignor of the real or personal property being sold at the auction, and shall perform his or her duties so that the highest or most favorable offer made by a bidder is accepted, and shall otherwise perform his or her duties in accordance with the highest standards of the auctioneering profession, as described in Subchapter VII (Code of Ethics) of this chapter.

§ 5630. Availability of license.

Licensed auctioneers or persons licensed as auction firms shall have their auctioneer licenses available at each auction they advertise and conduct.

§ 5631. Sales records.

A licensed auctioneer or a person licensed as an auction firm shall maintain sales records which identify by name, address, and, when possible, telephone number, all bidders registered on the day of auction and the purchasers of all real or personal property sold. The sales records must contain an adequate description of the real or personal property sold and must be sufficient to positively identify the owner of the property. Sales records must be maintained for a period of at least two (2) years from the date of sale. Sales records must be open for inspection by the Commission or its designated agent upon written request and with reasonable notice.

§ 5632. Consignment records.

A licensed auctioneer or a person licensed as an auction firm shall maintain consignment records and, upon receipt of real or personal property for auction and before the sale, shall enter in their records the name and address of the person who employed the auctioneer to sell the real or personal property at auction and the name and address of the owner of the goods to be sold. The consignment record must contain an adequate description of the real or personal property to be sold.

Consignment records must be maintained for a period of at least two years from the date of the sale. Consignment records must be open for inspection by the Commission or its designated agent upon written request and with reasonable notice.

§ 5633. Escrow and trust accounts for real property auctions

(a) A licensed auctioneer or a person licensed as an auction firm who does not disburse all funds to the seller on auction day shall maintain a trust or escrow account with a federally insured bank or credit union located in this State and shall deposit in the account all funds that are received for the benefit of another person and are not disbursed to the seller on auction day.

(b) A licensed auctioneer or a person licensed as an auction firm shall maintain for not less than three (3) years complete records showing the deposit, maintenance, and withdrawal of trust or escrow funds and the disbursement of those funds on auction days. Records of the disbursement of funds on auction days must include a copy of each receipt or settlement statement issued when funds were disbursed. The Commission or its designated agent may inspect these records periodically, without prior notice, and may also inspect the records whenever the Commission determines that they are pertinent to an investigation of a specific complaint against a licensed auctioneer or a person licensed as an auction firm within five (5) working days of receipt of the complaint.

§ 5634. Final settlements.

At or before the time of a final settlement, the licensed auctioneer or the designated person of a licensed auction firm shall provide the seller or consignor with a settlement statement, which includes a description of all real or personal property sold, the selling price of the property sold, all expenses such as labor or advertising, the net proceeds due to the seller or consignor, the name and address of the person receiving the disbursement, and the amount of the disbursement. A settlement statement must be signed by the auctioneer or by a designated person of the licensed auction firm and by the person receiving the disbursement. The licensed auctioneer or the designated person of a licensed auction firm shall provide the buyer with a signed copy of the settlement statement and shall keep at least one (1) signed copy for his or her own records for two (2) years from the date of the sale.

§ 5635. Fees, costs, and assessments.

All fees, costs, and assessments created under the provisions of this chapter must reflect the actual cost of goods and services provided, unless a specific amount is designated in statute.

Subchapter IV. Administrative Provisions.

§ 5641. Creation of the Auctioneer Licensing Commission.

(a) The Auctioneer Licensing Commission is hereby created. The Commission is composed of five (5) members. At least three members must be licensed auctioneers. The other two (2) members must be public individuals who are not and never have been associated with auctioneering in any way other than as a consumer. The members are appointed by the Governor to serve for a term of three (3) years, and may successively serve one (1) additional term. A

vacancy arising on the Commission due to circumstances, such as retirement, relocation, death, or suspension or removal by the Governor for misfeasance, nonfeasance, or malfeasance, must be filled by an appointment made by the Governor. An individual appointed to fill a vacancy serves for the unexpired term of the member whose vacancy is being filled.

(b) A member of the Commission shall be suspended or removed by the Governor for misfeasance, nonfeasance, or malfeasance. A member subject to disciplinary proceedings is disqualified from Commission business until the charge is adjudicated or the matter is otherwise concluded. A member may appeal a suspension or removal to the Superior Court.

(c) The Commission receives and acts upon applications for auctioneer and auction firm licenses and has the power to issue, reinstate, suspend, and revoke those licenses and to take such other action as is necessary to carry out the provisions of this chapter.

(d) The Commission has the authority to make or adopt such rules and regulations, pursuant to the Administrative Procedures Act (Title 29, Chapter 101), as are reasonable and necessary for the orderly regulation of the auctioneering profession. The Commission also has the authority to implement the provisions of this chapter that confer duties upon it.

§ 5642. Exclusive authority.

An agency or political subdivision of the State may not impose on an auctioneer, auction firm, or seller at auction any registration or license requirement or any registration, license, or employment fee or charge for auctioneering activities.

§ 5643. Requirements for Commission members.

Each appointee to the Commission must meet the following requirements:

(a) Each appointee must be a citizen of the United States of America.

(b) Each appointee must be a citizen of the State and be domiciled in the State.

(c) Each appointee must be at least 21 years of age.

(d) Each auctioneer appointee must have been an auctioneer for a period of not less than five (5) years immediately preceding the appointment.

(e) An appointee may not be a member of the Commission while holding another elected or appointed office in either State or federal government.

(f) An appointee may not be a member of the Commission while maintaining a controlling interest in a school or other facility which trains individuals to be auctioneers.

§ 5644. Officers and meetings.

(a) The members of the Commission shall elect one member to serve as chair. The members shall also elect one (1) member to serve as vice chair. The chair and vice chair must be elected annually by majority vote of the total membership of the Commission.

(b) The Commission meets each January at a time and place established by the chair to conduct an election of officers and to consider such other business that is appropriate. The Commission also meets upon the call of the chair or upon the request of any two (2) members of the Commission. The chair shall provide reasonable notice of the time and place of each meeting to all members.

(c) Three (3) members of the Commission constitute a quorum for the purpose of transacting business. A majority vote of the Commission is necessary to bind the Commission. The Commission may not impose discipline upon an auctioneer or auction firm without at least 3 affirmative votes.

(d) The Commission shall meet at least four (4) times a year, one time each quarter.

§ 5645. Per diem and expenses.

Each member of the Commission is entitled to reimbursement for necessary travel expenses incurred in the performance of his or her official duties, in accordance with the travel policies and procedures established by the Division of Professional Regulations.

§ 5646. Jurisdiction.

The Commission has jurisdiction over the actions of auctioneers and auction firms. The Commission also has jurisdiction over the business of auctioneering, including individuals and persons engaging in the business of auctioneering without a proper license, pursuant to this chapter.

§ 5647. Powers.

In addition to the powers specified in other sections of this chapter, the Commission has the following powers:

(1) The power to establish qualifications for licensure; to grant and renew licenses;

(2) The power to examine or to provide for the examination of an applicant who applies to be licensed as an auctioneer, an auction firm, or as a designated person in the State;

(3) The power to make rules and regulations pursuant to the Administrative Procedures Act (Title 29, Chapter 101) that will promote the orderly functioning of the auction profession;

(4) The power to order restitution;

(5) The power hold hearings, subpoena witnesses, make findings of fact, and otherwise enforce the disciplinary provisions contained in this chapter;

(6) The power to regulate the business of auctioneering, and to fine or prosecute individuals or persons engaging in auctioneering without an auctioneer or auction firm license;

(7) The power to fine or otherwise discipline auctioneers and auction firms for violations of § 5661 of this chapter;

(8) The power to approve of educational institutions, auctioneering schools, and continuing education providers, in relation to the provisions of this chapter;

(9) The power to levy assessments on auctioneers and each person licensed as an auction firm;

(10) The power to sue in its own name for damages or injunctive relief, or both, to enforce the provisions of this chapter.

§ 5648. Investigations.

With the approval of or at the request of the Division, the Commission shall investigate alleged violations of this chapter by any licensed or unlicensed auctioneer, auction firm, designated person, or applicant.

§ 5649. Cease and desist orders.

(a) When the Commission determines that a person not licensed under this chapter is engaging in, or is reasonably believed to be engaging in, an activity for which a license is required under this chapter, the Commission may issue an order requiring that person to show cause why he, she, or it should not be ordered to cease and desist from the activity. The show-cause order must set forth a time and place for a hearing at which the person must appear to show cause as to why he, she, or it should not be subject to the licensing laws under this chapter.

(b) If, after a hearing, the Commission determines that the activity in which the person has engaged is subject to licensing under this chapter, the Commission may issue a cease and desist order that describes the person and the activity that are the subject of the order.

(c) A cease-and-desist order under this section is enforceable in the Superior Court.

§ 5650. Penalties for unlicensed conduct.

(a) A person or an association of persons violating the provisions of § 5606 (auctioneer license) or § 5614 (auction firm license) of this chapter is guilty of a class B misdemeanor. The Attorney General has jurisdiction to prosecute violations of this chapter.

(b) The Commission may, in its own name, seek injunctive relief in the Court of Chancery to restrain any violation or anticipated violation of any provision of this chapter.

(c) The Commission is entitled to the services of the Attorney General in enforcing the provisions of this chapter.

(d) When the Commission determines that a person has engaged in the business of auctioneering without being licensed under this chapter, and the person's conduct injured an individual or business within this State, it may impose a fine of not more than ten thousand (\$10,000) dollars.

§ 5651. Appeal procedure.

(a) The findings of fact made by the Commission acting within its powers shall, in the absence of fraud, be conclusive, but the Superior Court may review questions of law involved in any final decision or determination of the Commission.

(b) Application must be made by the aggrieved party within 30 days after the determination by certiorari, mandamus, or by any other method permissible under the rules and practices of the Superior Court or the laws of this State.

(c) The Court may make such further orders in respect thereto as justice may require.

§ 5652. Current laws.

The Commission shall maintain, and provide upon request, a copy of the current auctioneer and auction firm laws, and an accurate list of the states having reciprocity with this State. Laws and regulations pertaining to this chapter are available online.

Subchapter V. Disciplinary Provisions.

§ 5661. Prohibited acts.

Committing any of the following acts subjects the violator to the penalties and discipline provided in this chapter:

(1) Knowingly filing, or causing to be filed, a false application.

(2) Failure to enter into a written agreement with the seller or consignor prior to the sale or prior to advertising the sale. The appearance of an auctioneer's or auction firm's name in advertising creates a rebuttable presumption that the advertising was placed with the auctioneer's or auction firm's knowledge.

(3) Failure to give to the seller or consignor a signed receipt for real or personal property received for sale at auction, either by item or by lot, at the time the item or lot is received, unless the item or lot is to remain in the possession of the seller or the consignor.

(4) Failure to give to the seller or consignor and the buyer of real or personal property sold at auction a statement indicating the item or lot description, selling price, buyer's identity, and the net proceeds due to the seller or consignor.

(5) Unless contemporaneous payment is made to the seller or consignor, failure to place funds received from a real or personal property auction sale in an escrow or trust account, and failure to make a timely settlement on escrowed funds. Absent a written agreement to the contrary, thirty (30) business days is considered timely for settlement on real or personal property.

(6) Knowingly permitting an unlicensed auctioneer to call for bids in an auction sale, unless he or she is working as an apprentice auctioneer.

(7) Engaging in the business of auctioneering for an unlicensed auction firm.

(8) Being convicted of one or more felonies. For the purposes of this section, "convicted" means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

- 479 (9) Any course of intentional or wanton conduct which misleads or creates a false impression among the
480 seller, buyer, or bidders in the advertising, conduct, and/or closing of an auction.
- 481 (10) Any violation of this chapter or of any regulations promulgated by the Commission.
- 482 (11) Aiding or abetting the activity of another person which violates this chapter or any regulations
483 promulgated by the Commission.
- 484 (12) Misrepresenting a fact material to a buyer's decision on whether or not to purchase real or personal
485 property.
- 486 (13) Materially misrepresenting the qualities or characteristics of any real or personal property offered for sale
487 at auction.
- 488 (14) Failing to comply with or violating an order of the Commission requiring an individual licensed as an
489 auctioneer or person licensed as an auction firm to comply with any provision of this chapter or with the rules or
490 regulations of the Commission.
- 491 (15) Failure to provide information within thirty (30) days in response to a written request made by the
492 Commission.
- 493 (16) Using a misleading or untruthful advertisement, or using a trade name or insignia of membership in an
494 auctioneer association or organization of which the auctioneer or auction firm is not a member.
- 495 (17) Engaging in the business of auctioneering without a license or after a license has expired or has been
496 revoked, suspended, or terminated.
- 497 (18) Failure to disclose to the bidders, immediately prior to offering real or personal property for sale, the
498 existence and amount of any known liens or other encumbrances on the real or personal property.
- 499 (19) Failure to notify the Commission of any change in name, address, business or trade name, or corporate
500 status of an auctioneer or auction firm within thirty (30) days of the change.
- 501 (20) Failure to make the required contribution to the Recovery Fund.
- 502 (21) Selling or offering for sale at auction real or personal property known to be owned by a minor or other
503 incapacitated individual, without the express written consent of a parent or legal guardian.
- 504 (22) Engaging in any conduct in connection with a sales transaction that the Commission finds to have been
505 transacted in bad faith or dishonestly.
- 506 (23) Engaging in conduct determined by the Commission to be in violation of the Code of Ethics (Subchapter
507 VII of this chapter), unprofessional, or of a character likely to deceive, defraud, or harm the public.
- 508 (24) Knowingly permitting or engaging in phantom bidding, or using shills or any type of bid rigging.
- 509 § 5662. Disciplinary action.

Nothing in this chapter limits the authority of the Commission to take disciplinary action against an individual licensed as an auctioneer or person licensed as an auction firm under this chapter, nor does the repayment in full of all obligations to the Fund by an individual licensed as an auctioneer or person licensed as an auction firm nullify or modify the effect of any disciplinary proceedings brought under this chapter.

§ 5663. Penalties.

(a) Each individual sale or act in connection with the conduct of an auction that is in violation of any provision of this chapter, or of any rules and regulations adopted by the Commission, constitutes a separate offense. If the Commission finds that an individual or person has violated any of the prohibited acts under § 5661 of this chapter, it may enter an order imposing one or more of the following penalties:

(1) A fine of not more than ten thousand (\$10,000) dollars; however, no combination of violations may exceed \$50,000;

(2) Issuance of a letter of reprimand;

(3) Placement of the auctioneer on probation for a period of time and subject to conditions as the Commission may specify. However, the probation period may not exceed 6 (six) months from the date of the imposition of the penalty;

(4) Payment of restitution by the violator and/or from the Recovery Fund to each consumer affected by a violation. Proof that restitution was paid is a signed and notarized release executed by the victim or the victim's estate;

(5) License suspension for a period of time established by the Commission, with or without automatic reinstatement;

(6) License revocation.

(b) The Commission may, in its own name, seek injunctive relief in the Court of Chancery to prevent any violation or anticipated violation of any provision of this chapter.

(c) The Commission is entitled to the services of the Attorney General in enforcing the provisions of this chapter.

(d) When the Commission finds that an individual or person has violated this chapter and enters an order imposing a penalty, the investigative costs incurred by the Commission, if any, are recoverable. In its order, the Commission may order the individual or person to pay the investigative costs as part of a restitution order. The Commission's order is enforceable in the Court of Chancery or in the Superior Court, depending upon the relief sought.

§ 5664. Disciplinary actions against out-of-state licensees.

(a) The Commission may refuse to issue or renew a license, may place a violator on probation, may suspend or revoke a license, or may otherwise discipline an auctioneer or auction firm for being disciplined by another state, the

District of Columbia, a territory of the United States, or the United States, if at least one of the grounds for that discipline is the same as or equivalent to one of the grounds for discipline in this chapter.

(b) The Commission may refuse to issue or renew a license, may place a violator on probation, may suspend or revoke a license, or may otherwise discipline an auctioneer or auction firm who fails to report to the Commission within thirty (30) days any adverse final action taken against the auctioneer or auction firm by any other licensing jurisdiction, government agency, law enforcement agency, or court, or any liability for conduct that would constitute grounds for disciplinary action set forth in this chapter.

Subchapter VI. Recovery Fund.

§ 5671. Establishment of the Recovery Fund.

(a) The Recovery Fund is established for the purposes set forth in this chapter. The Fund is administered by the Division.

(b) If at any time the moneys in the Fund are insufficient to satisfy a valid claim or portion thereof, the Division shall satisfy the unpaid claim or portion thereof as soon as a sufficient amount has been deposited in or transferred to the fund. If there is more than one (1) unsatisfied claim outstanding, the claims must be paid in the order in which the claims were made.

(c) Upon the payment of any amount from the Fund in settlement of a claim or in satisfaction of a judgment against an auctioneer or auction firm, the license of the auctioneer or auction firm is automatically suspended until the auctioneer or auction firm has complied with § 5676 of this chapter. A discharge of bankruptcy does not relieve an individual or person from the penalties provided in this chapter.

(d) Moneys in the Fund at the end of a fiscal year must be retained in the Fund and accrue for the benefit of auctioneers and auction firms. When the Fund exceeds the amount set forth in § 5672 of this chapter, all surcharges or assessments for the Fund are suspended until the Fund is reduced below the amount set forth in § 5672 of this chapter.

§ 5672. Surcharge to license fee; assessment for Recovery Fund.

(a) Before an auctioneer or auction firm license is issued under this chapter, the licensee must pay, in addition to an examination fee and a license fee, an assessment as required by § 5608(8) and § 5616(5) of this chapter. The assessment must be in an amount to be determined by the Division, a minimum of \$200 and not to exceed \$300, to be deposited in the Fund at the time of licensure.

(b) The Division shall maintain at least \$5,000 in the Fund for use as provided in this chapter. If the total amount in the Fund, including principal and interest, exceeds \$5,000 at the end of the State's fiscal year after the payment of all claims and expenses, the amount in excess of \$5,000 must remain in the Fund for the benefit of auctioneers and auction firms by tolling the assessments until such time as the Fund needs replenishing.

(c) If the total amount of the Fund, including principal and interest, is less than \$5,000 at the end of the State's fiscal year after the payment of all claims and expenses, the Division shall assess, in addition to any other fees required by this chapter, a surcharge against auctioneers and auction firms at the time of initial licensure or at the time of renewal, according to the following formula in order to maintain the fund at \$5,000:

(1) Determine the amount remaining in the Fund at the end of the State's fiscal year after all expenses and claims have been paid.

(2) Subtract the amount determined under paragraph (1) from the amount desired by the Division for the Fund.

(3) Determine the number of initial licenses and license renewals in the fiscal year that precedes the current fiscal year.

(4) Divide the amount determined under paragraph (2) by the number determined under paragraph (3).

(d) The Division shall assess the surcharge described in subsection (c) of this section against each individual and person who receives an initial or renewed auctioneer or auction firm license during the fiscal year that follows the year in which the amount remaining in the Fund was less than \$5,000.

§ 5673. Conditions of recovery from the Recovery Fund.

(a) Recovery from the Fund may be obtained as follows:

(1) An aggrieved person is eligible to receive recovery from the Fund if the Commission has issued a final order directing an offending licensed auctioneer or licensed auction firm to pay restitution to the claimant as the result of violating any provision of this chapter or any rule or regulation adopted by the Commission, and the Commission has determined that the order of restitution cannot be enforced; or

(2) An aggrieved person who obtains a final judgment in any court against a licensed auctioneer or licensed auction firm to recover damages for any actual loss that resulted from a violation of this chapter or any rule or regulation adopted by the Commission may, upon termination of all proceedings, including appeals and proceedings supplemental to judgment for collection purposes, file a verified application to the Division for an order directing payment out of the Fund of the amount of actual loss in the transaction that remains unpaid upon the judgment. The amount of actual loss may include court costs, but may not include attorney fees or punitive damages awards.

(b) The amount paid from the Fund may not exceed \$5,000 per claim for claims arising out of the same transaction or auction, or an aggregate lifetime limit of \$50,000 with respect to a violation or violations by any one (1) auctioneer or auction firm. For the purposes of this subsection, auctions conducted under a single contract, agreement, or consignment are considered a single transaction or auction, even though conducted at more than one time or place.

(c) A claim for recovery from the Fund must be made within two (2) years from the time of the act giving rise to the claim or within two (2) years from the time the act is discovered, or should have been discovered, with the exercise of due diligence. However, a claim for recovery may not be made more than four (4) years from the date of the act giving rise to the claim.

(d) The Division may not issue an order for payment of a claim from the Fund unless the claimant has reasonably established to the Division that he or she has taken proper and reasonable action to collect the amount of his or her claim from the auctioneer or auction firm responsible for the loss and that any recovery made has been applied to reduce the amount of the claim on the Fund.

(e) Notwithstanding any other provision of this chapter, a claim based on any act or omission that occurred outside of this state is not payable from the Fund.

(f) In cases of payment of loss from the Fund, the Fund is subrogated, to the extent of the amount of the payment, to all the rights of the claimant against any auctioneer or auction firm with respect to the loss.

§ 5674. Payment of claim upon final court order.

Upon a final order of the court directing that payment be made out of the Recovery Fund, the Division shall, subject to the provisions of this chapter, make the payment out of the Fund as provided in § 5673 of this chapter.

§ 5675. Payment of multiple claims upon final court order.

(a) If the payment in full of two (2) or more pending valid claims that have been filed by aggrieved persons against a single auctioneer or auction firm exceeds the \$50,000 limit as set forth in § 5673(b) of this chapter, the money must be distributed among the aggrieved persons in the ratio of their respective claims to the aggregate of all valid claims, or in any other manner that a court of record may determine to be equitable. The money must be distributed among the aggrieved persons entitled to share in it, without regard to the order of priority in which their respective judgments have been obtained or their claims have been filed.

(b) Upon petition by the Division, the court may require all claimants and prospective claimants against one auctioneer or auction firm to be joined in one action, to the end that the respective rights of all the claimants to the Division may be equitably adjudicated and settled.

(c) On June 30 and December 31 of each year, the Division shall identify each claim that the court ordered to be paid during the 6-month period that ends on December 31 and the 6-month period that ends on June 30. The Division shall pay the part of each claim that has been identified within twenty (20) days after the end of the 6-month period in which the claim was ordered to be paid. However, if the balance of the Fund is insufficient to pay the full payable amount of each claim that is ordered to be paid during a 6-month period, the Division shall pay a pro rated portion of each claim. Any part of the payable amount of a claim left unpaid due to the pro rating of payments under this subsection must be paid.

subject to the applicable limits set forth in § 5673 of this chapter, before the payment of claims ordered to be paid during the second 6-month period.

(d) Claims for the second 6-month period may not be paid until all previous claims have been paid in full. Each claim must be processed in the order in which it was issued by the Division.

§ 5676. Suspension of license.

If the Division is required to make a payment from the Fund in settlement of a claim or toward the satisfaction of a judgment under this chapter, the Commission shall suspend the auctioneer's or auction firm's license. The auctioneer or auction firm is not eligible to be licensed again as an auctioneer or auction firm until the auctioneer or auction firm has repaid in full the amount paid from the Fund, with interest at the current applicable rate.

§ 5677. Expenditure of excess funds.

The Division may expend excess moneys from the Fund for the following purposes:

(1) To prepare publications which provide information concerning the Commission's activities and administrative rulings;

(2) To prepare publications which provide for the distribution of laws, rules, and educational information concerning the practice of auctioneering;

(3) To promote education and research in the auctioneer profession that benefits persons licensed under this chapter, and to improve the efficiency of the profession;

(4) To underwrite educational seminars, training centers, and other forms of educational projects to benefit auctioneers and auction firms.

Subchapter VII. Code Of Ethics.

§ 5680. Licensees' responsibilities to clients and customers.

(a) A licensee shall protect and promote the interests of the client. This obligation of absolute fidelity to a client's interests is primary, but does not relieve a licensee of his or her obligation to treat fairly all parties to the transaction.

(b) A licensee shall, in conducting an auction, deal with customers in a manner exhibiting the highest standards of professionalism and respect. A licensee owes the customer the duties of honesty, integrity, and fair dealing at all times.

(c) A licensee shall, to assure better service to the seller and to prevent misunderstandings, enter into written agreements or, at a minimum, clear oral agreements that set forth the specific terms and conditions of the transaction.

(d) A licensee may not accept compensation from any party other than the client, even if permitted by law, without the full knowledge of all parties to the transaction.

(e) A licensee shall provide the highest level of service in those fields in which the licensee is customarily engaged. This level of service is attained by education, training, study, practice, and experience. Level of service also includes the wisdom to recognize the limitations of his or her knowledge and the wisdom to seek counsel, assistance, or client referral when appropriate for the circumstances.

(f) A licensee may not undertake to provide professional services if either the licensee or his or her immediate family, licensees of his or her firm, or any entity in which they have an ownership interest has presently or contemplates an interest, without first specifically disclosing such interest or contemplated interest.

(g) A licensee may not make a profit on expenditures made for his or her client without the client's prior knowledge and consent.

(h) A licensee may not engage in activities that constitute the unauthorized practice of law, and shall recommend that legal counsel be obtained when the interest of any party to the transaction would be appropriately served.

(i) A licensee shall keep monies, such as escrows, trust funds, client monies, and other similar items coming into his or her possession, in trust for other persons in a separate special account in a federally insured financial institution.

(j) A licensee may not disclose any confidential client information without the client's written consent except as required by legal authorities.

§ 5681. Licensees' responsibilities to the public.

(a) A licensee shall avoid misrepresentation or concealment of pertinent facts. A licensee has an affirmative obligation to disclose adverse factors of a material nature of which he or she has personal knowledge.

(b) A licensee shall at all times present true information in their advertising and other representations to the public. A licensee shall ensure that all advertising includes the names and information necessary for the public to contact the auctioneer or auction firm responsible for conducting an auction.

(c) A licensee shall participate in Commission-approved continuing education programs, and shall keep informed on matters affecting the auction industry and his or her area of specialization.

(d) A licensee shall at all times abide by the laws, rules, and regulations which govern the profession, as well as those which, if violated, would negatively affect his or her ability to present to the public an image of behavior that appropriately represents the professionalism of the auction industry.

§ 5682. Licensees' responsibilities to the profession.

(a) A licensee may never publicly criticize a competitor using false or deceptive information. If an opinion of a competitor's transaction is requested, it should be rendered in conformity with strict professional courtesy and dignity.

(b) A licensee shall willingly share with other licensees the lessons learned through experience and study to better the profession, licensees' business practices, and how the profession is perceived by society. A licensee shall be loyal

to the National Auctioneers' Association (NAA), which includes active participation in educational, civic, and charitable endeavors.

(c) A licensee shall conduct his or her business affairs in a manner that avoids disputes with other licensees. If a controversy between licensees arises, the licensees should seek the assistance of the Commission to arbitrate the controversy.

(d) A licensee having personal knowledge of an act by another licensee that, in the licensee's opinion, is a material violation of the ethical principles of this Code, shall treat the matter in accordance with the procedures of filing a grievance.

(e) A licensee charged with unethical practice, or who is asked to present evidence in a disciplinary proceeding or investigation, shall promptly and voluntarily place all pertinent facts and information before the appropriate body.

Section 2. Amend § 8735(a) [Effective until Aug. 6, 2013], Title 29 of the Delaware Code by making an insertion as shown by underlining as follows:

(35) Auctioneer Licensing Commission as set forth in Chapter 56 of Title 24.

Section 3. Amend § 8735(a) [Effective Aug. 6, 2013], Title 29 of the Delaware Code by making an insertion as shown by underlining as follows:

(36) Auctioneer Licensing Commission as set forth in Chapter 56 of Title 24.

Section 4. Amend § 10161(a) [Effective until Aug. 6, 2010], Title 29 of the Delaware Code by making an insertion to the Administrative Procedures Act as shown by underlining as follows:

(53) Auctioneer Licensing Commission.

Section 5. Amend § 10161(a) [Effective Aug. 6, 2013], Title 29 of the Delaware Code by making an insertion to the Administrative Procedures Act as shown by underlining as follows:

(54) Auctioneer Licensing Commission.

Section 6. Amend § 2901, Title 24 of the Delaware Code by making insertions as shown by underlining as follows:

§ 2901. License requirements; exemptions.

(a) No person shall engage in the practice of providing real estate services or hold himself or herself out to the public in this State as being qualified to practice the same; or use in connection with that person's name, or otherwise assume or use, any title or description conveying or tending to convey the impression that the person is qualified to practice real estate services, unless such person has been duly licensed under this chapter.

(b) Any person engaging in the practice of providing real estate services in this State without the proper licensure shall be in violation of this chapter and shall be subject to the provisions of § 10161 of Title 29.

730 (c) No brokerage organization, corporation, partnership or other business entity shall be licensed under this
731 chapter. Nothing in this chapter, however, shall prevent such brokerage organization from providing real estate services
732 provided the individual or business entity has a broker who is responsible for providing real estate services and who may
733 have affiliated associate brokers or salespersons, properly licensed in this State, who provide such services under the
734 supervision of the broker.

735 (d) No person shall directly or indirectly provide real estate services through a licensee of the State without having
736 a license in this State.

737 (e) This chapter shall not apply to:

738 (1) Any person or a subsidiary or division thereof with common ownership or control who, as owner or
739 lessor or buyer or lessee, performs any of the acts enumerated in this section with reference to property owned,
740 purchased or leased by such person or a subsidiary or division thereof with common ownership or control or to the
741 regular employee of such person, with respect to the property so owned, purchased or leased, where such acts are
742 performed in the regular course of or as an incident to the management of such property and the investment
743 therein; or

744 (2) Persons acting as attorney in fact under a duly executed power of attorney from a person engaged in
745 a real estate transaction authorizing the final consummation by performance of any agreement of sale, leasing or
746 exchange of real estate.

747 (3) This chapter shall not be construed to include in any way the services rendered by an attorney-at-
748 law, nor shall it be held to include, while acting as such, the receiver, trustee in bankruptcy, administrator or
749 executor, or any person selling real estate under order of any court, or a trustee acting under a trust agreement,
750 deed of trust or will, or the regular salaried employee thereof.

751 (4) An "auctioneer" as defined in § 2301(a)(3) of Title 30 if he or she is employed only to call for bids
752 at an auction of real property. A licensed auctioneer must present to a seller of real property a signed contract of
753 sale within 10 days of conclusion of the advertised auction days from a bidder who was registered for and attended
754 the auction in person or electronically where bids were called for that property, or the auction is null and void. A
755 licensed auctioneer may not advertise that he or she is authorized to sell real property. A licensed auctioneer may
756 advertise real property that is for sale at public auction when employed to do so pursuant to this chapter, and may
757 advertise that he or she is authorized to auction real property at a public auction. However, property not sold on
758 the day of auction may no longer be advertised by the auctioneer unless another auction day is scheduled. If a
759 contract of sale is not signed until after the day of auction and within the permitted 10-day period, an affidavit

760 verifying that the bidder was registered and attended the auction in person or electronically where bids were called
761 for that property must be signed by the buyer and auctioneer, with copies retained by the auctioneer, buyer, and
762 settlement attorney for as long as the settlement statement is retained.

763 (5) A provider of property management services as defined in § 2902 of this title excepting that a
764 provider of property management services shall not directly or indirectly sell or offer to sell, buy or offer to buy,
765 negotiate the purchase, sale, or exchange of real estate, lease or rent or offer for lease or rent any real estate, or
766 negotiate leases or rental agreements thereof or of the improvements thereon for others.

767 Section 7. Severability. If a provision of this Act or the application of a provision to a person or circumstance is
768 held to be invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect
769 without the invalid provision or application; and, to this end, the provisions of this Act are declared severable.

770 Section 8. This Act becomes effective 180 days after its enactment into law.

SYNOPSIS

This Act covers the licensing of auctioneers and auction firms, and creates a commission to license auctioneers and auction firms and to oversee their activities. Section 6 amends the exemption for auctioneers in the real estate brokers chapter to make it the same as the exemption in the auctioneer's licensing chapter.