

- 23 (2) “Applicant” means a person applying for an auctioneer or auction firm license under this chapter.
- 24 (3) “Auction” means the public sale of real or personal property, or both, in which the sale price of the
25 property offered is increase by competitive bids until the highest accepted bidder becomes the purchaser.
- 26 (4) “Auctioneer” means an individual licensed under this chapter who engages in, or who, by advertising or
27 otherwise, holds himself or herself out as being available to engage in the calling for, the recognition of, and the acceptance
28 of competitive bids for the purchase of real or personal property at an auction, or who otherwise engages in the business of
29 auctioneering.
- 30 (5) “Auctioneering” or “business of auctioneering” means, in addition to the actual calling, recognition, and
31 acceptance of competitive bids, the following:
- 32 a. Contracting for an auction;
- 33 b. Accepting consignments of real or personal property for sale at auction;
- 34 c. Advertising an auction, but not beyond the day of the auction;
- 35 d. Offering real or personal property for sale at auction;
- 36 e. Accepting payment or disbursing monies for real or personal property sold at auction; and
- 37 f. Otherwise soliciting, arranging, sponsoring, or managing an auction, or holding oneself out as an
38 auctioneer or auction firm;
- 39 (6) “Auction firm” means a sole proprietorship, corporation, or LLC of which the owner is not a licensed
40 auctioneer, or a partnership, association, corporation, or other legal entity that sells, either directly or through agents, real or
41 personal property at auction, or that arranges, sponsors, manages, conducts, or advertises auctions, or otherwise engages in
42 the business of auctioneering. This definition applies whether or not an owner or officer of the business acts as an
43 auctioneer.
- 44 (7) “Calling for bids” means crying the auction, the chant, and asking the audience at an auction for bids.
- 45 (8) “Commission” means the Auctioneer Licensing Commission created by this chapter.
- 46 (9) “Consignment” means the act of delivering or transferring real or personal property, in fact or
47 constructively, to an auctioneer or the auctioneer’s agent in trust for the purpose of resale at auction, whereby title does not
48 pass to the buyer until the auctioneer declares the real or personal property sold. For the purpose of this chapter,
49 consignment may also mean a bailment for sale.
- 50 (10) “Conviction” means a verdict of guilty by the trier of fact, whether judge or jury, or a plea of guilty or a
51 plea of nolo contendere accepted by the Court.
- 52 (11) “Designated person” means a person approved by the Commission to have the authority to transact
53 business for an auction firm.
- 54 (12) “Division” means the Division of Professional Regulation.

86 without an auctioneer license issued pursuant to the provisions of this chapter, unless the auction sale is exempt under
87 § 5607 of this chapter.

88 § 5607. Exemptions.

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

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

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

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

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

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

105 § 5608. Requirements for auctioneer license.

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

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

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

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

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

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

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

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

126 (8) The applicant must pay an assessment fee of not less than \$200 nor more than \$300, as set forth in
127 § 5672(a) of this chapter, in an amount established by the Division for the Recovery Fund;

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

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

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

135 § 5609. Issuance of auctioneer license.

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

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

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

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

146 (e) If a license has not been reactivated within three (3) months of its expiration date, the license holder must
147 file an application and comply with § 5608 of this chapter, except for the 80 hours of a prescribed course of study
148 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.

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

210 § 5615. Exemptions.

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

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

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

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

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

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

227 § 5616. Requirements for auction firm license.

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

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

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

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

233 (4) The applicant must pay a licensing fee in an amount established by the Division. The fee may not exceed
234 \$200;

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

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

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

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

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

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

253 § 5617. Issuance and renewal of auction firm license.

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

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

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

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

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

300 § 5628. Auctioneer's authority from the bidder.

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

303 § 5629. Performance by auctioneer.

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

308 § 5630. Availability of license.

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

311 § 5631. Sales records.

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

318 § 5632. Consignment records.

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

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

325 § 5633. Escrow and trust accounts for real property auctions

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

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

337 § 5634. Final settlements.

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

346 § 5635. Fees, costs, and assessments.

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

349 Subchapter IV. Administrative Provisions.

350 § 5641. Creation of the Auctioneer Licensing Commission.

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

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

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

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

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

369 § 5642. Exclusive authority.

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

372 § 5643. Requirements for Commission members.

373 Each appointee to the Commission must meet the following requirements:

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

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

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

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

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

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

383 § 5644. Officers and meetings.

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

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

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

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

395 § 5645. Per diem and expenses.

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

399 § 5646. Jurisdiction.

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

403 § 5647. Powers.

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

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

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

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

410 (4) The power to order restitution;

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

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

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

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

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

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

422 § 5648. Investigations.

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

425 § 5649. Cease and desist orders.

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

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

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

435 § 5650. Penalties for unlicensed conduct.

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

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

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

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

446 § 5651. Appeal procedure.

- 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 skills or any type of bid rigging.
509 § 5662. Disciplinary action.

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

514 § 5663. Penalties.

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

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

521 (2) Issuance of a letter of reprimand;

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

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

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

530 (6) License revocation.

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

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

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

539 § 5664. Disciplinary actions against out-of-state licensees.

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

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

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

549 Subchapter VI. Recovery Fund.

550 § 5671. Establishment of the Recovery Fund.

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

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

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

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

564 § 5672. Surcharge to license fee; assessment for Recovery Fund.

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

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

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

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

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

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

583 (4) Divide the amount determined under paragraph (2) by the number determined under paragraph
584 (3).

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

588 § 5673. Conditions of recovery from the Recovery Fund.

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

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

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

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

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

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

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

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

617 § 5674. Payment of claim upon final court order.

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

620 § 5675. Payment of multiple claims upon final court order.

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

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

630 (c) On June 30 and December 31 of each year, the Division shall identify each claim that the court ordered to
631 be paid during the 6-month period that ends on December 31 and the 6-month period that ends on June 30. The Division
632 shall pay the part of each claim that has been identified within twenty (20) days after the end of the 6- month period in
633 which the claim was ordered to be paid. However, if the balance of the Fund is insufficient to pay the full payable amount
634 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.
635 Any part of the payable amount of a claim left unpaid due to the pro rating of payments under this subsection must be paid.

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

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

640 § 5676. Suspension of license.

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

645 § 5677. Expenditure of excess funds.

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

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

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

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

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

655 Subchapter VII. Code Of Ethics.

656 § 5680. Licensees' responsibilities to clients and customers.

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

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

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

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

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

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

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

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

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

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

682 § 5681. Licensees' responsibilities to the public.

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

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

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

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

693 § 5682. Licensees' responsibilities to the profession .

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

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

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

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

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

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

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

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

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

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

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

717 (53) Auctioneer Licensing Commission.

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

720 (54) Auctioneer Licensing Commission.

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

723 § 2901. License requirements; exemptions.

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

728 (b) Any person engaging in the practice of providing real estate services in this State without the proper licensure
729 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.