

§ 4707.01. Definitions.

As used in this chapter:

- (A) "Auction" means a method of sale of real or personal property, goods, or chattels, at a predetermined date and time, by means of a verbal exchange, regular mail, telecommunications, the internet, an electronic transmission, or a physical gesture between an auctioneer or apprentice auctioneer and members of the audience or prospective purchasers, the exchanges and gestures consisting of a series of invitations for offers made by the auctioneer and offers by members of the audience or prospective purchasers, with the right to acceptance of offers with the auctioneer or apprentice auctioneer. "Auction" includes a sale of real or personal property, goods, or chattels in which there has been a solicitation or invitation by advertisement to the public for an advance in bidding using sealed bidding, provided that the bids are opened and there is a call for an advancement of the bids.
- (B) "Auctioneer" means any person who engages, or who by advertising or otherwise holds the person out as being able to engage, in the calling for, recognition of, and the acceptance of, offers for the purchase of real or personal property, goods, or chattels at auction either directly or through the use of other licensed auctioneers or apprentice auctioneer.
- (C) "Apprentice auctioneer" means any individual who meets the requirements of R.C. 4707.09 and who is supervised by a licensed auctioneer when engaging in any activity in division (A) of this section.
- (D) "Special auctioneer" means any person who currently is subject to section 4707.071 of the Revised Code.
- (E) "Absolute auction" means an auction of real or personal property to which all of the following apply:
 - (1) The property is sold to the highest bidder without reserve.
 - (2) The auction does not require a minimum bid.
 - (3) The auction does not require competing bids of any type by the seller or an agent of the seller.
 - (4) The seller of the property cannot withdraw the property from auction after the auction is opened and there is public solicitation or calling for bids.
- (F) "Reserve auction" means an auction in which the seller or an agent of the seller reserves the right to establish a stated minimum bid, the right to reject or accept any or all bids, or the right to withdraw the real or personal property at any time prior to the completion of the auction by the auctioneer.
- (G) "Auction mediation company" means a company that provides a forum through the internet for a person to sell the person's real or personal property via the submission of silent bids using a computer or other electronic device.
- (H) "Public authority" means any board or commission of the state or any officer of such a board or commission, or any political subdivision of the state.
- (I) "Estate auction" means the auction of real or personal property of a deceased person.
- (J) "Absentee bidding" means a method by which a potential purchaser authorizes a proxy to place on behalf of the potential purchaser a written or oral bid to an auctioneer or auction firm or an agent of an auctioneer or auction firm.
- (K) "Person" means an individual, sole proprietor, corporation, limited liability company, association, or partnership.
- (L) "Auction firm" means a person who provides auction services.
- (M) "Auction services" means arranging, managing, and sponsoring a personal property auction. "Auction services" includes the taking and advertising of personal property on consignment to be sold at auction by a licensed auctioneer.
- (N) "Consignee" means a person or auction firm that takes personal property on consignment to be sold at auction by a licensed auctioneer.

- (O) "Firm manager" means the individual designated by an auction firm who is responsible for ensuring that the auction firm complies with this chapter.
- (P) "Sealed bidding" means a method of submitting a bid in writing by one or more persons following which the bids are opened at an advertised, predetermined time and place, and, after a review of all the bids received, the real or personal property is awarded to the highest and most responsive bidder.

§ 4707.011. Administration of chapter.

The department of agriculture shall administer this chapter.

§ 4707.02. Auctioneer, apprentice auctioneer or special auctioneer license required; exceptions.

- (A) No person shall act as an auction firm, auctioneer, apprentice auctioneer, or special auctioneer within this state without a license issued by the department of agriculture. No auction shall be conducted in this state except by an auctioneer licensed by the department. The department shall not issue or renew a license if the applicant or licensee has been convicted of a felony or crime involving fraud or theft in this or another state at any time during the ten years immediately preceding application or renewal.
- (B) Division (A) of this section does not apply to any of the following:
 - (1) Sales at auction that either are required by law to be at auction, other than sales pursuant to a judicial order or decree, or are conducted by or under the direction of a public authority;
 - (2) The owner of any real or personal property desiring to sell the property at auction, provided that the property was not acquired for the purpose of resale;
 - (3) An auction mediation company;
 - (4) An auction that is conducted in a course of study for auctioneers that is approved by the state auctioneers commission created under section 4707.03 of the Revised Code for purposes of student training and is supervised by a licensed auctioneer;
 - (5)(a) An auction that is sponsored by a nonprofit or charitable organization that is registered in this state under Chapter 1702. or Chapter 1716. of the Revised Code, respectively, if the auction only involves the property of the members of the organization and the auction is part of a fair that is organized by an agricultural society under Chapter 1711. of the Revised Code or by the Ohio expositions commission under Chapter 991. of the Revised Code at which an auctioneer who is licensed under this chapter physically conducts the auction; or
 - (b) Sales at an auction sponsored by a charitable, religious, or civic organization that is tax exempt under subsection 501(c)(3) of the Internal Revenue Code, or by a public school, chartered nonpublic school, or community school, if no person in the business of organizing, arranging, or conducting an auction for compensation and no consignor of consigned items sold at the auction, except such organization or school, receives compensation from the proceeds of the auction. As used in division (B)(5)(b) of this section, "compensation" means money, a thing of value other than participation in a charitable event, or a financial benefit.
 - (6) A person licensed as a livestock dealer under Chapter 943. of the Revised Code who exclusively sells livestock and uses an auctioneer who is licensed under this chapter to conduct the auction;
 - (7) A person licensed as a motor vehicle auction owner under Chapter 4517. of the Revised Code who exclusively sells motor vehicles to a person licensed under Chapter 4517. of the Revised Code and who uses an auctioneer who is licensed under this chapter to conduct the auction;
 - (8) A person who sells real or personal property by means of the internet.

- (C)(1) No person shall advertise or hold oneself out as an auction firm, auctioneer, apprentice auctioneer, or special auctioneer without a license issued by the department of agriculture.
- (2) Division (C)(1) of this section does not apply to an individual who is the subject of an advertisement regarding an auction conducted under division (B)(5)(b) of this section.

§ 4707.021. Sale of real property at auction

Only an auctioneer who is licensed under this chapter and who is licensed as a real estate broker or a real estate salesperson under Chapter 4735. of the Revised Code shall sign an auction contract for the sale of real property at auction. A real estate broker who is licensed under Chapter 4735. of the Revised Code, but who is not licensed as an auctioneer under this chapter shall not sign an auction contract or conduct an auction, but may contract for the sale of real property at auction only if either of the following applies:

- (A) The auctioneer who signs the auction contract and who conducts the auction is a salesperson licensed under Chapter 4735. of the Revised Code and is associated with the real estate broker who contracts for the sale of real property.
- (B) The real estate broker enters into a cooperative agreement with another real estate broker licensed under Chapter 4735. of the Revised Code with whom an auctioneer licensed under this chapter is associated and the auctioneer is solely responsible for signing the auction contract and conducting the auction.

An apprentice auctioneer who is licensed as a real estate broker or real estate salesperson under Chapter 4735. of the Revised Code may act as a bid caller in the sale of real property at auction if the ~~sponsoring~~ supervising auctioneer is licensed under this chapter and is licensed as a real estate broker or real estate salesperson under Chapter 4735. of the Revised Code.

Nothing in this section shall be construed to permit a business to contract for the sale of real property at auction through an individual who is not licensed under this chapter and Chapter 4735. of the Revised Code.

§ 4707.022. Reserve Auction; disclosure; agency.

- (A) An auction shall be a reserve auction unless explicitly stated otherwise in the contract for the auction and in the terms and conditions governing the auction. For purposes of a reserve auction, there need not be an announcement or indication that the reserve is attained.
- (B) A person licensed under this chapter shall not use absentee bidding unless the owner of the real or personal property being sold provides prior written permission to use absentee bidding.
- (C) A person licensed under this chapter shall be an agent of the owner or consignee of the real or personal property for purposes of all aspects of the auction.

§ 4707.023. Property sold at absolute auction; advertising; disclosure of auctioneer - seller bidding.

- (A) No person licensed under this chapter shall advertise, offer for sale, or sell real or personal property by absolute auction unless all of the following apply:
- (1) One of the following applies:
- (a) Except for current tax obligations, easements, or restrictions of record of the seller, there are no liens or encumbrances on the property in favor of any other person.
- (b) Every holder of a lien or encumbrance, by execution of the auction contract or other written agreement provided to the auctioneer, agrees to the absolute auction without regard to the amount of the highest bid or to the identity of the highest bidder.
- (c) A financially sound person, firm, trust, or estate, by execution of the auction contract or other written agreement provided to the auctioneer, guarantees the complete discharge and satisfaction of all liens and encumbrances, as applicable, immediately

after the absolute auction or at the closing without regard to the amount of the highest bid or to the identity of the highest bidder.

- (2) The seller of the real or personal property at the time of advertising and at the time of the absolute auction has a bona fide intention to transfer ownership of the property to the highest bidder regardless of the amount of the highest bid and without reliance on any agreement that a particular bid or bid level be attained in order to transfer the property.
 - (3) The auction contract requires that the auction be conducted as an absolute auction, specifies that the auction is not a reserve auction, and prohibits the seller or anyone acting on behalf of the seller to bid or participate in the bidding process of the auction.
- (B) Division (A) of this section does not prohibit any of the following:
- (1) The bidding of a secured party or lien holder, other than the seller, at an absolute auction, provided that the bids are bona fide offers, that the bidding does not constitute bid rigging or a reserve for the seller, and that the bidding is not for the purpose of aiding or assisting or on behalf of the seller or the auctioneer;
 - (2) The bidding by an individual or a party to a dissolution of marriage, partnership, or corporation on real or personal property being sold at auction pursuant to the dissolution;
 - (3) The advertising of real or personal property to be sold by absolute auction and by reserve auction within the same advertisement or for auction on the same date and at the same place, provided that the advertisement is not misleading and clearly identifies the property that is to be sold by absolute auction and the property that is to be sold by reserve auction.
- (C) A person licensed under this chapter may make a bona fide bid on the licensee's own behalf at an absolute auction and at a reserve auction, provided that the licensee provides full disclosure that the licensee may make a bona fide bid to the seller and at the auction.
- (D) A seller or a person on behalf of a seller may make a bid if the auction is a reserve auction and the auctioneer provides full disclosure before bidding begins that the seller retains the right to bid. No person licensed under this chapter knowingly shall receive such a bid in the absence of full disclosure.
- (E) Except in the case of a dissolution as provided in division (B)(2) of this section, a person licensed under this chapter shall not knowingly receive a bid by a seller or a person on the seller's behalf at an absolute auction.

§ 4707.024.Trust or escrow account.

- (A) Not later than seventy-two hours after the end of an auction, a person licensed under this chapter shall deposit in one or more trust or escrow accounts all money received from the sale of an owner's or consignee's personal property at auction unless the licensee pays the money to the owner or consignee immediately after the end of the auction.
- (B) For purposes of this section, a person licensed under this chapter shall designate a trust or escrow account that contains an owner's or consignee's money as "client trust account" or with words of similar meaning. In addition, a trust or escrow account only shall contain money received from the sale of personal property at auction that has not been disbursed and money for expenses regarding the auction, including commission and advertisement fees, that are specifically delineated in the auction contract.
- (C) Except for the payment of money to the owner or consignee immediately after the end of the auction, a person licensed under this chapter shall pay the owner or consignee with money from the client's trust or escrow account. In addition, the licensee may pay expenses, including commission and advertisement fees, that are specifically delineated in the auction contract with money from the trust or escrow account. Money in the trust or escrow account shall not be disbursed for any purpose that is inconsistent with this section. In addition, the money shall not be commingled with the licensee's personal or business money. In

administering the trust or escrow account, the licensee shall keep detailed records that show deposits, withdrawals, and interest accrued, if applicable.

Unless otherwise agreed to by the parties in the auction contract or by the direction of a court of law, all money deposited into a trust or escrow account shall be disbursed to the seller not later than fifteen days after the auction.

- (D) Money from the sale of personal property at auction may be deposited in an interest bearing account if the parties to the auction contract specifically agree to such a deposit. Interest earned in the account shall be credited to the seller unless otherwise agreed to by the parties in the auction listing contract. The interest credited to the account may remain in the account for a period of sixty days after the seller receives the money from the account. The interest money then shall be disbursed according to the terms of the auction contract.
- (E) All money received in connection with the sale of real property at auction shall be deposited in a broker's special or trust bank account in a depository located in this state that is described in division (A)(26) of section 4735.18 of the Revised Code.

§ 4707.03. State auctioneers commission created.

A state auctioneers commission shall be created within the department of agriculture as follows:

- (A) The governor, with the advice and consent of the senate, shall appoint a commission consisting of five members, each of whom immediately prior to the date of appointment has been a resident of this state for at least five years. Four members shall have been an auctioneer for a period of at least five years prior to appointment. One member shall be a member of the public who represents the interests of consumers, is not licensed under this chapter, does not have any management responsibility in the auctioneering industry, does not formulate any policy of the auctioneering industry, does not have a financial interest in the auctioneering industry, and does not have any other connection with the auctioneering profession.
- (B) Terms of office shall be for three years, commencing on the tenth day of October and ending on the ninth day of October. Of the two additional appointments made after the effective date of this amendment, one shall be for a term ending on the ninth day of October in the first year following the appointment, and one shall be for a term ending on the ninth day of October in the second year following the appointment. Thereafter, each term of office shall be for three years, commencing on the tenth day of October.
Each member shall hold office from the date of appointment until the end of the term for which appointed. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of such term. Any member shall continue in office subsequent to the expiration date of the member's term until the member's successor takes office, or until a period of sixty days has elapsed, whichever occurs first. A member appointed for a term commencing on or after October 10, 2005, shall not serve more than three consecutive terms.
- (C) At no time shall there be more than three members of the same political party serving on the commission.

§ 4707.04. Powers and duties; expenses.

- (A) The state auctioneers commission shall, upon qualification of the member or members appointed in each year, select from its members a chairperson, and shall serve in an advisory capacity to the department of agriculture for the purpose of carrying out this chapter. The commission shall meet not less than four times annually.
- (B) The commission shall establish requirements and standards for courses of study in auctioneering. The commission triennially shall review courses of study in auctioneering that are offered at institutions in order to determine whether the courses comply with those requirements and standards. The commission shall approve institutions that offer courses that

comply with the requirements and standards. If an institution is not approved, the institution may reapply for approval within a year of the disapproval. If at that time the commission approves the institution, the institution shall be approved for the remainder of the triennial period. The commission, prior to the triennial review, may place on probationary status or revoke the approval of any institution that provides a course of study in auctioneering if the institution fails to comply with the requirements and standards established under this division.

- (C) Members of the commission who are licensed auctioneers under this chapter shall administer the oral licensing examination required under section 4707.08 of the Revised Code.
- (D) Each commissioner shall receive the commissioner's actual and necessary expenses incurred in the discharge of the commissioner's duties. Each commissioner also shall receive a per diem salary from the auctioneers fund created in section 4707.05 of the Revised Code for each meeting attended. The director of agriculture shall adopt rules in accordance with Chapter 119. of the Revised Code establishing the per diem salary.
- (E) The commission may form subcommittees for purposes of research, education, and promotion of the auctioneering profession. If a majority of the members of the commission approves, the members of a subcommittee may be reimbursed from the auction education fund created in section 4707.171 of the Revised Code for the actual and necessary expenses incurred in the discharge of their duties.
- (F) Serving as a member of the commission does not constitute holding a public office or position of employment under the laws of this state and does not constitute grounds for removal of public officers or employees from their offices or positions of employment.
- (G) The commission may advise the director on actions of the director as required under this chapter.

(H) The commission shall approve post-licensure education course providers. The commission shall establish the requirements and standards for the post-licensure course providers.

§ 4707.05. Auctioneers fund; education programs.

Except as otherwise provided in section 4707.25 of the Revised Code, all fees and charges collected by the department of agriculture pursuant to this chapter shall be paid into the state treasury to the credit of the auctioneers fund, which is hereby created. All expenses incurred by the department in administering this chapter shall be paid out of the fund. The total expenses incurred by the department in the administration of this chapter shall not exceed the total fees, charges, fines, and penalties imposed under sections 4707.08, 4707.10, and 4707.99 of the Revised Code and paid to the treasurer of state. The department may conduct education programs for the enlightenment and benefit of all auctioneers who have paid fees pursuant to sections 4707.08 and 4707.10 of the Revised Code.

At the end of each fiscal year, if the balance of the fund is greater than three hundred thousand dollars, the director of agriculture shall request the director of budget and management to, and the director of budget and management shall, transfer twenty-five per cent of the balance that is in excess of three hundred thousand dollars to the auction recovery fund created in section 4707.25 of the Revised Code.

§ 4707.06. Record of auctioneers, apprentice auctioneers and special auctioneers.

The department of agriculture shall maintain a record of the names and addresses of all auction firms, auctioneers, apprentice auctioneers, and special auctioneers licensed by the department. This record shall also include a list of all persons whose licenses have been suspended or revoked as well as any other information relative to the enforcement of this chapter that the department considers of interest to the public.

§ 4707.07. Auctioneer's license.

- (A) The department of agriculture may grant auctioneers' licenses to those individuals who are determined to be qualified by the department. Each individual who applies for an auctioneer's license shall furnish to the department, on forms provided by the department, satisfactory proof that the applicant:
- (1) Has a good reputation;
 - (2) Is of trustworthy character;
 - (3) Has attained the age of at least eighteen years;
 - (4) Has done one of the following:
 - (a) Met the ~~apprenticeship~~ requirements set forth in section 4707.09 of the Revised Code;
 - (b) Met the requirements of section 4707.12 of the Revised Code.
 - (5) Has a general knowledge of the following:
 - (a) The requirements of the Revised Code relative to auctioneers;
 - (b) The auction profession;
 - (c) The principles involved in conducting an auction;
 - (d) Any local and federal laws regarding the profession of auctioneering.
 - (6) Has satisfied the financial responsibility requirements established under section 4707.11 of the Revised Code if applicable.
- (B) Auctioneers ~~who served apprenticeships and~~ who hold licenses issued before ~~May 1, 1991~~ the effective date of this section, and who seek renewal of their licenses, are not subject to the additional ~~apprenticeship~~ requirements imposed by section 4707.09 of the Revised Code.
- (C) A licensee may do business under more than one registered name, but not to exceed three registered names, provided that the names have been approved by the department. The department may reject the application of any person seeking licensure under this chapter if the name or names to be used by the applicant are likely to mislead the public, or if the name or names do not distinguish the applicant from the name or names of any existing person licensed under this chapter. If an applicant applies to the department to do business under three names, the department may charge a fee of ten dollars for the third name.
- ~~(D) The department, in its discretion, may waive the schooling and apprenticeship requirements for a resident of this state, provided that the resident holds a valid auctioneer license that was issued by a state with which the department has entered into a reciprocal licensing agreement and the resident is in good standing with that state. The applicant shall provide proof that is satisfactory to the department that the applicant has had two years of experience as an auctioneer immediately preceding the date of application that includes at a minimum twelve auctions in which the applicant was a bid caller in the reciprocal state.~~

§ 4707.071. Auction companies licensed as of 5-1-91; special auctioneer's license.

- (A) On May 1, 1991, all persons licensed as auction companies under former section 4707.071 of the Revised Code shall comply with all provisions of this chapter that are applicable to auctioneers except as provided in divisions (B) and (C) of this section. Such persons, however, do not have to serve an apprenticeship or attend a course of study under section 4707.09 of the Revised Code or submit to an examination under section 4707.08 of the Revised Code as long as they do not engage in the calling for, recognition of, and the acceptance of, offers for the purchase of personal property at auction and do not conduct auctions at any location other than the definite place of business required in section 4707.14 of the Revised Code.
- (B) The principal owner of each auction company that is licensed as of May 1, 1991, who pays the annual renewal fee specified in division (B) of section 4707.10 of the Revised Code during the first renewal period following May 1, 1991, shall be issued a special auctioneer's license, for the auction of personal property subject to division (A) of this section. Each principal owner shall apply for an annual license. In applying for an annual license, each

person licensed as an auction company on May 1, 1991, shall designate an individual as principal owner by submitting documentation substantiating that the individual is in fact the principal owner and shall identify a definite place of business as required in section 4707.14 of the Revised Code. A person licensed as an auctioneer shall not be entitled to a special auctioneer's license.

- (C) A special auctioneer's license issued under this section to the principal owner of a former auction company does not entitle the principal owner or former auction company to conduct auctions at any location other than the definite place of business required in section 4707.14 of the Revised Code. Notwithstanding section 4707.10 of the Revised Code, the department of agriculture shall not issue a new special auctioneer's license if the definite place of business identified by the licensee in the licensee's initial application for a special auctioneer license has changed or if the name under which the licensee is doing business has changed. No person other than an owner, officer, member, or agent of the former auction company who personally has passed the examination prescribed in section 4707.08 of the Revised Code and been licensed as an auctioneer shall engage in the calling for, recognition of, and the acceptance of, offers for the purchase of real or personal property, goods, or chattels at auction in connection with a former auction company that has been issued a special auctioneer's license.
- (D) A person licensed as a special auctioneer shall not engage in the sale of real property at auction.
- (E) As used in this section, "auction company" means "auction company" as defined in section 4707.01 of the Revised Code prior to its amendment by Sub. S.B. 209 of the 125th general assembly.

§ 4707.072. One-auction licenses for nonresidents.

The department may grant one-auction licenses to any nonresident individual who is determined to be qualified by the department. Any individual who applies for a one-auction license shall attest, on forms provided by the department, and furnish to the department, satisfactory proof that the license applicant meets the following requirements:

- (A) Has a good reputation;
- (B) Is of trustworthy character;
- (C) Has attained the age of at least eighteen years;
- (D) Has a general knowledge of the requirements of the Revised Code relative to auctioneers, the auction profession, and the principles involved in conducting an auction;
- (E) Has two years of professional auctioneering experience immediately preceding the date of application that includes the personal conduct by the applicant of at least twelve auction sales in any state, or has met the requirements of section 4707.12 of the Revised Code;
- (F) Has paid a fee of five hundred dollars;
- (G) Has not applied for or previously obtained a license under this section;
- (H) Has provided proof of financial responsibility in the form of either an irrevocable letter of credit or a cash bond or a surety bond in the amount of fifty thousand dollars. If the applicant gives a surety bond, the bond shall be executed by a surety company authorized to do business in this state. A bond shall be made to the department and shall be conditioned that the applicant shall comply with this chapter and rules adopted under it, including refraining from conduct described in section 4707.15 of the Revised Code. All bonds shall be on a form approved by the director of agriculture.

§ 4707.073. Auctioneer: Corporation, Partnership, or Association License.

- (A) No corporation, general or limited partnership, or unincorporated association shall act or hold itself out as an auctioneer without a valid auctioneer's license issued under this section. This

section does not apply to a person who is issued a license under section 4707.071 of the Revised Code.

- (B) The department of agriculture may grant an auctioneer's license to a corporation, general or limited partnership, or unincorporated association that is determined to be qualified by the department. Every applicant for a license under this section shall furnish to the department, on forms provided by the department, satisfactory proof that the applicant:
- (1) Is in good standing with the secretary of state if the applicant is a corporation;
 - (2) Is of trustworthy character;
 - (3) Has provided proof of financial responsibility as required in section 4707.11 of the Revised Code;
 - (4) Is registered with the secretary of state or a local authority, as applicable, to do business in this state;
 - (5) Has complied with any other requirement that the director establishes in rules adopted under section 4707.19 of the Revised Code.
- (C) An application submitted under this section shall list the names of all of the owners, directors, partners, or members of the applicant, as applicable, and shall indicate those that have an auctioneer's license issued under section 4707.07 of the Revised Code.
- (D)(1) The department shall not issue a license under this section unless one of the following applies, as applicable:
- (a) If the applicant is a general or limited partnership, not less than fifty per cent of the general partners have a current license issued under section 4707.07 of the Revised Code.
 - (b) If the applicant is a corporation, not less than fifty per cent of the directors and the president or chief executive have a current license issued under section 4707.07 of the Revised Code.
 - (c) If the applicant is an unincorporated association, not less than fifty per cent of the members have a current license issued under section 4707.07 of the Revised Code. Failure of a corporation, partnership, or unincorporated association to maintain the applicable requirements of this division after the issuance of a license under this section may be sufficient cause for the revocation of the license under section 4707.15 of the Revised Code.
- (2) Not later than two years after the effective date of this section, a corporation, partnership, or unincorporated association that was issued a license under section 4707.07 of the Revised Code on or before the effective date of this section shall comply with the requirements established in division (D)(1) of this section. If such a corporation, partnership, or unincorporated association fails to comply with those requirements, the license of the corporation, partnership, or unincorporated association immediately shall terminate.
- (E) Upon the issuance of a license under this section, a corporation, partnership, or unincorporated association shall designate an individual from among its directors, partners, or members who is licensed under section 4707.07 of the Revised Code as its agent for purposes of communication with the department. If that individual ceases to be the agent, the corporation, partnership, or unincorporated association shall notify the department not later than ten days after the day on which the individual ceases to be the agent. Upon notification to the department, the license of the corporation, partnership, or unincorporated association, as applicable, immediately shall terminate. If the corporation, partnership, or unincorporated association notifies the department of the designation of a new agent in accordance with the requirements of this division and pays a fee in the amount of ten dollars, the department shall issue the corporation, partnership, or unincorporated association a new license.

- (F) This section does not preclude a corporation, partnership, or unincorporated association from selling real property at auction, provided that the requirements of this section and section 4707.021 and Chapter 4735. of the Revised Code are satisfied.
- (G) A person licensed as a real estate broker under Chapter 4735. of the Revised Code shall not be required to obtain a license under this section if the person complies with sections 4707.021 and 4707.22 of the Revised Code.

§ 4707.074. Auction Firm License.

- (A) A person who is not otherwise licensed under this chapter and who only provides auction services or holds the person's self out as providing auction services shall do so only with a valid auction firm license issued under this section. This section does not apply to either of the following:
 - (1) A person licensed as a motor vehicle auction owner under Chapter 4517. of the Revised Code who exclusively sells motor vehicles to a person licensed under Chapter 4517. of the Revised Code and who uses an auctioneer who is licensed under this chapter to conduct the auction;
 - (2) A person licensed as a livestock dealer under Chapter 943. of the Revised Code who exclusively sells livestock and uses an auctioneer who is licensed under this chapter to conduct the auction.
- (B) The department of agriculture may grant an auction firm license to an auction firm that is determined to be qualified by the department. Every applicant for an auction firm license shall furnish to the department, on forms provided by the department, satisfactory proof that the applicant:
 - (1) Is in good standing with the secretary of state if the applicant is a corporation;
 - (2) Is of trustworthy character;
 - (3) Is registered with the secretary of state or a local authority, as applicable, to do business in this state;
 - (4) Has complied with any other requirement that the director establishes in rules adopted under section 4707.19 of the Revised Code;
 - (5) Has a general knowledge of the requirements of the Revised Code and the general principles regarding auctions, auctioneering, and auction management;
 - (6) Has provided proof of financial responsibility in the amount of fifty thousand dollars in the form of a surety bond, an irrevocable letter of credit, or cashbond;
 - (7) Employs a firm manager as required under division (D) of this section.
- (C) An application submitted under this section for an auction firm license shall list the names of all of the owners, directors, partners, or members of the applicant, as applicable.
- (D) An auction firm shall designate a firm manager. The firm manager shall have sufficient authority in the operation of the auction firm to ensure compliance with this chapter and rules adopted under it. If the firm manager does not have a current license issued under section 4707.07 of the Revised Code, the firm manager shall pass the written examination held under section 4707.08 of the Revised Code before the department may issue a license under this section to the auction firm.
- (E)(1) An auction firm license issued under this section immediately shall terminate if any of the following occurs:
 - (a) The auction firm incorporates.
 - (b) The auction firm ceases to operate as a corporation.
 - (c) The auction firm changes ownership.
 - (d) If the auction firm is a partnership, the firm changes the number of partners in the partnership or changes the partners comprising the partnership.
 - (e) The auction firm changes the firm manager.
 - (f) The auction firm changes the name under which the firm conducts business.

(g) The auction firm changes its permanent business location.

If a license terminates under this division, the licensee immediately shall cease auction services, notify the department of the termination, and return the terminated license to the department.

(2) Not later than ten days prior to the date on which an auction firm license will terminate pursuant to division (E)(1)(a), (b), (c), or (d) of this section, the auction firm may submit an application for a new auction firm license in accordance with division (B) of this section. If the auction firm submits the application, returns the terminated license, and pays a fee in the amount of one hundred dollars, the department may issue a new license under this section.

(3) If a license terminates pursuant to division (E)(1)(e), (f), or (g) of this section and the formerly licensed auction firm notifies the department, returns the terminated license, and pays a fee in the amount of ten dollars, the department shall issue a new license under this division.

(F) For purposes of the financial responsibility that is required under division (B) of this section, if a person provides a surety bond, the bond shall be executed by a surety company that is authorized to do business in this state. The bond shall be made payable to the department and shall include a condition that requires the applicant to comply with this chapter and rules adopted under it, including a requirement that the person refrain from conduct described in section 4707.15 of the Revised Code. A bond shall be on a form that is approved by the director. A person who is issued a license under this section shall maintain the financial responsibility that is required under division (B) of this section for as long as the person is licensed.

(G) An auction firm licensed under this section shall not conduct the bid calling for the sale of real or personal property at auction.

§ 4707.08. Examination for auctioneer's or ~~apprentice auctioneer's~~ auction firm license.

(A) The department of agriculture shall hold written examinations four times each year for the purpose of testing the qualifications required for obtaining a license under section 4707.07 of the Revised Code and section 4707.09 and ~~obtaining a license under section 4707.09 of the Revised Code and~~ for unlicensed auction firm managers as required under division (D) of section 4707.074 of the Revised Code. The written examination shall be held at the department or at an alternative location determined by the department. In addition to the written auctioneer examination, auctioneer and apprentice auctioneer license applicants shall pass an oral examination administered by the state auctioneers commission on the same date and at the same location as the written examination. An examination shall not be required for the renewal of any license unless the license has been revoked, suspended, or allowed to expire without renewal, in which case the applicant shall take and pass the appropriate examinations offered by the department.

An examination fee of twenty-five dollars shall be collected from each person taking the auctioneer examination and fifteen dollars from each person taking ~~either the apprentice auctioneer examination or~~ the auction firm manager examination to defray expenses of holding the examinations.

(B) All applications and proofs shall be filed by each applicant before the scheduled date of examination, and shall be accompanied by proof of financial responsibility and a license fee. In order to be seated for an examination held under this section, an applicant shall have a complete application on file with the department not later than fourteen days prior to the examination date.

(C) If a court of competent jurisdiction or the department, at an administrative hearing, has found that an applicant conducted an auction, provided auction services, or acted as an auctioneer without a license issued under this chapter, the department may refuse to allow the applicant

to take an examination under this section or may deny the issuance of a license to the applicant for a period of two years.

- (D)(1) If an applicant for a license fails to pass the examination, the applicant may take the examination on the next scheduled date for the examination. If an applicant fails to pass the examination on the second consecutive attempt, the applicant shall not take the examination on the next scheduled date for the examination.
- (2) If an applicant for a license fails to pass the examination on the third attempt, the applicant shall attend auction school a second time before the applicant may take the examination. If an applicant for a license fails to pass the examination on the fourth attempt, the applicant shall not take the examination for at least one year from the date of the last failed attempt.
- (3) If an individual who is taking the examination for an auction firm manager fails to pass the examination on the third attempt, the individual shall not take the examination for one year from the date of the last failed attempt.

§ 4707.09. Apprentice auctioneer's license.

~~The department of agriculture may grant apprentice auctioneers' licenses to those persons that are determined to be qualified by the department. Every applicant for an apprentice auctioneer's license shall pass an examination relating to the skills, knowledge, and statutes and rules governing auctioneers. Every applicant for an apprentice auctioneer's license shall furnish to the department, on forms provided by the department, satisfactory proof that the applicant:~~

- ~~(A) Has a good reputation;~~
- ~~(B) Is of trustworthy character;~~
- ~~(C) Has attained the age of at least eighteen years;~~
- ~~(D) Has obtained a written promise of a licensed auctioneer to sponsor the applicant during the applicant's apprenticeship;~~
- ~~(E) Has satisfied the financial responsibility requirements established under section 4707.11 of the Revised Code if applicable;~~
- ~~(F) Has successfully completed a course of study in auctioneering at an institution that is approved by the state auctioneers commission.~~

~~Before an apprentice may take the auctioneer's license examination, the apprentice shall serve an apprenticeship of at least twelve months, participate as a bid caller in at least twelve auction sales under the direct supervision of the sponsoring licensed auctioneer, which auctions shall be certified by the licensed auctioneer on the apprentice's application for an auctioneer's license. No apprentice auctioneer shall be under the sponsorship of more than one licensed auctioneer at one time.~~

~~If an auctioneer intends to terminate sponsorship of an apprentice auctioneer, the sponsoring auctioneer shall notify the apprentice auctioneer of the sponsoring auctioneer's intention by certified mail, return receipt requested, at least ten days prior to the effective date of termination and, at the same time, shall deliver or mail by certified mail to the department a copy of the termination notice and the license of the apprentice auctioneer. No apprentice auctioneer shall perform any acts under authority of the apprentice's license after the effective date of the termination until the apprentice receives a new license. No more than one license shall be issued to any apprentice auctioneer for the same period of time.~~

~~No licensed auctioneer shall have under the licensed auctioneer's sponsorship more than two apprentice auctioneers at one time. No auctioneer shall sponsor an apprentice auctioneer if the auctioneer has not been licensed and in good standing for a period of at least two years immediately before sponsoring the apprentice auctioneer. A sponsoring auctioneer whose license is suspended or revoked shall send to the department the apprentice auctioneer's license not later than fourteen days after the suspension or revocation. If a sponsoring auctioneer's license is suspended or revoked, the apprentice auctioneer shall obtain a written promise of sponsorship~~

from another licensed auctioneer before performing any acts under the authority of an apprentice auctioneer's license. The apprentice auctioneer shall send a copy of the written promise of sponsorship of another auctioneer to the department. If the department receives a copy of such a written promise of sponsorship and the apprentice pays the fee established by the department, the department shall issue a new license to the apprentice.

An apprentice auctioneer may terminate the apprentice's sponsorship with an auctioneer by notifying the auctioneer of the apprentice's intention by certified mail, return receipt requested, at least ten days prior to the effective date of termination. At the same time, the apprentice shall deliver or mail by certified mail to the department a copy of the termination notice. Upon receiving the termination notice, the sponsoring auctioneer shall promptly deliver or mail by certified mail to the department the license of the apprentice auctioneer.

The termination of a sponsorship, regardless of who initiates the termination, shall not be cause for an apprentice auctioneer to lose credit for any certified auctions in which the apprentice participated as a bid caller or apprenticeship time the apprentice served under the direct supervision of the former sponsor.

Apprentice Auctioneer

(A) The department of agriculture may grant apprentice auctioneers' licenses to those individuals who are determined to be qualified by the department. Each individual who applies for an apprentice auctioneer's license shall furnish to the department, on forms provided by the department, satisfactory proof that the applicant:

- (1) Has a good reputation;
- (2) Is of trustworthy character;
- (3) Has attained the age of at least eighteen years;
- (4) Has satisfied the financial responsibility requirements established under section 4707.11 of the Revised Code.
- (5) Has done all of the following:
 - a. The applicant has completed an approved auction school within one year prior to the date of application;
 - b. The applicant shall take and pass the written auctioneer exam with a score of 75% or higher and receive a passing score on the verbal examination administered by the auction commission;
 - c. An apprentice auctioneer shall serve as an apprentice auctioneer for a minimum of two years and within two (2) years of the issuance of the apprentice auctioneer license, the applicant must successfully complete twelve hours of post-licensure education. The first six hours must be completed within one (1) year of the issuance of the license.
 1. The post-licensure education shall consist of ten (10) hours of the following core courses:

<u>a. Agency Law</u>	<u>1 hour</u>
<u>b. Contract Law</u>	<u>3 hours</u>
<u>c. Uniform Commercial Code</u>	<u>2 hours</u>
<u>d. Auction Ethics</u>	<u>1 hour</u>
<u>e. Ohio Auction Law</u>	<u>2 hours</u>
<u>f. Trust/Escrow Accounts</u>	<u>1 hour</u>
 2. The post-licensure education shall consist of the licensee's choice of two (2) hours of the following elective courses:

<u>a. Advertising & Marketing</u>	<u>1 hour</u>
<u>b. Business Math/Accounting</u>	<u>1 hour</u>
<u>c. Insurance & Liability</u>	<u>1 hour</u>
<u>d. Federal Firearms Law</u>	<u>1 hour</u>

- e. Business Management 1 hour
- f. Automobile Auctions 1 hour
- g. Real Estate Auctions 1 hour
- h. Property appraisals 1 hour
- i. Bid Calling 1 hour

3. Courses must be taken from an approved course provider.

B. Failure to complete post-licensure education requirements shall result in an automatic license suspension.

- 1. Licensees will have six months from the date of suspension to provide proof of completion.
- 2. Failure to provide proof of completion shall result in an automatic revocation of the license.
- 3. If a license is revoked due to the failure to meet post-licensure requirements, the licensee may reapply after one (1) year following the revocation. The licensee shall meet all requirements for licensure as if they had never been licensed which includes attendance at an approved auction school.

C. Any auctions conducted by an apprentice auctioneer must be conducted under the supervision of a licensed auctioneer who has signed the auction contract. The supervising auctioneer is a person licensed under section 4707.07 of the Ohio Revised Code who has been licensed for a period of at least five years and who has been in good standing for a period of at least two years that oversees the conduct of the auction. The auctioneer must sign a verified form indicating that the apprentice auctioneer conducted the auction in conjunction with the auctioneer. The apprentice auctioneer must keep the form on file with the auction records for a period of at least two years.

D. A non-resident applicant under this section, who has been a practicing auctioneer in another state for a period of at least two years immediately prior to application and who is not eligible to apply via reciprocity as referenced in section 4707.12 of the Revised Code, may make application to the state auctioneer commission for a waiver of the auction school requirement found in (A)(4)(a) of this section.

E. Not later than one year after the effective date of this section, an apprentice auctioneer that was issued a license under former section 4707.09 of the Revised Code before the effective date of this section shall do one of the following:

- 1. Comply with the requirements established in divisions (A), (B) and (C) of this section; or
- 2. The apprentice auctioneer may make application for an auctioneer license under section 4707.07 of the Ohio Revised Code and provide proof to the department that the apprentice auctioneer has:
 - a. Attended an approved auction school;
 - b. Acted as a bid caller in at least twelve auctions under the direct supervision of the apprentice's sponsor; and
 - c. The apprentice served at least twelve full months as an apprentice auctioneer under former section 4707.09 of the Ohio Revised Code.

Failure to obtain a license under E(1) or E(2) shall cause the apprentice license to automatically terminate.

§ 4707.091. License on deposit.

(A) Prior to the expiration of an auctioneer's or apprentice auctioneer license, an auctioneer or apprentice auctioneer may submit an application to the department of agriculture, on forms provided by the department, to place the license on deposit with the department for a period not to exceed two years. Not later than fourteen days after receipt of an application under this section, the department shall accept or deny the application.

- (B) If the department accepts the application, an auctioneer or apprentice auctioneer who has a license on deposit with the department under this section shall not act as an auctioneer or apprentice auctioneer while the license is on deposit. In addition, such an auctioneer shall not be required to pay an assessment under section 4707.25 of the Revised Code.
- (C) An auctioneer or apprentice auctioneer may reacquire a license on deposit from the department if the auctioneer or apprentice auctioneer does all of the following prior to reacquisition:
- (1) Submits a written request to the department that contains the business address and telephone number of the auctioneer or apprentice auctioneer, as applicable;
 - (2) Pays a reactivation fee for the license in the following amount, as applicable:
 - (a) ~~In the case of an apprentice auctioneer, one hundred dollars;~~
 - (b) In the case of an auctioneer whose license is reacquired during the first half of the biennium according to the biennial schedule established in division (B) of section 4707.10 of the Revised Code, two hundred dollars;
 - (c) ~~(b)~~ In the case of an auctioneer whose license is reacquired during the second half of the biennium according to that biennial schedule, one hundred dollars.
 - (3) Pays the assessment that is levied under section 4707.25 of the Revised Code for the current year, if applicable;
 - (4) Provides proof of financial responsibility as required in section 4707.11 of the Revised Code, if applicable;
 - (5) Complies with any other requirement established in rules adopted by the director under section 4707.19 of the Revised Code.
- (D) If an auctioneer or apprentice auctioneer, at the time of placing the auctioneer's or apprentice auctioneer's license on deposit, as applicable, has not maintained proof of financial responsibility for the entire period of time required under section 4707.11 of the Revised Code, the auctioneer or apprentice auctioneer, beginning at the time of reacquisition, shall maintain proof of financial responsibility for the remainder of the time required under that section.

§ 4707.10. License fees, renewal, certificate; notice of change of name or location.

- (A) The fee for each apprentice auctioneer or auction firm license issued by the department is one hundred dollars, and the annual renewal fee for any such license is one hundred dollars. All licenses expire annually on the last day of June of each year and shall be renewed according to the standard renewal procedures of Chapter 4745. of the Revised Code, or the procedures of this section. Any licensee under this chapter who wishes to renew the licensee's license, but fails to do so before the first day of July shall reapply for licensure in the same manner and pursuant to the same requirements as for initial licensure, unless before the first day of September of the year of expiration, the former licensee pays to the department, in addition to the regular renewal fee, a late renewal penalty of one hundred dollars.
- (B)(1) Each person to whom the department issues an auctioneer's license or special auctioneer's license shall pay a licensure fee. Those licenses are biennial and expire in accordance with the schedule established in division (B)(2) of this section. If such a license is issued during the first year of a biennium, the licensee shall pay a fee in the amount of two hundred dollars. If the license is issued during the second year of a biennium, the licensee shall pay a fee in the amount of one hundred dollars. With respect to an auctioneer's license, the fees apply regardless of whether the license is issued to an individual under section 4707.07 of the Revised Code or to a corporation, partnership, or association under section 4707.073 of the Revised Code.
- All auctioneer's licenses and special auctioneer's licenses expire on the last day of June of the biennium. The licenses shall be renewed in accordance with the standard renewal procedures of Chapter 4745. of the Revised Code or the procedures in this section and upon the licensee's

payment to the department of a renewal fee of two hundred dollars. A licensee who wishes to renew the licensee's license, but who fails to do so before the first day of July following the license's expiration, shall reapply for licensure in the same manner and pursuant to the same requirements as for the initial licensure unless before the first day of September following the expiration, the former licensee pays to the department, in addition to the regular renewal fee, a late renewal penalty of one hundred dollars.

(2) The biennial expiration of an auctioneer's license or special auctioneer's license shall occur in accordance with the following schedule:

(a) The license shall expire in odd-numbered years if the business name or last name, as applicable, of the licensee begins with the letters "A" through "J" or with the letters "X" through "Z."

(b) The license shall expire in even-numbered years if the business name or last name, as applicable, of the licensee begins with the letters "K" through "W."

(C) Any person who fails to renew the person's license before the first day of July is prohibited from engaging in any activity specified or comprehended in section 4707.01 of the Revised Code until such time as the person's license is renewed or a new license is issued. Renewal of a license between the first day of July and the first day of September does not relieve any person from complying with this division. The department may refuse to renew the license of or issue a new license to any person who violates this division.

(D) The department shall prepare and deliver to each licensee a permanent license certificate and an identification card, the appropriate portion of which shall be carried on the person of the licensee at all times when engaged in any type of auction activity, and part of which shall be posted with the permanent certificate in a conspicuous location at the licensee's place of business.

(E) Notice in writing shall be given to the department by each auctioneer or apprentice auctioneer licensee of any change of principal business location or any change or addition to the name or names under which business is conducted, whereupon the department shall issue a new license for the unexpired period. Any change of business location or change or addition of names without notification to the department shall automatically cancel any license previously issued. For each new auctioneer or apprentice auctioneer license issued upon the occasion of a change in business location or a change in or an addition of names under which business is conducted, the department may collect a fee of ten dollars for each change in location, or name or each added name unless the notification of the change occurs concurrently with the renewal application or unless otherwise provided in section 4707.07 of the Revised Code.

§ 4707.11. Proof of financial responsibility.

(A) Except as provided in division (B) of this section, each application for a license issued under this chapter shall be accompanied by proof of financial responsibility in the form of either an irrevocable letter of credit or a cash bond or a surety bond in the amount of twenty-five thousand dollars. If the applicant gives a surety bond, the bond shall be executed by a surety company authorized to do business in this state.

A bond shall be made payable to the department of agriculture and shall include a condition that requires the applicant to comply with this chapter and rules adopted under it, including a requirement that the person refrain from conduct described in section 4707.15 of the Revised Code. All bonds shall be on a form approved by the director of agriculture.

A licensee shall maintain proof of financial responsibility for three years following the date of initial licensure. After the three-year period, a licensee who has not engaged in conduct described in section 4707.15 of the Revised Code and has not otherwise violated this chapter or rules adopted under it during that period shall no longer be required to maintain proof of financial responsibility except as otherwise provided in this section.

A licensee whose license expires without being renewed under section 4707.10 of the Revised Code or is suspended under section 4707.30 of the Revised Code shall give proof of financial responsibility in accordance with this section in order to obtain reinstatement or reactivation of the license.

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

- (1) A licensee whose license was issued prior to July 1, 2003, provided that the license continues to be renewed under section 4707.10 of the Revised Code and is not suspended under section 4707.15 or 4707.30 of the Revised Code;
- (2) An apprentice auctioneer licensee whose license was issued under section 4707.09 of the Revised Code prior to July 1, 2003, and who applies for an auctioneer's license under section 4707.07 of the Revised Code on or after July 1, 2003, provided that the apprentice auctioneer's license is not suspended under section 4707.15 or 4707.30 of the Revised Code, and, if necessary, continues to be renewed under section 4707.10 of the Revised Code, prior to the issuance of the auctioneer's license to the applicant;
- (3) An auction firm license that is issued under section 4707.074 of the Revised Code.

§ 4707.111. State preemption of regulation; notice to police chief or sheriff prior to auction.

The state, through the department of agriculture and in accordance with this chapter, shall solely regulate auctioneers, auction firms, and the conduct of auction sales.

By enactment of this chapter, it is the intent of the general assembly to preempt municipal corporations and other political subdivisions from the regulation and licensing of auctioneers, auction firms, and auction sales.

At least twenty-four hours prior to an auction, the person licensed under this chapter to conduct the auction shall notify, via telephone, mail, or personal delivery, the chief of police of the municipal corporation in which the auction site is located or, if the site is in the unincorporated area of a county, the county sheriff as to the location and time of the auction and give to that officer a general description of the items offered for sale. A licensee who conducts regular auction sales on a fixed day at the same location is required to provide such notice to the chief of police or county sheriff only once. However, the licensee shall notify the chief of police or county sheriff if the auctions subsequently are discontinued or are conducted on a different day or at a different location.

§ 4707.12. Reciprocity.

A nonresident may operate as an auctioneer, ~~apprentice auctioneer, or special auctioneer~~ within the state by conforming to this chapter.

The department of agriculture may, within its discretion, waive the testing and schooling requirements for a nonresident, provided that the nonresident holds a valid auctioneer ~~or apprentice auctioneer~~ license issued by a state with which the department has entered into a reciprocal licensing agreement. Nonresidents wishing to so operate in this state shall make application in writing to the department and furnish the department with proof of their ability to conduct an auction, proof of license and financial responsibility, as well as other information that the department may request. If a state with which the department has entered into a reciprocal licensing agreement does not require an apprenticeship, the applicant shall provide proof of license as an auctioneer for a period of at least one year prior to receipt of the application.

This section does not apply to nonresident auctioneers who do not have a license from a state with which the department has entered into a reciprocal licensing agreement.

§ 4707.13. Suits against nonresident auctioneers.

Any nonresident who applies for permission to operate as an auctioneer within this state shall file an irrevocable consent with the department of agriculture that suits and actions may be commenced against such applicant in any court of competent jurisdiction within this state by

service of process upon the secretary of state. Said consent shall agree that the service of such process shall be held in all courts to be valid and binding as if service had been made upon the applicant within this state.

§ 4707.14. Place of business.

- (A) Each person licensed under this chapter shall have a definite place of business in this state.
- (B) Except as provided in division (C) of this section, if the licensee is a nonresident, it is not necessary for the licensee to maintain an active place of business within this state if the licensee maintains such a place of business in the state where the licensee is a resident.
- (C) A nonresident who is licensed as a special auctioneer under section 4707.071 of the Revised Code shall have a definite place of business within the state and shall not conduct auctions anywhere else in the state other than the licensee's place of business.

§ 4707.15. Causes for suspension or revocation of license.

The department of agriculture may deny, refuse to renew, suspend, or revoke the license of any auction firm, auctioneer, apprentice auctioneer, or special auctioneer for any of the following causes:

- (A) Obtaining a license through false or fraudulent representation;
- (B) Making any substantial misrepresentation in an application for a license;
- (C) A continued course of misrepresentation or for making false promises through agents, advertising, or otherwise;
- (D) Specifying that an auction is a reserve auction, absolute auction, or estate auction, but not conducting the auction as specified;
- (E) Failing to account for or remit, within a reasonable time, any money or property belonging to others that comes into the licensee's possession, and for commingling funds of others with the licensee's own, or failing to keep funds of others in an escrow or trust account, except that in the case of a transaction involving real estate, such funds shall be maintained in accordance with division (A)(26) of section 4735.18 of the Revised Code;
- (F) Paying valuable consideration to any person who has violated this chapter;
- (G) Conviction in a court of competent jurisdiction of this state or any other state of a criminal offense involving fraud, forgery, embezzlement, false pretenses, extortion, conspiracy to defraud, or another similar offense or a felony;
- (H) Violation of this chapter or rules adopted under it;
- (I) Failure to furnish voluntarily at the time of execution, copies of all written instruments prepared by the auctioneer or auction firm;
- (J) Any conduct of a person that is licensed under this chapter that demonstrates bad faith, dishonesty, incompetency, or untruthfulness;
- (K) Any other conduct that constitutes improper, fraudulent, or dishonest dealings;
- (L) Failing prior to the sale at public auction to enter into a written contract with the owner or consignee of any property to be sold, containing the terms and conditions upon which the licensee received the property for auction;
- (M) The use of any power of attorney to circumvent this chapter;
- (N) Failure to display the sign required under section 4707.22 of the Revised Code and a notice conspicuously at the clerk's desk or on a bid card that clearly states the terms and conditions of the auction;
- (O) Failure to notify the department of any conviction of a felony or crime involving fraud within fifteen days of conviction;
- (P) Aiding an unlicensed person in the performance of services or acts that require a license under this chapter;
- (Q) The suspension or revocation of a license to engage in auctioneering or other disciplinary action by the licensing authority of another state;

- (R) The refusal or disapproval by the licensing authority of another state of an application for a license to engage in auctioneering;
- (S) Failure of a licensee to notify the department of agriculture within fifteen days of a disciplinary action against the licensee by another state's applicable governing authority;
- (T) Engaging in auctioneering or providing auction services without a license or during the suspension of a license;
- (U) Attempting to cheat or cheating on an auctioneer examination or aiding another to cheat on an examination.

§ 4707.151. Bid rigging.

- (A) No person shall engage in bid rigging.
- (B) As used in this section, "bid rigging" means a conspiracy between auctioneers, apprentice auctioneer, special auctioneers, any participants in an auction, or any other persons who agree not to bid against each other at an auction or who otherwise conspire to decrease or increase the number or amounts of bids offered at auction.

§ 4707.152. Reprimand of licensee.

In lieu of suspending or revoking a license under section 4707.15 of the Revised Code, the department of agriculture may issue a written reprimand to any licensee who violates any provision of this chapter.

§ 4707.16. Investigation of complaints; unlicensed practice.

- (A) The department of agriculture may, upon its own motion, and shall, upon the verified written complaint of any person, investigate the actions of any auction firm, auctioneer, apprentice auctioneer, or special auctioneer, any applicant for an auction firm's, auctioneer's, a apprentice auctioneer, or special auctioneer's license, or any person who assumes to act in that capacity, if the complaint, together with other evidence presented in connection with it, makes out a prima-facie case.
If the department determines that any such applicant is not entitled to receive a license, a license shall not be granted to the applicant, and if the department determines that any licensee is guilty of a violation of section 4707.14 or 4707.15 of the Revised Code, the department may suspend or revoke the license. Any auction firm, auctioneer, apprentice auctioneer, or special auctioneer who has had the auction firm's, auctioneer's, apprentice auctioneer, or special auctioneer's license revoked shall not be issued another such license for a period of two years from the date of revocation.
- (B) The department may investigate complaints concerning the violation of sections 4707.02 and 4707.15 of the Revised Code and may subpoena witnesses in connection with such investigations as provided in this section. The department may make application to the court of common pleas for an order enjoining the violation of sections 4707.02 and 4707.15 of the Revised Code, and upon a showing by the department that any licensed auction firm, auctioneer, apprentice auctioneer, or special auctioneer has violated or is about to violate section 4707.15 of the Revised Code, or any person has violated or is about to violate section 4707.02 of the Revised Code, an injunction, restraining order, or other order as may be appropriate shall be granted by the court.
- (C) The department may compel by subpoena the attendance of witnesses to testify in relation to any matter over which it has jurisdiction and that is the subject of inquiry and investigation by it, and require the production of any book, paper, or document pertaining to that matter. In case any person fails to file any statement or report, obey any subpoena, give testimony, or produce any books, records, or papers as required by such a subpoena, the court of common pleas of any county in the state, upon application made to it by the department, shall compel

obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from that court, or a refusal to testify therein.

- (D) When the department determines that a person not licensed under this chapter is engaged in or is believed to be engaged in activities for which a license is required under this chapter, the department may issue an order to that person requiring the person to show cause as to why the person should not be subject to licensing under this chapter. If the department, after a hearing, determines that the activities in which the person is engaged are subject to licensing under this chapter, the department may issue a cease-and-desist order that shall describe the person and activities that are subject to the order. A cease-and-desist order issued under this section shall be enforceable in and may be appealed to the common pleas courts of this state under Chapter 119. of the Revised Code.
- (E) In addition to the remedies provided under this section and irrespective of whether an adequate remedy at law exists, the department may apply to a court of common pleas for a temporary or permanent injunction or other appropriate relief for continued violations of this chapter. For purposes of this division, the court of common pleas shall be the court of common pleas of Licking county or the court of common pleas of the county where the violation occurs.
- (F) For purposes of this section, investigative costs incurred by the department are recoverable either by the issuance of an administrative order of the department or by an order of a court of competent jurisdiction.

§ 4707.171. Auction education fund.

There is hereby created in the state treasury the auction education fund. Seven dollars and fifty cents of each fee collected for an initial or renewed auction firm's or apprentice auctioneer's license shall be credited to the auction education fund. In addition, seven dollars and fifty cents out of each one hundred dollars that is collected as a fee for an initial or renewed auctioneer's license or for a renewed special auctioneer's license shall be credited to the fund. All interest earned on moneys deposited in the state treasury to the credit of the auction education fund shall be credited to the fund.

The state auctioneers commission shall use any moneys from the auction education fund to advance and underwrite education and research in the auction field for the benefit of those licensed under this chapter and the auctioneering public and to cooperate with associations of auctioneers and other groups for the education of auctioneers and the advancement of the auction profession in this state.

§ 4707.18. Licensee's action for compensation.

No person engaged in the business of, or acting in the capacity of, an auctioneer or special auctioneer shall bring or maintain any action in the courts of this state for the collection of compensation for any services performed as an auctioneer without first alleging and proving that the person was a duly licensed auctioneer or special auctioneer at the time the alleged cause of action arose.

§ 4707.19. Rules; hearing of testimony; proof of good character.

(A) The director of agriculture may adopt reasonable rules necessary for the implementation of this chapter in accordance with Chapter 119. of the Revised Code. In addition, the director shall adopt rules in accordance with Chapter 119. of the Revised Code that establish the portion of

license fees collected under this chapter that are to be deposited into the auction recovery fund under section 4707.25 of the Revised Code.

No person shall fail to comply with a rule adopted under this chapter.

(B) The director shall adopt rules that establish a schedule of civil penalties for violations of this chapter, rules adopted under it, or orders issued under it. The rules shall provide that the civil penalty for the first violation of this chapter, rule, or order shall not exceed five thousand dollars and the civil penalty for each subsequent offense shall not exceed ten thousand dollars. In addition, the director, in establishing the schedule of civil penalties in the rules, shall consider past violations of this chapter and rules adopted under it, the severity of a violation, and the amount of actual or potential damage to the public or the auction profession.

(C) The director shall adopt rules that establish the requirements for a licensed auctioneer supervising an apprentice auctioneer under section 4707.09 of the Ohio Revised Code.

(D) The director shall adopt the post-licensure education course provider requirements and standards in rule established under section 4707.04 of the Ohio Revised Code.

~~(E)~~ (E) The department of agriculture may hear testimony in matters relating to the duties imposed on it, and any person authorized by the director may administer oaths. The department may require other proof of the honesty, truthfulness, and good reputation of any person named in the application for an auction firm's, auctioneer's, apprentice auctioneer's, or special auctioneer's license before admitting the applicant to an examination or issuing a license.

§ 4707.20. Auction contracts or agreements required.

(A) Except when conducting an auction under division (B)(5)(b) of section 4707.02 of the Revised Code, no person shall act as an auction firm, auctioneer, or special auctioneer until the person has first entered into a written contract or agreement in duplicate with the owner or consignee of any property to be sold, containing the terms and conditions upon which the licensee receives or accepts the property for sale at auction. All contracts executed by an apprentice auctioneer shall be cosigned by the supervising auctioneer. The contracts or agreements shall, for a period of two years, be kept on file in the office of every person so licensed. ~~No apprentice auctioneer shall be authorized to enter into such a contract or agreement without the written consent of the apprentice auctioneer's sponsoring auctioneer, and all contracts or agreements shall be made in the name of and on behalf of the sponsoring auctioneer.~~ In addition, an apprentice auctioneer shall not enter into an auction contract for the sale of real property ~~in the name of the sponsoring auctioneer regardless of whether the apprentice auctioneer is licensed as a real estate broker or salesperson.~~

(B) On all contracts or agreements between an auction firm, auctioneer, apprentice auctioneer or special auctioneer and the owner or consignee, there shall appear a prominent statement indicating that the auction firm, auctioneer, apprentice auctioneer or special auctioneer is licensed by the department of agriculture, and either that the licensee is bonded in favor of the state or that an aggrieved person may initiate a claim against the auction recovery fund created in section 4707.25 of the Revised Code as a result of the licensee's actions, whichever is applicable.

(C) The auction firm, auctioneer, apprentice auctioneer and supervising auctioneer, or special auctioneer who contracts ~~s~~ with the owner ~~is are~~ liable for the settlement of all money received, including the payment of all expenses incurred only by the licensee and the distribution of all funds, in connection with an auction.

- (D) For purposes of this section, a contract or agreement shall specify all of the following:
- (1) The owner of the property to be sold or the owner's agent or the consignee;
 - (2) The date of the auction or a termination date of the contract or agreement;
 - (3) The location of the auction;
 - (4) The terms and conditions of the auction;
 - (5) All of the fees to be charged by the auctioneer or the auction firm, which shall include commissions, rentals, advertising, and labor;
 - (6) An explanation of the settlement of the auction that includes the disbursement of interest money, if applicable;
 - (7) A statement establishing the responsibility for bad checks, debts, and unpaid auction items;
 - (8) A statement indicating whether the auction is a reserve auction or an absolute auction. In addition, the statement shall include the definition of reserve auction or absolute auction from section 4707.01 of the Revised Code, as applicable.
 - (9) A statement of the auctioneer's or auction firm's policy regarding absentee bidding;
 - (10) A brief description of the real or personal property to be sold;
 - (11) If the sale is of real or personal property at absolute auction, a statement affirming that the seller of the real or personal property has a bona fide intention to transfer ownership of the property to the highest bidder.
 - (12) In the event that the contract is executed by an apprentice auctioneer and supervising auctioneer, the contract shall designate whether the apprentice auctioneer or supervising auctioneer shall be responsible for handling all funds related to the auction.

§ 4707.21. Duty to furnish information and answer questions; records.

No auction firm, auctioneer, apprentice auctioneer, or special auctioneer shall willfully neglect or refuse to furnish the department of agriculture statistics or other information in the auction firm's, auctioneer's, apprentice auctioneer's, or special auctioneer's possession or under the auction firm's, auctioneer's, apprentice auctioneer's or special auctioneer's control that the auction firm, auctioneer, apprentice auctioneer's, or special auctioneer is authorized to collect; nor shall the auction firm, auctioneer, apprentice auctioneer, or special auctioneer neglect or refuse, for more than thirty days, to answer questions submitted on circulars; nor shall the auction firm, auctioneer, apprentice auctioneer, or special auctioneer knowingly answer any such questions falsely; and nor shall the auction firm, auctioneer, apprentice auctioneer, or special auctioneer refuse to obey subpoenas and give testimony. Licensees, as well as charitable, religious, or civic organizations and schools that sponsor an auction under division (B)(5)(b) of section 4707.02 of the Revised Code, shall keep records relative to any auction for at least two years from its date. These records shall include settlement sheets, written contracts, and copies of any advertising that lists the items for auction, as applicable.

§ 4707.22. Advertising by licensees.

- (A) Any person licensed under this chapter who advertises, by linear advertisements or otherwise, to hold or conduct an auction shall indicate in the advertisement the licensee's name or the name registered with the department of agriculture and that the licensee is an auctioneer or apprentice auctioneer. Any apprentice auctioneer who advertises, as provided in this section, also shall indicate in the apprentice auctioneer's advertisement the name of the licensed auctioneer under with whom the ~~apprentice is licensed~~ apprentice auctioneer is conducting the auction. The name of the auctioneer shall be displayed in equal prominence with the name of the apprentice auctioneer in the advertisement. Any such licensee who advertises in a manner other than as provided in this section is guilty of violating division (C) of section 4707.15 of the Revised Code.
- (B) An auction firm licensed under this chapter that advertises, by linear advertisements or otherwise, to solicit or receive consignments or to provide auction services shall indicate in

the advertisement the name of the auction firm. In addition, an advertisement of an auction of consignments or an advertisement by an auction firm of an auction for which the auction firm will provide auction services shall comply with divisions (A) and (D) of this section.

- (C) If an auction to be advertised is an absolute auction, all advertisements for the auction shall unequivocally state that the auction is an absolute auction.
- (D) If an advertisement for an auction contains the words "estate auction," or words to that effect, the person licensed under this chapter who advertises shall do both of the following:
 - (1) Enter into an agreement directly with the executor, administrator, or court appointed designee of the estate property;
 - (2) List prominently in the advertisement the county in which the estate is located and the probate court case number of the estate.
- (E) All persons licensed under this chapter that conduct or are involved in an auction jointly are responsible for the posting of a sign at the auction. The sign shall contain all of the following:
 - (1) The name of all licensed persons involved in the auction;
 - (2) A statement that the persons are licensed by the department of agriculture;
 - (3) The address of the department of agriculture.

The sign shall be posted at the main entrance of the auction, at the place of registration for the auction, or by the cashier for the auction. The sign shall be of a size not smaller than eight and one-half inches by eleven inches. The letters and numbers on the sign shall be of adequate size to be readily seen by an individual with normal vision when viewing it.

- (F) An advertisement for the sale of real property at auction shall contain the name of the licensed auctioneer who is entering into the auction contract and the name of the real estate broker licensed under Chapter 4735. of the Revised Code who is involved in the sale. Compliance with this section shall not require a real estate broker licensed under Chapter 4735. of the Revised Code to obtain a license under section 4707.073 of the Revised Code.

§ 4707.23. Effect of child support default.

On receipt of a notice pursuant to section 3123.43 of the Revised Code, the department of agriculture shall comply with sections 3123.41 to 3123.50 of the Revised Code and any applicable rules adopted under section 3123.63 of the Revised Code with respect to a license issued pursuant to this chapter.

§ 4707.24. Application to one-auction license granted to nonresident.

Except for the purposes of divisions (A) and (B) of section 4707.25 of the Revised Code, sections 4707.25 to 4707.31 of the Revised Code do not apply with respect to a license issued under section 4707.072 of the Revised Code.

§ 4707.25. Auction recovery fund created.

- (A) The auction recovery fund is hereby created in the state treasury. The fund shall be administered by the director of agriculture. The treasurer of state shall credit all of the following to the fund: any moneys transferred to it from the auctioneers fund created under section 4707.05 of the Revised Code; except as otherwise provided in this section, a portion, in an amount specified in rules adopted under section 4707.19 of the Revised Code, of license fees collected under this chapter; any assessments levied under this section; repayments made to the auction recovery fund under section 4707.30 of the Revised Code by persons licensed under this chapter; and interest earned on the assets of the fund.

Moneys credited to the fund shall be used to make payments to persons in accordance with sections 4707.26 and 4707.31 of the Revised Code and to persons who obtain a final judgment in accordance with section 4707.261 and sections 4707.27 to 4707.30 of the Revised Code in a court of competent jurisdiction against a person licensed under this chapter on the grounds of conduct by the licensee that is described in section 4707.15 of the Revised

Code or that otherwise violates this chapter or rules adopted under it and that is associated with an act or transaction that only a licensee lawfully may perform. In the case of a final judgment, the amount of the payments shall be limited to any portion of the final judgment that remains unpaid. In all cases, the amount of the payments is subject to the dollar limitations established in section 4707.29 of the Revised Code.

- (B) The director shall ascertain the balance of the fund on the first day of July each year. If the balance of the fund is greater than two million dollars, the director may utilize, during the fiscal year beginning on that first day of July, the portion of the fund that is greater than two million dollars to sponsor educational programs or to underwrite research that is beneficial to persons licensed under this chapter and to the public. If the balance of the fund is at least four million dollars, the portion of license fees collected under this chapter that otherwise would be credited to the fund under this section shall be credited to the auctioneers fund during the fiscal year beginning on that first day of July.

If the balance of the fund is less than four hundred thousand dollars, the director shall levy an assessment against each person who holds a valid license issued under this chapter. The amount of the assessment shall be determined by subtracting the balance of the fund from five hundred thousand dollars and dividing the resulting total by the number of persons recorded under section 4707.06 of the Revised Code as holding a valid license issued under this chapter. All assessments that are collected shall be credited to the fund.

- (C) The director shall collect from the fund a service fee in an amount equal to the interest rate specified in division (A) of section 1343.03 of the Revised Code multiplied by the annual interest earned on the assets of the fund to defray the expenses incurred by the department of agriculture in the administration of the fund.

§ 4707.26. Claim against recovery fund.

- (A)(1) A person who asserts that the person has been aggrieved by the actions of a person licensed under this chapter that resulted in actual and direct losses to the aggrieved person may initiate a claim against the auction recovery fund either under this section or section 4707.261 of the Revised Code. If an aggrieved person who wishes to seek recovery from the auction recovery fund has obtained a final judgment in a court of competent jurisdiction against the licensee, the aggrieved person shall initiate the claim in accordance with section 4707.261 of the Revised Code. If an aggrieved person who wishes to seek recovery from the auction recovery fund has not obtained a final judgment in a court of competent jurisdiction against the licensee, the aggrieved person shall initiate the claim in accordance with this section.
- (2) An aggrieved person may initiate a claim against the auction recovery fund under this section if all of the following apply:
- (a) The loss was associated with an act or transaction that only a person licensed under this chapter lawfully may perform.
 - (b) The licensee's actions are described in section 4707.15 of the Revised Code or otherwise violate this chapter or rules adopted under it.
 - (c) The licensee is not an auction firm.
 - (d) The loss was not associated with an auction conducted under division (B)(5)(b) of section 4707.02 of the Revised Code.

To initiate a claim against the fund, an aggrieved person shall file a verified complaint with the department of agriculture in accordance with section 4707.16 of the Revised Code. The verified complaint shall include an application to the department that requests recovery of the applicant's actual and direct losses and that is made on forms that the department provides. The application for recovery shall specify the nature of the act or transaction on which the applicant's claim is based, the actual and direct losses sustained by the applicant, and any activities that the applicant has pursued as a remedy for the losses.

(B) Upon receipt of a verified complaint and application, the department shall conduct an investigation in accordance with section 4707.16 of the Revised Code. After the investigation, if the department determines that the licensee has engaged in conduct described in section 4707.15 of the Revised Code or otherwise has violated this chapter or rules adopted under it, the department shall propose to take action to suspend or revoke the licensee's license under section 4707.15 of the Revised Code or to initiate a criminal action against the licensee under section 4707.99 of the Revised Code, or both. The department shall issue a letter to the applicant indicating the department's proposed action and the date of any hearing that the department has scheduled regarding the matter.

(C) Upon exhaustion of administrative remedies or criminal proceedings that results in a finding that the licensee has engaged in conduct described in section 4707.15 of the Revised Code or otherwise has violated this chapter or rules adopted under it, the department shall issue a notice in accordance with Chapter 119. of the Revised Code via certified mail to the applicant indicating that the applicant may request a hearing for relief from the auction recovery fund. An applicant who seeks recovery from the fund of any actual and direct losses suffered as a result of a licensee's conduct shall submit, not later than thirty days following receipt of the notice, a request for a hearing to the department.

Upon the timely receipt of a request for a hearing, the department shall provide the applicant with the opportunity to appear at an adjudication hearing to offer proof and evidence of the actual and direct losses. Whenever possible, the department shall require all applicants whose claims to the fund arose from an underlying transaction involving the same licensee to be joined in one adjudication under this section so that the rights of all applicants may be equitably adjudicated and settled. On behalf of the fund, the department may defend claims against the fund and shall have recourse to all appropriate means of defense and review, including examination of witnesses, and verification of actual losses.

(D) Upon the conclusion of the adjudication hearing, the hearing officer shall issue a report and recommendation in favor of making payment to an applicant from the fund if, during the course of the adjudication hearing, all of the following have been shown:

- (1) The licensee has engaged in conduct described in section 4707.15 of the Revised Code or otherwise has violated this chapter or rules adopted under it.
- (2) The licensee's conduct or violation is associated with an act that only a person licensed under this chapter lawfully may perform and the act resulted in direct and actual losses to the applicant.
- (3) The applicant filed a verified complaint and application with the department as required by this section.
- (4) The applicant is not the spouse of the licensee or the personal representative of the licensee's spouse.
- (5) If the licensee either provided an irrevocable letter of credit or gave bond in accordance with section 4707.11 of the Revised Code, the applicant first sought recovery under the irrevocable letter of credit or bond before applying for payment from the fund.

The amount of any payment from the fund to the applicant shall consist of an amount that is equal to the portion of the actual and direct losses incurred by the applicant that remain unpaid. The amount of the payment is subject to the dollar limitation established in section 4707.29 of the Revised Code.

If the hearing officer determines that not all of the items described in divisions (D)(1) to (5) of this section have been shown during the course of the adjudication hearing, the hearing officer shall issue a report and recommendation against making payment from the fund to the applicant.

(E) Pursuant to section 119.09 of the Revised Code, a hearing officer or the hearing officer's representative shall forward by certified mail a copy of the hearing officer's written report and

recommendation to the applicant or the applicant's attorney or other representative not later than five days after the date on which the report and recommendation are filed.

Not later than ten days after receiving such a copy, the applicant may file with the department written objections to the report and recommendation. The department may grant extensions of time to the applicant within which to file objections.

The objections shall be considered by the department before it approves, modifies, or disapproves the recommendation. The department may order additional testimony to be taken or permit the introduction of further documentary evidence.

The recommendation of the hearing officer may be approved, modified, or disapproved by order of the director of agriculture. The order shall not be issued until more than ten days have elapsed following the applicant's receipt of the report and recommendation as provided by this section. The director's approval, modification, or disapproval of the hearing officer's recommendation shall have the same effect as if the hearing had been conducted by the director.

No recommendation shall be final until approved, modified, or disapproved by the director as indicated by the order entered on the record of proceedings of the department. If the director modifies or disapproves the recommendations of the hearing officer, the director shall include in the record of the proceedings the reasons for the modification or disapproval.

After an order is entered on its journal, the department shall make payment, if applicable, to the applicant from the auction recovery fund in accordance with the order and shall provide to the applicant by certified mail, return receipt requested, a copy of the order and a statement of the time and method by which an appeal may be perfected. In addition, the department shall mail a copy of the order to the attorney or other representative of the applicant.

- (F) An order of the director issued under this section constitutes a final determination of the director for purposes of appeal. An applicant who is denied compensation from the auction recovery fund or who receives an award less than the award requested may appeal the order of the director. Notices of appeal shall be filed in the manner provided in section 119.12 of the Revised Code.

§ 4707.261. Application for order directing payment from recovery fund.

A person who obtains a final judgment in a court of competent jurisdiction against a person licensed under this chapter, on the grounds of conduct by the licensee that is described in section 4707.15 of the Revised Code or that otherwise violates this chapter or rules adopted under it and that is associated with an act or transaction that only a licensee lawfully may perform, may file a verified application in a court of common pleas for an order directing payment from the auction recovery fund. The application shall be accompanied by the judgment entry and may seek payment in an amount that is equal to the portion of the judgment that remains unpaid.

The application shall specify the nature of the act or transaction on which the underlying judgment was based, the activities of the applicant in pursuit of remedies available under the law for the collection of judgments, and the actual and direct losses sustained by the applicant. The applicant shall attach to the application a copy of each pleading and order in the underlying court action. In addition, the application shall include proof of the applicant's actual and direct loss. Whenever possible, the court shall require all applicants and prospective applicants whose claims to the fund arose from an underlying judgment against the same licensee to be joined in one action under this section so that the rights of all applicants may be equitably adjudicated and settled.

§ 4707.262. Determination of whether recovery should be from real estate or auction recovery fund.

A person who has sustained actual and direct losses in the course of a real estate auction transaction and who believes that they may qualify to seek recovery for the losses from the real

estate recovery fund in accordance with section 4735.12 of the Revised Code or from the auction recovery fund shall apply to a court of competent jurisdiction for a determination of the fund from which the person should seek recovery if either or both of the following apply:

(A) The transaction involves both of the following:

- (1) A violation of Chapter 4735. of the Revised Code;
- (2) A violation of this chapter or rules adopted under it or conduct that is described in section 4707.15 of the Revised Code.

(B) The person is unclear as to the fund from which recovery should be sought.

Upon receipt of an application under this section, the court shall determine whether it appears that conduct or a violation described in division (A) of this section occurred and also shall determine, in its discretion, the appropriate fund from which the person should seek recovery and notify the person of the determination.

In the event that the court determines the person is able to recover from both the real estate recovery fund and the auction recovery fund, the total aggregate amount that is paid to the person from both the funds shall not exceed the actual and direct losses sustained by the person. In addition, the total aggregate amount that is paid to the person from both the funds shall not exceed the dollar limitations established in section 4707.29 of the Revised Code, and the portion of that total aggregate amount that is paid from the real estate recovery fund shall not exceed the dollar limitations established in division (D) of section 4735.12 of the Revised Code.

For purposes of division (B)(4)(d) of section 4735.12 of the Revised Code, with respect to recovery from the real estate recovery fund, a person shall not be required first to seek recovery from the auction recovery fund in order to be considered to have diligently pursued the person's remedies.

§ 4707.27. Notice of application filed with director of agriculture; rights of director.

A person who applies to a court of common pleas for an order directing payment from the auction recovery fund under section 4707.261 of the Revised Code shall file notice of the application with the director of agriculture. The director may defend any such action on behalf of the fund and shall have recourse to all appropriate means of defense and review, including examination of witnesses, verification of actual and direct losses, and challenges to the underlying judgment obtained from a court of competent jurisdiction to determine whether the underlying judgment is based on activity that only a person holding a valid license issued under this chapter is authorized to perform. The director may move the court of common pleas at any time to dismiss the application when it appears that there are no triable issues and the application is without merit, provided that the director shall give written notice to the applicant not fewer than ten days before the motion is made. The motion may be supported by affidavit of any person having knowledge of the facts and may be made on the basis that the application, including the underlying judgment referred to in it, does not form the basis for a meritorious recovery claim. Subject to court approval, the director may compromise a claim based on the application of the aggrieved party. The director shall not be bound by any prior compromise or stipulation of the licensee who is the judgment debtor.

§ 4707.28. Order directing payment; bonding companies and persons barred from recovery; items that are not recoverable.

(A) After receipt of an application that is filed under section 4707.261 of the Revised Code and that satisfies the requirements established under that section, a court of common pleas shall issue an order directing the director of agriculture to make payment from the auction recovery fund to an applicant who satisfies the criteria established under this section. The payment shall consist of an amount that is equal to the portion of the final judgment that was obtained by the applicant against a person licensed under this chapter and that remains unpaid. The

amount of the payment is subject to the dollar limitations established in section 4707.29 of the Revised Code.

The court shall issue an order directing payment to the applicant from the fund when the applicant has shown all of the following:

- (1) The applicant has obtained a judgment in a court of competent jurisdiction against a person licensed under this chapter on the grounds of conduct that is described in section 4707.15 of the Revised Code or that otherwise violates this chapter or rules adopted under it and that is associated with an act or transaction that only a licensee lawfully may perform.
 - (2) All appeals from the judgment have been exhausted, and the applicant has filed notice with the director in accordance with section 4707.27 of the Revised Code and has otherwise complied with that section.
 - (3) The applicant is not either the spouse of the licensee who is the judgment debtor or the personal representative of the spouse.
 - (4) The applicant has diligently pursued the applicant's remedies against all judgment debtors and all other persons who are liable to the applicant in the underlying auction transaction for which the applicant seeks recovery from the fund.
 - (5) The applicant filed the application not later than six months following the termination of all proceedings, including appeals, in connection with the judgment.
 - (6) If the judgment debtor either provided an irrevocable letter of credit or gave bond in accordance with section 4707.11 of the Revised Code, the applicant first sought recovery under the irrevocable letter of credit or the bond before applying for payment from the fund.
- (B) All of the following are prohibited from receiving payment under section 4707.26 or 4707.261 of the Revised Code from the auction recovery fund:
- (1) A bonding company that was not a party in the underlying auction transaction;
 - (2) A person holding a valid license issued under either this chapter or Chapter 4735. of the Revised Code;
 - (3) A person who, under division (B)(5) of section 4735.12 of the Revised Code, would be ineligible to receive payment from the real estate recovery fund;
 - (4) A person who obtained a final judgment that arose from an act or transaction that only a licensed real estate broker or real estate salesperson is authorized to perform under Chapter 4735. of the Revised Code and that did not involve a violation of this chapter or rules adopted under it.
- (C) Punitive damages, attorney's fees, court costs, and interest on a judgment are not recoverable from the auction recovery fund.

§ 4707.29. Limits on amount recoverable; pro rata distributions.

The liability of the auction recovery fund shall not exceed fifty thousand dollars for losses involving violations committed by any one licensee, except that with respect to any one licensee who provides either an irrevocable letter of credit or a bond in order to maintain proof of financial responsibility under section 4707.11 of the Revised Code, the liability of the fund shall not exceed twenty-five thousand dollars for losses involving violations committed by the licensee. If a licensee's license is reactivated as provided in section 4707.30 of the Revised Code, the liability of the fund for the licensee shall again be fifty thousand dollars, or twenty-five thousand dollars if applicable, but only for transactions that occur subsequent to the time of reactivation.

If fifty thousand dollars, or twenty-five thousand dollars if applicable, are insufficient to pay the valid claims of all persons who have applied for payment from the fund with respect to losses involving violations committed by the same licensee, the money shall be distributed among the persons in the ratio that their respective claims bear to the aggregate of valid claims or in another manner that the court or, if all the claims involve applications filed under section 4707.26 or

4707.31 of the Revised Code, the director of agriculture determines to be equitable. Distribution of the money shall be among the persons entitled to share in it without regard to the order of priority in which their respective claims may have been decided or their applications for payment from the fund may have been filed.

§ 4707.30. Automatic license suspension; subrogation; priority lien.

(A) As used in this section:

- (1) "Aggrieved party" means a person who has sustained actual and direct losses in an auction transaction involving a person licensed under this chapter due to conduct by the licensee that is described in section 4707.15 of the Revised Code or that otherwise violates this chapter or rules adopted under it and that is associated with an act or transaction that only a licensee lawfully may perform.
- (2) "Offending licensee" means a person licensed under this chapter who fits either of the following descriptions:
 - (a) Against whom an aggrieved party has obtained a final judgment in a court of competent jurisdiction and whose failure to pay all or a portion of the judgment results in a payment to the aggrieved party from the auction recovery fund;
 - (b) Whose conduct has resulted in a payment from the auction recovery fund to an aggrieved party under section 4707.26 or 4707.31 of the Revised Code.

(B) If the director of agriculture makes a payment from the auction recovery fund to an aggrieved party and the license of the offending licensee has not been suspended or revoked under section 4707.15 of the Revised Code, the license automatically is suspended on the date on which the payment is made. The director shall provide the offending licensee an opportunity for an administrative hearing on the suspension in accordance with Chapter 119. of the Revised Code. The director shall not reactivate the suspended license until the offending licensee has repaid in full, plus interest per annum at the rate specified in division (A) of section 1343.01 of the Revised Code, the amount paid from the fund to the aggrieved party. A discharge in bankruptcy does not relieve an offending licensee from the suspension provisions and requirements for reactivation of a license that are established in this section. When the director has paid from the fund any sum to an aggrieved party, the director shall be subrogated to all of the rights of the aggrieved party to the extent of the amount of the payment that the aggrieved party received from the fund. If the aggrieved party obtained a final judgment against the offending licensee in a court of competent jurisdiction, the aggrieved party shall assign all of the aggrieved party's right, title, and interest in the judgment to the director to the extent of the amount of the payment that the aggrieved party received from the fund. The director shall deposit into the fund any amount and interest recovered by the director from the offending licensee.

With respect to the amount of a payment that the director has paid to an aggrieved party from the fund and has not recovered, the director shall have a priority lien in front of all other interested creditors against the assets of an offending licensee who files bankruptcy. The lien shall be deemed to have taken effect on the date that the offending licensee entered into a contract in accordance with section 4707.20 of the Revised Code with respect to the auction transaction out of which the payment from the fund arose.

Disciplinary action taken under this section against an offending licensee and the recovery of moneys from an offending licensee for deposit into the fund shall not excuse the offending licensee from any other disciplinary action to which the offending licensee may be subject under this chapter or any other provision of the Revised Code or rules adopted under it.

§ 4707.31. Payment by director without requiring prior order.

Notwithstanding any other provision of this chapter to the contrary, the director of agriculture may, within the director's discretion, make a payment out of the auction recovery fund to a person

without first requiring the person to obtain a prior order issued by the director or by a court of competent jurisdiction if all of the following apply:

- (A) The person claims to have sustained total actual and direct losses in the amount of one thousand dollars or less.
- (B) The losses are associated with an act or transaction that only a person licensed under this chapter lawfully may perform.
- (C) The licensee allegedly has engaged in actions that are described in section 4707.15 of the Revised Code or that otherwise violate this chapter or rules adopted under it.
- (D) The amount of the alleged loss is readily ascertainable rather than speculative in nature.
- (E) The claimant filed a properly notarized complaint with supporting documentation to the department not later than one year following the date of the alleged wrongful actions of the licensee.
- (F) The department, within its discretion, determines that, based upon the evidence presented, justice would be better served by allowing compensation to be paid without first requiring the aggrieved party to obtain a judgment from a court of competent jurisdiction or an order of the department.

§ 4707.32. Claims against auction firm.

(A) A person who asserts that the person has been aggrieved solely by the actions of an auction firm that resulted in actual and direct losses to the aggrieved person may seek recovery under the auction firm's financial responsibility that is required under section 4707.074 of the Revised Code. The director of agriculture shall adopt rules under section 4707.19 of the Revised Code that do all of the following:

- (1) Establish procedures for filing a claim against an auction firm's financial responsibility;
- (2) Establish procedures that provide for the equitable disbursement of money for multiple claims against the auction firm that resulted from the same circumstances;
- (3) Establish procedures for providing notice to the department of agriculture from a person seeking recovery under this division;
- (4) Limit an aggrieved person's recovery to the actual and direct losses caused by the auction firm.

(B) A person who asserts that the person has been aggrieved by the actions of both an auction firm and a licensed auctioneer related to an auction that resulted in actual and direct losses to the aggrieved person may file a cause of action with a court of competent jurisdiction claiming that a violation of this chapter or rules adopted under it resulted in the actual and direct losses. The court shall determine if there was a violation of this chapter or rules adopted under it that resulted in those losses. If the court determines that the auction firm, the licensed auctioneer, or both violated this chapter or rules adopted under it and that the violation resulted in the aggrieved person's actual and direct losses, the court shall determine the percentage of culpability, in relation to one hundred per cent, that is attributable to each party to the action from whom the complainant seeks recovery.

If the court finds that the percentage of culpability that is attributable to the licensed auctioneer is greater than zero, the aggrieved person may initiate a claim against the auction recovery fund in accordance with sections 4707.26 to 4707.31 of the Revised Code to recover that percentage of the actual and direct losses sustained by the person. If the court finds that the percentage of culpability that is attributable to the auction firm is greater than zero, the aggrieved person may recover that percentage of the actual and direct losses sustained by the person under the auction firm's financial responsibility that is required under section 4707.074 of the Revised Code.

The total aggregate amount that is paid to the aggrieved person from the auction recovery fund and the auction firm's financial responsibility shall not exceed the actual and direct losses sustained by the person. In addition, the total aggregate amount that is paid from the

auction recovery fund shall not exceed the dollar limitations established in section 4707.29 of the Revised Code, and the total aggregate amount that is paid from the auction firm's financial responsibility shall not exceed the dollar limitations established in section 4707.074 of the Revised Code.

- (C) If a person files a cause of action under division (B) of this section, the person immediately shall send written notice to the department of agriculture.

§ 4707.99. Penalties.

- (A) Whoever violates section 4707.02 of the Revised Code is guilty of a misdemeanor of the first degree on the first offense and a felony of the fifth degree on each subsequent offense.
- (B) Whoever violates this chapter or any rule adopted by the department of agriculture in the administration of this chapter, for the violation of which no penalty is provided, is guilty of a misdemeanor of the first degree.
- (C) Whoever violates section 4707.151 of the Revised Code is guilty of a felony of the fifth degree on the first offense and a felony of the fourth degree on each subsequent offense.
- (D) Notwithstanding section 1901.31, 1907.20, or 2335.37 of the Revised Code, the clerk of the court shall transmit to the treasurer of state for deposit into the state treasury to the credit of the auction education fund created in section 4707.171 of the Revised Code fifty per cent of any fine imposed under this section.