

You should know...



North Dakota Public Service Commission

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North Dakota Public
Service Commission

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Responsibilities of Auctioneers/Auction Clerks

Who may obtain a license?

North Dakota law requires that licenses be granted only to persons who bear a good reputation for honesty, truthfulness, and fair dealing and who are competent to transact the business of an auctioneer or a clerk. An applicant for a license must be at least 18 years of age.

What is an auctioneer and what are the license requirements?

An *auctioneer* is a person, who for a compensation or valuable consideration, sells or offers for sale either real or personal property at public auction as a whole or partial vocation.

Auctioneers are required to maintain a \$5,000 surety bond.

Every individual crying at public auction must maintain a separate license. Under no circumstances can one auctioneer cry under another auctioneer's license.

What is an auction clerk and what are the license requirements?

An *auction clerk* is any person, firm, partnership, etc., who, for a compensation or valuable consideration, is employed either directly or indirectly by an owner while the sale is in progress to record each item offered for sale including its selling price and the buyer's name or number, to collect sale proceeds, to pay sale expenses, and to prepare a closing statement and make

settlement to parties.

Auction clerks are required to maintain a \$10,000 surety bond. Federally insured financial institutions are exempt from the bonding requirements. Every clerk must maintain a separate trust account where all funds collected from said sale will be deposited immediately.

The auction clerk may hire people to work under his/her auction clerk license and is responsible for the actions of such workers.

What are the auction clerk's responsibilities?

The auction clerk must pay the seller any monies collected within 30 days of the date of the sale. The clerk must prepare a full closing statement and provide it to the owner and the auctioneer after each auction sale. It shall contain at a minimum:

- ☛ The name and address of the owner or owners;
- ☛ The date of the sale;
- ☛ The name of the auctioneer and auction clerk;
- ☛ The gross proceeds of the sale;
- ☛ The location and number of the custodial account;
- ☛ All expenses associated with the sale including the auctioneers' and clerks' fees,

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Responsibilities of Auctioneers/Auction Clerks (cont.)

advertising, and other expenses relevant to the sale; and

- ☛ A list of all purchasers at the sale and a description and price of each item sold.

What is required in a written contract?

Auctioneers and auction clerks are required to enter into written contracts when selling the property of others. The licensee must retain a copy of each contract for at least two years after the auction. The only exception to a written contract is for livestock markets or consignment sales where the value of the seller's property is less than \$500. The contract must contain at a minimum:

- ☛ The licensee's name, state license number, business address, and business telephone number;
- ☛ A general description of the property to be sold at auction, any restrictions, and a statement identifying whether or not the licensee is authorized to purchase at the auction;
- ☛ A description of the services to be provided (state which party is responsible for advertising and other expenses) and the consideration for the services;
- ☛ The date or dates when the items will be sold at auction; and
- ☛ A disclosure of the amount of bond that the licensee has on file with the commission and the commission's address and phone number.

What does "with reserve" and "without reserve" mean to me?

If an auction sale is with reserve, the auctioneer may withdraw the goods at any time until he announces completion of the sale. If an auction sale is without reserve, it means that the sale is absolute and items cannot be withdrawn. Auction sales are considered to be with reserve unless stated on the sale bill.

Who is exempt from licensing?

A license is not required if the sale is an isolated transaction or if:

- ☛ The sale is an estate sale conducted by an executor or an administrator;
- ☛ The sale is being conducted by a sheriff or some other person under court order;
- ☛ The sale is being conducted by a public official acting in an official capacity; or
- ☛ Livestock is being sold and the livestock is either purebred or registered.

Persons exempt from licensing or bonding under this section are required to comply with all other provisions of North Dakota Century Code Chapter 51-05.1.

What do I do if I have been harmed?

To find out if an auctioneer or auction clerk is licensed in North Dakota, visit the Public Service Commission website at www.psc.nd.gov or call (701) 328-4097. The Public Service Commission may be able to help people who are harmed by the inappropriate actions or conduct of licensed auctioneers and auction clerks.