

**Title 30: Professions and Occupations- Mississippi Auctioneer Commission**

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## **Title 30: Professions and Occupations-Mississippi Auctioneer Commission**

### **Part 401: Mississippi Auctioneer Commission General Rules**

#### **Part 401 Chapter 1: Responsibilities of the Mississippi Auctioneer**

##### *Rule 1.1 Definitions*

- (a) **Auction-** means a sale transaction conducted by means of oral or written exchanges between an auctioneer and the members of his audience, which exchanges consist of a series of invitations for offers for the purchase of goods made by the auctioneer and offers to purchase made by members of his audience and culminate in the acceptance by the auctioneer of the highest or most favorable offer made by a member of the participating audience.
- (b) **Absolute Auction-** an auction in which property put up for sale is sold to the highest bidder and no minimum price will limit the bid. The seller may not nullify the sale by bidding himself or through an agent.
- (c) **Auction with reserve-** any auction in which the seller or his agent reserves the right to establish a minimum bid, to accept or reject any and all bids and to withdraw the property at any time prior to the completion of the sale by the auctioneer.
- (d) **Auction without reserve-** an auction in which property put up for sale is sold to the highest bidder and no minimum price will limit the bid. The seller may not nullify the sale by bidding himself or through an agent. **“Auction without reserve is equivalent to the term absolute auction.”**
- (e) **Estate Auction-** any auction in which all the property advertised and sold is the property of a specified deceased person or the property of a specified living person’s estate.
- (f) **Absolute auction verses reserve auction-** auctions are considered to be with reserve unless otherwise stated, and as provisioned as under the Uniform Commercial Code.
- (g) **Auction Firm-** means any business establishment or other location owned by any entity other than a duly licensed auctioneer where goods are sold or advertised to be sold at auction or on a recurring basis.

Source: *Miss. Code Ann.* § 73-4-13 (Rev. 2009)

##### *Rule 1.2 Advertising*

- (a) Rules and regulations applying to advertising and proper disclosure include advertisements on television, radio, newspaper, and other media.
- (b) It shall be a violation of these Rules for an auctioneer or gallery/auction firm to permit its name or license number to appear on any advertisement for an auction without reviewing the contents of the advertisement prior to its publication to ascertain its compliance with applicable law and Rules.

(c) Any advertisements for an auction must identify the name and license number of the auctioneer or gallery who will be conducting the auction business.

(d) False, deceptive, misleading and untruthful advertising is expressly prohibited. Any advertisement or advertising shall be deemed to be false, deceptive, misleading or untruthful, if it:

(1) contains misrepresentations of fact;

(2) is misleading or deceptive because in its content or in its context it makes only a partial disclosure of relevant facts;

(3) creates false or unjustified expectations of the services to be performed;

(4) contains any misrepresentation or claim which the advertising licensee fails to perform;

(5) advertises an auction as absolute when any portion to be sold is subject to confirmation or with reserve or with minimum bids.

(e) It shall be a violation of these Rules to advertise for sale items which the auctioneer or gallery/auction firm does not intend to offer for sale at the advertised auction

(f) If an auctioneer and seller enter into a contract which establishes “a minimum reserve, minimum guarantee, or agreement by the auction company to guarantee or purchase the property at a set price,” the auction cannot be advertised as absolute.

(g) Any auctioneer, gallery or agent that willfully advertises an auction as absolute, and during the course of the auction commits acts universally known as “buy-bidding”, “shielding”, or “jacking” shall be a violation of the law.

(h) A general advertisement which does not concern a specific sale(s) and which does not list sale dates, times or locations, shall not be subject to any identification requirement. A licensee may advertise under a name, trade name, or combination of names, only if written notice has been previously filed with the Commission.

Source: *Miss. Code Ann.* § 73-4-13 (Rev. 2009)

### *Rule 1.3 Pocket Identification Cards*

A pocket card will be issued by the Executive Director giving the auctioneer, gallery/auction firm’s name, license number and date of expiration. The pocket card must be carried by the licensee, and in the case of gallery/auction firms the designated person(s), at all times when auctioneering activities are being conducted and shall be available for inspection by the Executive Director or designated agent for the Commission.

Source: *Miss. Code Ann.* § 73-4-13 (Rev. 2009)

*Rule 1.4 Statements to the Commission*

Any false information, statements, or testimony given to the Mississippi Auctioneer Commission or its agent by a licensee or applicant will be grounds for denial of an application or disciplinary actions against the licensee.

Source: *Miss. Code Ann.* § 73-4-13 (Rev. 2009)

*Rule 1.5 Inspection of Records*

Documents, books, or records concerning an auction or auctions must be made available for inspection by the Commission or its authorized personnel or representative upon request. Failure by licensee, to produce requested documents, books, records, or copies thereof, within 20 days of request by Commission will be grounds for further investigation and disciplinary action as appropriate by the Commission.

Source: *Miss. Code Ann.* § 73-4-13 (Rev. 2009)

*Rule 1.6 Escrow Account*

(a) Auctioneers must deposit all proceeds from the auction sales into the licensee's escrow account and make all disbursements from such escrow account.

(b) All account records of monies received and paid out shall be available for inspection by the Commission or its designated agent, without advance notice, and copies shall be provided to the Commission upon request.

Source: *Miss. Code Ann.* § 73-4-13 (Rev. 2009)

*Rule 1.7 Change of address or business name or ownership*

(a) All licensees shall notify the Commission in writing of any change or addition of residence or business address (including mailing address) and change of trade name, assumed name, or combination of names under which the licensee conducts business related to auctions.

(b) Any change in address, business name, or ownership required by these Rules shall be reported within 10 days of the occurrence of such change.

Source: *Miss. Code Ann.* § 73-4-13 (Rev. 2009)

*Rule 1.8 License name and number non-transferable*

It is deemed to be intentional willful or wanton conduct for a Mississippi auctioneers to allow his/her names and state numbers to be used by an auction firm and do not actually participate in the conducting of the auction business, such Mississippi Auctioneer or Auction Firm will be held directly responsible for any and all such violations. Licensed auctioneers will be further held accountable for any omission in advertising that may occur.

Source: *Miss. Code Ann.* § 73-4-13 (Rev. 2009)

*Rule 1.9 Examination Days*

(a) A completed auctioneer application and evidence of a \$10,000.00 Surety Bond must be received by the Commission deadline dates for each exam as established by the Commission. Upon approval of his/her application, the applicant is notified by letter of the date scheduled for his/her examination and asked to confirm or reschedule at least two weeks prior to the scheduled date.

(b) An applicant who fails to appear without notification for the first scheduled date will automatically be rescheduled for the next exam. Failure to appear without notification the second time will be sufficient cause to cancel the application without refund of the examination fee. An applicant whose application has been canceled must file a new application and pay the examination fee as if no prior application has been submitted. Each time an examination is taken and failed, the examination fee is forfeited. The applicant may request reexamination, within a reasonable period of time, without submitting another application but must remit the appropriate examination fee.

(c) Once an applicant has failed the examination twice consecutively, the applicant will be required to wait six months before requesting reexamination.

Source: *Miss. Code Ann.* § 73-4-13 (Rev. 2009)

*Rule 1.10 Examinations*

Examinations are confidential tests. They are designed and administered under conditions established to protect the security of the tests. Neither current forms nor any previous forms of the tests are available for purchase or inspection. No applicant who has taken the examination will be permitted to inspect that or any other completed examination after it has been graded in order to ensure the validity of the examination.

Source: *Miss. Code Ann.* § 73-4-13 (Rev. 2009)

*Rule 1.11 Out-of- State Firm Licenses*

Any out-of- state auction company/firm contracting, advertising, and managing auctions in Mississippi will be required to have a firm license, but not limited thereto.

Source: *Miss. Code Ann.* § 73-4-13 (Rev. 2009)

*Rule 1.12 Out-of- State Auctioneers*

Out- of- state auctioneers who work under contract with licensed Mississippi auctioneers or auction firms and who do not individually contract, advertise or manage auctions in Mississippi, must be a licensed Mississippi Auctioneer but will not be required to have a firm license.

Source: *Miss. Code Ann.* § 73-4-13 (Rev. 2009)

## **Part 401 Chapter 2: Public Procedures**

### *Rule 2.1 Public Records Request*

The Commission will respond to all public records requests within 14 days.

Source: *Miss. Code Ann.* § 25-43.3.104 (Rev. 2006)

### *Rule 2.2 Method of Operation*

The Mississippi Auctioneer Commission is created under the Mississippi Auctioneers Licensing Act, (MS Code Section 73-4-1 et seq). Authority is given by law to set and collect reasonable license fees for Auctioneers licenses, regulate the Auction profession and administer the provisions of the statute, promulgate rules and regulations, issue, suspend and revoke licenses in accordance with the law; provide for filing of surety bonds, investigate complaints against licensees and applicants for licensure as authorized by law; hold public hearings on any matters for which a hearing is required under the Auctioneers Licensing Act; commence actions in the name of the State of Mississippi in an appropriate court in order to force compliance with the Auctioneers Licensing Act. The office of the Mississippi Auctioneer Commission is located at 5135 Galaxie Drive, Suite 500 E, Jackson, MS, 39206. The Commission phone number is (601) 364-2384 and the fax number is (601) 364-2387. The Executive Director and staff are available at the same address to receive requests for declaratory opinions, requests for public records, requests for other matters under the auspices of this act.

Source: *Miss. Code Ann.* § 25-43.2.105 (Rev. 2006)

### *Rule 2.3 Oral Proceedings of Proposed Rules*

**(a) Scope.** This rule applies to all oral proceedings held for the purpose of providing the public with an opportunity to make oral presentations on proposed new rules and amendments to rules before the Commission pursuant to Section 25-43-3.104

**(b)When Oral Proceedings will be scheduled on Proposed Rules.** The Commission will conduct an oral proceeding on a proposed rule or amendment if requested by a political subdivision, an agency or ten (10) persons in writing within twenty (20) days after the filing of the notice of the proposed rule.

**(c) Request Format.** Each request must be printed or typewritten, or must be legible handwriting. Each request must be submitted on standard business letter-size paper (8 ½ inches by 11 inches). Requests may be in the form of a letter addressed to the Commission and signed by the requestor(s).

**(d) Notification of Oral Proceeding.** The date, time and place of all oral proceedings shall be filed with the Secretary of State's office and mailed to each requestor. The oral proceedings will be scheduled no earlier than twenty (20) days from the filing of this information with the Secretary of State.

**(e) Presiding Officer.** The Chairman of the Commission or his designee, who is familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule.

**(f) Public Presentations and Participation.**

(1) At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule.

(2) Persons wishing to make oral presentation at such a proceeding shall notify the Commission at least one business day prior to the proceeding and indicate the general subject of their presentations. The presiding officer in his or discretion may allow individuals to participate that have not previously contacted the Commission.

(3) At the proceeding, those who participate shall indicate their names and addresses, identify any person or organizations they may represent, and provide any other information relation to their participation deemed appropriate by the Chairman of the Commission.

(4) The Chairman may place time limitations on individual oral presentations when necessary to assure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for person whose presentation represent the views of other individuals as well as their own views.

(5) Persons making oral presentations are encouraged to avoid restating matters that have already been submitted in writing.

(6) There shall be no interruption of a participant who has been given the floor by the presiding officer, except that the presiding officer may in his or her discretion interrupt or end the partisan's time where the orderly conduct of the proceeding so requires.

**(g) Conduct of Oral Proceeding**

(1) Presiding Officer. The presiding officer shall have authority to conduct the proceeding in his or her discretion for the orderly conduct of the proceeding. The presiding officer shall (i) call proceeding to order; (ii) give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons provided by Commission for the proposed rule; (iii) call on those individuals who contacted the Commission about speaking on or against the proposed rule; (iv) allow for rebuttal statements following all participants' comments; (v) adjourn the proceeding.

(2) Questions. The presiding officer, where time permits and to facilitate the exchange of information, may open the floor to questions or general discussion. The presiding officer may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submission made by those participants in that proceeding; but no participant shall be required to answer any question.

(3) Physical and Documentary Submissions. Submissions presented by participants in an oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the Commission and are subject to the Commission's public request procedure.

(4) Recording. The Commission may record oral proceedings by stenographic or electronic means.

Source: *Miss. Code Ann.* § 25-43.2.105 (Rev. 2006)

#### *Rule 2.4 Declaratory Opinions*

(a) **Scope.** These rules set forth the Mississippi Auctioneer Commission's, hereinafter "Commission", rules governing the form and content of requests for declaratory opinions, and the Commission's procedures regarding the requests, as required by Mississippi Code 25-43-2.103. These rules are intended to supplement and be read in conjunction with the provisions of the Mississippi Administrative Procedures Law, which may contain additional information regarding the issuance of declaratory opinions. In the event of any conflict between these rules and the Mississippi Administrative Procedures Law, the latter shall govern.

(b) **Persons Who May Request Declaratory Opinions.** Any person with a substantial interest in the subject matter may request a declaratory opinion from the Commission by following the specified procedures. "Substantial interest in the subject matter" means: an individual, business, group or other entity that is directly affected by the Commission's administration of the laws within its primary jurisdiction. "Primary jurisdiction of the agency" means the agency has a constitutional or statutory grant of authority in the subject matter at issue.

(c) **Subjects Which May Be Addressed in Declaratory Opinions.**

The Commission will issue declaratory opinions regard the applicability to specified facts of (1) a statute administered or enforceable by the Commission or (2) a rule promulgated by the Commission. The Commission will not issue a declaratory opinion regarding a statute or rule which is outside the primary jurisdiction of the agency.

(d) **Circumstances In Which Declaratory Opinions Will Not Be Issued.** The Commission may, for good cause, refuse to issue a declaratory opinion. The circumstances in which declaratory opinions will not be issued include, but are not necessary limited to:

- (1) lack of clarity concerning the question presented;
- (2) there is pending or anticipated litigation, administrative action, or other adjudication which may either answer the question presented by the request or otherwise make an answer unnecessary;
- (3) the statute or rule on which a declaratory opinion is sought is clear and not in need of interpretation to answer the question presented by the request;
- (4) the facts presented in the request are not sufficient to answer the question presented;

(5) the request fails to contain information required by these rules or the requestor failed to follow the procedure set forth in these rules;

(6) the request seeks to resolve issues which have become moot, or are abstract or hypothetical such that the requestor is not substantially affected by the statute or rule on which a declaratory opinion is sought;

(7) no controversy exists concerning the issue as the requestor is not faced with existing facts or those certain to arise which raise a question concerning the application of the statute or rule;

(8) the question presented by the request concerns the legal validity of a statute or rule;

(9) the request is not based upon facts calculated to aid in the planning of future conduct but is, instead, based on past conduct in an effort to establish the effect of that conduct;

(10) no clear answer is determinable;

(11) the question presented by the request involves the application of a criminal statute or a set of facts which may constitute a crime;

(12) the answer to the question presented would require the disclosure of information which is privileged or otherwise protected by law from disclosure;

(13) the question is currently the subject of an Attorney General's opinion request or has been answered by an Attorney General's opinion;

(14) A similar request is pending before this agency or any other agency or a proceeding is pending on the same subject matter before any agency, administrative or judicial tribunal, or where such an opinion would constitute the unauthorized practice of law.

(15) Where issuance of a declaratory opinion may adversely affect the interests of the State, the Commission or any of their officers or employees in any litigation which is pending or may reasonably be expected to arise;

(16) The question involves eligibility for a license, permit, certificate or other approval by the Commission or some other agency, and there is statutory or regulatory application process by which eligibility for said license, permit, certificate or other approval would be determined.

**(e) Written Request Required.** Each request must be printed or Typewritten or must be in legible handwriting. Each request be submitted on standard business letter-size paper (8 ½ inches by 11 inches). Requests may be in the form of a letter addressed to the Commission.

(f) **Where to Send Requests.** All requests must be mailed, delivered, or transmitted via facsimile to the Commission. The request shall clearly state that it is a request for a declaratory opinion. No oral, telephone or email requests will be accepted for official opinions.

(g) **Name, Address and Signature of Requestor.** Each request must include the full name, telephone number, and mailing address of the requestor. All requests shall be signed by the person filing the request, who shall attest that the request complies with the requirements set forth in these rules, including but not limited to a full, complete, and accurate statement of relevant facts and that there are no related proceedings pending before any other administrative or judicial tribunal.

(h) **Questions Presented.** Each request shall contain the following:

- (1) a clear and concise statement of all facts on which the opinion is requested.
- (2) a citation to the statute or rule at issue;
- (3) the question(s) sought to be answered in the opinion, stated clearly;
- (4) a suggested proposed opinion from the requestor, stating the answers desired by petitioner and a summary of the reasons in support of those answers;
- (5) the identity of all other known persons involved in or impacted by the described factual situation, including their relationship to the facts, name, mailing address and telephone number; and
- (6) a statement to show that the person seeking the opinion has a substantial interest in the subject matter.

(i) **Time for Commission's Response.** Within forty-five (45) days after receipt of a request for a declaratory opinion which complies with the requirements of these rules, the Commission shall, in writing:

- (1) issue a declaratory opinion regarding the specified statute or rule as applied to the specified circumstances;
- (2) decline to issue a declaratory opinion, stating the reasons for its action; or
- (3) agree to issue a declaratory opinion by a specified time but not later than ninety (90) days after receipt of the written request;

The forty-five (45) day period shall begin running on the first State of Mississippi business day on or after the request is received by the Mississippi Auctioneer Commission, whichever is sooner.

(j) **Opinion Not Final for Sixty Days.** A declaratory opinion shall not become final until the expiration of sixty (60) days after the issuance of the opinion. Prior to the expiration of the sixty (60) days, the Mississippi Auctioneer Commission may, in its discretion, withdraw or amend the

declaratory opinion for any reason which is not arbitrary or capricious. Reasons for withdrawing or amending an opinion include, but are not limited to, a determination that the request failed to meet the requirements of these rules or that the opinion issued contains a legal or factual error.

**(k) Notice by the Mississippi Auctioneer Commission to third parties.** The Mississippi Auctioneer Commission may give notice to any person, agency, or entity that a declaratory opinion has been requested and may receive and consider data, facts, arguments and opinions from other persons, agencies or other entities other than the requestor.

**(l) Public Availability of Requests and Declaratory Opinions.** Declaratory opinions and requests for declaratory opinions shall be available for public inspection and copying in accordance with the Public Records Act and the Mississippi Auctioneer Commission's public records request procedure. All declaratory opinions and requests shall be indexed by name and subject. Declaratory opinions and requests which contain information which is confidential or exempt from disclosure under the Mississippi Public Records Act or other law shall be exempt from the requirement and shall remain confidential.

**(m) Effect of a Declaratory Opinion.** The Mississippi Auctioneer Commission will not pursue any civil, criminal, or administrative action against a person who is issued a declaratory opinion from the Mississippi Auctioneer Commission and who, in good faith, follows the direction of the opinion and acts in accordance therewith unless a court of competent jurisdiction holds that the opinion is manifestly wrong. Any declaratory opinion rendered by the Mississippi Auctioneer Commission shall be binding only on the Mississippi Auctioneer Commission and the person to whom the opinion is issued. No declaratory opinion will be used as precedent for any other transaction or occurrence beyond that set forth by the requesting person.

Source: *Miss. Code Ann.* § 25-43.2.105 (Rev. 2006)