

State of Rhode Island and Providence Plantations
DEPARTMENT OF BUSINESS REGULATION
Commercial Licensing Division
1511 Pontiac Avenue, Bldg. 68-69
Cranston, Rhode Island 02920

Public Notice of Proposed Rule-Making

Pursuant to the provisions of the Administrative Procedures Act, Chapter 42-35 of the General Laws, the Department of Business Regulation hereby gives notice of its intent to repeal Commercial Licensing Regulation 2 – Auctioneers.

In the 2015 legislative session, the Rhode Island General Assembly repealed the requirement that auctioneers be licensed by the Department. 2015 P.L. ch. 141.

A copy of the regulation proposed to be repealed is available for public inspection at www.dbr.ri.gov, in person at Department of Business Regulation, 1511 Pontiac Avenue, Cranston, Rhode Island 02920, or by emailing jenna.algee@dbr.ri.gov or by calling Jenna Algee, Esq. at (401) 462 9593.

In proposing this repeal, consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

All interested parties are invited to submit written or oral comments concerning the proposed regulations by October 30, 2015 to Jenna Algee, Esq., Department of Business Regulation, 1511 Pontiac Avenue, Bldg. 68-1, Cranston, RI 02920, (401) 462 9593, jenna.algee@dbr.ri.gov. A public hearing to consider the proposed amendment shall be held on October 30, 2015 at 11:00 a.m. at 1511 Pontiac Avenue, Cranston, Rhode Island 02920 at which time and place all persons interested therein will be heard.

All are welcome at the Rhode Island Department of Business Regulation ("DBR"). If any reasonable accommodation is needed to ensure equal access, service or participation, please contact DBR at 401-462-9551, RI Relay at 7-1-1, or email directorofficeinquiry@dbr.ri.gov at least three (3) business days prior to the hearing.

Macky McCleary
Director, Department of Business Regulation

Date posted: September 29, 2015

State of Rhode Island and Providence Plantations
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1511 Pontiac Avenue
Buildings 68-69
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Concise Summary of Proposed Non-Technical Changes

In accordance with the Administrative Procedures Act, Section 42-35-3(a)(1) of the General Laws of Rhode Island, the following is a concise summary of proposed non-technical changes that would be accomplished by the proposed repeal of Commercial Licensing Regulation 2 – Auctioneers.

In the 2015 legislative session, the Rhode Island General Assembly repealed the requirement that auctioneers be licensed by the Department. 2015 P.L. ch. 141. Therefore, the Department proposes to repeal the regulation in its entirety.

State of Rhode Island and Providence Plantations
DEPARTMENT OF BUSINESS REGULATION
Division of Commercial Licensing
233 Richmond Street
Providence, RI 02903

Commercial Licensing Regulation 2 – Auctioneers

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Section 1 — Authority

~~These rules and regulations governing the conduct of auctioneers (hereinafter referred to as the "Rules") are adopted pursuant to the authority vested in the Director of the Department of Business Regulation of the State of Rhode Island under R.I. Gen. Laws § 5-58-1 et seq. (the "Act").~~

Section 2 — Purpose

~~The purpose of these Rules is to create standards and procedures for the issuance of auctioneer's licenses and to generally assist the Department of Business Regulation in carrying out the administration and enforcement of the terms and provisions of the Act so that the public interest may be effectively served.~~

Section 3 — Definitions

~~When used in these Rules, the following words, except as otherwise required by the context, shall have the following meaning:~~

- ~~(a) "Applicant" means any Person filing an application for a License to be an Auctioneer or any Person filing an application for a Permit to be an Apprentice Auctioneer.~~

- (b) ~~"Apprentice Auctioneer" means any Person who for compensation or valuable consideration or otherwise, is employed directly or indirectly, by an Auctioneer to deal or engage in the business of Auctioneering and who holds a Permit.~~
- (c) ~~"Auction" means any sale by means of exchanges between an Auctioneer and members of his/her audience, the exchanges consisting of a series of invitations for offers made by the Auctioneer, offers by members of the audience, written offers made by absentee bid and the acceptance by the Auctioneer of the highest or most favorable offer.~~
- (d) ~~"Auctioneer" means any Person who for a fee, commission, profit or any other valuable consideration, or with the intention or expectation of receiving same, by means of, or process of, an Auction or sale at Auction, offers, negotiates or attempts to negotiate a listing contract, sale, purchase or exchange of Goods.~~
- (e) ~~"Auctioneering" means the business or conduct of an Auctioneer or Apprentice Auctioneer at an Auction.~~
- (f) ~~"Department" means the Department of Business Regulation.~~
- (g) ~~"Director" means the Director of the Department of Business Regulation.~~
- (h) ~~"Division" means the Division of Commercial Licensing and Regulation.~~
- (i) ~~"Goods" means any chattels, wares, merchandise, property, tangible or intangible, real, personal or mixed; or commodities of any form or type which may lawfully be kept or offered for sale at Auction.~~
- (j) ~~"Inventory" means a list of new or used Goods or Property sold at Auction.~~
- (k) ~~"License" means the Department license issued in accordance with the Act authorizing an Auctioneer to conduct the business of Auctioneering.~~
- (l) ~~"Licensee" means the Person to whom a License was issued.~~
- (m) ~~"Lot" means the designation used by an Auctioneer to group Goods being offered at the block during a sale and the word lot shall mean a single item or a number of similar or dissimilar items, each item or number of items being sold in its entirety as it is put up for bid.~~
- (n) ~~"Non Resident" means any Person who maintains a primary domicile and place of residence in a state other than the State of Rhode Island.~~

- (o) ~~"Permit" means the Department permit issued in accordance with the Act authorizing an Apprentice Auctioneer to engage in the conduct permitted by the Act.~~
- (p) ~~"Permittee" means the Person to whom a Permit was issued.~~
- (q) ~~"Person" means any individual, partnership, corporation, limited liability company, association, sole proprietorship, public or private organization or any other entity, however formed.~~
- (r) ~~"Record" means a record of sales conducted at each Auction by the Auctioneer and/or his/her Apprentice Auctioneer.~~
- (s) ~~"Supervising Auctioneer" means a licensed Auctioneer who employs an Apprentice Auctioneer and agrees to be responsible for the acts of the Apprentice Auctioneer.~~

Section 4 — License/Permit

- (a) ~~Auctioneer's License. No Person shall be an Auctioneer engaged in the business of Auctioneering without first obtaining a License from the Department. Any Person wishing to obtain a License shall make written application for such License on the forms prescribed by the Department. Before accepting the application for processing, the application shall (i) be completed in full (ii) be accompanied by a non-refundable fee in the amount specified by the Act and (iii) be accompanied by a bond in the amount of Ten Thousand Dollars (\$ 10,000). Such bond shall provide that it shall not be canceled or terminated except upon thirty (30) days prior written notice to the Department.~~

~~Upon receipt of the License application, the Division shall review the application to determine if it is in compliance with the requirements of the Act and these Rules. The Division may require that the Applicant submit such additional information as the Division may deem necessary to enable it to complete its evaluation of the application.~~

- (b) ~~Auctioneer's License Minimum Qualifications. Each Applicant for an auctioneer's License shall:~~
 - (1) ~~be at least eighteen (18) years of age at the time of submission of the application; and~~
 - (2) ~~(i) have been an Apprentice Auctioneer under the supervision of a duly licensed Auctioneer for a period of at least six (6) months and conducted at least ten (10) Auctions within the State of Rhode Island, or, upon submission of proof of graduation from a course of study of at least eighty (80) hours from any approved school of Auctioneering, serve a period of at least three (3) months and conduct at least five (5) Auctions, or (ii) hold an Auctioneer's license, in good standing, issued by another lawful jurisdiction, (iii) if the Applicant does not meet either (i)~~

or (ii) above, take and pass the Auctioneer's examination as detailed in Section 5 below or (iv) have held an Auctioneer's License in good standing in Rhode Island on June 30, 1995.

- ~~(c) Non Resident Auctioneer's License. Any Non Resident Auctioneer may apply for and be granted a Rhode Island Auctioneer's License without taking the examination as detailed in Section 5; provided that the state in which the Non Resident Auctioneer is licensed and domiciled provides similar recognition to a Licensee of this state.~~

~~Each Non Resident Auctioneer applying for a Rhode Island Auctioneer's License shall submit with his/her application a photocopy of his/her current and valid auctioneer's license issued by his/her state of domicile accompanied by (i) a non-refundable fee in the amount specified by the Act and (ii) by a bond in the amount of Ten Thousand Dollars (\$ 10,000). Such bond shall provide that it shall not be canceled or terminated except upon thirty (30) days prior written notice to the Department. Upon receipt of the Non Resident Auctioneer's application, the Division shall review the application to determine if it is in compliance with the requirements of the Act and these Rules. The Division may require that the Non Resident Auctioneer submit such additional information as the Division may deem necessary to enable it to complete its evaluation of the Non Resident Auctioneer Application.~~

~~Non Resident Auctioneers whose states do not provide reciprocal privileges to Rhode Island licensed Auctioneers, Non Resident Applicants who have never held an Auctioneer's License in any state and Non Resident Applicants whose states of domicile do not require Auctioneers to be licensed by law shall be required, in addition to the application requirements detailed above, as applicable, to take and pass the Auctioneer's examination outlined in Section 5 as a condition of receiving an Auctioneer's License.~~

- ~~(d) Apprentice Auctioneer's Permit. No Person shall be an Apprentice Auctioneer without first obtaining a Permit from the Department. Any Person wishing to obtain a Permit shall make written application for such Permit on the forms prescribed by the Department. Before accepting the application for processing, the application shall (i) be completed in full (ii) be accompanied by a non refundable fee in the amount specified by the Act and (iii) be accompanied by a bond in the amount of Two Thousand Dollars (\$ 2,000). Such bond shall provide that it shall not be canceled or terminated except upon thirty (30) days prior written notice to the Department.~~

~~Upon receipt of the Permit application, the Division shall review the application to determine if it is in compliance with the requirements of the Act and these Rules. The Division may require that the Applicant submit such additional information as the Division may deem necessary to enable it to complete its evaluation of the application.~~

~~(e) Apprentice Auctioneer's Permit Minimum Qualifications. Each Applicant for an Apprentice Auctioneer's Permit shall:~~

~~(1) be at least eighteen (18) years of age at the time of submission of the application; and~~

~~(2) be employed by a Supervising Auctioneer who shall file a statement under oath that in his or her opinion the Applicant is competent and trustworthy and is recommended as a suitable Person to be granted an Apprentice Auctioneer's Permit.~~

~~The suspension, revocation, expiration, cancellation or other termination of a Supervising Auctioneer's License by the Director shall automatically cause the cancellation of every Apprentice Auctioneer's Permit granted to any Person by virtue of his/her employment with that Supervising Auctioneer. The Apprentice Auctioneer may retain his/her Apprentice Auctioneer's Permit by transferring to the employment of another licensed Auctioneer within thirty (30) days, provided the request for transfer is made to the Director in writing and the Apprentice Auctioneer supplies the statement from the new Supervising Auctioneer required in (2) above.~~

~~Apprentice Auctioneers may hold an Apprentice Auctioneer's Permit under more than one licensed Auctioneer in order to gain experience and expertise in different areas of Auctioneering so long as the Apprentice Auctioneer supplies the statement required in (2) above and so long as any secondary or tertiary Supervising Auctioneer is not primarily engaged in the same Auctioneering specialty as the initial Supervising Auctioneer.~~

~~Non-Resident Apprentice Auctioneer's Permits shall be prohibited and will not be issued by the Department under any circumstances.~~

~~(f) Non-Resident Auctioneers; Service of Process. Each Non-Resident Applicant shall be deemed, upon execution of his/her application and the subsequent issuance of his/her Non-Resident Auctioneer's License, to have irrevocably appointed the Director as his/her agent upon whom may be served any summons, subpoena, subpoena duces tecum, or other process directed to such Non-Resident Auctioneer. Whenever lawful process shall be served upon the Director, the Director shall forward a copy of the process served upon him/her by mail, postpaid, directed to the Non-Resident Auctioneer. For each copy of the process served the Director shall collect, for the use of the state the sum of five dollars (\$ 5.00), which shall be paid by the plaintiff at the time of service.~~

~~(g) Terms of Licenses/Permits. All Licenses and Permits shall be valid for a term of three (3) years.~~

Section 5 — Examination

- (a) ~~The Director shall require all Applicants for an Auctioneer's License to submit to a written examination to test the Applicant's knowledge of Auctioneering. Upon Notification of the Applicant's desire to be examined, the Director shall schedule the examination to be held at a time and place determined by the Director. Prior to taking the examination, all Applicants shall pay an examination fee in an amount established by the Director to reimburse the Department for the costs of the examination. The examination shall test the Applicant's ability and competency in the fundamentals of the Auctioneering profession, contractual obligations, bid calling, advertising of sales, provisions of the Act and any other areas which the Director determines to be important in measuring the knowledge of the Applicant for an Auctioneer's License.~~
- (b) ~~The passing grade on the examination shall be at least 75% of the total points possible. Each Applicant shall be notified in writing by the Director of the results of the examination within twenty (20) days of the date which the examination is administered. An Applicant who fails two (2) consecutive examinations must wait a period of six (6) months before taking the examination again and shall be required to complete and file a new application along with the appropriate licensing fee and any other information and documents required by the Act or these Rules.~~
- (c) ~~No examination shall be required for the renewal of any Auctioneer's License unless the Licensee has had his/her License canceled, terminated, suspended, revoked or unless Licensee fails to renew within six (6) months following the prescribed renewal date. The Director shall specify in any decision or order rendered pertaining to suspension or revocation whether the Licensee shall be required to retake the examination as a condition of future reinstatement of the License.~~
- (d) ~~Any person who held an Auctioneer's License in good standing as of June 30, 1995 shall not be required to take the examination.~~

Section 6 — Responsibilities of Licensees

- (a) ~~Each Licensee shall be responsible for the advertising and management of the sale at Auction; shall account for all proceeds received therefrom and shall sign and issue a closing statement to the owner or agent whose goods are sold.~~

~~Auctioneers shall pay owners or consignors of Goods sold at Auction within thirty (30) days of the conduct of such Auction sale unless the Auctioneer has entered into a written agreement with the owner or consignor specifying the method and time of partial and/or full payment for Goods sold.~~

~~Each Auctioneer shall keep and preserve in good condition in a safe place for a period of at least five (5) years complete and correct records and accounts pertaining to sales held at Auction including, but not limited to, inventory of Goods, record of sales, duplicate receipts and contracts of payment for services rendered.~~

~~Any circular or other advertisement advertising a sale shall contain the name and license number of the Auctioneer conducting the sale, the date, place and exact time of the Auction. There shall be no restrictions upon the time of day or night, or the day of the week during with an Auction may be held, except as stipulated, required, controlled or regulated by ordinance or rule of the city or town in which an Auction is held.~~

~~Whenever an Auction contains Goods brought in by the Auctioneer which were not part of the original Inventory commissioned for sale by the owner, or when Goods are the personal property of the Auctioneer and sold in conjunction with property of others, the Auctioneer shall cause the words "with additions" to be printed in the advertisement in conspicuous bold face type following the header "Auction," "Auction Sale" or other similar notice of sale, or immediately following a full or partial listing of Goods to be sold.~~

~~During the Sale at Auction of Property upon which is contained building(s) or other permanent structures, the Auctioneer shall, prior to the commencement of the sale, verbally inform the audience whether the building(s) or structures are empty and devoid of any Goods, or if they contain Goods, whether or not the Goods are included in the sale.~~

- ~~(b) — Every Auctioneer shall keep and preserve a Record in which shall be entered the Inventory, the price received for each item or Lot, the amount of sales tax collected for each item or Lot and the grand total, the amount paid over to the owner or consignor of Goods sold and the date of payment to owner and type of financial transaction (i.e. cash, money order, other consideration, etc.)~~

~~Every Auctioneer shall keep and preserve an Inventory for sales held at Auction to include the name, address and license number of the Auctioneer conducting the sale, the date, place and time of the Auction, a physical description of each Good by item or Lot, item or Lot number assigned to each Good and the name and address of the owner of each Good put up for sale.~~

~~Inventories shall be prepared prior to the commencement of any sale. Following a sale, Inventories shall be entered as part of the permanent written record.~~

- ~~(c) — Every Auctioneer shall be responsible for giving each buyer or purchaser at an Auction, upon request, a receipt with each purchase setting forth the name, address and license number of the Auctioneer, the date on which the purchase was made, the price paid for the item or Lot purchased, the amount of tax paid, if any~~

~~and a description of the item or Lot. Each receipt shall be in writing, made in duplicate, one (1) copy given to the buyer at time of purchase and one (1) copy to be retained by the Auctioneer.~~

- ~~(d) Every Auctioneer shall prior to each sale mark or tag each Lot to be offered at such sale either by single item or Lot with a distinctive lot or identification number and shall record the number in the Record as required. The Goods of each different owner shall be listed as separate entries and each grouping shall be attested to as accurate and complete by the signature of the owner or his agent. Such signature shall authenticate the Inventory and shall signify authorization of sale.~~
- ~~(e) Whenever an Auctioneer determines that Goods recorded by Lot in the Inventory and Record will be separated and sold as individual items on the block, appropriate changes shall be made in the Inventory and Record to show description, ownership and price received for individual items. When an Auctioneer determines that Goods recorded by item in the Inventory and Record will be combined and sold by Lot, appropriate changes will be made in the Inventory and Record to show the new grouping by Lot and total monies received for the newly designated Lot after sale on the block.~~
- ~~(f) The disposition of items not sold at Auction shall be annotated in the Record and Inventory immediately following a sale and shall state whether Goods were returned to a consignor or owner, held in reserve or given away as free merchandise.~~

Section 7 — Miscellaneous

- ~~(a) Authority to transact business as an Auctioneer or Apprentice Auctioneer under License or Permit issued by the Director shall be restricted to the Person named in such License or Permit and shall not inure to the benefit of any other person. All employees of any Person wishing to conduct Auctions for their employer must hold a separate License or Permit and bond and be in compliance with all appropriate provisions of the Act and these Rules, except that Apprentice Auctioneers operating under the Supervising Auctioneer shall be covered under his/her bond during the period of training. Other employees working for an Auctioneer who do not accept bids, or auction goods from the block, shall not be required to post separate bond, but shall be covered by the bond of the employing Auctioneer and as such, the Auctioneer shall be responsible for the actions of his/her employees during the conduct of such Auction sales.~~
- ~~(b) Every Auctioneer and Apprentice Auctioneer shall display his/her License or Permit in the full and unobstructed view of the public at the place in which and during the time at which each sale at Auction is held.~~

- ~~(c) — Every Licensee and Permittee shall maintain a definite address, either residential or commercial, which shall be used as an address of record on the application, identification card, forms and License or Permit. Post office boxes shall not be used as an address, although they may be used in addition to a definite address for mailing purposes only.~~
- ~~(d) — Each Licensee or Permittee shall be required to wear on the outer jacket, shirt, blouse of his or her person, for the purpose of display while conducting an Auction sale or while engaging in any other facet of Auctioneering an identification card issued by the Department which shall identify him or her as a Licensee or Permittee and shall contain such other information as the Director deems necessary in his or her sole discretion.~~
- ~~(e) — Written notice shall be given to the Director by each Licensee and Permittee within ten (10) days of any change in mailing, business or residence address, or any change in any information reported on the most recent application.~~

Section 8 — Termination of License or Permit

- ~~(a) — Whenever an Auctioneer or Apprentice Auctioneer is discharged, dies or for any reason terminates his/her employment, it shall be the duty of the Auctioneer or the Apprentice Auctioneer as applicable or his/her legal representative to deliver the License or Permit to the Director within ten (10) days following such discharge, death, or termination.~~
- ~~(b) — If, after discharge or termination of his/her employment, an Auctioneer intends to resume the practice of his/her profession, the individual shall have ten (10) days from the expected date of resumption of his/her profession to notify the Director of his/her intentions. If a portion of the period of licensing remains unexpired, the Director will forward the License which shall remain valid and in good standing until expiration. Should the License have expired at the time of notification of resumption of his/her profession, the Director shall provide the former Licensee or with a renewal application.~~

Section 9 — Denial, Non-Renewal, Suspension or Revocation of Licenses/Permits

- ~~(a) — The Director may deny, non-renew, suspend or revoke the License/Permit of any Auctioneer Applicant, Licensee, Apprentice Auctioneer Applicant or Permittee for any other the following reasons:
 - ~~(1) — violation or failure to comply with any of the provisions of these Rules or the Act;~~
 - ~~(2) — failure, within a reasonable time as determined by the Director in his or her sole discretion, to account for or to pay over monies belonging to~~~~

~~others which have come into the Licensee's or Permittee's possession as a result of a sale transaction;~~

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- ~~(3) placing or using any misleading, untruthful or deceptive advertising;~~
- ~~(4) failure to voluntarily furnish the Director at his or her request copies of all written instruments prepared by the Auctioneer or Apprentice Auctioneer;~~
- ~~(5) any conduct which demonstrates bad faith, dishonesty, incompetency or untruthfulness;~~
- ~~(6) any act by a Licensee or Permittee to procure any Person to make any fictitious bids; or for any Auctioneer or Apprentice Auctioneer fictitiously to raise any bid himself or herself; or for any Person to act as a by-bidder or what is commonly known as a "capper" or "booster" or "shiller" or offer to make any false or fictitious bid or pretend to bid for or pretend to buy any article sold or offered for sale;~~
- ~~(7) been convicted or pled *nolo contendere* to any felony;~~
- ~~(8) been convicted or pled *nolo contendere* to any misdemeanor involving the handling, misuse or misappropriation of funds;~~
- ~~(9) made any materially untrue statement in the License or Permit Application; or~~
- ~~(10) failure to comply with the provisions of R.I. Gen. Laws § 44-21-1 et seq.~~
- ~~(b) In any action by the Department pursuant to this Section, the Department shall notify promptly the Applicant, Licensee or Permittee of the reason for the action taken. The Applicant, Licensee or Permittee may make written demand upon the Director within thirty (30) days of the date of the action so taken for a hearing to review the action. The hearing shall be conducted in accordance with the rules and regulations of the Department and pursuant to the Rhode Island Administrative Procedures Act.~~
- ~~(c) Whenever the Department has reason to believe that any Person is violating any of the provisions of the Act or these Rules, the Director may issue an order to that Person commanding them to appear before the Department at a hearing to be held not sooner than ten (10) days nor later than twenty (20) days after issuance of the order to show cause why the Department should not issue an order to that Person to cease and desist from the violations. An order to show cause may be served on any Person by any Person by mailing a copy of the order to the Person at any address at which that Person has done business or at which the Person may live. If upon the hearing the Department shall be satisfied that the Person is in fact violating the Act or these Rules, then the Department shall order that Person, in writing, to cease and desist from the violation.~~

Section 10 — Exemptions

These Rules shall not apply to the following:

- (1) ~~An Auction of Goods conducted exclusively by individuals who personally own such Goods and who did not acquire such Goods for resale;~~
- (2) ~~An Auction conducted pursuant to any judgment, sentence, decree, order or rule of any court of the state or any court of the United States having jurisdiction within the state; an Auction conducted by virtue of any writ, execution, warrant of distress, or order of law, or the property of any city or town, sales or property held by executors, administrators or guardians of estates lying or being within the state;~~
- (3) ~~Any Auction conducted by or under the direction of any public authority; or~~
- (4) ~~A charitable Auction conducted for the benefit of a charitable organization duly registered under Rhode Island Law.~~

Section 11 — Severability

~~If any provision of these Rules or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not effect other provisions or application of these Rules which can be given effect without the invalid provision or application, and to this end the provisions are declared to be severable.~~

EFFECTIVE DATE: ~~November 17, 1997~~

REFILED: ~~December 19, 2001~~