



Scott Walker, Governor
Laura Gutiérrez, Secretary

TELECONFERENCE/VIRTUAL MEETING
AUCTIONEER BOARD
Room 121A, 1400 E. Washington Avenue, Madison
Contact: Dan Williams (608) 266-2112
April 10, 2018

The following agenda describes the issues that the Board plans to consider at the meeting. At the time of the meeting, items may be removed from the agenda. Please consult the meeting minutes for a description of the actions of the Board.

AGENDA

9:30 A.M.

OPEN SESSION – CALL TO ORDER – ROLL CALL

A. Adoption of Agenda (1-3)

B. Approval of Minutes of December 12, 2017 (4-6)

C. Administrative Matters – Discussion and Consideration (7-12)

- 1) Staff Updates
- 2) Nominations, Reappointments, and Announcements
- 3) Election of Officers
- 4) Appointment of Liaisons and Alternates
- 5) Delegation of Authorities
- 6) Board Member – Term Expiration Date
 - a) Heather Berlinski-05/01/2016
 - b) Ronald Polacek-05/01/2013
 - c) Randy Stockwell-05/01/2020
 - d) Timothy Sweeney-05/01/2012
 - e) Jerry Thiel-05/01/2018
 - f) James Wenzler-05/01/2015
 - g) Leonard Yoap-05/01/2014

D. Legislative and Administrative Rules Matters (13-26)

- 1) Rulemaking Process
- 2) Update on Legislation and Pending or Possible Rulemaking Projects

E. Update on Definition of the Word ‘Auction’ – Discussion and Consideration

E. Items Added After Preparation of Agenda

- 1) Introductions, Announcements and Recognition

- 2) Election of Board Officers
- 3) Appointment of Board Liaison(s)
- 4) Administrative Matters
- 5) Education and Examination Matters
- 6) Credentialing Matters
- 7) Practice Matters
- 8) Legislative/Administrative Rule Matters
- 9) Liaison Reports
- 10) Informational Items
- 11) Disciplinary Matters
- 12) Presentations of Petitions for Summary Suspension
- 13) Petitions for Designation of Hearing Examiner
- 14) Presentation of Proposed Stipulations, Final Decisions and Orders
- 15) Presentation of Proposed Final Decision and Orders
- 16) Presentation of Interim Orders
- 17) Petitions for Re-Hearing
- 18) Petitions for Assessments
- 19) Petitions to Vacate Orders
- 20) Requests for Disciplinary Proceeding Presentations
- 21) Motions
- 22) Petitions
- 23) Appearances from Requests Received or Renewed
- 24) Speaking Engagement(s), Travel, or Public Relation Request(s)

G. Public Comments

CONVENE TO CLOSED SESSION to deliberate on cases following hearing (s. 19.85(1)(a), Stats.); to consider licensure or certification of individuals (s. 19.85(1)(b), Stats.); to consider closing disciplinary investigations with administrative warnings (ss. 19.85 (1)(b), and 440.205, Stats.); to consider individual histories or disciplinary data (s. 19.85 (1)(f), Stats.); and to confer with legal counsel (s. 19.85(1)(g), Stats.).

H. **Deliberation of Division of Legal Services and Compliance (DLSC) Matters**

- 1) **Proposed Stipulations, Final Decisions, and Orders**
 - a. 16 AUC 004 – Nicholas C. Schaetzel and Qic Bid, LLC **(27-33)**

I. Consulting with Legal Counsel

K. Deliberation of Items Added After Preparation of the Agenda

- 1) Education and Examination Matters
- 2) Credentialing Matters
- 3) Disciplinary Matters
- 4) Monitoring Matters
- 5) Professional Assistance Procedure (PAP) Matters
- 6) Petitions for Summary Suspensions
- 7) Petitions for Designation of Hearing Examiner
- 8) Proposed Stipulations, Final Decisions and Order

- 9) Administrative Warnings
- 10) Review of Administrative Warnings
- 11) Proposed Final Decision and Orders
- 12) Matters Relating to Costs/ Orders Fixing Costs
- 13) Case Closings
- 14) Proposed Interim Orders
- 15) Petitions for Assessments and Evaluations
- 16) Petitions to Vacate Orders
- 17) Remedial Education Cases
- 18) Motions
- 19) Petitions for Re-Hearing
- 20) Appearances from Requests Received or Renewed

RECONVENE TO OPEN SESSION IMMEDIATELY FOLLOWING CLOSED SESSION

L. Vote on Items Considered or Deliberated Upon in Closed Session, if Voting is Appropriate

M. Open Session Items Noticed Above Not Completed in the Initial Open Session

ADJOURNMENT

NEXT SCHEDULED MEETING: JULY 10, 2018

**AUCTIONEER BOARD
VIRTUAL TELECONFERENCE MEETING MINUTES
December 12, 2017**

PRESENT: Heather Berlinski, Randy Stockwell (*via GoToMeeting*), Ronald Polacek (*via GoToMeeting*), Timothy Sweeney (*via GoToMeeting*), Jerry Thiel (*via GoToMeeting*), James Wenzler, Leonard Yoap (*via GoToMeeting*)

STAFF: Dan Williams, Executive Director; Laura Smith, Bureau Assistant, and other DSPS Staff.

CALL TO ORDER

Jerry Thiel, Chair, called the meeting to order at 9:30 a.m. and a quorum of seven (7) members was confirmed.

ADOPTION OF AGENDA

MOTION: James Wenzler moved, seconded by Ronald Polacek, to adopt the agenda as published. Motion carried unanimously.

APPROVAL OF MINUTES OF MARCH 21, 2017

MOTION: James Wenzler moved, seconded by Ronald Polacek, to approve the minutes of March 21, 2017 as published. Motion carried unanimously.

ADMINISTRATIVE MATTERS

UPDATE ON DEFINITION OF THE WORD 'AUCTION'

MOTION: James Wenzler moves, seconded by Ronald Polacek, to request that Randy Stockwell provide a written summary of whether online auctions may be regulated in Wisconsin, and why other states regulate online auctions, for discussion at the next Board meeting. Motion carried unanimously.

CLOSED SESSION

(Leonard Yoap left the meeting at 9:57 a.m.)

MOTION: James Wenzler moved, seconded by Timothy Sweeney, to convene to Closed Session to deliberate on cases following hearing (§ 19.85 (1) (a), Stats.); to consider licensure or certification of individuals (§ 19.85 (1) (b), Stats.); to consider closing disciplinary investigations with administrative warnings (§ 19.85 (1) (b), Stats. and § 448.02 (8), Stats.); to consider individual histories or disciplinary data (§ 19.85 (1) (f), Stats.); and to confer with legal counsel (§ 19.85 (1) (g), Stats.). The Chair read the language of the motion aloud for the record. The vote of each member was ascertained by voice vote. Roll Call Vote: Heather Berlinski– yes; Ronald Polacek – yes; Randy Stockwell – yes; Timothy Sweeney – yes; Jerry Thiel – yes; James Wenzler – yes. Motion carried unanimously.

The Board convened into Closed Session at 9:58 a.m.

RECONVENE TO OPEN SESSION

MOTION: James Wenzler moved, seconded by Ronald Polacek, to reconvene in Open Session at 10:03 a.m. Motion carried unanimously.

VOTE ON ITEMS CONSIDERED OR DELIBERATED UPON IN CLOSED SESSION

MOTION: James Wenzler moved, seconded by Ronald Polacek, to affirm all motions made and votes taken in Closed Session. Motion carried unanimously.

(Be advised that any recusals or abstentions reflected in the closed session motions stand for the purposes of the affirmation vote.)

DIVISION OF LEGAL SERVICES AND COMPLIANCE (DLSC) MATTERS

Proposed Stipulations, Final Decisions, and Orders

16 AUC 005 and 17 AUC 003 – Terry R. Locke and Lea G. Locke

MOTION: Timothy Sweeney moved, seconded by James Wenzler, to accept the Findings of Fact, Conclusions of Law and Order in the matter of disciplinary proceedings against Terry R. Locke and Lea G. Locke, DLSC case numbers 16 AUC 005 and 17 AUC 003. Motion carried unanimously.

16 AUC 006 and 16 AUC 007 – Howard N. Johannes, Sr.

MOTION: Timothy Sweeney moved, seconded by James Wenzler, to accept the Findings of Fact, Conclusions of Law and Order in the matter of disciplinary proceedings against Howard N. Johannes, Sr., DLSC case numbers 16 AUC 006 and 16 AUC 007. Motion carried unanimously.

Case Closings

17 AUC 006

MOTION: Randy Stockwell moved, seconded by James Wenzler, to close DLSC case number 17 AUC 006 for (P2) Prosecutorial Discretion. Motion carried.

ADJOURNMENT

MOTION: James Wenzler moved, seconded by Timothy Sweeney, to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 10:06 a.m.

**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Laura Smith, Bureau Assistant, on behalf of Dan Williams, Executive Director		2) Date When Request Submitted: 11/24/17 Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting	
3) Name of Board, Committee, Council, Sections: Auctioneer Board			
4) Meeting Date: 1/16/2018	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Administrative Matters/Updates 1) Election of Officers 2) Appointment of Liaisons and Alternates 3) Delegation of Authorities	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session	8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required: N/A	
10) Describe the issue and action that should be addressed: 1) The Board should conduct Election of its Officers for 2018 2) The new Chairperson should review and appoint/reappoint Liaisons and Alternates as appropriate 3) The Board should review and then consider continuation or modification of previously delegated authorities			
11) Authorization			
<i>Laura Smith</i>		11/24/2017	
Signature of person making this request		Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda) Date			
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

MARCH 2017

AUCTIONEER BOARD

**ELECTION RESULTS, LIAISON APPOINTMENTS, AND DELEGATED
AUTHORITIES**

2017 ELECTION RESULTS	
Board Chair	Jerry Thiel
Vice Chair	Randy Stockwell
Secretary	Heather Berlinski

LIAISON APPOINTMENTS

2017 LIAISON APPOINTMENTS	
Credentialing Liaison:	Jerry Thiel
Education and Exams Liaison:	Jerry Thiel
Monitoring Liaison:	Jerry Thiel
Professional Assistance Procedure (PAP) Liaison:	Timothy Sweeney
Legislative Liaison	Randy Stockwell
Website Liaison:	Heather Berlinski
Screening Panel Members	Ronald Polacek, Timothy Sweeney, Jerry Thiel Alternate: Heather Berlinski
Practice Questions Liaison	Jerry Thiel – 2016?

DELEGATION MOTIONS

Delegated Authority for Urgent Matters

MOTION: Timothy Sweeney moved, seconded by Ronald Polacek, that, in order to facilitate the completion of assignments between meetings, the Board delegates its authority by order of succession to the Chair, highest ranking officer, or longest serving member of the Board, to appoint liaisons to the Department to act in urgent matters, make appointments to vacant liaison, panel and committee positions, and to act when knowledge or experience in the profession is required to carry out the duties of the Board in accordance with the law. Motion carried unanimously.

Delegated Authority for Application Denial Reviews

MOTION: Leonard Yoap moved, seconded by Timothy Sweeney, that the Board counsel or another department attorney is formally authorized to serve as the Board’s designee for purposes of Wis. Admin. Code § SPS 1.08(1). Motion carried unanimously.

Document Signature Delegation

MOTION: Randy Stockwell moved, seconded by Leonard Yoap, to delegate authority to the Chair or chief presiding officer, or longest serving member of the Board, by order of succession, to sign documents on behalf of the Board. In order to carry out duties of the Board, the Chair, chief presiding officer, or longest serving member of the Board, has the ability to delegate this signature authority for purposes of facilitating the completion of assignments during or between meetings. The Chair, chief presiding officer, or longest serving member of the Board delegates the authority to Executive Director or designee to sign the name of any Board member on documents as necessary and appropriate. Motion carried unanimously.

Credentialing Authority Delegations

MOTION: Leonard Yoap moved, seconded by Timothy Sweeney, to delegate authority to the Credentialing Liaisons to make all credentialing decisions. Motion carried unanimously.

Education and Exams Liaison Authority Delegations

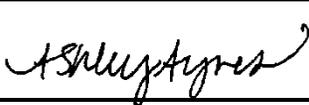
MOTION: Timothy Sweeney moved, seconded by Leonard Yoap, to delegate authority to the Education and Exams Liaison to make all decisions. Motion carried unanimously.

Monitoring Delegations

MOTION: Timothy Sweeney moved, seconded by Leonard Yoap, to affirm the Chair’s appointment of Jerry Thiel as the Monitoring Liaison, to adopt the ‘Roles and Authorities Delegated to the Monitoring Liaison and Department Monitor; document as presented. Motion carried unanimously.

**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Ashley Ayres Monitoring and Intake Supervisor Division of Legal Services and Compliance		2) Date When Request Submitted: December 18, 2017	
		Items will be considered late if submitted after 4:30 p.m. and less than: <ul style="list-style-type: none"> ▪ 10 work days before the meeting for Medical Board ▪ 14 work days before the meeting for all others 	
3) Name of Board, Committee, Council, Sections: Auctioneer Board			
4) Meeting Date: January 16, 2018	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Appointment of Monitoring Liaison and Delegated Authority Motion	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes (Fill out Board Appearance Request) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed: Adopt or reject the Roles and Authorities Delegated to the Monitoring Liaison and Department Monitor document as presented in today's agenda packet.			
11) Authorization <div style="display: flex; justify-content: space-between;"> <div style="width: 60%; border-bottom: 1px solid black; text-align: center;">  </div> <div style="width: 35%; border-bottom: 1px solid black; text-align: center;"> December 18, 2017 </div> </div> <hr/> <div style="display: flex; justify-content: space-between;"> <div style="width: 60%; border-bottom: 1px solid black;"> Signature of person making this request </div> <div style="width: 35%; border-bottom: 1px solid black; text-align: center;"> Date </div> </div> <hr/> <div style="display: flex; justify-content: space-between;"> <div style="width: 60%; border-bottom: 1px solid black;"> Supervisor (if required) </div> <div style="width: 35%; border-bottom: 1px solid black; text-align: center;"> Date </div> </div> <hr/> <div style="display: flex; justify-content: space-between;"> <div style="width: 60%; border-bottom: 1px solid black;"> Executive Director signature (indicates approval to add post agenda deadline item to agenda) </div> <div style="width: 35%; border-bottom: 1px solid black; text-align: center;"> Date </div> </div>			
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

Roles and Authorities Delegated to the Monitoring Liaison and Department Monitor

The Monitoring Liaison (“Liaison”) is a Board/Section designee who works with department monitors to enforce Board/Section orders as explained below.

Current Authorities Delegated to the Monitoring Liaison

The Liaison may take the following actions on behalf of the Board/Section:

1. Grant a temporary reduction in random drug screen frequency upon Respondent’s request if he/she is unemployed and is otherwise compliant with Board/Section order. The temporary reduction will be in effect until Respondent secures employment in the profession. The Department Monitor (“Monitor”) will draft an order and sign on behalf of the Liaison.
2. Grant a stay of suspension if Respondent is eligible per the Board/Section order. The Monitor will draft an order and sign on behalf of the Liaison.
3. Remove the stay of suspension if there are repeated violations or a substantial violation of the Board/Section order. In conjunction with removal of any stay of suspension, the Liaison may prohibit Respondent from seeking reinstatement of the stay for a specified period of time. The Monitor will draft an order and sign on behalf of the Liaison.
4. Grant or deny approval when Respondent proposes continuing/remedial education courses, treatment providers, mentors, supervisors, change of employment, etc. unless the order specifically requires full-Board/Section approval.
5. Grant a maximum of one 90-day extension, if warranted and requested in writing by Respondent, to complete Board/Section-ordered continuing education.
6. Grant a maximum of one extension or payment plan for proceeding costs and/or forfeitures if warranted and requested in writing by Respondent.
7. Grant full reinstatement of licensure if Respondent has fully complied with all terms of the order without deviation. The Monitor will draft an order and obtain the signature or written authorization from the Liaison.
8. Grant or deny a request to appear before the Board/Section in closed session.
9. *(Except Pharmacy)* Accept Respondent’s written request to surrender credential. If accepted by the Liaison, Monitor will consult with Board Counsel to determine if a stipulation is necessary. If a stipulation is not necessary, Monitor will draft an order and sign on behalf of the Liaison. If denied by the Liaison, the request to surrender credential will go to the full Board for review.
10. *(Except Pharmacy)* Grant Respondent’s petition for a reduction in drug screens per the standard schedule, below. If approved, Monitor will draft an order and sign on behalf of the Liaison.
 - a. Year 1: 49 screens (including 1 hair test, if required by original order)
 - b. Year 2: 36 screens (plus 1 hair test, if required by original order)
 - c. Year 3: 28 screens plus 1 hair test
 - d. Year 4: 28 screens plus 1 hair test
 - e. Year 5: 14 screens plus 1 hair test
11. *(Dentistry only)* – Ability to approve or deny all requests from a respondent.

Current Authorities Delegated to the Department Monitor

The Monitor may take the following actions on behalf of the Board/Section, draft an order and sign:

1. Grant full reinstatement of licensure if CE is the sole condition of the limitation and Respondent has submitted the required proof of completion for approved courses.
 2. Suspend the license if Respondent has not completed Board/Section-ordered CE and/or paid costs and forfeitures within the time specified by the Board/Section order. The Monitor may remove the suspension and issue an order when proof completion and/or payment have been received.
 3. Suspend the license (or remove stay of suspension) if Respondent fails to enroll and participate in an Approved Program for drug and alcohol testing within 30 days of the order, or if Respondent ceases participation in the Approved Program without Board approval. This delegated authority only pertains to respondents who must comply with drug and/or alcohol testing requirements.
-

Proposed (New) Delegations to the Monitoring Liaison

The Monitoring Unit is proposing the following additions to the Monitoring Liaison's authority:

1. Board Monitoring Liaison may determine whether Respondent's petition is eligible for consideration by the full Board/Section.
2. Board Monitoring Liaison may approve or deny Respondent's request to be excused from drug and alcohol testing for work, travel, etc.

**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Sharon Henes Administrative Rules Coordinator		2) Date When Request Submitted: 26 March 2018 Items will be considered late if submitted after 12:00 p.m. on the deadline date: ▪ 8 business days before the meeting	
3) Name of Board, Committee, Council, Sections: Auctioneer Board			
4) Meeting Date: 10 April 2018	5) Attachments: <input type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Legislation and Rule Matters – Discussion and Consideration 1. Rulemaking Process 2. Update on Legislation and Pending and Possible Rulemaking Projects	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes (Fill out Board Appearance Request) <input type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed:			
11) Authorization			
<i>Sharon Henes</i>			
Signature of person making this request			Date
Supervisor (if required)			Date
Executive Director signature (indicates approval to add post agenda deadline item to agenda)			Date
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480.04 General duties and powers of board. (1) In addition to the other duties and powers of the board under this chapter, the board shall advise the secretary on matters relating to auctioneers or auction companies or to the board.

(2) The board does not have rule-making authority.

480.06 Rules; review of rules. (1) Before submitting any proposed rules relating to auctioneers or auction companies or to the board to the legislative council staff under s. 227.15, the department shall submit the proposed rules to the board for comment. The board shall have 30 days to submit comments on the proposed rules to the secretary.

(2) When promulgating emergency rules under s. 227.24, the department shall provide a copy of the rules to the board prior to publication of the rules in the official state newspaper.

(3) The chairperson of the board, or his or her designee from the board, may cochair with the secretary, or the secretary's designee, any public hearing held by the department on proposed rules relating to auctioneers or auction companies or to the board.

(4) The department shall submit to the board a copy of the report required under s. 227.19 (2) on any proposed final rules relating to auctioneers or auction companies or to the board. The board may prepare a dissenting report stating its recommendations on the proposed final rules. Any dissenting report shall be prepared within 10 days from the date of receipt of the department's report, attached to the department's report and sent to the presiding officer of each house of the legislature and distributed under s. 227.19 (2). The department shall publish a statement to appear in the Wisconsin administrative register indicating that a dissenting report of the board has been submitted to the presiding officer of each house of the legislature.

(5) The department shall provide staff to assist the board in the review of administrative rules and preparation of comments or dissenting reports.

Chapter SPS 128

EDUCATIONAL PROGRAM

SPS 128.01 Authority.
 SPS 128.015 Definitions.
 SPS 128.02 Education requirements prior to first renewal.
 SPS 128.03 Courses; examinations.

SPS 128.04 Approval of educational programs; courses and instructors.
 SPS 128.05 Certification of completion of courses.
 SPS 128.06 Education examination.

Note: Chapter RL 128 was renumbered chapter SPS 128 under s. 13.92 (4) (b) 1., Stats., Register November 2011 No. 671.

SPS 128.01 Authority. This chapter is adopted pursuant to ss. 227.11 (2) and 480.08 (6), Stats.

History: Cr. Register, November, 1996, No. 491, eff. 12-1-96.

SPS 128.015 Definitions. In this chapter:

(1) "Distance education" means the provision of educational programs or courses without an instructor or a representative of an approved school physically present with the students. "Distance education" includes the delivery of educational programs and courses on CD-ROM, videotape, computer disk, or the internet.

(2) "Hour" means a period of 50 minutes of actual instruction.

(3) "Program provider" means a provider of either a program or a course or both.

History: CR 02-030: cr. Register September 2002 No. 561, eff. 10-1-02.

SPS 128.02 Education requirements prior to first renewal. (1) Except as provided in s. SPS 128.06, every registered auctioneer applying to renew a registration shall complete at least 12 hours in an educational program, except that a registered auctioneer who is initially registered less than 6 months prior to the first renewal date shall complete the educational program prior to the date for the second renewal of the registration under s. 440.08 (2), Stats.

(3) A registered auctioneer may attend approved courses of one or more program providers in order to complete the courses which are part of the educational program.

(4) A registered auctioneer who acts as an instructor of an approved educational program or course shall receive credit toward satisfaction of the registered auctioneer's educational requirement. An instructor shall receive one hour of credit for each 50 minutes of instruction. The registered auctioneer may not receive credit for teaching a specific course more than one time during any biennium.

(5) The department may grant an extension of time for completion of the educational program by a registered auctioneer and the registered auctioneer may obtain a renewal registration for the extension period granted for one of the following:

(a) Health reasons which prevented attendance at the educational program or course.

(b) Active duty in the military service with assignment to a duty station outside Wisconsin.

(6) The department may either require a registered auctioneer to certify on a renewal application form that he or she has met the educational requirements when applying for renewal of the registration or the department may require a registered auctioneer to submit a certificate of completion which a registered auctioneer received from a program provider pursuant to s. SPS 128.05. The department shall deny the renewal application until the certificate or certification is provided.

History: Cr. Register, November, 1996, No. 491, eff. 12-1-96; CR 02-030: am. (1) and (4), r. (2), Register September 2002 No. 561, eff. 10-1-02; correction in (1), (6) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.

SPS 128.03 Courses; examinations. (1) COURSES. The educational program shall consist of 12 hours, which shall include:

(a) Three hours in the Wisconsin laws relating to auctioneer ethical and professional conduct.

(b) Nine hours in topics pertinent to the practice of auctioneering that shall be approved by the department biennially, which may include a 7 hour national Uniform Standards of Professional Appraisal Practice (USPAP) update course approved by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation for a person who holds credentials under both chs. 480 and 458, Stats.

(2) EXAMINATIONS. A program provider shall give a written examination subsequent to the completion of instruction of each course. A registered auctioneer, except a registered auctioneer who teaches a course, shall pass the examination in order to successfully complete the course. The examination shall consist of at least 5 multiple-choice questions for each hour of instruction. The program provider shall design the examination so that a person who is competent to protect the public when practicing as an auctioneer would achieve a score of 70% or more. A registered auctioneer who fails to achieve a passing score on an examination shall be permitted to retake the examination within a reasonable time as determined by the program provider. A registered auctioneer who twice fails an examination shall not be credited with having completed the course and is required to retake the course.

History: Cr. Register, November, 1996, No. 491, eff. 12-1-96; CR 02-030: r. and recr. Register September 2002 No. 561, eff. 10-1-02; CR 06-014: am. (1) (intro.), (a) and (b), r. (1) (c) and (d) Register September 2006 No. 609, eff. 10-1-06; CR 11-029: am. (1) (b) Register January 2012 No. 673, eff. 2-1-12.

SPS 128.04 Approval of educational programs; courses and instructors. (1) A program provider seeking initial approval from the department of an educational program or a course shall submit its application on a form provided by the department prior to the first date the program or course is offered. The program provider shall include a designation of the courses to be provided, the name and outline of the courses, the name and qualifications of the instructors, and the time segments of the courses. The department shall notify the provider whether the program or course has been approved or denied within 20 business days from the date the application is received. The department shall approve an educational program or course if the program provider submits to the department the information required by this subsection and agrees to comply with the provisions in subs. (2) to (6).

Note: Applications for educational program and course approval are available from the Department of Safety and Professional Services, Office of Education and Examinations, 1400 East Washington Avenue, P.O. Box 8366, Madison, Wisconsin 53708-8366 or from the department's website at: <http://dsps.wi.gov>.

(1m) A program provider seeking the approval of a continuing education program or course that will be presented as distance education shall comply with sub. (1) and shall, additionally, describe to the department how the program provider will do all of the following:

(a) Ensure that instructors approved by the department under sub. (6) are available to the students at reasonable times and by reasonable means.

(b) Provide a reasonable level of examination security for the examination given at the end of each distance education continuing education course.

(c) Sufficiently cover the subjects specified for continuing education courses.

(d) Provide reasonable oversight to ensure that the students who take the examination are the enrolled students.

(e) Provide a reasonable opportunity for student self-evaluation of mastery.

Note: Applications for educational program and course approval are available from the Department of Safety and Professional Services, Office of Education and Examinations, 1400 East Washington Avenue, P.O. Box 8366, Madison, Wisconsin 53708-8366 or from the department's website at <http://dsps.wi.gov>.

(2) The educational program and courses shall be available to all registered auctioneers regardless of membership in any organization.

(3) Program providers shall agree to monitor attendance at the beginning and end of each course and to furnish each participant an individual certificate of completion. Program providers shall retain copies of attendance records and evidence of completion of the courses by registered auctioneers for at least 5 years from the date the courses were presented.

(4) Program providers shall agree to distribute course evaluation survey forms to registered auctioneers who attend the courses offered by the providers. Program providers shall retain the originals of the completed forms for at least 12 months after the date of completion of the course and, upon request from the department, make them available to the department.

(6) Course instructors shall be approved by the department. An instructor whose auctioneer registration has been limited, suspended or revoked in Wisconsin or any other jurisdiction may not instruct in approved courses while the disciplinary action is in effect. An approved instructor shall possess at least one of the following qualifications:

(a) Be an auctioneer who is currently practicing auctioneering, and who has engaged in such practice for at least 5 years.

(b) Be an attorney who is engaged in the field of auctioneering-related law.

(c) Be an appraiser who is approved by the AQB of the Appraisal Foundation to provide a 7 hour national USPAP update course.

(d) Be an instructor in a course approved under s. SPS 128.04 (1) and be a person, in good standing in the jurisdiction in which

he or she is credentialed, with at least 5 years of education and experience in the subject matter of the approved course.

Note: Applications for approval of instructors are available from the Department of Safety and Professional Services, Office of Education and Examinations, 1400 East Washington Avenue, P.O. Box 8366, Madison, Wisconsin 53708-8366 or from the department's website at: <http://dsps.wi.gov>.

History: Cr. Register, November, 1996, No. 491, eff. 12-1-96; CR 02-030: am. (1), cr. (1m), r. (5), Register September 2002 No. 561, eff. 10-1-02; CR 11-029: cr. (6) (c) Register January 2012 No. 673, eff. 2-1-12; CR 13-056: am. (6) (a), cr. (6) (d) Register August 2014 No. 704, eff. 9-1-14.

SPS 128.05 Certification of completion of courses.

(1) COMPLETION REQUIREMENTS. A registered auctioneer shall attend all the required hours before the program provider may give a certificate of completion to the registered auctioneer.

(2) CERTIFICATION OF COMPLETION. Program providers shall provide an individual certificate of completion to all registered auctioneers upon satisfactory completion of courses.

History: Cr. Register, November, 1996, No. 491, eff. 12-1-96.

SPS 128.06 Education examination. (1) The department shall conduct an education examination. A registered auctioneer may take the education examination conducted by the department in lieu of the educational program set forth in s. SPS 128.03. A registered auctioneer who passes the education examination shall not be required to complete the educational program.

(2) The education examination shall cover the courses required for the educational program approved by the department under s. SPS 128.03, and shall have no less than 5 questions for each hour of instruction in the approved education program or courses.

(3) The department shall permit a registered auctioneer to retake the education examination one time. If the registrant fails the examination a second time, the registrant shall attend an approved educational program or courses.

(4) The department shall require a minimum passing score of 70 on the education examination.

(5) The department shall permit registrants who take the education examination to review the examination and the examination results, as provided in s. SPS 122.06.

(6) Passing the examination for original registration as an auctioneer under s. 480.10, Stats., does not satisfy the requirements under this section.

History: Cr. Register, November, 1996, No. 491, eff. 12-1-96; correction in (1), (2), (5) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.

Chapter SPS 120

AUTHORITY AND DEFINITIONS

SPS 120.01 Authority.

SPS 120.02 Definitions.

Note: Chapter RL 120 was renumbered chapter SPS 120 under s. 13.92 (4) (b) 1., Stats., Register November 2011 No. 671.

SPS 120.01 Authority. The rules in this chapter are adopted under authority of s. 227.11 (2), Stats., and ch. 480, Stats.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

SPS 120.02 Definitions. As used in chs. SPS 120 to 128:

(1) “Absolute auction” means an auction in which:

(a) The goods or real estate are sold to the highest bidder.

(b) No minimum price will limit the bid.

(c) The seller may not withdraw the goods or real estate from the auction after the first bid is received.

(d) The seller may not nullify the sale by bidding himself or herself or through an agent.

Note: An “absolute auction” is also known as an “auction without reserve”. The department will construe written statements of an auctioneer or auction company in advertising or in other written materials relating to an auction, such as “everything will be sold” or “everything goes,” as being indicative of the auctioneer’s intent to conduct an absolute auction.

(2) “Auction with reserve” means an auction where the seller or his or her agent reserves the right to establish a minimum bid, to accept or reject any and all bids or to withdraw the goods or real estate from sale at any time prior to the announcement of the completion of the sale by the auctioneer.

(3) “Board” means the auctioneer board.

(4) “Buyer’s fee or surcharge” means an amount of money, usually based on a percentage of the successful bid, charged to the

successful bidder and either added to the successful bid to determine the final selling price or paid separately by the successful bidder in addition to the successful bid.

(5) “Consignor” means the owner or representative of the owner who places goods or real estate with a registrant for sale at auction.

(6) “Department” means the department of safety and professional services.

(7) “False bid” means a non-existent bid acknowledged by an auctioneer in an attempt to escalate bidding.

(8) “Minimum bid” means the lowest acceptable price at which the seller agrees to complete the sale.

(9) “Registrant” means a person registered as an auctioneer or auction company by the department.

(10) “Shill” means an employee or agent of the registrant who bids against legitimate bidders at an auction to escalate bidding.

(11) “State registration number” means the number issued to a registrant by the department, as indicated upon the certificate of registration.

(12) “Trade name” means a name other than the name appearing on an auctioneer’s or auction company’s registration certificate, under which an auctioneer or an auction company advertises or does business.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95; am. Register, November, 1996, No. 491, eff. 12-1-96; am. (4) and cr. (12), Register, July, 1999, No. 523, eff. 8-1-99; correction in (intro.), (6) made under s. 13.92 (4) (b) 6., 7., Stats., Register November 2011 No. 671.

Chapter SPS 121

APPLICATIONS

SPS 121.01	Authority.
SPS 121.02	Initial registration.
SPS 121.025	Temporary registration.
SPS 121.03	Consent by nonresident for service of process.

SPS 121.04	Renewal of registration.
SPS 121.05	Cause for denial of registration.
SPS 121.06	Change of name.
SPS 121.07	Use of trade name.

Note: Chapter RL 121 was renumbered chapter SPS 121 under s. 13.92 (4) (b) 1., Stats., Register November 2011 No. 671.

SPS 121.01 Authority. The rules in this chapter are adopted pursuant to ss. 227.11 (2), 440.03, 440.05, 440.08, 480.06, 480.08 and 480.10, Stats.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

SPS 121.02 Initial registration. (1) AUCTIONEER. The department may register as an auctioneer an applicant who satisfies the requirements in s. 480.08 (2) or (2m), Stats. The department shall consider s. 480.08 (2) (d), Stats., as having been satisfied, if the applicant has either received a seller's permit from the department of revenue under s. 77.52 (9), Stats., or the applicant has determined that he or she is not required to have a seller's permit and is, therefore, not eligible to obtain a permit.

(2) AUCTION COMPANY. The department may register as an auction company an applicant who satisfies the requirements in s. 480.08 (3), Stats. The department shall consider s. 480.08 (3) (d), Stats., as having been satisfied, if the applicant has either received a seller's permit from the department of revenue under s. 77.52 (9), Stats., or the applicant has determined that it is not required to have a seller's permit and is, therefore, not eligible to obtain a permit. An auction company is not required to have any of its officers, partners or directors registered as an auctioneer unless such officers, partners or directors engage in acts specified in s. 480.08 (1) (a), Stats.

Note: Applications may be obtained from the department located at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708. An otherwise qualified applicant shall be provided with reasonable accommodations.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

SPS 121.025 Temporary registration. A temporary registration certificate issued under s. 480.08 (7), Stats., shall be valid for no more than 60 days after the date that the applicant has filed an application for registration as an auctioneer with the department.

History: Cr. Register, January, 2001, No. 541, eff. 2-1-01.

SPS 121.03 Consent by nonresident for service of process. The application of a nonresident person for registration as an auctioneer or auction company constitutes the appointment of the secretary of the department as the applicant's agent upon whom process may be served in any action or proceeding against the applicant arising out of a transaction or operation connected with or incidental to the business of an auctioneer or auction company.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

SPS 121.04 Renewal of registration. (1) AUCTIONEER. (a) Except as provided in s. SPS 121.05, the department shall renew the credential of an auctioneer who files a completed application for renewal of registration before the renewal date, as defined in s. 440.01 (1) (dm), Stats., if all of the following conditions are satisfied:

1. The applicant has paid the renewal fee specified in s. 440.08 (2) (a) 14r., Stats.

2. The applicant continues to meet the registration criteria in s. 480.08 (2) (a) to (d), Stats.

(b) Except as provided in s. SPS 121.05, the department shall renew the credential of an auctioneer who files a completed application for renewal of registration after the renewal date, as defined in s. 440.01 (1) (dm), Stats., but less than 5 years after the renewal date, if all of the following conditions are satisfied:

1. The applicant has paid the renewal fee specified in s. 440.08 (2) (a) 14r., Stats., and the late renewal fee specified in s. 440.08 (3), Stats.

2. The applicant continues to meet the registration criteria in s. 480.08 (2) (a) to (d), Stats.

(c) The department shall renew the credential of an auctioneer who files a completed application for renewal of registration 5 years or more after the renewal date, as defined in s. 440.01 (1) (dm), Stats., if the following conditions are satisfied:

1. The applicant has paid the renewal fee specified in s. 440.08 (2) (a) 14r., Stats., and the late renewal fee specified in s. 440.08 (3), Stats.

2. The applicant continues to meet the registration criteria in s. 480.08 (2) (a) to (d), Stats.

3. The applicant has taken and passed the registration examination within one year prior to the date of the application for renewal of registration.

(2) AUCTION COMPANY. (a) Except as provided in s. SPS 121.05, the department shall renew the credential of an auction company which files a completed application for renewal of registration before the renewal date, as defined in s. 440.01 (1) (dm), Stats., if all of the following conditions are satisfied:

1. The applicant has paid the renewal fee specified in s. 440.08 (2) (a) 14g., Stats.

2. The applicant continues to meet the registration criteria in s. 480.08 (3) (a) to (d), Stats.

(b) Except as provided in s. SPS 121.05, the department shall renew the credential of an auction company which files a completed application for renewal of registration at any time after the renewal date, as defined in s. 440.01 (1) (dm), Stats., if all of the following conditions are satisfied:

1. The applicant has paid the renewal fee specified in s. 440.08 (2) (a) 14g., Stats., and the late renewal fee specified in s. 440.08 (3), Stats.

2. The applicant continues to meet the registration criteria in s. 480.08 (3) (a) to (d), Stats.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95; am. (1) (c) 3., Register, July, 1999, No. 523, eff. 8-1-99; correction in (1) (a) (intro.), (b) (intro.), (2) (a) (intro.), (b) (intro.) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.

SPS 121.05 Cause for denial of registration. The department may deny an application for registration as an auctioneer or auction company submitted by a person or entity who or which has committed fraud or misrepresentation in the application or who or which has done any acts which are grounds for discipline under s. 480.24, Stats.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

SPS 121.06 Change of name. If the name of a registered auctioneer or auction company appearing on the current registra-

tion certificate changes, written notice of the name change shall be sent to the department within 30 days after the name change.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

SPS 121.07 Use of trade name. A registered auctioneer or auction company, before doing business under any trade name, shall notify the department in writing of the trade name.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95; r. (1) and renum. (2) to be RL 121.07, Register, July, 1999, No. 523, eff. 8-1-99.

Chapter SPS 122

EXAMINATIONS

SPS 122.01	Authority.
SPS 122.02	Public notice.
SPS 122.03	Subjects tested.
SPS 122.04	Cheating on examination.

SPS 122.05	Passing score.
SPS 122.06	Examination review.
SPS 122.07	Claim of examination error.
SPS 122.08	Examination retakes.

Note: Chapter RL 122 was renumbered chapter SPS 122 under s. 13.92 (4) (b) 1., Stats., Register November 2011 No. 671.

SPS 122.01 Authority. The rules in this chapter are adopted pursuant to ss. 227.11 (2), 480.06, 480.08 (2) (e) and (2m), and 480.10, Stats.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

SPS 122.02 Public notice. The department shall prepare an examination application form and informational materials which list the examination dates which have been scheduled by the department for no less than the 6 months following publication.

Note: Applications may be obtained from the department located at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708. An otherwise qualified applicant shall be provided with reasonable accommodations.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

SPS 122.03 Subjects tested. The department shall prepare examinations as required under s. 480.10, Stats. The examination shall be a written examination that tests the applicant's knowledge or competence in all of the following areas:

- (1) Solicitation.
- (2) Contracts.
- (3) Pre-auction preparation.
- (4) Conducting an auction.
- (5) Closing and sales records.
- (6) Statutes and administrative rules substantially related to conducting an auction.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

SPS 122.04 Cheating on examination. An applicant may not give or receive unauthorized assistance during the examination, improperly remove notes, examination questions or secure documents from the examination setting, sell or distribute actual examination questions from the examination, buy or obtain unauthorized access to examination questions, or otherwise violate the published rules of conduct of the examination.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95; am. Register, July, 1999, No. 523, eff. 8-1-99.

SPS 122.05 Passing score. The score required to pass the examination shall be based on the department's determination of the level of examination performance required for minimum acceptable competence in the profession. The department shall make the determination after consultation with subject matter experts who have reviewed a representative sample of the examination questions and available candidate performance statistics, and shall set the passing score for the examination at that point which represents minimum acceptable competence in the profession.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

SPS 122.06 Examination review. (1) An applicant who fails the examination may request a review of that examination by filing a written request to the department within 30 days after the date on which the examination results were mailed to the applicant.

(2) An examination review shall be conducted under the following conditions:

- (a) The time for review shall be limited to one hour.
- (b) The examination shall be reviewed only by the applicant and in the presence of a proctor.
- (c) The proctor may not respond to inquiries by the applicant regarding allegations of examination error.
- (d) Any comments or claims of error regarding specific questions or procedures in the examination may be placed in writing by the applicant on the form provided for this purpose. The request shall be reviewed by the department in consultation with a subject matter expert. The applicant shall be notified in writing of the department's decision. If the decision does not result in a passing grade, the applicant may retake the examination.

(e) An applicant shall be permitted only one review of the failed examination each time it is taken and failed.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

SPS 122.07 Claim of examination error. (1) An applicant wishing to claim examination error must file a written request for department review in the department office within 30 days after the date the examination was reviewed. The request shall include:

- (a) The applicant's name and address.
- (b) The type of registration applied for.
- (c) A description of the perceived error, including reference text citations or other supporting evidence for the applicant's claim.

(2) The request shall be reviewed by the department in consultation with a subject matter expert. The applicant shall be notified in writing of the department's decision. If the decision does not result in a passing grade, the applicant may retake the examination.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

SPS 122.08 Examination retakes. (1) There is no limit to the number of times any applicant may retake the examination.

(2) An applicant who passes the examination and remains unregistered for one year or more after the date of the examination shall again take and pass the examination before being registered.

(3) An applicant who reviews an examination pursuant to s. SPS 122.06 may not retake the examination within 30 days after the date on which the examination was reviewed.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95; correction in (3) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.

Chapter SPS 123

ADVERTISING

SPS 123.01 Authority.
SPS 123.02 False advertising.

SPS 123.03 Contents of advertising.

Note: Chapter RL 123 was renumbered chapter SPS 123 under s. 13.92 (4) (b) 1., Stats., Register November 2011 No. 671.

SPS 123.01 Authority. The rules in this chapter are adopted under authority of ss. 227.11 (2), 480.06, 480.20 and 480.24 (2) (d), Stats.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

SPS 123.02 False advertising. No registrant may advertise in a manner which is false, deceptive or misleading.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

SPS 123.03 Contents of advertising. All advertisements that an auction will be conducted shall contain the follow-

ing information:

(1) The name or trade name of an auctioneer responsible for the auction conducted pursuant to the contract required under s. 480.14 (1), Stats., and the name or trade name of any auction company that is managing the auction.

(2) A statement that the auctioneer is a 'registered Wisconsin auctioneer' and the state registration number of the auctioneer.

(3) A statement of the terms and conditions under which the registrant will accept payment by buyers at the auction.

(4) The percentage or other amount of any buyer's fee or surcharge which is a condition to sale.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95; r. and recr., Register, July, 1999, No. 523, eff. 8-1-99.

Chapter SPS 124

WRITTEN CONTRACTS

SPS 124.01 Authority.
SPS 124.02 Written contracts; terms.

SPS 124.03 Written contracts; copies.

Note: Chapter RL 124 was renumbered chapter SPS 124 under s. 13.92 (4) (b) 1., Stats., Register November 2011 No. 671.

SPS 124.01 Authority. The rules in this chapter are adopted under authority in ss. 227.11 (2), 480.06 and 480.14, Stats.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

SPS 124.02 Written contracts; terms. No auctioneer may conduct an auction unless the auctioneer or the auction company that is managing the auction has entered into a prior written contract with each owner or consignor of goods or real estate that may be sold at the auction. The contract shall specify the terms and conditions upon which the auctioneer or auction company accepts the goods or real estate for sale and must contain:

- (1) The registrant's name, trade or business name, state registration number, business address and business telephone number.
- (2) The name and address of the owner or consignor.
- (3) A general description of the property to be sold at auction, any restrictions relating to conducting the auction and a statement indicating whether the registrant is authorized to purchase at the auction.

(4) A description of the services to be provided and the consideration for the services. The description must state which party is responsible for advertising and other expenses.

(5) A statement of whether a buyer's fee or surcharge will be assessed and, if so, the percentage or other amount to be charged to the successful bidder.

(6) The date, dates or time period during which the items will be sold at auction.

(7) A statement by the seller that he or she has title and right to sell all property to be sold at auction free of encumbrances and liens; or, if some or all of the property to be sold is subject to encumbrances or liens, a specific itemization of such property.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95; am. (5), Register, July, 1999, No. 523, eff. 8-1-99.

SPS 124.03 Written contracts; copies. An auctioneer or auction company shall give the owner or consignor a legible copy of the contract referred to in s. SPS 124.02 at the time of signing.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95; correction made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.

Chapter SPS 125

MAINTENANCE OF RECORDS

SPS 125.01	Authority.	SPS 125.05	Time of trust account deposit.
SPS 125.02	Definition.	SPS 125.06	Opening and closing trust accounts.
SPS 125.025	Use of computers.	SPS 125.07	Trust account designation.
SPS 125.03	Account summary sheet for registrants not maintaining a trust account.	SPS 125.08	Notification of the department regarding trust account.
SPS 125.035	Trust account required.	SPS 125.09	Withdrawal of trust funds.
SPS 125.04	Type of account.	SPS 125.10	Commingling prohibited.
		SPS 125.12	Trust account bookkeeping system.

Note: Chapter RL 125 was renumbered chapter SPS 125 under s. 13.92 (4) (b) 1., Stats., Register November 2011 No. 671.

SPS 125.01 Authority. The rules in this chapter are adopted pursuant to ss. 227.11 (2), 480.06, 480.14, 480.16 and 480.18, Stats.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

SPS 125.02 Definition. In this chapter, “trust funds” means cash, checks, share drafts, drafts or notes received by an auctioneer or an auction company on behalf of any other person while acting as an auctioneer or auction company for an auction of goods. “Trust funds” does not include proceeds received by an auctioneer or an auction company on behalf of any other person pursuant to an auction in which the written contract under s. 480.14, Stats., requires the registrant to pay the owner or consignor within 24 hours after the auction.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95; am. Register, July, 1999, No. 523, eff. 8-1-99.

SPS 125.025 Use of computers. An auctioneer or an auction company may maintain any records required by this chapter in a computerized system, provided that:

(1) A backup copy of the bookkeeping records is made on any day on which entries are made in the computerized bookkeeping system. The backup copy shall be made on a disk or other medium which is separate and distinct from that on which the source documents reside.

(2) All records which are not maintained as written paper records are capable of being immediately converted to written paper records and immediately made available without charge to the department for the purposes of department audit or investigation.

History: Renum. from RL 125.12 and am. (intro.), Register, July, 1999, No. 523, eff. 8-1-99.

SPS 125.03 Account summary sheet for registrants not maintaining a trust account. An auctioneer or auction company that is not required to maintain a trust account shall maintain an account summary sheet which shows the receipts, deposits, expenses and disbursements of each individual auction.

Note: This provision applies only to registrants not required to maintain a trust account. Registrants for whom a trust account is required must use the trust account bookkeeping system described in s. SPS 125.12.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95; r. and recr., Register, July, 1999, No. 523, eff. 8-1-99.

SPS 125.035 Trust account required. An auctioneer or auction company shall maintain a trust account when the registrant receives and holds auction funds which are not disbursed to the owner or consignor under a written contract under s. 480.14, Stats., within 24 hours after the auction.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

SPS 125.04 Type of account. An auctioneer or auction company may place trust funds in an interest-bearing or non-

interest-bearing account, provided that none of the interest inures to the benefit of the auctioneer or auction company.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

SPS 125.05 Time of trust account deposit. An auctioneer or auction company shall deposit trust funds in a trust account within 48 hours after receipt by the auctioneer or auction company.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

SPS 125.06 Opening and closing trust accounts.

(1) The department may not require an auctioneer or auction company to open a trust account before the auctioneer or auction company receives trust funds which must be deposited, unless the department finds, in a specific case, that an earlier opening of an account is needed in order to assure compliance with this chapter.

(2) An auctioneer or auction company may close a trust account when no trust funds remain in the auctioneer’s or auction company’s possession.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

SPS 125.07 Trust account designation. An auctioneer or auction company shall:

(1) Include the words “trust account” in the name of the trust account maintained by the auctioneer or auction company.

(2) Imprint the name of the auctioneer or auction company on the trust account checks, share drafts or drafts.

(3) Designate the account with the name appearing on the auctioneer’s or auction company’s registration certificate or with a trade name submitted to the department under s. SPS 121.07.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95; correction in (3) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.

SPS 125.08 Notification of the department regarding trust account. (1) An auctioneer or an auction company shall provide the department with the name and number of every trust account maintained by the auctioneer or auction company and the name of the depository institution in which the auctioneer or auction company holds each trust account. The auctioneer or auction company shall provide this notification to the department on a form prepared by the department no later than 10 days after opening a trust account. The auctioneer or auction company shall authorize representatives of the department to examine and audit all of the auctioneer’s or auction company’s trust accounts.

(2) An auctioneer or an auction company shall obtain the certification of every depository institution in which the auctioneer or auction company maintains a trust account, in which the depository institution attests to the existence of the account and consents to the examination and audit of the account by a duly authorized representative of the department.

Note: A Consent to Examine and Audit Auctioneer Trust Account form may be obtained from the department located at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

(3) An auctioneer or auction company shall notify the department no later than 10 days after a change has been made to an auction trust account name, auction trust account number or deposi-

tory institution name. The notification shall be provided on a form prepared by the department.

Note: Forms may be obtained from the department at 1400 East Washington Avenue, P. O. Box 8935, Madison, Wisconsin 53708.

(4) An auctioneer or auction company shall notify the department no later than 10 days after an auction trust account has been closed. This notification shall be made in written correspondence to the department.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95; cr. (3) and (4), Register, July, 1999, No. 523, eff. 8-1-99.

SPS 125.09 Withdrawal of trust funds. An auctioneer or auction company shall withdraw funds to reimburse the auctioneer or auction company for expenses incurred and commissions and fees earned by the auctioneer or auction company within the 30 days specified in s. 480.14 (3), Stats., or as otherwise provided by the terms of a contract.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

SPS 125.10 Commingling prohibited. (1) Except as provided in subs. (2) and (3), an auctioneer or an auction company may not commingle the auctioneer's or auction company's personal or company funds which are not trust funds in a trust account maintained pursuant to this chapter.

(2) An auctioneer or auction company may place personal or company funds in a trust account under the following conditions:

(a) Funds equal to the amount of any checks received by the auctioneer or auction company on behalf of an owner or consignor when such funds are deposited by the auctioneer to cover potential or actual "non-sufficient funds" checks received from purchasers.

(b) Funds sufficient to cover service charges relating to the trust account.

(3) An auctioneer or an auction company shall deposit additional personal or other funds in the trust account within 10 busi-

ness days following receipt of a statement or other notification from a depository institution that the trust account is overdrawn.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

SPS 125.12 Trust account bookkeeping system. An auctioneer or an auction company required to maintain a trust account shall maintain a bookkeeping system that enables the auctioneer or auction company to adequately account for all trust funds in a trust account, to maintain an accurate and sufficient balance in the account and to account for all trust funds received from specified buyers and paid to specified sellers for specified purchases. The bookkeeping system shall consist of at least the following:

(1) CHECK REGISTER. An auctioneer or an auction company shall maintain a record regarding a trust account, called a check register, which shall show the date, the payee, the number of the check, share draft or draft and the amount.

(2) BANK RECONCILIATION. An auctioneer or an auction company shall reconcile the trust account in writing each month unless there has been no activity during the month. The written reconciliation shall include all of the following:

(a) The ending bank statement balance.

(b) The date and amounts of the deposits in transit.

(c) The check number and amounts of outstanding checks.

(d) The resulting reconciled bank statement ending balance.

(3) VALIDATION. The auctioneer or auction company shall review the reconciled bank statement ending balance, the account summary sheets described in sub. (4), and the check register to ensure that all of the records are accurate and in agreement as of the date the trust account statement has been reconciled.

(4) ACCOUNT SUMMARY SHEET. An auctioneer or auction company shall maintain a record regarding a trust account, called an account summary sheet, which shows the receipts, deposits, expenses and disbursements as they affect each individual auction.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95; renum. from RL 125.11, am. (intro.), cr. (1) to (4), Register, July, 1999, No. 523, eff. 8-1-99.

Chapter SPS 126

CONDUCT

SPS 126.01 Authority.
SPS 126.02 Unprofessional conduct.

SPS 126.03 Effect of suspension or revocation on registrant.

Note: Chapter RL 126 was renumbered chapter SPS 126 under s. 13.92 (4) (b) 1., Stats., Register November 2011 No. 671.

SPS 126.01 Authority. The rules in this chapter are adopted under authority in ss. 227.11 (2), 480.06 and 480.24 (2) (b), Stats.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

SPS 126.02 Unprofessional conduct. Conduct evidencing a lack of knowledge or ability to apply professional principles or skills, within the meaning of s. 480.24 (2) (b), Stats., includes, but is not limited to, engaging in or aiding or abetting the following conduct:

(1) Performing or offering to perform services for which the registrant is not qualified by education, training or experience.

(2) Violating a law or rule of any jurisdiction, the circumstances of which substantially relate to the practice under the registration.

(3) Advertising an auction as an absolute auction if any item or items are to be sold with reserve or with minimum bids.

(4) Engaging in false, fraudulent, deceptive or misleading billing practices.

(5) Obtaining or attempting to obtain compensation by fraud or deceit.

(6) Reporting distorted, false or misleading information or making false statements in practice.

(7) Discriminating on the basis of age, race, color, sex, religion, creed, national origin, ancestry, disability or sexual orientation by means of service provided or denied.

(8) Knowingly escalating or attempting to escalate bidding through false bids, shills or through collusion with another.

(9) Violating or attempting to violate any formal disciplinary order of the auctioneer board.

(10) Knowingly providing false information to the board, the department or their agents.

(11) Cheating on the registration examination contrary to s. SPS 122.04.

(12) Failing to post written notice at the location where the auction is to be conducted, prior to the commencement of an auction, of the terms and conditions under which the registrant will accept payment by buyers.

(13) If a buyer's fee or surcharge is a condition of sale, failing to post written notice at the location where the auction is to be conducted, prior to the commencement of an auction, of the percentage or other amount of the buyer's fee or surcharge.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95; cr. (11), (12) and (13), Register, July, 1999, No. 523, eff. 8-1-99; am. (13), Register, January, 2001, No. 541, eff. 2-1-01; correction in (11) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.

SPS 126.03 Effect of suspension or revocation on registrant. (1) An auctioneer or auction company whose registration has been suspended or revoked shall notify all persons with whom the auctioneer or auction company has a contract for services to be performed during the period of suspension or following revocation. The notice shall be in writing, state that the registration of the auctioneer or auction company has been suspended or revoked, and describe the terms of the suspension or revocation.

(2) An auctioneer or auction company whose registration has been suspended or revoked by the board may not engage in the following activities during the term of the suspension or revocation:

(a) Call an auction by calling for, recognizing, or accepting offers for the purchase of goods or real estate at an auction.

(b) Advertise, represent or otherwise hold out as being available to call or manage an auction.

(c) Advertise, represent or otherwise hold out as being an auctioneer or auction company or use the title "auctioneer," "registered auctioneer," "certified auctioneer," "licensed auctioneer," "auction company," "auction sales staff," "auction team member" or any similar title.

(d) Solicit, negotiate or enter into any auction contract, auction listing, auction consignment, or related auction agreement, including assisting or aiding another registrant to perform auction-related duties.

(e) Perform, manage or supervise any of the following:

1. Call for bids at any type of auction, including auctions under s. 480.02 (2) (a) to (h), Stats.

2. Oversee, in any manner, the conducting of any auction.

3. Accept any form of referral fee, finder's fee, commission, commission sharing or splitting, or related compensation from any auctioneer, auction company, or auctioneer-related professional.

4. Participate in any form of auctioneer-related bid-calling.

5. Suggest or imply to the public, privately or through advertising, that he or she is able to perform any of the activities in subs. 1. to 4.

(3) An auctioneer or auction company may not employ, retain or otherwise utilize an auctioneer or auction company whose registration has been suspended or revoked to perform any auction-related activity described in sub. (2). This section does not prohibit an auctioneer or auction company from contracting to perform services that an auctioneer or auction company is unable to perform because of a registration suspension or revocation and which the auctioneer or auction company contracted to perform prior to the license suspension or revocation.

History: Cr. Register, January, 2001, No. 541, eff. 2-1-01.

Chapter SPS 127

SALE OF REAL ESTATE AT AUCTION

SPS 127.01 Authority.
 SPS 127.02 Auction of real estate.
 SPS 127.03 Limitations.

SPS 127.04 Contract.
 SPS 127.05 Real estate subject to exclusive listing contract.
 SPS 127.06 Solicitation of owners with exclusive listing contract prohibited.

Note: Chapter RL 127 was renumbered chapter SPS 127 under s. 13.92 (4) (b) 1., Stats., Register November 2011 No. 671.

SPS 127.01 Authority. The rules in this chapter are adopted under authority in ss. 227.11 (2), 480.01, 480.14 and 480.16, Stats.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

SPS 127.02 Auction of real estate. (1) AUCTIONEER. An auctioneer may engage in, or advertise or otherwise hold himself or herself out as being available to engage in, the calling for and the recognition and acceptance of offers for the purchase of real estate at an auction, and may handle sales proceeds, down payments, earnest money deposits or other trust funds received by the auctioneer on behalf of the auctioneer's principal or any other person at or as a result of an auction of real estate.

(2) AUCTION COMPANY. An auction company may manage an auction of real estate and may have primary responsibility for handling sales proceeds, down payments, earnest money deposits or other trust funds received by the auction company on behalf of the auction company's principal or any other person at or as a result of an auction of real estate.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

SPS 127.03 Limitations. (1) REGISTRANT LICENSED AS A REAL ESTATE BROKER OR SALESPERSON. A registrant who is licensed as a real estate broker and who conducts an auction of real estate listed for sale with the registrant, or a registrant who is licensed as a real estate broker or salesperson and who conducts an auction of real estate listed for sale with the registrant's real estate broker-employer, may prepare contracts or other documents necessary to transfer title to the real estate or conduct any other activities requiring a real estate license under ch. 452, Stats., and chs. REEB 11 to 25.

(2) REGISTRANT NOT LICENSED AS A REAL ESTATE BROKER OR SALESPERSON. (a) A registrant who is not licensed as a real estate broker or salesperson may, in connection with an auction of real estate:

1. Distribute written information describing real estate or the condition of the real estate to be auctioned, if the information has been made available by the owner of the real estate or a real estate licensee.

2. Provide access to real estate for the purpose of permitting prospective buyers to view the real estate.

3. Conduct inquiries in person, by telephone or by other media to determine whether the person being contacted is interested in bidding upon the real estate to be auctioned.

4. Perform other tasks relating to conducting an auction which do not require a real estate license under ch. 452, Stats.

(b) A registrant who is not licensed as a real estate broker or salesperson may not perform activities which require a real estate license under ch. 452, Stats., including but not limited to:

1. Preparing any contracts or other documents necessary to transfer title to real estate.

2. Distributing to prospective buyers written information about the real estate or conditions affecting the real estate which has not been provided by the owner of the real estate or the owner's agent.

3. Negotiating with a prospective buyer within the meaning of s. 452.01 (5m), Stats., other than by conducting an auction.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register February 2017 No. 734.

SPS 127.04 Contract. A registrant shall have a written contract with the owner of real estate to be sold at an auction, or the owner's agent, which specifies the terms and conditions upon which the auctioneer or auction company accepts the real estate for sale at auction. The following conditions apply to the contract:

(1) A registrant who is licensed as a real estate broker under ch. 452, Stats., shall use the appropriate approved listing contract form required under s. REEB 16.03, when contracting with the owner to conduct an auction of real estate, and shall include provisions which comply with s. SPS 124.02.

(2) A registrant who is licensed as a real estate salesperson shall use the appropriate approved listing contract form required under ch. REEB 16, when contracting with the owner to conduct an auction of real estate if the salesperson is employed by a real estate broker, and shall include provisions which comply with s. SPS 124.02.

(3) A registrant who is not licensed as a real estate broker or salesperson under ch. 452, Stats., shall use a contract that complies with s. SPS 124.02.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96; correction in (1), (2), (3) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.

SPS 127.05 Real estate subject to exclusive listing contract. Prior to entering into any contract for the sale of real estate at an auction, the registrant shall determine whether the real estate is subject to an exclusive real estate listing contract. If the real estate to be sold at an auction is subject to an exclusive real estate listing contract between the seller and a real estate broker other than the registrant, the registrant:

(1) May only enter into a contract under s. SPS 127.04, with the real estate broker holding the exclusive real estate listing contract on the real estate.

(2) May not receive any sales proceeds, down payments, earnest money deposits or other trust funds as a result of an auction of the real estate, unless the contract under sub. (1) authorizes the registrant to do so.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.

SPS 127.06 Solicitation of owners with exclusive listing contract prohibited. A registrant may not solicit an owner of real estate to sell the real estate at an auction if the registrant knows that the real estate is subject to an exclusive real estate listing contract.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.