

TAA QUARTERLY

Volume II, Issue 3

August 2014

TENNESSEE AUCTIONEERS ASSOCIATION



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Upcoming Events

November 30, 2014

Board Meeting
Annual Meeting
Grand Champion Auction
Competition
Fun Auction

December 1, 2014

6 Hours of CE

This newsletter is published by the Tennessee Auctioneers Association as a service to its members and supporters in the auctioneering industry. Suggestions are welcome for articles in future editions.

Message From The President...

My daughter has moved back to school for another year of college, my wife who is a high school teacher has started another year. It's hard to believe how fast time passes us by.

Next year will be my 25th year as a member of the Tennessee Auctioneers Association. During that time I've seen many changes not only in the association, in our profession, but also in the people. Reflecting back, I recall hearing conversations such as, "I'll never charge a buyer's premium, I'll lose all my buyers", "I don't use one them fancy computers", "What's email?", "You'll never sell real estate on the internet". How times have changed.

At the summer convention in Chattanooga this past June, the association membership voted approval of another change, the elimination of the rotating President position between the three grand divisions. The President's position will therefore now be elected at-large.

During my membership in the TAA, some names and faces have changed, however, some have remained the same. There is one constant that remains in both the old and new membership, and that is passion, a passion and devotion to our profession, and our association.

With that, I would like to congratulate Mr. Ed Stallings for his induction into the Tennessee Auctioneers Hall of Fame.

Also, I would like to congratulate the Rookie Bid Calling Contestants:

Champion: Mr. J.T. Shouse
1st Runner Up: Mr. Ray Hubner
2nd Runner Up: Mr. David Mahaney

I would like to thank everyone that assisted in anyway with the Chattanooga Convention, from the fun auction to the continuing education classes.

The winter convention in Nashville is just a few months away and I hope to see each and every one of you there.

Sincerely,
Marcus D. Gravitt, CAI, AARE, GPPA

TAA ANNUAL Winter CONVENTION

WHEN: Sunday and Monday, November 30 - December 1, 2014

WHERE: The Inn at Opryland Hotel, Nashville, TN

DETAILS: \$100/Rate, Please reserve by November 2, 2014, (615) 889-0800

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PUBLICATION DATES

Articles and ad deadlines:

FEBRUARY 1 APRIL 1
AUGUST 1 NOV. 1

Any and all TAA members are encouraged to send information on past or coming events they have conducted or news articles that would be of interest to other members. Please send profiles of members that you feel deserve to be highlighted in our publication.

TAA Salutes Members of Hall of Fame

- | | | |
|-------------------------------------|---------------------------------------|-------------------------------|
| 2014 Ed Stallings | 2001 James Gary | 1990 Charles Rainwater |
| 2013 David Fall | 2000 Bill Colson | 1990 Clive Anderson Jr |
| 2013 Tim Mast | 2000 Jack Holbrook * | 1990 C B Arnette |
| 2013 Van Massey | 1999 William "Bear" Stephenson | 1990 Fulton Beasley |
| 2012 Marc Colson | 1999 Bobby Colson | 1990 Clyde White |
| 2012 David Cole | 1998 Ray Parham | 1990 G S Gordan |
| 2010 Tommy Anderson | 1998 Feller Brown | 1989 Jasper Jones |
| 2009 Rick Hinson | 1996 Max Puckett | 1986 Jim Stevens |
| 2008 Jerry E. Gregory | 1995 Frank Walden | 1985 Ottis Kemp |
| 2008 Ken Gravitt | 1995 Raymond Taggart | 1984 Buford Evans |
| 2007 Amon Ringemann | 1994 Tom Shepard * | 1983 Hoyt Walker |
| 2006 Earl Lamb | 1994 Ben Gary | 1982 Bill Collier |
| 2005 J.J. Dower | 1994 J B Stiner | 1982 Hubert Songer |
| 2005 Robbie Franklin | 1993 Harvey Boles | 1981 Beeler Thompson |
| 2004 John "Skeets" Eskridge* | 1993 Marvin Alexander | 1981 G W Clark |
| 2004 Charles Woodard | 1993 Dean Howard | 1980 Billy Howard |
| 2004 Comas Montgomery | 1993 John Cook | 1980 Ralph Massengill |
| 2003 Don King | 1993 Red Jesse | 1978 Clive Anderson Sr |
| 2003 Scott McCarter | 1992 Hack Ayers | 1978 Fred Ramsey |
| 2002 Hugh Howell | 1992 Bill Hall | 1978 EB Fulkerson |
| 2002 Kenneth Dreaden | 1992 Thelma Cartwright | |
| 2001 Lloyd Nevels | 1990 C B McCarter | |

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- | | | |
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Travel Channel's "Baggage Battles"

Nashville's live auction facility, Music City Auction, once again enjoyed a national television spotlight as they were featured on not one, but two episodes of the Travel Channel's auction-reality show "Baggage Battles." In July of 2013, the "Baggage Battles" cast and crew came to Nashville and MCA to film a live auction for their show (which subsequently aired in October of 2013). The experience was apparently a positive one, as they asked owner/auctioneer David Allen if they could return to film another live Music City Auction. A date was agreed upon and on October 18, 2013 the cast members and film production crew participated in MCA's 3rd Friday of the Month Absolute Live Auction.

"Baggage Battles" has been on television for several years. On Wednesday, April 23, 2014, they kicked off their 4th season by featuring the October MCA auction in their premier episode. The auction taping was actually edited into two different shows, and just one week later on Wednesday, April 30, they aired the second show. Mr. Allen said, "I was pleased that they were able to present our auction firm in two of their episodes. This makes the third time that Music City Auction has been featured in a "Baggage Battles" episode and I think it allowed the viewer the opportunity to get a great look at the work we do each and every time that we conduct a live auction."

The cast members are filmed during the preview, with each member expressing interest or disinterest in any specific number of items. Some of the items featured on the show have been placed into the auction by the "Baggage Battles" production team. However, most of items highlighted on each episode come from outside consigners, not associated with the show, who simply want their items to be sold in a live auction. And with *all* of the items won by the cast members, real money is being tendered for payment (with all buyer's premiums being assessed, as well).

Just because a cast member expresses interest in an item during the preview filming, this does not guarantee that they will ultimately be the successful bidder for that item. Case in point- the "BB" personnel were highly interested in purchasing a vintage "Mr. Peanut" costume and spent a great deal of time in the preview filming highlighting its uniqueness and desirability. When the item came up for auction, the bidding was unexpectedly very brisk and, ultimately they lost out to another bidder not associated with the show, to the tune of \$2800 (plus the 10% BP). As they said after the auction, "It was disappointing not to win the item, but it is after all, an un-staged live auction, and we cannot (and would not) control the outcome of the sale of an item. It should, however, make for "great TV" (which it did!).

Mr. Allen was pleased with the great exposure that the television show provided to his 10-year old auction firm. "The show did a nice job throughout each episode of showing our logo and signage, our facility, as well as our personnel at work during the auction. Anytime that you can get national coverage like that, it can only help to bring more business to your doorstep." Currently, there are no plans to return to MCA to film again, but Mr. Allen wouldn't be surprised if he got another phone call. "I think there is a comfort level and familiarity with each other that would make working together again beneficial for both of us. Regardless, however, of whether we are on TV or not, MCA will always try to put on a great live auction!



Left: "Music City Auction Hall before filming TV Show"

Additional Photo on Page 6

Article Submitted by: David Allen

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Steve Proffitt

“AS IS” Not Bulletproof

I looked across the roomful of auctioneers at the continuing education class and asked:

“How many of you sell with an ‘as is’ disclaimer?”

Predictably, hands flew up everywhere. Probably every auctioneer who sells goods of any kind does so under an “as is” disclaimer. Indeed, “as is” is so ubiquitous in auctions that it almost seems to be an industry slogan.

Not bulletproof

While the types of goods that auctioneers sell, and the circumstances of these sales, present good reason to invoke the “as is” disclaimer, there is a serious problem with it that most auctioneers do not know. Contrary to popular belief, the disclaimer is not bulletproof armor for sellers and their auctioneers and there is a legal limitation on its effectiveness. As quickly as an auctioneer gives the disclaimer in the terms of auction, she commonly steps from behind it during the offering stage for the lots, thereby shedding the very protection that the auctioneer seeks for her seller and herself and exposing both to potential liability.

Three warranties

Every time an auctioneer offers a lot for sale, she almost invariably gives three warranties for which she and her seller are responsible. These warranties are provided for by statutes within the Uniform Commercial Code (“UCC”), as enacted into law by the states (except for Louisiana).

First, the auctioneer warrants, pursuant to UCC section 2-312 (1) (a), that the seller has the right to sell the lot offered and “the title conveyed (from the seller to the buyer) shall be good, and its transfer rightful....” So unless an auctioneer expressly states the contrary (and a simply invocation of “as is” will not accomplish that), she warrants that the seller has the right to offer the goods and will convey good title to them to the buyer. If this were not the case, who would bid on anything in an auction? The obvious answer is that no one would knowingly bid to buy what he might not be able to lawfully own and this is the reason the UCC protects buyers in this manner.

Second, the auctioneer also warrants, pursuant to UCC section 2-312 (1) (b), that the seller has unencumbered ownership of the lot offered and will convey it to the buyer “free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.” This is a corollary of the first war-

ranty. Unless an auctioneer expressly disclaims it (“as is” is also insufficient for this purpose), she gives the warranty. Again, if this were not the case, who would bid to spend good money to purchase what the buyer might not be able to own free and clear of the claims of others? The drafters of the UCC understood this and included this statutory warranty to protect buyers from such a predicament.

Third, the auctioneer’s description of the goods offered becomes an expressed warranty of the lot, pursuant to UCC section 2-313. This means the auctioneer expressly warrants that the goods are what she describes them to be. So a “Waterford crystal bowl” had better be one and not a plain, glass ashtray as once happened to me at an auction, resulting in my declining to accept the piece. If an auctioneer incorrectly describes the goods, the buyer might rely on the errant description and purchase the lot only to learn that it is not what it was claimed to be. The damages suffered by the buyer could trigger a legal claim against both the seller and auctioneer.

Description danger

An auctioneer deepens her seller’s and her own potential liability as she expands her descriptions of the goods offered. Here is an example:

“This desk is solid mahogany. It’s a product of Thomas Chippendale’s shop in London. Benjamin Franklin purchased and owned it. He gave it to his friend, Thomas Jefferson, who kept it at his home at Monticello. It’s museum quality.”

The auctioneer had better be right on each of these representations. This is because these statements go well beyond the puffery that a salesperson is allowed and rise to statements of fact that create an expressed warranty. If any part of this description is wrong, the variance between what is described and the truth could result in damages which the buyer could seek to recover from the seller and auctioneer. Consequently, auctioneers should never make representations about anything that they do not know to be true.

Sales versus safety

Here is a question auctioneers often ask: How can an auctioneer fulfill her duty to maximize selling prices for her seller, while minimizing risk for descriptive warranties? The answer to this question reminds me of the law-school axiom about assault and battery – my right to thrust my fist through the air ends where your nose begins. Here, an auctioneer’s duty to a seller to highlight and best present a lot so it brings the most money ends where the truth stops. It is perfectly fine for an auctioneer to give the fullest description that might help boost the price for a piece, so long as that description is correct. Anything more could open the

Hall of Fame

At the recent TAA convention in Chatt. most of you know I was inducted into the TAA Hall Of Fame. This was a total shock to me and my wife Lani. At that time I could say very little, so I thought I needed to express my gratitude to a few individuals. I want to thank David Cole for his kind words during his induction speech. I also want to recognize Charlie Yount who took a chance on a E-TN hillbilly to be able to get into the auction business. Also the great Ray Sims, who the auction song was written about, who was President and instructor at Superior Auction School in Decatur, IL., where I attended auction school. A student ask him how to be successful in the auction field. His answer was " go a little further-stay a little longer-work a little harder". This is a statement I have remembered and took to heart since that day. I have always said that my wife Lani and I are partners in this business. I must say she took Mr. Sims quote far more serious than myself. She was a high school special education teacher and taught Monday thru Friday then caught a flight and flew to where we were conducting an auction that week, worked the auction on Saturday, caught a flight back home Sunday and went back to teaching Monday morning. My final thoughts are I will cherish this award for the rest of my life, humbly I say thanks to the individuals who voted me into the hall of fame. If I can be any help to anyone at any time just give me a call. LET'S HAVE AN AUCTION.

Ed Stallings

Steve Proffitt (Continued)

door to a legal claim by the buyer. Even an auctioneer's good-faith belief in the description given for a lot, if wrong, could open the door to a claim and result in liability for the seller and auctioneer.

Therein is stretched the tightrope that an auctioneer must walk. The auctioneer has a duty to the seller to present every lot in the manner that will help it achieve its best selling price, and to do less runs the risk of a claim against the auctioneer by the seller. So an auctioneer who sold the above-described Chippendale desk as just "a wooden desk" could expect an issue with the seller when the desk brings far less than it would be worth given its correct provenance. This is because best serving the interests of the seller is part and parcel of an auctioneer's fiduciary duty to the seller.

Likewise, the auctioneer cannot give an incorrect description for a lot without exposing herself and her seller to an auction by an aggrieved buyer. An incorrect description for a piece could raise two causes of legal action by the buyer against the seller and auctioneer. One would be the breach of the statutory warranty of description that is provided for in section 2-313 of the UCC. The other would be the common-law tort of fraud.

Conclusion

Consequently, while an auctioneer has a duty to her seller not to under represent the description of a lot, she has a corresponding duty to the bidders and any buyer not to over represent it with false assertions. This is a delicate balancing act. Professional auctioneers know how to do it right.

Steve Proffitt is general counsel of J. P. King Auction Company, Inc. (www.jpking.com) in Gadsden, AL. He is also an auctioneer and instructor at Mendenhall School of Auctioneering in High Point, NC. This information does not represent legal advice or the formation of an attorney-client relationship and readers should seek the advice of their own attorneys on all legal issues. Mr. Proffitt may be contacted by email at sproffitt@jpking.com.

*JohnStephen Proffitt III
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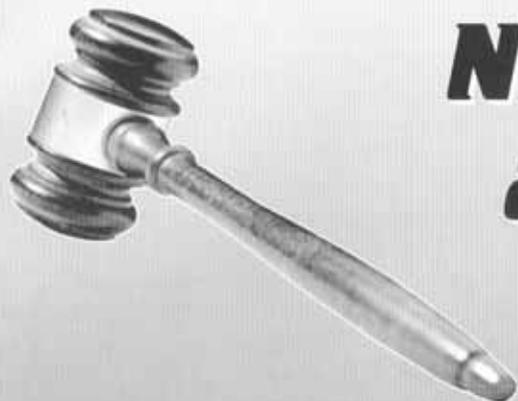
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"1920s-30s Walgreen Stores in Nashville Porcelain Sign"

For full article Return to page 3.



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