



Monthly E-News

JUNE 2010

Summer TAA Convention & Fun Auction

By Patti Baldini-Martin and David Allen

Join the TAA in Tunica on June 6 for the Convention and Fun Auction Event. This is our major fund raising event, and we are asking you to please remember to bring an item to sell at the Fun Auction during our Banquet.

Our Winter Convention Fun Auction in Nashville was a huge success, and with your help, we could top it!

Suggested items include gift cards for restaurants, retail shopping, spa visits, fuel cards, amazon.com gift cards, and just about anything else you would like to bring. The TAA appreciates all donations.

Come and showcase your talent, and we'll see you in Tunica!

REGISTER TODAY!

GO ONLINE TO **WWW.TNAUCTIONEERS.COM** TO
DOWNLOAD REGISTRATION FORMS, AN AGENDA AND A
ROOKIE BID CALLING COMPETITION FORM.

JOIN US IN TUNICA!

Member Spotlight – Jeremy Finley, 2009 TAA Rookie Bid Calling Champion

By Ben Jones, Associate Executive Director

Jeremy Finley wasn't sure how he'd do in the 2009 Tennessee Auctioneers Association Rookie Bid Calling Competition. He was three weeks removed from auctioneers school graduation, but he had enough of a competitive drive to find out how he could fare against similar industry peers.

Finley took on three other contestants in Murfreesboro at the annual Summer Convention, and in the end, he was the last auctioneer standing as the TAA named him the rookie champion.

"I grew up in the antique business," said Finley, a Nashville native. "I was around a lot of auctions as a kid, so I kind of was used to seeing and hearing them."

His familiarity paid off.

Finley, who works for David Allen at Music City Auction in Nashville, said the win showed him he made the right career choice and added to his confidence going forward.

"I like doing auctions," Finley said. "It's in my blood."

He said before he calls at auctions, Allen and others will announce that he is the current champion, which is a testament to the association's credibility.

"People comment on it (on my Facebook page), too," Finley said.

His long-term goal is to own an auction house, but for now, he knows he's in a great place.

"The biggest thing David has taught me is ethics," Finley said. "I thought I knew everything after graduating, but he has shown me much more."

Finley said he will likely not be able to make the 2010 Summer Convention in Tunica, Miss., but he does plan to attend the Winter Convention in December in Nashville.



A Guide For Auctioneers Selling Guns

By Mike Brandy, Auctioneer, The Ohio Auction School

The gun market (demand) is high these days. In fact, it's hard to think back to when there wasn't a strong market for guns. Auctioneers often find themselves in situations where clients have guns to sell, and wish the auctioneer's help. Auctioneers need to be careful, and thus this guide.

Being careful is paramount. Only one case need be talked about to remind all auctioneers that selling guns at auction requires strict adherence to all applicable laws. Thus, we have the Burkheimer case:

Auctioneer R.C. Burkheimer, of North East, M.D., tried to do everything right for a gun auction he had in 1978, but he ended up going to jail.

He sold the inventory of a small gun shop owned by a licensed gun dealer who was also a member of the Maryland State Police. Because the shop was small, Burkheimer suggested they bring the guns to his auction gallery where they would have ample parking, seating and restroom facilities.

The Auctioneer did almost everything right-the dealer stayed on site with the guns at all times and filled out all the paperwork. But the Auctioneer missed one detail: the dealer transferred ownership of the firearms at the auction gallery. Federal law says that transfer of ownership must occur at the place where the Federal Firearms License is issued, which would have been the dealer's shop.

Because Burkheimer didn't personally hold a FFL and he conducted the transfer of firearms on his premises, he was convicted of a felony. He spent 18 months in a federal penitentiary and sustained \$250,000 in fines and legal fees.

Do we have your attention?

The sale of guns is regulated, first, by the federal government in the United States. Then, states can have (and do have) additional laws that regulate the sale and/or transfer of guns. Too, some local laws have been enacted by cities, counties, townships, etc. Auctioneers need to be attentive to Brall the laws that are applicable for any sale or transfer of guns.

First, most notably, there are four federal gun acts to consider:

■ The Gun Control Act of 1968, Pub. L. No. 90-618, 82 Stat. 1213 (also known as GCA or GCA68, and codified as Chapter 44 of Title 18, United States Code) is a federal law in the United States that broadly regulates the firearms industry and firearms owners. It primarily focuses on regulating interstate commerce in firearms by generally prohibiting interstate firearms transfers except among licensed manufacturers, dealers and importers.

■The Firearm Owners' Protection Act (FOPA), Pub. L. No. 99-308, 100 Stat. 449 (May 19, 1986), codified at 18 U.S.C. § 921 et seq., is a United States federal law that revised many statutes in the Gun Control Act of 1968.

■The Brady Handgun Violence Prevention Act (Pub.L. 103-159, 107 Stat. 1536) was an Act of the United States Congress that, for the first time, instituted federal background checks on firearm purchasers in the United States. It was signed into law by President Bill Clinton on November 30, 1993, and went into effect on February 28, 1994. The Act was named after James Brady, who was shot by John Hinckley, Jr. during an attempted assassination of President Ronald Reagan on March 30, 1981.

■The Federal Assault Weapons Ban (AWB) (or Public Safety and Recreational Firearms Use Protection Act) was a subtitle of the Violent Crime Control and Law Enforcement Act of 1994, a federal law in the United States that included a prohibition on the sale to civilians of certain semi-automatic firearms, so called "assault weapons." There was no legal definition of "assault weapons" in the U.S. prior to the law's enactment. The ten-year ban was passed by Congress on September 13, 1994 and was signed into law by President Bill Clinton the same day. The ban only applied to weapons manufactured after the date of the ban's enactment. The Federal Assault Weapons Ban expired September 13, 2004, as part of the law's sunset provision. It is important only here because there are recent efforts to reenact similar AWB laws.

Now, here is the exact text of Title 18 § 923 and Rule 96-2 of the United States Code:

18 U.S.C. § 923 (a): ENGAGING IN THE BUSINESS OF DEALING IN FIREARMS
(Auctioneers)

Auctioneers who regularly conduct consignment-type auctions of firearms, for example, held every 1-2 months, on behalf of firearms owners where the auctioneer takes possession of the firearms pursuant to a consignment contract with the owner of the firearms giving the auctioneer authority to sell the firearms and providing for a commission to be paid by the owner upon sale of the firearms are required to obtain a license as a dealer in firearms.

ATF Rul. 96-2

An association of auctioneers has asked the Bureau of Alcohol, Tobacco and Firearms (ATF) for a ruling concerning the auctions conducted by their members and whether the sale of firearms at such auctions requires a Federal firearms license as a dealer in firearms.

The auctioneers' association stated that their members generally conduct two types of auctions: estate-type auctions and consignment auctions. In estate-type auctions, articles to be auctioned, including firearms, are sold by the executor of the estate of an individual. In these cases the firearms belong to and are possessed by the executor. The auctioneer acts as an agent of the executor and assists the executor in finding buyers for the firearms. The firearms are possessed by the estate and their sale to third parties is controlled by the estate. The auctioneer is paid a commission on the sale of each firearm by the estate at the conclusion of the auction.

The association states that, in consignment-type auctions, an auctioneer may take possession of firearms in advance of the auction. The firearms are inventoried, evaluated, and tagged for

identification. The firearms belong to individuals or businesses who have entered into a consignment agreement with the auctioneer giving the auctioneer authority to sell the firearms. The agreement states that the auctioneer has the exclusive right to sell the items listed on the contract at a location, time, and date to be selected by the auctioneer. The consignment-type auctions generally involve accepting firearms for auction from more than one owner. Also, these auctions are held on a regular basis, for example, every 1-2 months.

Section 923(a), Title 18, U.S.C., provides that no person shall engage in the business of dealing in firearms until he has filed an application and received a license to do so. Section 922(a)(1), Title 18, U.S.C., provides that it is unlawful for any person, other than a licensee, to engage in the business of dealing in firearms. Licensees generally may not conduct business away from their licensed premises.

The term “dealer” is defined at 18 U.S.C. § 921(a)(11)(A) to include any person engaged in the business of selling firearms at wholesale or retail. The term “engaged in the business” as applied to a dealer in firearms means a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms. A dealer can be engaged in the business” without taking title to the firearms that are sold. However, the term does not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms. 18 U.S.C. § 921(a)(21)(C).

In the case of estate-type auctions, the auctioneer acts as an agent of the executor and assists the executor in finding buyers for the estate’s firearms. The firearms are possessed by the estate, and the sales of firearms are made by the estate. In these cases, the auctioneer does not meet the definition of “engaging in the business” as a dealer in firearms and would not require a license. An auctioneer engaged in estate-type auctions, whether licensed or not, may perform this function, including delivery of the firearms, away from the business premises.

In the case of consignment-type auctions held on a regular basis, for example, every 1-2 months, where persons consign their firearms to the auctioneer for sale pursuant to an agreement as described above, the auctioneer would be “engaging in the business” and would require a license. The auctioneer would be disposing of firearms as a regular course of trade or business within the definition of a “dealer” under §_921(a)(11)(A) and must comply with the licensing requirements of the law.

As previously stated, licensed auctioneers generally must engage in the business from their licensed premises. However, an auctioneer may conduct an auction at a location other than his licensed premises by displaying the firearms at the auction site, agreeing to the terms of sale of the firearms, then returning the firearms to the licensed premises for delivery to the purchaser.

Held: Persons who conduct estate-type auctions at which the auctioneer assists the estate in selling the estate's firearms, and the firearms are possessed and transferred by the estate, do not require a Federal firearms license.

Held further: Persons who regularly conduct consignment-type auctions, for example, held every 1-2 months, where the auctioneer takes possession of the firearms pursuant to a consignment contract giving the auctioneer the exclusive right and authority to sell the firearms at a location, time and date to be selected by the auctioneer and providing for a commission to be paid upon sale are required to obtain a license as a dealer in firearms pursuant to 18 U.S.C. § 923(a). [ATFB 96-2 101]

What does all this mean?

Here's some rules auctioneers can remember:

For auctioneers without an FFL

OR

For auctioneers with an FFL acting as auctioneers without an FFL:

- Don't sell a short gun (i.e. pistol or revolver) to anyone under the age of 21.
- Don't sell a long gun (i.e. rifle or shotgun) to anyone under the age of 18.
- Only sell guns, or facilitate such sales, to in-state buyers.
- Only assist someone with the sale of their guns (and not repeatedly assist someone with the sale of their guns), without taking possession of them, with the seller maintaining possession of the guns until they are transferred to the buyers.
- Secure buyer information such as age, positive ID, address, phone, etc. and use the ATF form 4473 (or similar form) to have the purchaser answer questions about if they are a convicted felon, illegal alien, under indictment, etc. This lessens the risk of the auctioneer being held responsible for selling a gun to someone who cannot legally take possession.
- Be sure all guns are unloaded, and secured so they cannot be loaded by someone else.
- Have gun locks available to buyers.
- Be alert to "straw purchasers," where a person is bidding for someone else, such as an illegal act of purchasing for an out-of-state buyer, or convicted felon, etc.

Auctioneers with an FFL, acting as an FFL:

- Don't sell a short gun (i.e. pistol or revolver) to anyone under the age of 21.
- Don't sell a long gun (i.e. rifle or shotgun) to anyone under the age of 18.
- Only transfer guns from their licensed location. Guns could be "sold" at another location, but would have to be moved back to the licensed location for ultimate transfer by the licensee.
- Use the ATF form 4473 to have a background check initiated for a pending gun transfer. The ATF will respond with a "proceed," "delay" or "deny."
- Use the ATF form 3310 "Report of Multiple Sale or Other Disposition of Pistols or Revolvers" when selling two or more short guns to one buyer within a five day period.

- Transfer long guns to in-state buyers or out-of-state buyers either directly or via another FFL, so long as state and local law involved (the state/local laws where the gun is sold, and the state/local laws where the gun is going) doesn't prohibit such a transfer.
- Transfer short guns directly to in-state buyers, or via another FFL for out-of-state buyers, so long as state and local law involved (the state/local laws where the gun is sold, and the state/local laws where the gun is going) doesn't prohibit such a transfer.
- Maintain a gun dealer log book noting all transfers.
- Make sure all guns are unloaded, and secured so they cannot be loaded by someone else.
- Have gun locks available to buyers (at no charge.)
- Be alert to "straw purchasers," where a person is bidding for someone else, such as an illegal act of purchasing for an out-of-state buyer, or convicted felon, etc.

Auctioneers with an FFL may (and auctioneers without an FFL may not):

- Engage in the business of selling firearms
- Possess firearms belonging to others
- Buy and sell firearms, as a business
- Hold oneself out as a dealer in guns
- Make a living in dealing in guns
- Repeatedly assist the same seller with the sale of their guns
- Conduct a gun consignment auction, or take gun consignments

One area not covered in the federal code is antique firearms. Auctioneers can sell to out-of-state buyers without a license, as long as the firearm meets the federal definition. An antique is described in the U.S. Firearms Code as any firearm with a matchlock, flintlock or percussion cap manufactured in or before 1898, or a replica of such item. Auctioneers can also sell a firearm without a license if it uses a ring-fire or conventional center-fire fixed ammunition that is no longer manufactured in the United States or is not readily available in the ordinary channels of commercial trade.

Another somewhat confusing issue for auctioneers is when a court issues a court order to sell guns — and the order is not in compliance with federal law. Customarily, court orders override and supersede law. However, if the court is a state court or local court, they would not have the authority to override federal law per Article IV of the United States Constitution. A federal court order would likely suffice as an exception to federal laws regarding the sale or transfer of guns.

In almost all cases, it would be advisable for auctioneers to secure competent legal counsel if they find they are ordered by any court to sell guns, and especially if that court order is contrary to any federal, state or local gun laws.

Mike Brandy, Auctioneer, CAI, AARE has been an auctioneer and certified appraiser for more than 30 years. His company's auctions are located at: Mike Brandy, Auctioneer, Keller Williams Auctions and Goodwill Columbus Car Auction. His Facebook page is: www.facebook.com/mbauctioneer. He is Executive Director of The Ohio Auction School.