



# NewsLine

An Official Publication of the Tennessee Auctioneers Commission

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## Commission Members & Staff

### Bobby Colson, Chairman

Middle Tennessee Member  
Term: 08/31/2004 – 08/31/2010

### David Cole, Vice Chair

East Tennessee Member  
Term: 09/01/2009 – 08/31/2012

### Marvin Alexander, Board Member

West Tennessee Member  
Term: 11/30/2004 – 08/31/2010

### Kenneth Dreaden, Board Member

At-Large Member  
Term: 11/10/2005 – 08/31/2011

### Mary Frances Rudy, Board Member

Consumer Member  
Term: 04/25/2007 – 08/31/2010

### Donna Hancock Interim Director

Donna.Hancock@tn.gov

### Gloria Lye, Administrative Assistant

Gloria.Lye@tn.gov

### Daniel Syriac Complaints Coordinator

Daniel.Syriac@tn.gov

## Mission Statement

The Mission of Tennessee Auctioneer Commission is to protect the public and licensees by monitoring the auctioneer profession through licensure and regulation.

State of Tennessee  
Department of Commerce & Insurance  
Tennessee Auctioneer Commission  
500 James Robertson Parkway  
Davy Crockett Tower - Sixth Floor  
Nashville, Tennessee 37243-1152

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[www.tn.gov/commerce/boards/auction](http://www.tn.gov/commerce/boards/auction)

## From the Chairman

by Bobby Colson, Chairperson

It's hard to believe the year is almost over. It has been a year of changes in the auction industry and within the commission. We now have a complete staff; and communication between licensees, board members, and staff has never been better. The commission members would like to thank Marvin Alexander for serving as Chairperson for the past year and also congratulate him for being inducted into the National Auctioneers Association Hall of Fame in July. Thanks are also owed to Howard Phillips who served the commission for three terms. We also want to welcome our newest addition to the commission: David Cole is our newly appointed East Tennessee Commissioner. The Auctioneer Commission staff and commission members are looking forward to serving with David. As always licensee are welcome and encouraged to attend the meetings. The website (see the link below) is loaded with good information such as 2010 continuing education seminar dates and venues, the commission meeting dates, online license renewal, and contact information for your commissioners and staff. Most important, you will find links to the current and up to date Tennessee Auctioneer License Laws, Rules and Regulations.

Our next scheduled board meeting is February 1, 2010. In closing I think I can speak for my fellow commission members in wishing everyone Happy Holidays and a great start to 2010.

Sincerely, *Bobby Colson*

**Upcoming Commission Meetings : Feb 1, 2010 – Mar 1, 2010 - Apr 5, 2010**  
All meetings are scheduled at 9:00 a.m. (Central Standard Time) at 710 James Robertson Pkwy – 2<sup>nd</sup> Floor  
**Meetings dates and times are subject to change. Check for changes at:**  
<http://tn.gov/commerce/boards/auction>

## COMMISSION REPORT

If you happen to read the listing of **Commission Members and Staff** on the left side of this page, you will notice some changes. As Chairman Colson mentioned, David Cole has been appointed as the Commissioner from East Tennessee. Commissioner Cole is the owner of Cole Auctions in Kingsport, TN with auctioneer and real estate licenses in Tennessee, North Carolina, South Carolina and Virginia. David is a Past-President of the Tennessee Auctioneers Association and holds the CAI, AARE, CES, CRS, GRI designations in auctioneering and real estate. Additionally, Susan Lockhart continues to work with the Auctioneer Commission in the context of supervising the licensing staff for this board, as well as several others. Gloria Lye is the new Administrative Assistant over auctioneer licensing. Welcome!

We remind you to please send the appropriate paperwork attached to any payments sent into the Auctioneer Commission. Payments without explanation cannot be properly posted and can delay an address correction or renewal.

### Citations:

|   |            |
|---|------------|
| <b>Bob Parks Auction Co. (# 3984)</b><br>Advertising Violations<br>Consent Order & Civil Penalty  | \$ 750.00  |
| <b>Nashville Power Sports (# 4687) and Rodney M. Settles (# 2838)</b><br>Misrepresentation and Making False Promises<br>Agreed Citation and Civil Penalty<br>Revocation of Firm License and Suspension of Auctioneer License for 6 months | \$ 1000.00 |

# Looking For a Reasonable Person

By John Stephen Proffitt, III

In the last article, I presented the first installment of a two-part discussion of negligence. We saw that negligence is comprised of four essential elements: (a) a duty to exercise ordinary care, (b) a breach of that duty, (c) the proximate cause (i.e. a natural, probable, and reasonably foreseeable consequence) of the breach being (d) damages to the claimant. If any of these four elements is missing from a case, there is no negligence. Negligence can result from an act or an omission. In this article, we will look at the test for determining negligence. We will also consider several important issues for auctioneers.

**The Test:** Negligence is usually a question for a jury to decide. The legal test starts with whether a defendant acted as a “reasonable person” would have acted under the same circumstances. If a jury finds the defendant did the same thing that the fictitious “reasonable person” would have done, then the defendant would not have breached any duty owed to the plaintiff. However, if the jury finds that the defendant did not do what the “reasonable person” would have done, that would be a breach of duty and might be negligence for which the plaintiff could recover damages from the defendant.

Let’s consider an example. The driver of an automobile has a duty to operate his vehicle with ordinary care. When he approaches an intersection controlled by a stop sign, the driver has a duty to stop, look, and not proceed until the way is clear. If he fails to do these things and causes a wreck with a truck, he has breached his duty to the truck driver and will be responsible for all damages caused. However, harm does not equal negligence. Causing someone to be hurt and suffer damages is not necessarily negligence, and the mere happening of an accident is not proof of negligence. So, one person could be injured by another and still not recover damages if the other person was not negligent. The “reasonable person” test is the measure to determine whether a legal duty was breached.

Let’s return to the example of the motor vehicle accident and assume the driver of the automobile suffered an unpredictable heart attack and lost consciousness as he approached the intersection. His car then proceeded into the intersection and collided with the truck. If the fictitious “reasonable person” had been operating the automobile, would he have done anything differently than the driver did? No, the “reasonable person” would have been in the throes of a heart attack and unconscious, too, so he would have had the same wreck. Since the driver did just what the “reasonable person” would have done under these circumstances, there would be a breach of duty and, therefore, no negligence. Here the truck driver would be damaged but have no basis for recovering anything from the automobile driver.

**“Not Responsible For Accidents.”** Have you seen this disclaimer of liability in auction ads? Sure you have – plenty of auctioneers use it. They should drop this disclaimer and advertise something that would help the auction, because this won’t. It is worthless and an example of auctioneers copycatting instead of thinking.

There are two problems with using this disclaimer in an effort to avoid liability for negligence. First, the parties with equal bargaining power can contract away liability in limited instances, but those who attend auctions don’t enter into contracts just to be there. Second, since most auctions are public, numerous jurisdictions would hold such a disclaimer to be contrary to public policy.

Think about it – how many stores, restaurants, theaters, and the like do you see disclaiming liability for negligence? None. Don’t you think they would do it if the law allowed it? If you still believe in this disclaimer, try hanging a sign on the front of your car that reads, “Not responsible for accidents.” Then see where that gets you if you have a wreck that is your fault.

When auctioneers think of negligence, they typically envision someone tripping over something at an auction site and being injured. That can happen and it might be negligence, but there are other goblins lurking. Here are several I have encountered that may have escaped your radar.

- Many auctions are held at sites where the premises can pose substantial risk – old farmsteads, buildings, warehouses, fields, etc. I’ve seen dilapidated houses, open wells, rickety structures, crumbling outbuildings, dangerous equipment, broken glass, jagged metal, junk piles, and the like at auctions that should have worried the auctioneers, but apparently did not. Auctioneers should carefully

search for site hazards and either cure them or clearly mark them for the public to avoid. Special precautions are needed for young children who are incapable of appreciating these dangers. You just can't be too careful.

- I read that up to one (1) percent of the population is susceptible to suffering a fatal insect sting. In one recent year, 84,000 people suffered anaphylactic shock from stings and nearly 500 died. Around 100-120 people do die annually from insect stings. My wife was stung on the leg by a bald-faced hornet at an auction and it was a nasty wound. We were standing with a lot of other people beside a fir tree. After she was stung, I spotted the nest on an inside limb just four feet off the ground. The hornets had become agitated and the crowd suddenly realized the danger and started to move quickly away from the tree. It was only then that the auctioneer said, "Y'all watch out for them hornets in that tree." He knew about the hornets and had done nothing to get rid of them. That was negligence.

- Here's a biggie: Auctioneers are agents representing the principals. This brings them under a legal doctrine called respondeat superior. When an agent acts within the scope of the agency and is negligent, the liability can be vicariously related back to the principal - the seller. Most auctioneers don't know this, and neither do their sellers, until a lawyer becomes involved.

This has been a brief introduction to negligence and a comprehensive treatment. When an auctioneer asks me what their greatest risk is of being hit with a negligence claim, the answer is simple. It is the same as it is for every other citizen – operating a motor vehicle. Nothing we do is more likely to cause serious injury or death. So buckle up, drive defensively, and be careful...very careful!

*The above is an excerpt from a two-part series of articles written by John Stephen Proffitt III, with minor editing for space. It is printed here at the request of past TAC Commission Chair Marvin Alexander and with the author's permission. Steve Proffitt is general counsel for J.P. King Auction Company, Inc. in Gadsden, AL. He is also an auctioneer and longtime author, instructor and lecturer. Proffitt is a graduate of the University of Virginia School of Law and Missouri Auction School. This information does not represent legal advice or formation of an attorney-client relationship. Readers should seek the advice of their own attorneys on all legal issues. Mr. Proffitt may be contacted by email at sproffitt@jpkking.com. © 2009 John Stephen Proffitt III.*

## Protecting Personal Information: Five Steps for Business

by Lesley Fair

What's in your file cabinet right now? Tax records? Payroll information? And what's on your computer system? Financial data from your suppliers? Credit card numbers from your customers? To a busy marketer, those documents are an everyday part of doing business. But in the hands of an identity thief, they're tools for draining bank accounts, opening bogus lines of credit, and going on the shopping spree of a lifetime — at the expense of your company, your employees, and the customers who trust you.

Sophisticated hack attacks make the headlines, but many security breaches could be prevented by commonsense measures that cost companies next to nothing. That's why the Federal Trade Commission (FTC) has published **Protecting Personal Information: A Guide for Business**, a plain-language handbook with practical tips on securing sensitive data. The specifics depend on the size of your company and the kind of information you have, but the basic principles remain the same. Whether you work for a multinational powerhouse with branches around the world or a start-up based in a home office, a sound information security plan is built on these five key practices:

- **Take stock.** Know what personal information you have in your files and on your computer. Understand how personal information moves into, through, and out of your business and who has access — or could have access to it.
- **Scale down.** Keep only what you need for your business. That old business practice of holding on to every scrap of paper is "so 20th century." These days, if you don't have a legitimate business reason to have sensitive information in your files or on your computer, don't keep it.
- **Lock it.** Protect the information you keep. Be cognizant of physical security, electronic security, employee training, and the practices of your contractors and affiliates.
- **Pitch it.** Properly dispose of what you no longer need. Make sure papers containing personal information are shredded, burned, or pulverized so they can't be reconstructed by an identity thief.
- **Plan ahead.** Draft a plan to respond to security incidents. Designate a senior member of your team to create an action plan before a breach happens.

Get your copy of **Protecting Personal Information: A Guide for Business** at [www.ftc.gov/infosecurity](http://www.ftc.gov/infosecurity). While you're there, download copies for your IT manager, your human resources department, your sales staff, and anyone else who comes in contact with customer or employee information.

*Lesley Fair is an attorney in the FTC's Bureau of Consumer Protection who specializes in business compliance.*

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**The Tennessee Auctioneer Commission will host the following Continuing Education Seminars in 2010:**

**Germantown, TN  
March 23, 2010**

The Great Hall of Germantown  
900 South Germantown Road  
Germantown, Tennessee 38138

**Nashville, TN  
June 22, 2010**

The Scarritt-Bennett Center  
Harambee Auditorium  
1008 19<sup>th</sup> Avenue South  
Nashville, Tennessee 37212

**ABOUT THE SPEAKER:**

Speaking at the 2009-2010 Seminars will be Randy Wells from Post Falls, Idaho. Randy is the Past President of the National Auctioneers Association and holds his Certified Auctioneer Institute (CAI) designation, along with the Accredited Auctioneer of Real Estate (AARE), Certified Estate Specialist (CES), Benefit Auction Specialist (BAS), and the General Personal Property Appraiser (GPPA) certifications. Randy has been a regular instructor for the NAA and has instructed for the annual CAI program at Indiana University in Bloomington, Indiana.

Randy will be presenting two separate three-hour programs. Auctioneers as Trendsetters will cover the history of auctions, ways to identify trends in auctioneering, identifying opportunities, and the use of technology in today's auction industry. The ABC's of a Successful Auction Business will provide every auctioneer and auction business with the necessary tools to maximize your business potential through understanding sellers and auction bidders, and applying proven successful business strategies to your auction business and auction events.

**"The Tennessee Department of Commerce and Insurance is committed to principles of equal opportunity, equal access, and affirmative action." Contact the EEO Coordinator or ADA Coordinator at 615-741-2177 (TDD).**