

Note: New York City businesses must comply with all relevant federal, state, and City laws and rules. All laws and rules of the City of New York, including the Consumer Protection Law and Rules, are available through the Public Access Portal, which businesses can access by visiting www.nyc.gov/consumers. For convenience, sections of the New York City Licensing Law (and Rules, if enacted) are included as a handout in this packet. The Law (and Rules) are current as of May 2009.

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NEW YORK CITY ADMINISTRATIVE CODE
TITLE 20: CONSUMER AFFAIRS
CHAPTER 2: LICENSES
SUBCHAPTER 13: AUCTIONEERS

§ 20-278 License required. It shall be unlawful for any person to engage in the business of auctioneer without a license therefor.

§ 20-279 Fee; bond; fingerprinting. a. The annual fee for such license shall be two hundred dollars.

b. Each applicant for such license shall file with the commissioner, a bond with two good sureties, in the penal sum of two thousand dollars, which bond shall meet with the approval of the commissioner.

c. The commissioner shall require that applicants for licenses issued pursuant to this subchapter be fingerprinted for the purpose of securing criminal history records from the state division of criminal justice services. The applicant shall pay a processing fee as required by the state division of criminal justice services. Fingerprints shall be taken of the individual owner if the applicant is a sole proprietorship; the general partners if the applicant is a partnership; and the officers, principals, directors, and stockholders owning more than ten percent of the outstanding stock of the corporation if the applicant is a corporation. Any person required to be fingerprinted hereunder shall furnish to the department three current passport-sized photographs of such person. Notwithstanding the foregoing, the commissioner need not require applicants for licenses required under this subchapter to be fingerprinted if criminal history records concerning such applicants are not available from the state division of criminal justice services.

§ 20-279.1 Refusal to issue or renew, or suspension or revocation based on criminal conviction. In addition to any of the powers that may be exercised by the commissioner pursuant to this subchapter or chapter

one of this title, the commissioner, after notice and an opportunity to be heard, may refuse to issue or renew, or may suspend or revoke, a license required under this subchapter if the applicant or licensee, or any of its principals, officers or directors, or any of its stockholders owning more than ten percent of the outstanding stock of the corporation has been convicted of a crime which, in the judgment of the commissioner, has a direct relationship to such person's fitness or ability to perform any of the activities for which a license is required under this subchapter or has been convicted of any other crime which, in accordance with article twenty-three-a of the correction law, would provide a justification for the commissioner to refuse to issue or renew, or to suspend or revoke, such license.

§ 20-280 Requirements for auctioneers. Each auctioneer shall cause his or her name and license number to be conspicuously displayed at any place where he or she shall conduct an auction sale during such sale.

§ 20-281 Persons acting as auctioneers. It shall be unlawful for any person not licensed as an auctioneer to represent or circulate or place before the public any announcement, or to insert or cause to be inserted in any city, business or telephone directory, any notice that he or she is conducting the business of auctioneering.

§ 20-282 Advertising. Every auctioneer in his or her own name, shall give notice in one or more of the public newspapers printed in the city, of every auction sale to be conducted by him or her. In the event that such auctioneer shall be connected with any firm or other person his or her name shall in all cases precede the name of such firm or other person.

§ 20-284 Sale of jewelry. a. Each auctioneer shall cause to be delivered to the purchaser of diamonds, precious stones or other jewelry, a signed document containing a description of the article sold and the representations made in regard thereto at the time of the sale.

b. Each article of jewelry sold at public auction shall have affixed thereto a tag, on which shall be printed or written a correct description of such article.

§ 20-285 Restrictions. a. It shall be unlawful for any auctioneer, his or her agent, employee or servant to sell at public auction or expose for such sale:

1. Any dry-goods, clothing, hardware, household furniture, woodenware or tinware by retail or in small parcels or pieces, in any street or public place;

2. Any goods, wares, merchandise or other things to any person who, at the time of bidding for or while examining such articles, shall be on any street;

3. Any goods, wares, merchandise or other things in any street or public place, or place them thereon, unless he or she first shall obtain the consent or permission, in writing, of the occupant of the lot or building before which such articles or any part thereof shall be placed or exposed for sale.

b. It shall be unlawful to employ any means of attracting the attention of purchasers, other than a sign or flag, at or near any place of sale, auction room, residence of any auctioneer, or at or near any auction whatsoever.

c. Every article sold or exposed for sale at public auction, in any street or public place, shall be removed therefrom by sunset on the day of such sale or display.

§ 20-286 Sale of real property; fees. a. It shall be unlawful for any auctioneer to demand or receive for his or her services, in selling, at public auction, any real estate directed to be sold by any judgment or decree of any court of this state, a greater fee than fifty dollars for each parcel separately sold, except that in all sales of real estate conducted by any auctioneer pursuant to a judgment or decree of any court of this state in any action brought to foreclose a mortgage or other lien on real estate, the fees of such auctioneers shall be as follows:

1. in all cases where the judgment of foreclosure is for an amount not exceeding five thousand dollars, the fee shall be fifteen dollars;

2. in all cases where the judgment of foreclosure is for an amount in excess of five thousand dollars, but not exceeding twenty-five thousand dollars, the fee shall be twenty-five dollars;

3. in all cases where the judgment of foreclosure is for an amount in excess of twenty-five thousand dollars, the fee shall be fifty dollars.

b. Where such sale is made at any public salesroom, such auctioneer may demand and receive such further amount not exceeding ten dollars for each parcel separately sold as he or she may have actually paid for the privilege or right of making the sale in such salesroom.

c. Where one or more lots are so sold at public auction with the option to the purchaser of taking one or more additional lots at the same rates or price, nothing herein contained shall be construed to prevent the auctioneer making such sale from demanding and receiving for his or her services the compensation or fee above allowed, for each additional lot taken by such purchaser under such option.

§ 20-287 Split fees. It shall be unlawful for any auctioneer, either directly or indirectly, to allow or pay to the receiver, referee, sheriff, or other officer under whose direction a sale is made, pursuant to section 20-286 of this subchapter or to any of the attorneys in the action or proceeding from which such sale arises, any portion of his or her fee or compensation.

§ 20-288 False or fraudulent representations. Any auctioneer who shall have knowledge of any false or fraudulent representations or statements or who makes or causes any such statements to be made in respect to the character of any sale, or the party authorizing the same, or the quality, condition, ownership, situation, or value of any property, real or personal, exposed, put up, or offered by him or her for sale at public auction, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by imprisonment not exceeding one year or by a fine not exceeding one thousand dollars.

§ 20-289 Complaints. a. The commissioner may take testimony, under oath, relating to and upon the complaint of any person who claims he or she has been defrauded by any auctioneer, his or her clerk, agent or assignee, or relating to and upon the complaint of any person who has consigned real or personal property for sale and to whom such auctioneer shall not have accounted fully. The license of each such auctioneer may be revoked and his or her bond declared forfeited if, in the opinion of the commissioner, such charge is sustained. Any such person whose license has been revoked for cause shall not be granted another such license.

b. The commissioner may take testimony, under oath, relating to and upon the complaint of any person who claims that any auctioneer, his or her clerk, agent or assignee, has been guilty of misconduct relating to the business transacted under such auctioneer's license, and if such charge, in his or her opinion, shall be sustained, the commissioner may suspend such license for a period not to exceed six months.

§ 20-290 Marshals exempt. Nothing in this subchapter shall apply to a duly appointed marshal, who, by virtue of his or her office sells real or personal property, levied upon by him or her under legal process.

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RULES OF THE CITY OF NEW YORK
TITLE 6: DEPARTMENT OF CONSUMER AFFAIRS
CHAPTER 2: LICENSES
SUBCHAPTER M: AUCTIONEERS

§2-121 Standards, Licenses and Application of Regulations.

- (a) The auctioneer will be held responsible for the truth of any statement contained in any catalogue, advertisement, announcement, press release or other public statement made by the auctioneer relating to any auction.
- (b) The auctioneer shall be held responsible for full compliance by his employer or principal with all rules and regulations of the Department and pertinent provisions of law.
- (c) Each application for a license shall be accompanied by the affidavits of three citizens who are residents of New York City and who have known the applicant not less than two years.
- (d) The fee for a permit to auction publicly after 8 p.m. the goods or any of them specified in §20-283 of the Administrative Code shall be ten dollars for the first permit in any license year. Subsequent permits issued during the same license year may be issued without fee.
- (e) Each applicant for a permit to auction publicly after 8 p.m. shall furnish with the application for the permit a catalogue of the articles to be auctioned, and a copy of the advertisement to be published in connection with said auction. In the case of an auction of fruit, vegetables or other farm products, the catalogue shall be filed as soon as it has been printed.
- (f) All licensed auctioneers and auction houses must include their Department of Consumer Affairs license number, or the license number assigned to their auction house or principal auctioneer and identify it as such in all advertisements in any medium, and on all written contracts, catalogues and announcements, relating to auction activity in New York City.
- (g) These rules and regulations do not apply to auction sales of real property.

§2-122 Requirements and Obligations of Licensees.

- (a) *Contracts required.* No personal property may be auctioned except pursuant to a written contract between the consignor or his or her agent or authorized representative

and the auctioneer, unless auctioned pursuant to an order of a court of competent jurisdiction.

(b) Every contract required pursuant to §2-122(a) must contain the following provisions:

(1) All fees, commissions and charges to be paid by the consignor to the auctioneer or his or her agents, principals, employees, employers or assigns shall:

(i) to the extent practicable, be itemized and specified as to amount (which may be stated as a percentage of the reserve price or any final bid), and

(ii) if such itemization and specification as to amount is not practicable, be described with sufficient particularity to inform the consignor of the nature of the services for which such fees, commissions and charges will be imposed.

(2) That as of the date of the auction the consignor warrants that he or she has complete and lawful right, title and interest in the property auctioned, and that the consignor shall identify the auctioneer, his or her agents, principals, employees, employers or assigns in the event of any defect in title, and that an intended beneficiary of this warranty is the ultimate purchaser at auction.

(c) Where articles are referred to by catalogue or advertisement as having been obtained from any specific person, place or source, such articles must be separately enumerated and identified.

(d) If an auctioneer or public salesroom has any interest, direct or indirect, in an article, including a guaranteed minimum, other than the selling commission, the fact such interest exists must be disclosed in connection with any description of the article or articles in the catalogue or any other printed material published or distributed in relation to the sale. Such notice may be denoted by a symbol or letter which will refer the reader to an explanation of the nature of the interest the symbol or letter denotes. For the purpose of this subdivision (d), advertisements in newspapers or other periodicals shall not constitute printed material. Where no printed material is provided in connection with an auction, the auctioneer shall have available during any advertised inspection period, information as to whether such an interest exists with relation to a particular item and shall announce before he or she commences the auction that such information is available upon request.

(e) Where a consignor is to receive a rebate commission in whole or in part, or where he or she will be permitted to bid upon and to buy back his or her own article at the sale, disclosure of such a condition must be made in connection with any description of the item or items so affected in the catalogue or any other printed material published or distributed in relation to the sale. The existence of such a condition may be denoted by a symbol or letter which will refer the reader to an explanation of the nature of the interest the symbol or letter denotes. For the purpose of this subdivision (e), advertisements in newspapers or other periodicals shall not constitute printed material. Where no printed material is provided in connection with the auction, the auctioneer shall have available during any advertised inspection period information of whether such a condition exists with relation to a particular item and shall announce before he or she commences the auction that such information is available upon request.

(f) (1) If the consignor has fixed a price below which an article will not be sold, the "reserve price," the fact that the lot is being sold subject to reserve must be disclosed in connection with the description of any lot so affected in the catalogue or any other

printed material published or distributed in relation to the sale. The existence of a reserve price may be denoted by a symbol or letter which will refer the reader to an explanation of reserve price. For the purpose of this subdivision (f), advertisements in newspapers or other periodicals shall not constitute printed material. Where no printed material is provided in connection with the auction an auctioneer shall have available during any advertised inspection period information as to whether a particular lot is to be sold subject to reserve and shall announce before he or she commences the auction that such information is available upon request.

(2) When a lot is not subject to a reserve price, the auctioneer shall not indicate in any manner that the lot is subject to a reserve price.

(g) The auctioneer shall:

(1) Provide information as to the number of jewels, approximate number of carats, number of points (diamond), principal metal content, and manufacturer's name, if known, for all articles of jewelry, including watches. The information required by this subdivision (g) shall be provided either in the catalogue descriptions of such items or by attaching to each such item a tag or marking containing the information.

(2) Issue or cause to be issued to each purchaser an invoice which shall contain all the following information:

- (i) The auctioneer's name, business address and license number;
- (ii) The name and address of the auctioneer's employer or principal;
- (iii) The date of sale;
- (iv) The lot number, description, quantity and selling price of each lot;
- (v) The total amount of purchase with a separate statement of sales tax;
- (vi) All deposits made against the purchase price.

This does not apply to the auction sale of fruit, vegetables or other farm products.

(3) Notify the department ten days in advance regarding the name and address of a new employer or the new location of activity.

(4) *[Reserved]*

(5) Advertise each auction sale at least once in the seven day period immediately preceding the auction.

(6) Notify the person whose property is being auctioned (and any other person entitled to be notified according to law) as to the date, place and time of sale.

(7) Permit (prior to the start of the auction) prospective purchasers to inspect each and every article to be offered for sale.

(8) Furnish to any buyer, consignor or owner of an article, upon request, information as to the whereabouts of that article that comes into his or her possession or that is sold or offered for sale by him or her.

(9) Send check for net amount received on all sales to persons entitled to the proceeds thereof within fourteen days of date of sale (except as otherwise agreed in writing or otherwise provided by law) together with a complete detailed statement including lot number, quantity, description and selling price of each lot; total amount received on sale; and disbursements listing commission, cost of advertisement, labor, charges and allowances, and sundry expenses.

(10) Report to the Department of Consumer Affairs the date and place of any sale of merchandise which includes a scale, in time to permit the Department to have an inspector present at the sale.

(11) Notify the department in advance if he or she is unable because of sickness or other valid reason to conduct a duly advertised auction; and then a licensed auctioneer may act as his or her substitute.

(12) When an auctioneer has a number of the same kind of articles to be sold and intends to dispose of each of them at the amount at which the first is sold, he or she shall make an announcement to that effect prior to opening the sale of the first article.

(h) If an auctioneer makes loans or advances money to consignors or prospective purchasers, this fact must be conspicuously disclosed in the auctioneer's catalogue or printed material. If the auctioneer does not provide any such printed material, he or she shall make the disclosure, either by conspicuously posting a sign, or in another similarly conspicuous manner, at the time of any advertised inspection periods prior to the auctions. For the purpose of this subdivision (h) advertisements in newspapers or other periodicals shall not constitute printed material.

(i) Except to implement a reserve price, and subject to §2-123(b), no auctioneer, his or her consignor, employee, employer, assignee or agent for any of them may bid for his or her own account at any auction if any of them shall have access to information not otherwise available to the public regarding reserves, value or other material facts relating to the articles which are the subject of the auction, unless their "insider;qc status and intended participation is disclosed in the auctioneer's catalogue and any printed material and on signs posted at the auction.

(j) Wherever an estimate or estimated value of an item or lot is published in a catalogue or any other printed material published or distributed in relation to an auction sale, a general description of the estimate and its meaning and function must be included in such printed material. For the purpose of this subdivision (j), advertisements in newspapers or other periodicals shall not constitute printed material. Where no printed material is provided, and an estimate or estimated value is announced or disseminated in any manner, a general description of the estimate and its meaning and function must be available for distribution and its availability must be announced at the commencement of the auction.

(k) In any advertisement indicating an auction sale due to a business' loss of lease or liquidation, the auctioneer must include the name of the consignor or business authorizing the auction. In any sale advertised as pursuant to a security agreement, the name of the debtor shall be indicated conspicuously.

(l) The following newspapers published in the City of New York are hereby designated as newspapers in which auctioneers shall advertise as required by §§20-282 and 20-283 of the Administrative Code:

New York Times
New York Post
Newsday
Staten Island Advance
New York Daily News
New York Law Journal
American Banker
China Times
France-Amerique

National Herald
Novoye Russkoye Slovo
El Diario
Svoboda
Jewish Daily Forward
The New York Observer
Crain's New York Business
The Village Voice
New York Press
The Wall Street Journal
AM New York
Metro New York
Hamodia
Ming Pao Daily News
Daily Challenge
Korea Central Daily News
The Segye Times
Sing Tao Daily
Korea Times New York Edition
China Press
The Liberty Times U.S.A.
The Brooklyn Daily Eagle & Daily Bulletin

Statement of Basis and Purpose. Section 20-104 (a) of the New York City Administrative Code confers on the Commissioner cognizance and control over all licenses issued under Chapter 2 of such Code, which includes auctioneers who are required to be licensed pursuant to subchapter 13 of such chapter. Section 20-104 (b) confers on the Commissioner the power to promulgate, amend or rescind rules necessary to carry out the powers and duties of the Department. Those powers include the authority to promulgate a rule that identifies the public newspapers printed in New York City in which the auctioneers are required by §20-282 to advertise auctions and are required by §20-283 to advertise night auctions.

The list of newspapers in which auctioneers can publish such advertisements that is included in subdivision (l) of section 2-122 of Chapter 2 of Title 6 of the Rules of the City of New York has become outdated since more than 33 percent of the listed newspapers have ceased publication.

The amendments to such subdivision update the list by deleting newspapers that have ceased publication and by adding public newspapers in New York City with circulations that are sufficient to alert an adequately large segment of the public to the holding of the advertised auction.

§2-123 Reserves.

(a) If the reserve price is not bid, the auctioneer may withdraw a lot from sale. At the time of such withdrawal, and before bidding on another lot begins, the auctioneer shall announce that the withdrawn lot has been "passed", "withdrawn", "returned to owner" or "bought-in".

(b) *Affirmative disclosure.* Before bidding on any lot has reached its reserve price no auctioneer may make or place consecutive or successive bids, or place bids in response to bids from others, on behalf of the consignor, unless the fact that the auctioneer will or may bid in such a manner is clearly and conspicuously disclosed in any catalogue and any other printed material published or distributed in connection with the sale. For the purposes of this subdivision (b) advertisements in newspapers or other periodicals shall not constitute printed material. This disclosure must also be made on signs prominently displayed in the auction room and at the entrance thereto, and must be announced by the auctioneer immediately prior to the commencement of any auction.

The sign required by this subdivision (b) must be at least 12 inches by 18 inches in dimension with letters at least one inch high, and must read as follows, or convey a substantially similar disclosure:

The auctioneer may open bidding on any lot by placing a bid on behalf of the seller. The auctioneer may further bid on behalf of the seller, up to the amount of the reserve, by placing successive or consecutive bids for a lot, or by placing bids in response to other bidders.

(c) After bidding has reached the reserve price of a lot:

(1) the auctioneer may not bid on behalf of the consignor or the auction house; and
(2) the auctioneer may only accept bids from persons other than the consignor or the auction house except absentee telephone, order or other agent's bids;

(3) This subdivision (c) shall not apply to auction sales conducted pursuant to an order of a court of competent jurisdiction, including an order of a bankruptcy judge or trustee, or a sale of secured property pursuant to the Uniform Commercial Code, or the sale of property which is subject to a lien or assignment pursuant to the laws of the State of New York.

(d) In no event shall the reserve price for any lot exceed the minimum estimated value of the lot as published in any catalogue or other printed material distributed by the auctioneer.

§2-124 Prohibited Practices.

(a) An auctioneer may not disclaim warranty of title of any item sold at auction. The auctioneer shall reimburse any purchaser in an amount equal to the successful bid at auction plus any buyer's commission paid in the event it is determined that the purchaser has not acquired transferable title to the item.

(b) At the auction sale premises only exterior signs may be displayed advertising the auction sale but the same shall not be excessive in size.

(c) An auctioneer may not:

(1) Offer more than one article for sale at any one time unless the combining of articles or lots is so indicated prior to the initial bid.

(2) Represent an article to be guaranteed by the manufacturer or the owner unless a manufacturer's or owner's guarantee accompanies the article.

(3) Offer an article contained in a carton, package or other container commonly known as a blind article unless prior to the offer it is announced that the highest bidder may reject the article if not satisfactory to him or her. This provision does not refer to an auction of articles in bulk where a sample is displayed and balance of articles are represented to conform with the sample.

(4) Use a loudspeaker outlet located within ten feet of any entrance or exit or which is beamed in any direction except away from said entrance or exit. In any event loud-speaker apparatus must not attract attention from outside auction premises.

(5) Accept as payment or exchange any article previously knocked down or sold to a successful bidder. The article knocked down or sold must be delivered to the bidder or, if the auctioneer is willing and at the bidder's election, the purchase price refunded in full. No other article may be offered to said bidder as a substitute or replacement. Such refund shall take place within a reasonable time or may be applied as part payment or payment for any other article purchased at auction by the same bidder.

§2-125 Records; Miscellaneous.

(a) An auctioneer must keep a written record of all details of each sale including copies of advertisements; lot number, quantity, description and selling price of each lot; record of disbursements; and net amount sent to persons entitled to proceeds of sale for a period of six years from the date of the auction.

(b) *Exceptions.* §2-122(c) through (e) inclusive above shall not apply to:

(1) Any auction sale involving a printed catalogue when all of the following conditions are met:

(i) the printed catalogue is distributed and available for a reasonable period of time prior to the auction being held;

(ii) said catalogue contains a precise, detailed description of the items to be auctioned and the terms used to describe the items have a widely accepted, standardized usage in the field;

(iii) the value of the items described in said catalogue can be verified by reference to standard recognized reference sources commonly known of and utilized in the field; and

(iv) the sale of the item at the auction is not final until the purchaser has had a reasonable opportunity to verify independently that the item purchased was accurately described in said catalogue.

(2) Any auction sales conducted for primarily commercial purposes where all of the bidders at such auction can reasonably be anticipated to be purchasing for use in a commercial endeavor and not for use by the purchaser, or the purchaser's family, as consumer goods as that term is defined in the Consumer Protection Law of 1969 of The City of New York (Administrative Code of The City of New York, §20-700 et seq.).