



Province of Alberta

FAIR TRADING ACT

PUBLIC AUCTIONS REGULATION

Alberta Regulation 196/1999

With amendments up to and including Alberta Regulation 82/2010

Office Consolidation

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(Consolidated up to 82/2010)

ALBERTA REGULATION 196/99
Fair Trading Act
PUBLIC AUCTIONS REGULATION

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Interpretation

1(1) In this Regulation,

- (a) “Act” means the *Fair Trading Act*;
(b) “licence” means an auction sales business licence;
(c) “lien”, in respect of goods to be sold at a public auction, means any lien, mortgage, charge or encumbrance to which the goods are subject.

(2) The definitions of auction sales business, auctioneer and sale by public auction in section 119 of the Act apply to this Regulation.

(3) The definition of goods in section 1(1)(e) of the Act does not apply to this Regulation.

Licensing of Auction Sales Businesses

Term

2 The term of a licence ends on the last day of the 60th month after it is issued or renewed.

Fee

3 The fee for a licence or to renew a licence is \$300.

General Licensing and Security Regulation

4 The *General Licensing and Security Regulation* applies to auction sales businesses.

Security

5(1) No licence may be issued or renewed unless the applicant submits to the Director a security that is in a form and in an amount approved by the Director.

(2) The Director may, if the Director considers it appropriate, increase the amount of the security that is to be provided by a licensee before the term of the licence expires.

Qualifications of Auctioneers**Qualifications**

6(1) An individual is qualified to conduct the bidding at a sale by public auction if

- (a) the individual
 - (i) is 18 years of age or older,
 - (ii) is a Canadian citizen, has been a resident of Canada for at least 3 consecutive months immediately prior to the date of the sale or is a non-resident who is legally admitted to Canada under the *Immigration and Refugee Protection Act* (Canada), and
 - (iii) has successfully completed an auction course recognized by the Director, or has been an auctioneer in another jurisdiction for at least one year immediately prior to the date of the sale,

or

- (b) the individual is a full member in good standing of the Auctioneers Association of Alberta.

(2) No individual may conduct the bidding at a sale by public auction unless the individual meets the qualifications set out in subsection (1).

(3) Subsection (2) does not apply to a sale by public auction referred to in section 120(1)(e) of the Act.

AR 196/99 s6;288/2009

Conditions of Sale

Conditions of sale

6.1(1) An auctioneer conducting the bidding at a sale by public auction must

- (a) at the commencement of the sale, and
- (b) at the recommencement of the sale if it is adjourned,

and before any goods are offered for sale, read the conditions of sale or cause them to be read to those present at the sale and announce the name of the auction sales business holding the sale and its licence number.

(2) The auctioneer's duty to read the conditions of sale or to cause them to be read at a sale by public auction under subsection (1) does not arise if all of the bidders at the sale are regular bidders at public auctions of the auction sales business that is holding the sale.

(3) An auction sales business must

- (a) provide the conditions of sale to bidders who will not be attending the auction in person when those bidders register to take part in the auction,
- (b) post the conditions of sale in a prominent place at the auction, and
- (c) have the conditions of sale prominently displayed on the bid cards.

(4) No auctioneer or auction sales business may

- (a) in any form of advertising or when holding or conducting a sale by public auction make statements or announcements that
 - (i) are inaccurate or misleading or that misrepresent in any way the quality, quantity, use, size, origin or content of any goods intended for sale by public auction,
 - (ii) misrepresent the terms of any sale by public auction,
 - (iii) misrepresent the value of any goods being offered for sale by public auction, or
 - (iv) misrepresent the policies or services of the auctioneer or auction sales business,

or

- (b) use or permit any employee or agent to use any form or manner of salesmanship that might deceive or mislead the public.

(5) Subsection (4) does not apply to statements, announcements or any form or manner of salesmanship in respect of personal property that is used or ordinarily used primarily for personal, family or household purposes.

(6) Part 2 of the Act applies to statements, announcements or any form or manner of salesmanship referred to in subsection (4) in respect of personal property that is used or ordinarily used primarily for personal, family or household services.

AR 187/2005 s2

Liens on Goods

Statutory declaration

7(1) In this section, “goods” means one item.

(2) No auction sales business may sell goods consigned to the auction sales business intended for sale by public auction that have a market value exceeding \$1000 unless, before the sale is held, the business obtains from the consignor of the goods a statutory declaration made by a person referred to in subsection (3) that sets out

- (a) the name of the owner of the goods or, if the goods are subject to a lien, the person entitled to possession of the goods, and
- (b) if the person making the declaration has knowledge that the goods are subject to one or more liens, the names of the lienholders and the amounts payable under the liens.

(3) The statutory declaration must be made

- (a) by the owner of the goods,
- (b) if the goods are subject to a lien, by the person entitled to possession of the goods, or
- (c) by an agent of the person referred to in clause (a) or (b), in which case the agent must have knowledge of the facts.

(4) The duty to obtain the statutory declaration under subsection (2) does not apply when the consignor of the goods is the Crown.

(5) Compliance with this section by an auction sales business does not affect the liability of that business with respect to unpaid liens on goods it sells.

AR 196/99 s7;82/2010

Standards of Conduct

Responsibilities of business

8 Every auction sales business

- (a) must render the best possible service to its consignors and all persons in attendance at a sale by public auction,
- (b) must render its services for reasonable fees and commissions that generally prevail in the auction sales business,
- (c) is solely responsible for all money received or payable on account at any sale by public auction that it holds, and
- (d) is solely responsible for the acts of its employees and agents
 - (i) in the conduct of any sale by public auction that it holds,
 - (ii) in the recording of the proceeds of any sale by public auction that it holds, and
 - (iii) in the accounting for money received and payable for all goods sold at any sale by public auction that it holds.

Bidding by employees of business

9(1) No employee or agent of an auction sales business may bid on goods at a sale by public auction that is held by the business if the person has no intention of buying the goods.

(2) Subsection (1) does not apply to an employee or agent of an auction sales business who makes a bid on behalf of a bidder who is not present at a sale by public auction that is held by the business.

(3) No auction sales business may permit an employee or agent to contravene subsection (1).

(4) When an employee or agent of an auction sales business proposes to bid on an item at a sale by public auction on the employee's or agent's own behalf, the auctioneer must make an

announcement of that fact prior to the commencement of the sale or recommencement of the sale, if it is adjourned.

AR 196/99 s9;82/2010

Bidding by consignor

10(1) In this section, “agent of the consignor” does not include an auction sales business, or an employee or agent of the business, that is holding a sale by public auction of a consignor’s goods.

(2) No auctioneer who is conducting the bidding at a sale by public auction may accept a bid on goods from a consignor of the goods or an agent of the consignor if the auctioneer knows or should know that the bidder is the consignor or the agent of the consignor.

(3) Every auction sales business must ensure that its auctioneers comply with this section.

Reserve bids

11(1) No auction sales business may advertise that a sale of goods by public auction it is holding is unreserved if there will be any goods subject to a reserve bid at the sale.

(2) If some or all of the goods to be sold at the sale by public auction are subject to a reserve bid, the auction sales business holding the sale must

- (a) ensure that the auctioneer indicates immediately before the start of the auction that some or all, as the case may be, of the goods to be sold are subject to a reserve bid, and
- (b) ensure that any written material available to bidders at the auction that describes the goods to be sold indicates that some or all, as the case may be, of the goods are subject to a reserve bid.

Completion of sale

12 An auction sales business must ensure that an auctioneer conducting the bidding on its behalf at a sale by public auction held by it states at the start of the auction, and at the recommencement of it if it is adjourned, that

- (a) the sale of each item is complete when the auctioneer announces its completion by the fall of the hammer or by any other customary manner, and
- (b) until that announcement is made, any bidder who has made a bid may retract the bid.

Competing bids at completion of sale

12.1 At the completion of a sale in accordance with section 12, an auctioneer may recognize that there are still 2 or more competing bidders for the item being sold at public auction and may re-open the bidding to those competing bidders.

AR 82/2010 s4

Attendance by public

13(1) An auction sales business that holds a sale by public auction must ensure that the sale is open to all members of the public who want to attend for the purpose of bidding at the sale.

(2) Subsection (1) does not prevent an auction sales business from excluding a person if there are reasonable grounds to believe that the person

- (a) will likely disrupt the conduct of the auction, or
- (b) will be unable to pay for the items on which the person bids.

Trust Accounts**Extended meaning of supplier**

14 For the purposes of section 143(a) of the Act, “supplier” includes an auction sales business.

Inclusion of consigned goods

14.1 For the purposes of sections 15 to 18 and 21, the sale of goods by public auction includes the sale of goods consigned to the auction sales business intended for sale by public auction, whether the consigned goods were sold by public auction or by any other means.

AR 82/2010 s5

Trust established

15(1) An auction sales business is the trustee of any money received from the sale of goods by public auction that it holds, and the business holds the money in trust to be paid out in accordance with this Regulation.

(2) The auction sales business must deposit all of the money received from the sale of goods, without making any deduction, into a trust account described in section 16

- (a) with respect to money received during the sale by public auction, within 3 days after the end of the sale, and

- (b) with respect to money received after the end of the sale by public auction, within 3 days of receiving the money.

Trust account

16(1) An auction sales business must maintain a trust account for the deposit of money received from the sale of goods sold by public auctions that it holds.

(2) An auction sales business must maintain the trust account in a bank, loan corporation, trust corporation, credit union or treasury branch in Alberta.

(3) No auction sales business may deposit any money into a trust account under subsection (1) except for money received from the sale of goods by public auctions that it holds.

Withdrawal from trust account

17(1) An auction sales business that has deposited into a trust account money received on the sale of goods by public auction must, within 21 days after the sale,

- (a) if the business has knowledge that the goods are subject to a lien,
 - (i) issue a cheque from the trust account for the amount owing under such lien payable to the consignor and the lienholder and take reasonable steps to ensure that the lienholder receives the amount owing, and
 - (ii) issue a cheque from the trust account payable to the consignor for the consignor's share of the purchase price, being the purchase price less the amount payable to the lienholders, applicable taxes and the auction sales business's fees and commissions,

and

- (b) in any other case, issue a cheque from the trust account payable to the consignor for the consignor's share of the purchase price, being the purchase price less applicable taxes and the auction sales business's fees and commissions.

(2) If there is a dispute respecting the ownership of goods sold by public auction, the auction sales business may pay from the trust account the proceeds of the sale less applicable taxes and the business's fees and commissions to the Court of Queen's Bench and the Court may determine who is entitled to the proceeds.

(3) No auction sales business may withdraw money from a trust account to cover its fees or commissions in respect of a sale of goods unless the business has issued the cheques referred to in subsection (1) or section 17.1 or paid the proceeds to the Court of Queen's Bench under subsection (2).

(4) An auction sales business that has issued a cheque from its trust account in accordance with subsection (1) or (2) or section 17.1 must within 21 days from the date of the sale finish disbursing the remaining funds relating to that sale.

AR 196/99 s17;82/2010

Payment to consignor

17.1 An auction sales business may issue a cheque from a general account of the auction sales business to a consignor for the consignor's share of the purchase price referred to in section 17(1) prior to receiving the money owing from the buyer on the goods sold at public auction.

AR 82/2010 s7

Prohibition

17.2 An auction sales business may not issue a cheque under section 17 or 17.1 unless it has sufficient funds in the account on which the cheque is drawn with which to meet its obligation.

AR 82/2010 s7

Statement to consignor and lienholder

18 An auction sales business must, within 21 days after the date of a sale of goods by public auction, provide the consignor of the goods and, if the business has knowledge that the goods are subject to a lien, provide the lienholder with a statement setting out the amount received for each of the goods.

Records

Duty to keep records

19 In addition to the requirements respecting records under section 132(1) of the Act and section 8 of the *General Licensing and Security Regulation*, every licensee and former licensee must maintain the following records and documents for at least 3 years after the day on which the goods to which the record or document relates were sold:

- (a) statutory declarations provided to it under section 7;
- (b) records of every sale by public auction held by it;

- (c) records in accordance with section 19.1 of payments made from its general account to a consignor under section 17.1;
- (d) records of statements provided to a consignor or lienholder under section 18.

AR 196/99 s19;82/2010

General account records

19.1 The records that must be kept by every licensee and former licensee for the purposes of section 19(c) are as follows:

- (a) the names and addresses of every consignor paid under section 17.1 from the general account;
- (b) the location and date of the sale to which the payment relates;
- (c) a description of the goods sufficient to identify the goods to which the payment relates;
- (d) the amount disbursed in respect of the goods.

AR 82/2010 s9

Duty to produce declaration

20 An auction sales business must produce a statutory declaration provided to it under section 7 to a person having an interest in the goods to which the declaration relates.

Trust records

21(1) Every licensee and former licensee must keep in Alberta trust records of money received at a sale by public auction held by it and that include the information referred to in subsection (2) and must retain those records for a period of at least 3 years following the date on which the sale was held, whether or not the auction sales business ceases to carry on business within that 3-year period.

- (2)** The trust records referred to in subsection (1) must include
- (a) the municipal address or legal description of the location where the sale was held,
 - (b) the date on which the sale was held,
 - (c) the name and address of each person on whose behalf the sale was held,

- (d) a description of the goods sold sufficient to identify each of the goods, and the name and address of each person on whose behalf the goods were sold,
- (e) the name and address of the purchaser or the bid number of the purchaser of each of the goods sold for a consideration of \$500 or more,
- (f) the consideration paid for each of the goods sold,
- (g) the fee or commission payable to the auction sales business for each of the goods sold,
- (h) the amount of the taxes paid in respect of each of the goods sold,
- (i) the amount disbursed in respect of each of the goods, whether the amount was disbursed
 - (i) directly to each person on whose behalf the sale was held, or
 - (ii) to the general account for reimbursement of funds paid to a consignor under section 17.1,

and

- (j) the amount disbursed to each person having an interest in or lien on the goods sold.

(3) An auction sales business that refers to the bid numbers of registered bidders in its trust records must maintain a record that sets out

- (a) the name, address and bid number of each registered bidder, and
- (b) the lot number or other description of each of the goods sold and the bid number of the registered bidder who purchased the goods.

AR 196/99 s21;82/2010

Offences

Offences

22 A contravention of section 6(2), 6.1(1), (3) or (4), 7, 8, 9, 10(2) or (3), 11, 12, 13(1), 15(2), 16, 17(1), (3) or (4), 17.1, 17.2, 18, 19, 19.1, 20 or 21 is, for the purposes of section 162 of the Act, an offence.

AR 196/99 s22;260/2005;82/2010

Transitional Provisions, Repeal, Expiry and Coming into Force

Transitional

23 A licence under the *Public Auctions Act* is continued as an auction sales business licence under Part 12 of the *Fair Trading Act*.

Repeal

24 The *Auction Sales Business Licensing Regulation* (AR 210/82) is repealed.

Expiry

25 For the purpose of ensuring that this Regulation is reviewed for ongoing relevancy and necessity, with the option that it may be repassed in its present or an amended form following a review, this Regulation expires on September 1, 2020.

AR 196/99 s25;68/2004;82/2010

Coming into force

26 This Regulation comes into force on September 1, 1999.



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