

Auctions – buying and selling

This publication is intended to provide general information only and is not a substitute for legal advice.

This publication outlines the rules and regulations that must be followed by Alberta businesses that sell goods by public auction. Such sales are governed by the *Consumer Protection Act*, the Public Auctions Regulation and the *Sale of Goods Act*.

Licensed to sell

Only a qualified auctioneer can conduct the bidding at a public auction. Any business that sells goods by public auction in Alberta must be licensed by the province and post a security such as a bond.

The following types of auctions are exempt from licensing requirements, but they must use the services of a qualified auctioneer:

- Auctions held by religious, charitable or non profit organizations
- Livestock auctions held by a livestock dealer licensed by Livestock Identification Services Ltd.
- Auctions to which the *Civil Enforcement Act* applies
- Sales held because of a court order
- Goods taken in distress for the recovery of tax or other legislated levies

Sales of real estate at public auction usually combine the services of a real estate broker and an auctioneer. The *Real Estate Act* regulates this type of sale. For more information, contact the Real Estate Council of Alberta at www.reca.ab.ca or phone 1-888-425-2754.

Goods sold at Internet auctions are not covered by the public auction legislation.

Responsibilities of a public auction business

Every public auction sales business must give the best possible service to its consignors (the people who entrust their goods to them for sale) and those attending the auction. The business is solely responsible for all money received or payable for goods sold. Fees must be reasonable and comparable to those generally prevailing in the industry. The business is responsible for the actions of its employees and agents.

No auctioneer or auction sales business may make any statements in their advertising - or when conducting an auction - that misrepresent the:

- Quality, quantity, use, size, origin, content or value of any goods offered for sale
- Terms of the sale
- Policies or services of the auctioneer or the auction business

The *Consumer Protection Act* also deals with unfair practices. For example, an auction business must be truthful about the reason that goods are being sold at auction.

The auctioneer must:

- Tell the public before the sale starts if any of the goods are subject to a reserve or minimum bid. An auction company cannot advertise an auction as “unreserved” if any of the goods at the sale are subject to a reserve bid.

- Announce how the sale of an item is completed. It could be by the bang of a hammer or the word “sold.” Until the sale of the specific item is completed, you can retract your bid. However, once the auctioneer indicates the item is sold, you are responsible for paying for it.
- Sometimes two or more bidders are still competing to purchase an item when the hammer fails to signal that the item is sold. To avoid confusion in these situations, the Public Auctions Regulation allows the auctioneer to re-open the bidding to those competing bidders only.

Employees of the business conducting the auction are allowed to bid on items, but only if they intend to buy those items they bid on. If an employee intends to buy items at an auction sale, the auctioneer must announce this at the beginning of the sale and after each break in the sale.

An auction company must post a security or bond with Service Alberta as part of their licence application. The minimum security for an auction business is \$25,000. A buyer or seller who suffers a loss because of the actions of an auction company may be able to make a claim against the security. If the total claims exceed the amount of the security, each claim will be prorated.

Conditions of sale

Before a sale begins, the auctioneer or other person must read the conditions of the sale, the name of the auction sales business conducting the sale and its licence number to those present. The conditions of sale must be posted in a prominent place at the auction and on the bid cards. If a bidder is not attending the sale in person, the business must provide him/her with information on the conditions of the sale.

Information for consignors

- When you consign your goods for sale at an auction sales business, you are entering into a legal contract. The business agrees to take your goods and sell them; you agree to pay for the service.

- Check the reputation of an auction sales business with someone who has used their services. The Auctioneers’ Association of Alberta or the Better Business Bureau may be able to provide you with additional information.
- Service Alberta can tell you if an auction sales business is licensed. Information on licensed businesses may be found at <https://www.alberta.ca/business-licences.aspx> under “Find out if a business is licensed”. You can also phone the **Consumer Contact Centre** at 780-427-4088 in Edmonton or toll-free in Alberta at 1-877-427-4088.
- If you want to set a minimum price for your goods, you can talk to the auction staff about setting a reserve bid.
- Unless your goods are offered as reserve bid items, a minimum selling price cannot be guaranteed no matter what you are promised. The goods must be sold to the highest bidder once bidding has begun.
- It is an offence for you or your agent to bid on your own goods.
- All terms and conditions of your consignment agreement should be in writing. Include details of pricing arrangements, the commission rate, any administration charges for storage, insurance, cleaning and repair, etc. Ask if you will be charged a fee for goods that do not sell. Keep a description of your consigned goods and a copy of the contract for future reference.
- Check to see if your goods are covered by the auction business’s insurance or if you have to carry your own insurance until the time the item is sold or picked up by the buyer.
- You can ask the auction sales business to arrange for additional security to cover consignment of expensive goods. Expect to pay the cost yourself.
- When goods are sold, the auction sales business must deposit all money received in a trust account. Within 21 days of the sale, the business must pay you the selling price, less the agreed upon costs and any amounts owed to lien holders. The business must send you and any lien holders an itemized statement showing the amount received for the goods.
- An auction sales business is responsible for getting payment before releasing your goods to the buyer.

- Keep a copy of any statutory declaration for goods valued over \$1,000.

Information for buyers

Statutory declaration

Before the auction is held, the auction sales business is required to take a statutory declaration from people who consign an item valued at more than \$1,000. The statutory declaration must identify the owner of the goods and all liens and encumbrances on the goods.

An auction sales business will try to check the validity of a statutory declaration. However, if you buy something that is found to have an undeclared lien against it, you may have a legal dispute with the consignor, the auction business or both. In that case, you should seek legal advice.

Liens

The goods you plan to bid for may have been pledged as the security for a loan or other debt. In other words, there may be a lien on the item. If known, the lien holder will be notified about the sale and will be paid before the consignor.

If possible, before bidding on an expensive item such as a vehicle, ask a registry agent to search the Personal Property Registry to see if there are any liens or encumbrances on the goods. If there are and you buy the item, specify that the lien holder is paid before the consignor. Be aware that checking the Personal Property Registry will not reveal liens registered outside the province. There will be a charge to do a lien search.

Registry agents can be found:

- on the Alberta government website at <https://www.alberta.ca/registry-agents.aspx>
- in the Yellow Pages under Licence and Registry Services
- by calling 780-427-7103 in Edmonton or toll free at 1-877-427-4088.

Mechanical Fitness Assessments

The Vehicle Inspection Regulation was amended to exempt auction sales businesses from having to

make a Mechanical Fitness Assessment to all potential purchasers of the vehicle. Buyers should be aware that a vehicle bought at auction has no guarantee of being mechanically sound.

Removal of Goods Purchased at the Sale

You may not remove goods purchased at a public auction until you have paid the auction business or have made other arrangements for payment

Before you buy

- It is possible to pick up a bargain at an auction, but you need to know what you are doing. Go to an auction as a spectator first and see what happens.
- Do your homework before the auction. Make sure you know what you are buying.
- Preview the items offered for sale. All items for sale will be available for public viewing before the auction. Take this opportunity to examine items of interest.
- Check the condition of goods before the sale. If the auctioneer makes a claim about an item, it must be true.
- Comparison shop before an auction to determine the appropriate value of goods offered for sale.
- Decide the maximum you can afford to spend and stick to it.
- Before bidding, find out what methods of payment the business accepts. Make sure you read and understand the terms and conditions of sale and any special conditions that apply to certain goods.
- Bid carefully. Usually, no refunds or exchanges are allowed at an auction. Under contract law, the sales agreement is binding on both parties.
- Check to see if you will be charged a “buyer’s premium” as part of the total cost of the item you purchase.
- You have to pay GST on most auctioned items.
- Make sure you know what currency the bidding is in for that particular sale.

Auction terminology

- **Conditions of sale** – The legal terms that govern the conduct of the auction including the acceptable methods of payment, terms, buyer’s

premium, reserve bids or any other limiting factors of an auction.

- **Caveat emptor** – A Latin term meaning let the buyer beware. This means that the buyer takes the risk regarding the quality or condition of the property purchased unless it is protected by warranty.
- **As is** – Selling the property without warranties as to the condition and/or the fitness of the property for a particular use.
- **Bidder number** – The number issued to each person who registers at an auction.
- **Bid** – A prospective buyer's indication or offer of a price he or she will pay to purchase property at an auction. Bids are usually in standardized increments established by an auctioneer.
- **Reserve bid** – The minimum price a seller is willing to accept for property to be sold at auction. If no one meets the reserve bid, the item will not be sold.
- **Opening bid** – An auctioneer may open the bidding on an item stating a certain dollar amount. This does not mean you have to bid that amount.
- **Minimum bid** – This is the lowest acceptable amount at which bidding must start.
- **Absentee bid** – A procedure that allows a buyer to participate in the bidding process without being physically present. The rules and procedures for absentee bids are unique to each auction business.
- **Lots** – The auctioneer will tell you when the items are being sold in lots. For example, 10 items may be auctioned in one lot for one price.
- **Inspection/viewing/preview** – Specified date, time and place where property is available for viewing and evaluation.
- **Buyer's premium** – A percentage of the high bid or a flat fee added to the high bid to determine the total contract price to be paid by the buyer.

For more information

Consumer Contact Centre

Edmonton: (780) 427-4088

Toll-free in Alberta: 1-877-427-4088

Queen's Printer Bookstore

You may purchase Acts and regulations from the Queen's Printer Bookstore:

10611 - 98 Avenue, Edmonton, Alberta T5K 2P7

Edmonton: (780) 427-4952

Toll-free in Alberta: 310-0000 then 780-427-4952

These are also free for you to download in the "pdf" or "html" formats at www.qp.alberta.ca

For more information about auctions, contact:

Auctioneers' Association of Alberta

Red Deer: 403-340-2070

<https://www.albertaauctioneers.ca/>

Check the Better Business Bureau's business reliability reports

Better Business Bureau of Central and Northern Alberta

Edmonton: 780-482-2341

Toll-free: 1-800-232-7298

www.edmontonbbb.org

Better Business Bureau in Southern Alberta and East Kootenays

Calgary: 403-517-4222

Toll-free in Southern Alberta: 1-800-661-4464

<http://calgary.bbb.org>