

Announcements made day of sale take precedence over any printed material...  
By Donna Brinker Potter, Ohio Department of Agriculture

Each month, I review many auction advertisements and I often see the phrase “announcements made the day of the sale take precedence over any printed material”. I have never been 100% certain what the auctioneer is trying to accomplish with this statement. In many cases, however, auctioneers appear to believe that this phrase gives them the right to verbally change the written terms and conditions at the last minute or the day of the auction. This is not necessarily true.

Let's say, for example, that an auctioneer advertises a real estate auction as an absolute auction. Unfortunately, on the day of the sale, the crowd is small and the seller, who suddenly gets cold feet, wants to change the auction to a reserve auction. Many auctioneers think that the phrase “announcements made the day of the sale take precedence over any printed material” in their ads permits them to change the auction from absolute to reserve on the day of the sale. However, as the Franklin County Court of Appeals noted:

A person responding to an advertisement that an auction sale will be held has a right to rely upon the representations made therein and that the advertisement is made in good faith *subject only to the right of the person conducting the sale in the exercise of good faith to withdraw the article from sale or to cancel the auction...* In short, a person responding to a public notice that an auction sale will be held has a right to rely upon the publication as being made in good faith. *Schwartz v. Capital Savings & Loan Company* (10th Dist. 1978), 56 Ohio App. 2d 83 at 87. [emphasis added]

This is why it is critical for you to make sure that both you and your client understand the type of auction that you are agreeing to conduct and that the client is fully aware of the risks and responsibilities of undertaking such an auction.

Some auctioneers have been disciplined for telling their clients that they will advertise the auction as absolute in order to draw a big crowd, with the understanding that they can always change it to a reserve auction at the eleventh hour if they are unhappy with the attendance. You cannot do this. R.C. 4707.023 requires a bona fide intent to sell the property absolute if that is how the auction is advertised. By advising your clients that they can switch from absolute to reserve the day of the auction, you are not showing such a bona fide intent to sell absolute, and to advertise otherwise would be misleading and fraudulent. In the above example, the seller's only options would be to proceed with the auction *as advertised* or else cancel the sale. Remember, under R.C. 4707.15(D), specifying an auction as reserve or absolute and not conducting it as such is grounds for disciplinary action

The information provided in this article is general in nature. Therefore, it is recommended that you consult a legal professional in regard to the specifics of any questions or concerns that you may have regarding this topic. If you have any seminar ideas or ideas for future *Buckeye* articles, please feel free to email me at:

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