

Protecting Yourself and Your Clients' Money
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With today's economic situation, it is imperative that you stop and take a look at your business practices to make sure that you are handling your client's and your personal and business monies correctly. The other day I received a phone call from an auctioneer who stated that he had become insolvent and that he was unable to pay his clients. Unfortunately, with the current economic environment, I am afraid this will not be the last call of this type that the department will be receiving. However, there are several things that you can do to help prevent this from happening to you.

First and foremost, you need to make sure that you have a client trust account. R.C. 4707.024 requires that all funds received at an auction should be deposited into the trust account within 72 hours from the date of the auction. This account is to be kept separate from your business and personal account(s). You should never pay your personal or business expenses from this account. The trust account or client account is for your clients' proceeds, and this money belongs to your clients. It is not yours for your own personal use. The auctioneer that I spoke with had been in business for over 20 years, and like many auctioneers who have found out the hard way, he paid such business expenses as facility rental fees, electric bills, and employee payroll from the same bank account that he used to hold client funds. Under Ohio law, it is a violation to commingle client monies with your business or personal monies. This is not a new provision. R.C. 4707.15(E) makes the failure to keep your client monies in a separate account grounds for disciplinary action and even possible criminal charges.

Secondly, keep accurate auction records. You should have an inventory of the items you have sold for your clients, records of how much the items sold for and to whom, and a copy of the settlement sheet. These records will assist you in making sure that your clients are paid for all of their items in a timely and accurate manner. Further, in accordance with R.C. 4707.21, you must keep all records that you have created in relation to the auction on file for at least two years from the date of the auction.

Most auctioneers accept checks as payment at auctions. Increasingly, some of these checks are returned by the bank for non-sufficient funds (NSF). Under the statute, you have fifteen days from the date of the sale to pay your client, unless otherwise stated in your contract. With the increase in NSF checks, you might want to extend the settlement date to insure that all checks have cleared before issuing a payment to your client out of the trust account. I recommend checking with your bank to see how long it usually takes for a check to clear, and adjusting the settlement date to allow sufficient time for all checks to clear. Further, you should clearly spell out in the auction contract who (you or the seller) is responsible for the collection of unpaid items and bad checks.

Finally, if you find that you are in trouble and you are not able to pay your clients, it is imperative that you seek help. You should not be conducting auctions if your circumstances prevent you from fully complying with the requirements of the law. An accountant and/or an attorney can provide you with advice and direction that may help you regain control and get your clients paid with minimal damage to your reputation, your career, and to the public and the profession.

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: dpotter@agri.ohio.gov.