

The Auction Contract  
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Every auctioneer must enter into a contract or an agreement with the owner or consignee of the goods to be sold. The days of conducting business with clients based on a simple handshake are over. Not only is a contract legally required, but it just makes good business sense. A contract is a legal agreement between you and the seller, outlining the services you are going to provide, the costs, the type of auction, and the duties of the seller. It is an opportunity to clearly spell out who is responsible for different aspects of the auction. For example, a contract determines who is responsible for bad checks or unpaid items; many auctioneers assume that responsibility, but there are some auctioneers who place that responsibility on the seller. Whichever you choose, it should be clearly spelled out in the contract to avoid confusion or misunderstanding. The contract is there to protect both you and the seller.

R.C. 4707.20(A) requires the auctioneer, special auctioneer or auction firm to enter into a contract with the owner or consignee of the goods to be sold prior to auction. To fully understand this requirement, you need to look at 4707.01, the definition section of the Auction Law. A “consignee” is defined as “a person or auction firm that takes personal property on consignment to be sold at auction by a licensed auctioneer.” If you are acting as an auctioneer for a person or firm that is taking property on consignment to be sold at auction, you must have a contract with the person or firm if you have not contracted directly with the owner of the property. That means if Auctioneer A has contracted with Owner X to sell his property and you, Auctioneer B, are helping, you, Auctioneer B, must either have a contract with Auctioneer A or Owner X to comply with the requirements in 4707.20(A).

The Ohio Revised Code contains very specific requirements for the auction contract. These requirements are found mainly within 4707.20(B) and (D) and Ohio Administrative Code 901:8-2-06. These requirements include:

1. The contract must state that you are licensed by the department of agriculture and bonded in favor of the state or that an aggrieved person may initiate a claim against the recovery fund created in 4707.25 as a result of the licensee’s actions (if you are in the recovery fund, your contract should not state that you are bonded in favor of the state of Ohio);
2. The name of the owner of the property to be sold or the name of the owner’s agent or consignee;
3. The date of the auction or termination date of the contract (if the date of the auction does not terminate the contract);
4. The location of the auction;
5. Terms and conditions of the auction;
6. All fees to be charged by the auctioneer or auction firm, which includes: commissions, rentals, advertising and labor;
7. An explanation of the settlement of the auction;
8. A statement establishing who is responsible for bad checks, debts, and unpaid auction items;
9. A statement indicating whether the auction is a reserve auction or absolute auction and the appropriate definition found in R.C. 4707.01;
10. A statement of the auctioneer’s or auction firm’s policy on absentee bidding;
11. A brief description of the real or personal property to be sold;
12. And if the sale is to be an absolute auction, a statement affirming that the seller of the property has a bona fide intention to transfer ownership of the property to the highest bidder.

Most contracts purchased from supply companies do not meet the requirements found in the Ohio Revised Code. Finally, if you are using a contract that you have purchased or you have borrowed the language from another auctioneer's contract, it is imperative you understand the contract and fill it out correctly. Often we will see contracts that contain some required information, but other information is left out or is filled out improperly because the auctioneer does not understand the language of the contract he or she is using.

If you have questions regarding whether or not you are in compliance with Ohio law, please seek advice from your attorney.