

# Wisconsin Department of Safety and Professional Services

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## DIVISION OF PROFESSIONAL CREDENTIAL PROCESSING

### QUESTIONS AND ANSWERS RELATING TO THE REGULATION OF AUCTIONEERS AND AUCTION COMPANIES IN WISCONSIN

**NOTE: The answers to the following questions paraphrase the Wisconsin Statutes and Administrative Code. Please consult Wis. Stats. Ch. 480 Wis. And Admin. Code Ch. SPS 120 through SPS 128 for the exact language.**

#### **1. What is an auction?**

A sale transaction conducted by means of oral or written exchanges between an auctioneer and prospective purchasers of goods or real estate that consists of a series of invitations made by the auctioneer and culminate in the acceptance by the auctioneer of the highest or most favorable offer made by one of the prospective purchasers.

#### **2. What is an auction company?**

A corporation, partnership, association or an individual (not licensed as an auctioneer) that manages an auction or that has primary responsibility for handling sales proceeds, downpayments, earnest money deposits or other trust funds received at an auction. If the registrant is an individual, he or she may not call auctions. If the person were to do so, he or she would have to be registered as an auctioneer and, in that case, would not need to be registered as an auction company.

#### **3. What is an auctioneer?**

An individual, at least 18 years old, who engages in, or who advertises or holds himself or herself out as engaging in, the calling for and the recognition and acceptance of offers for the purchase of goods or real estate at an auction.

#### **4. Is an auction business, owned by a single individual who is registered as an auctioneer and operated as a sole proprietorship, required to obtain an auction company registration?**

No.

#### **5. Must an out-of-state auctioneer who enters into a contract with an out-of-state owner/seller to auction property located in Wisconsin be registered in Wisconsin?**

Yes. If the auction will be held in Wisconsin, the person conducting it must be registered in Wisconsin.

#### **6. Does Wisconsin have jurisdiction over an auction held in another state, even if the property is located in Wisconsin?**

No.

#### **7. What persons or kinds of auctions are exempt from registration?**

- a. Governmental auctions.
- b. Court ordered auctions.
- c. Auctions required by law.
- d. Auctions by owners of goods or real estate which they held for their personal use for at least one year.
- e. Auctions by churches, schools, fraternal societies, non-profit organizations.
- f. Political fund raising auctions.
- g. Auctions of goods or services valued at under \$500.
- h. Fur auctions and auctioneers licensed by DNR.
- i. Motor vehicle auction dealers licensed by DOT.
- j. Persons conducting auctions within the scope of a license granted by another state agency.

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## **8. Under what circumstances can a person be registered as an auctioneer and not be required to take an exam?**

If an applicant passes the exam, the applicant will receive a “regular” registration certificate. Otherwise, the applicant may apply for a temporary registration certificate.

## **9. What is a “temporary registration”?**

Auctioneers may be issued a temporary registration which is valid for 60 days. During the 60 days, the temporary registrant must take and pass the exam or, at the end of the 60 days, cease practicing as an auctioneer. The temporary registration cannot be renewed.

## **10. How often are exams given and where?**

Exams are administered six times a year by the Department. Please see application form (#2077) for dates.

## **11. Are examination study materials available?**

A copy of the Wisconsin Statutes and Administrative Code relating to the practice of Auctioneers and Auction Companies is available on the web at <http://docs.legis.wisconsin.gov> or at most public libraries. If you wish to purchase a copy, contact Document Sales, Department of Administration by calling 800-362-7253 or 608-264-9419 or by email at [docsales@doa.state.wi.us](mailto:docsales@doa.state.wi.us). Exam questions are based on the information in this booklet.

## **12. If I am licensed in another state as an auctioneer, am I exempt from taking the Wisconsin exam?**

Only if you are licensed or registered in a state which has requirements substantially equivalent to Wisconsin’s or if you are licensed in a state with which Wisconsin has a reciprocal agreement. As of April 1, 2000, Wisconsin has a reciprocal agreement with Texas, Kentucky, Illinois, Tennessee, Arkansas, and North Carolina. Persons licensed in other states should submit a certified license verification to Wisconsin (sealed with the official seal of the licensing agency) which shows they are currently licensed or registered and in good standing in the other state. In those cases where Wisconsin does not have a reciprocal agreement with the state in which an applicant is licensed, a determination will be made whether the requirements for obtaining the auctioneer license in the other state are substantially equivalent to the requirements in Wisconsin.

## **13. Does eligibility for examination or a passing score on an examination imply eligibility for registration as an auctioneer?**

No. Part of the registration process includes answering questions about conviction of crimes and about disciplinary actions against any other licenses which you hold or held in the past. If this is the case, you may want to consult the department prior to registering for the examination. The department will determine whether convictions or disciplinary actions are substantially related to the practice of an auctioneer.

## **14. Might you also need a Wisconsin Seller’s Permit relating to the collection of sales taxes?**

Yes, in some circumstances the auctioneer is considered the retailer in regard to sales tax issues and is responsible for collecting the tax. The Department of Revenue (608-266-2776) has prepared a brochure which explains the sales tax requirements for auctions.

## **15. Before doing business under any trade name, must an auctioneer or auction company notify the department in writing of a trade name?**

Yes.

## **16. Is it necessary that a prior written contract be entered into with each owner or consignor of goods or real estate before conducting an auction?**

Yes, in all cases, even with people who wish to include an item or two with those being auctioned at a friend’s or neighbor’s auction. Also, the owner or consignor must be provided with a legible copy of the contract at the time of signing.

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**17. Under state law, must certain information be included in all auctioneer and auction company advertising?**

Yes, the name and registration number of the auctioneer who will conduct the auction, a statement that the auctioneer is a “registered Wisconsin auctioneer” and the name of any auction company that is managing the auction. The advertising must state the terms and conditions under which the auctioneer will accept payment by buyers and the percentage of any buyer's fee or surcharge which is imposed on the buyer. A notice concerning the information in the previous sentence must also be posted at the auction. **NOTE:** See brochure entitled Advertising Requirements for Wisconsin Auctioneers and Auction Companies for additional information and samples of ads.

**18. Must an auctioneer or auction company deposit trust funds in a trust account?**

Only when the auctioneer or auction company does not pay the seller or consignor within 24 hours after the auction.

**19. When must an auctioneer provide an accounting of all money and pay all moneys due the owner or consignor?**

Within 30 days after the sale of goods or real estate at an auction.

**20. How long must an auctioneer maintain complete and accurate records of the auction?**

For at least 2 years after an auctioneer conducts an auction or at least 2 years after the termination of any litigation.

**21. Must an auctioneer make records available for inspection and copying by the department or the Auctioneer Board?**

Yes.

**22. Are cashiers and clerks required to be registered by the department?**

Not if they do not deposit funds in an account which is controlled by them or hold the funds for disbursement.

**23. A husband and wife are both registered as auctioneers. Must they register as an auction company?**

If there is a partnership agreement and the business is taxed as a partnership, yes. Otherwise, no.

**24. If someone only arranges auctions for the sale of property and goods which he or she owns, must that person be registered as an auctioneer or auction company?**

No, provided property or goods owned by someone else are not included in the auction, and the owner has held the goods or real estate for his or her personal use for at least one year immediately preceding the date of the auction or the total appraised value of the goods or services for sale is less than \$500.

**25. May a registered auctioneer pay a finder's or referral fee to unregistered persons for securing an auction of another's personal property?**

Yes.

**26. If an auctioneer is engaged in a retail car auction, must the auctioneer be registered by the Department of Safety and Professional Services?**

Yes.

**27. Is an auctioneer or auction company who occasionally sells a firearm as part of goods being sold at an auction also required to be licensed as a Federal firearms dealer?**

No; however, the auctioneer or auction company must make sure that the person purchasing the firearm is a resident of the state in which the auction is being held, since it is unlawful under the Gun Control Act of 1968 for a person to transfer, sell, trade, give, transport or deliver any firearm to any person who the transferor knows or has reasonable cause to believe, resides in any state other than that which the transferor resides.

**28. Can an auctioneer conduct a consignment auction for firearms only?**

Yes; however, an auctioneer would be considered to be engaged in the business of selling firearms at wholesale or retail if such sales were repetitive. The auctioneer would then need a Federal firearms license.

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**29. Are “ringmen” or “runners” required to obtain registration as auctioneers?**

No.

**30. Can a commercial establishment, such as a hardware or furniture store, handle money received at an auction of its property by a registered auctioneer, without having to be registered as an auction company?**

Yes. This should be clearly expressed within the auction contract as a “term and condition” under which it is agreed the auction shall be held.

**31. Is it proper for an auctioneer to start a bid with a dollar amount which the auctioneer says was called, but which was not, and when the auctioneer doesn’t get a higher bid, the auctioneer drops the bid down to a lesser amount?**

No, this could be construed as a “false bid” because the auctioneer is making a statement that conveys to the purchasers that the starting number was a bid from the purchasers. The auctioneer should say something like: “I’m going to open the bids at \$\_\_\_\_\_.”

**32. Is a liquor license or permit required for the sale by an auction house at public auction of a collection of sealed bottles of intoxicating liquor or unopened beer cans for the purpose of settling an estate or disposing of the collection?**

No.

**33. Under Wisconsin Statutes and Administrative Rules, are auctioneers and auction companies required to obtain liability insurance or bonding?**

No; however, registrants should weigh the cost of coverage against the risks that are to be protected against. Worker’s compensation is a matter of state law and, generally, all employees and independent contractors must be included.

**34. What rights does an auctioneer have if a seller decides to cancel a contract for services?**

If the seller breaches the contract, the auctioneer could sue in an attempt to recover the costs of advertising and other expenses incurred up to the time of cancellation.

**35. Many advertisements use the term “dispersal”, rather than “auction”. Is a “dispersal sale” the same as an “auction” requiring registration?**

Yes, if the method of sale constitutes an “auction” as defined in Wisconsin Statutes.

**36. Is a licensed livestock market operator required to also be registered as an auctioneer if only livestock is auctioned at the livestock facility?**

No.

**37. Is a licensed livestock market operator who conducts an auction at the livestock facility required to also be registered as an auctioneer if goods in addition to livestock are auctioned at the livestock facility?**

Yes.

**38. Is a licensed livestock market operator required to also be registered as an auctioneer if he or she conducts a farm auction consisting only of livestock and some of the livestock is owned by farmers other than that at whose farm the auction is conducted?**

No.

**39. Is a licensed livestock dealer required to also be registered as an auctioneer if he or she conducts a farm auction at which goods in addition to livestock are auctioned?**

Yes.

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**40. Is a livestock dealer license required for a farm auction at which the only livestock auctioned is owned by the farmer at whose farm the auction is conducted?**

No; however, registration as an auctioneer is required.

**41. Is a registered auctioneer exempt from the livestock dealer licensing if the auctioneer conducts any of the following:**

- a. A farm sale at which no livestock is sold on a consignment basis,
- b. A sale conducted at a state, county or district fair or breeder association show, or
- c. A sale conducted by a youth agricultural organization?

Yes; however, the auctioneer must make records of the sales available to the Department of Agriculture, Trade and Consumer Protection upon request for disease investigation purposes.

**42. Is a registered auctioneer required to obtain a real estate broker's license in order to call an auction for the sale of real estate?**

No, the law permits a registered auctioneer to call an auction of real estate; however, it does not permit a registered auctioneer to perform any of the following activities unless the auctioneer is also licensed as a real estate broker:

- a. Prepare any contracts or other documents necessary to transfer title to real estate.
- b. Distribute to prospective buyers written information about the real estate or conditions affecting the real estate which has not been provided by the owner of the real estate or the owner's agent.
- c. Negotiate with a prospective buyer other than by conducting an auction.

**43. Can a licensed real estate broker call bids at an auction if the broker does not have an auctioneer registration?**

No.

**44. If a seller requests that a real estate broker offer real estate for sale through a sealed bid procedure, must the real estate broker be registered as an auctioneer or use a registered auctioneer?**

No. A real estate broker who advertises real estate for sale by using a sealed bid would not be conducting an auction as there is no "acceptance" by the real estate broker of the highest or most favorable offer. The seller accepts whatever bid he or she chooses.

**45. Is a person required to be registered as an auctioneer if he or she accepts written bids on real estate, opens them, and then tells people what the bids are and invites them to submit a higher bid?**

Yes, since the person would be using an auction method of selling real estate.