

AUCTION SALES ACT, 1989 P.N.D.C.L. 230

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P.N.D.C.L. 230

AUCTION SALES ACT, 1989(1)

AN ACT to provide for the registration of auctioneers, the proper conduct of auction sales and for related matters.

Establishment of the Board

1. Establishment of the Board

(1) There is hereby established an Auctioneers Registration Board consisting of

(a) one representative of the Ministry of Interior who shall be the chairman of the Board,

(b) the Registrar-General or one representative of the Registrar-General,

(c) the Inspector-General of Police or one representative of the Inspector-General of Police not below the rank of Assistant Commissioner of Police,

(d) one representative of the Ministry of Local Government,

(e) one representative of the Ghana Institute of Surveyors,

(f) one representative of the Ghana Auctioneers Association, and

(g) three other persons who in the opinion of the President can assist the Board in the performance of its functions.

(2) A member of the Board shall be appointed for the period and on the terms and conditions determined by the President.

2. Functions of the Board

(1) The functions of the Board are,

(a) to register auctioneers,

(b) to grant a licence to an auctioneer or to revoke or suspend a licence,

(c) to establish standards for the conducting of auction sales, and

(d) to receive complaints made by a member of the public in respect of a registered auctioneer or

relating to an auction sale and take disciplinary action.

(2) The Board shall keep a register of auctioneers in which the Board shall enter the names and particulars of auctioneers licensed under this Act.

3. Meetings of the Board

(1) The Board shall meet at least once in every three months at the times and places determined by the

chairman.

(2) The chairman shall preside at meetings of the Board and in the absence of the chairman, a member

of the Board elected by the members present from among themselves shall preside.

(3) The quorum at a meeting of the Board is five.

(4) The validity of the proceedings of the Board shall not be affected by a vacancy in its membership

or by a defect in the appointment of a member of the Board.

(5) Subject to this section, the Board shall regulate its own procedure.

Licences

4. Qualification of an auctioneer

(1) A person shall not be registered to practise as an auctioneer unless that person

(a) has passed the prescribed written examination conducted jointly by the Ghana Institute of Surveyors and the Ghana Auctioneers Association, and

(b) has served as an apprentice for one year under a licensed auctioneer.

(2) An auctioneer is bound by the rules of conduct laid down by the Board.

5. Application for auctioneer's licence

(1) A person shall not practise as an auctioneer unless that person possesses an auctioneer's licence

granted by the Board.

(2) An application for a licence shall be in writing, and addressed to the Board.

(3) The Board shall grant a licence to an applicant where it is satisfied with its investigations concerning the application and shall enter the name of the applicant in the register of auctioneers.

(4) The Board may on reasonable grounds, refuse to grant a licence to an applicant.

6. Auctioneer's licence

(1) A licence issued by the Board shall be in the form set out in the First Schedule and is valid for a

period of twelve months from the date of issue.

(2) A licence issued under subsection (1) may be renewed.

7. Licence fees

(1) A licensed auctioneer shall pay the prescribed fee in respect of each licence.

(2) The Minister may revise the fees payable under subsection (1) after consultation with the Board.

8. Applicant to enter into bond

(1) The Board shall not issue a licence to an applicant unless the applicant enters into a bond in the

form set out in the Second Schedule.

(2) The Board shall prescribe the value of the bond.

(3) Where it appears to the Board that the security of an auctioneer is or has become insufficient, it

shall call upon the auctioneer to give sufficient security and if the auctioneer fails to do so within one

month, the Board may suspend the licence of that auctioneer until sufficient security is given.

Conditions regarding Sales

9. Place of business and particulars of sale

(1) An auctioneer shall, before the commencement of a sale by auction and during the time of the sale,

display in a conspicuous part of the place where the auction is being held a notice containing

(a) the full name and residence or the name of the firm and the office address of the auctioneer written in large letters so as to be publicly visible and legible, and

(b) a clear description giving particulars of the quality and quantity of the items intended to be auctioned.

(2) An auctioneer who fails to comply with a requirement of subsection (1) commits an offence and is

liable on summary conviction to a fine not exceeding two hundred penalty units or to a term of imprisonment not exceeding six months or to both the fine and the imprisonment and the Board shall

suspend the licence of the auctioneer for a period defined by the Board, or revoke the licence.

10. Suspension or revocation of licence

(1) Where the Board makes an order suspending a licence, the licence shall cease to be of effect during the period of suspension.

(2) Where the licence is revoked, the licence shall cease to have effect and the registration of the

auctioneer shall be cancelled.

(3) An auctioneer aggrieved by the suspension or revocation under subsection (1) or subsection (2)

may petition the High Court for the restoration of the licence.

11. Sale of property by auctioneer

(1) Subject to subsection (2), an auctioneer shall, at the request of the owner of a property, undertake

the sale of the property and shall sell the property within the time that the owner requires, or as soon as is

possible, having regard to the sale or any other property with which the auctioneer is entrusted.

(2) The auctioneer is not bound to sell the property sooner than seven days after the undertaking to

sell that property.

(3) Subsection (2) shall not be construed as restricting an auctioneer from selling at the properties of

more than one owner if those properties are lotted consecutively and in a manner which shows that the

property of one owner is not mixed with the property of any other owners.

12. Notice of sale

(1) Where the goods to be sold by auction are not perishable or damaged goods, the auctioneer shall

give not less than seven days notice of the sale to the District Chief Executive of the district where the

sale is to take place.

(2) A notice of sale shall

(a) state the time and place of the sale, and

(b) give a catalogue of the goods to be sold.

(3) The auctioneer shall exhibit copies of the notice conspicuously for two days and at not less than

three public places in the district.

(4) Without prejudice to subsection (3), the auctioneer shall ensure that notice of the sale is given on

the day of the sale through the beating of a drum, a gong-gong or any other means of communication as

may be appropriate in the area.

(5) An auctioneer who contravenes a provision of this section commits an offence and is liable on

summary conviction to a fine not exceeding one hundred penalty units or to a term of imprisonment not

exceeding three months or to both the fine and the imprisonment.

13. Sale of spirits

(1) Except as otherwise provided in this section, a licence granted under this Act shall not authorise a

person to deal in or sell, on account of or for the benefit of that person or of any other person, any spirits

the sale of which a licence is required by law, except on premises in respect of which the owner of the

spirits has taken out a proper licence for the sale of the spirits which is in force at the time of the sale.

(2) A licensed auctioneer may sell by auction, in a town or place, samples of any spirits if the owner

of the spirits is duly licensed to sell those spirits in that town or place.

(3) For the purposes of subsection (2) spirits shall not be sold at that sale in any smaller lots or quantities than the whole contents of the cask or other vessel in which the spirits are actually contained at the time of sale.

(4) Subsection (2) does not restrict a licensed auctioneer from selling spirits which may be sold without a licence under the Liquor Licensing Act, 1970 (Act 331) or any other enactment.

14. Sale of firearms and ammunition

An auctioneer may sell by auction firearms or ammunition without being registered as a firearms dealer if that auctioneer has obtained a permit for the purpose of the sale from the Inspector-General of Police and complies with the terms of the permit.

15. Sale of land

(1) A sale by auction of land shall not take place unless the auctioneer has given at least twenty-one days public notice of the sale at the major town of the district in which the land is situated, and at the place of the intended sale.

(2) The notice shall be in writing and shall state the name and place of residence of the vendor and, where necessary, by the beating of drum or gong-gong or any other method intelligible to the public as the District Chief Executive of the district where the sale is to take place may direct.

(3) An auctioneer who sells land by auction in contravention of a provision of this section commits an offence and is liable on summary conviction to a fine not exceeding two hundred and fifty penalty units

or to a term of imprisonment not exceeding twelve months or to both the fine and the imprisonment.

16. Sale with or without reserve

(1) An auctioneer shall state the particulars or conditions of sale by auction of the goods or land whether the sale is without reserve, or subject to a reserved price, and whether a right to bid is reserved by

the vendor.

(2) Where the auction sale is as a result of a judgment debt, the sale shall be subject to a reserved price to be determined by the Court which gave the judgment.

(3) Where the sale is without a reserved price the vendor or person acting on behalf of, or employed

by, the vendor shall not bid at that sale and the auctioneer shall not knowingly take that bidding.

(4) Where the sale is subject to a reserved price as regards a specified lot or more specified lots, the

vendor or a person employed by the vendor may give one bid for each lot and no more, and the bid shall

be openly declared at the auction on the lot being put up for sale, before any other bidding for that lot is

received.

(5) Where the sale is subject to the right of the vendor to bid, the vendor or a person acting on behalf

of the vendor, but not more than one, may bid at that auction in the manner that the vendor thinks proper.

(6) Where the vendor or a person acting on behalf of, or employed by, the vendor bids at a sale

contrary to a provision of this section, a purchaser may refuse to fulfil the purchase, but the highest bona

fide bidder is entitled, if that bidder so elects, to have the goods or land at the price offered by that bidder.

(7) A sale which is subject to a reserved price shall not take effect even when the property is knocked

down to the highest bidder if the highest bid is lower than the reserved price and in that case the highest

bidder does not have a right of action.

(8) Where an auctioneer signs a memorandum of the contract after accepting a bid below the reserved

price, the auctioneer thereby impliedly warrants that the auctioneer has authority to sell at the price

named, and is liable to the purchaser for breach of warranty of authority.

(9) An auctioneer who knowingly receives a bid made contrary to a provision of this section commits

an offence and is liable on summary conviction to a fine not exceeding seven hundred and fifty penalty

units or to a term of imprisonment not exceeding three years or to both the fine and the imprisonment.

17. Report of sale to District Chief Executive

(1) An auctioneer shall, within seven days after an auction sale conducted by that auctioneer, furnish a

complete account of the sale verified by that auctioneer by statutory declaration to the District Chief

Executive of the district, specifying the price at which each lot was sold.

(2) An auctioneer who fails to furnish that complete account commits an offence and is liable on summary conviction to a fine not exceeding one hundred and fifty penalty units or to a term of

imprisonment not exceeding three months or to both the fine and the imprisonment.

18. Moneys due

(1) An auctioneer making a sale by auction is prohibited, unless it is agreed otherwise between the

auctioneer and the vendor, to sue for the recovery of the sum of money and the discharge of the liabilities

due in respect of that sale.

(2) An auctioneer is liable, unless it is otherwise agreed between the auctioneer and the vendor, for

the due payment to the vendor of the net proceeds of every sale of property within ten days from the date

of the sale of the property.

Authority and Responsibilities of Auctioneers

19. Authority of the auctioneer

(1) Despite any other enactment to the contrary, in the absence of an express instruction from the vendor, an auctioneer shall not receive payment of the purchase-money otherwise than in cash.

(2) Unless excluded by the express terms of the conditions of a sale, the implied authority of an auctioneer includes the authority to receive a deposit on sale of goods.

20. Limitation on the authority of the auctioneer

(1) The employment of an auctioneer to sell property by public auction does not authorise the auctioneer in case the public auction fails, to sell the property by private contract.

(2) An auctioneer may sell that auctioneer's own property as principal in which case the auctioneer

may not disclose the fact of selling as principal.

(3) An auctioneer is the agent only of the vendor where the auctioneer sells as an agent and for the

purposes of signing the contract the auctioneer is also the agent of the purchaser.

(4) Subject to subsections (2) and (3), and without prejudice to the express instructions of the vendor,

an auctioneer has an implied authority to sell or deal in the subject-matter of the sale in the way usual and

customary amongst auctioneers.

(5) The authority conferred by subsection (4) does not relieve the auctioneer of a liability for injury

caused by the negligence of the auctioneer to a person attending the sale unless the injury is caused by an

unlawful act or thing which the auctioneer was authorised to do by the vendor.

(6) An auctioneer does not have an implied authority to conclude a sale by private contract but where

the vendor accepts a purchaser introduced by the auctioneer and the vendor concludes a sale to the

purchaser by private treaty, the auctioneer has a right to claim remuneration from the vendor.

(7) Where an auctioneer has received payment by cheque or any other bill of exchange without the

authority of the vendor, or contrary to the authority of the vendor, whether express or implied, the vendor

is not bound by the payment and the purchaser remains liable for the payment of the purchase money in

which case the vendor may sue the auctioneer for the damages sustained by the vendor.

21. Authority to give warranty

(1) Unless by express instructions of the vendor, an auctioneer does not have the authority to give a

warranty at the auction.

(2) An unauthorised warranty given by the auctioneer does not bind the vendor and the auctioneer is

personally liable to the purchaser for breach of warranty of authority.

22. Termination of authority

(1) The agency of an auctioneer is an agency for sale by auction only and except for the purpose of

carrying out the contract made at the auction when the property has been knocked down the auctioneer's

authority terminates.

(2) The auctioneer shall not rescind the contract or introduce into the contract a stipulation as to title.

23. Revocation of auctioneer's authority

(1) Until the time of conclusion of sale and unless the contract gives the auctioneer an authority

coupled with an interest, the authority of an auctioneer may be revoked either expressly or in any of the

circumstances in which an agreement may ordinarily be terminated.

(2) The authority of an auctioneer may be withdrawn although the auctioneer has advertised the property for sale and incurred expenses in respect of that advertisement.

(3) An auctioneer is liable for trespass if after the termination of the authority, the auctioneer enters

the premises of the vendor for the purpose of effecting a sale.

(4) Where the authority of the auctioneer is revoked, the auctioneer shall not give the highest bidder a

right to the property even though the highest bidder is not aware that the authority of the auctioneer is

revoked.

24. Effect of advertisement of auction

(1) Subject to subsection (2), the advertisement of an auction is merely an intimation of an intention to

sell, and in the absence of fraud, intending purchasers who attend an auction do not have a right of action

if the property is not put up for sale or where the property put up for sale is withdrawn.

(2) Where an advertisement amounts to a representation of fact that the auctioneer is authorised to sell

and the representation is fraudulent, a person who incurs an expense on the faith of the fraudulent

representation may sue the auctioneer in tort.

25. Duties of the auctioneer

(1) An auctioneer is a bailee for reward and shall exercise ordinary care and diligence in keeping the

goods entrusted to the auctioneer.

(2) An auctioneer shall on demand by the vendor, redeliver the vendor's goods to the vendor except

where a right of lien exists in favour of the auctioneer

(a) before sale, if the authority to sell is revoked, or

(b) after sale, if the goods are unsold.

(3) An auctioneer shall sign a proper contract binding the purchaser and on failing to do so is liable to

the vendor for the damages sustained as a consequence of that failure.

(4) The purchase of property at an auction by the auctioneer personally without the vendor's consent

is voidable and may be set aside at the instance of the vendor unless there is evidence of acquiescence.

26. Auctioneer's duty to account

(1) An auctioneer shall account for the moneys received by the auctioneer on behalf of the vendor and

shall pay that money to the vendor.

(2) Without prejudice to subsection (1), an auctioneer is in a fiduciary position in respect of the moneys received on behalf of the vendor and an order to pay may be made against the auctioneer as

trustee which, if disobeyed, may render the auctioneer liable to attachment.

27. Bidding

A bid is a mere offer and may be retracted by the bidder before the auctioneer announces the completion of the sale and, until the property is actually knocked down, a complete contract of sale does

not exist.

28. Withdrawal of property

The vendor may, before the completion of the sale at an auction, withdraw the property from the auction, unless the sale is subject to a reserved price which has not been reached.

29. Remuneration of auctioneer on sale

(1) The remuneration of an auctioneer for selling property by auction shall not exceed seven percent

on the gross amount of the sale.

(2) Where property exposed for sale is bought by or on behalf of the vendor, the remuneration of the

auctioneer shall not exceed three percent of the amount at which the property has been so bought if that

amount is less than five hundred thousand cedis or two percent if it exceeds that amount.

(3) An agreement to pay or allow any rates higher than those specified in this section is not valid or

binding, and an auctioneer who receives or retains a higher sale out of the proceeds is liable to have the

licence of that auctioneer suspended or revoked by the Board.

30. Auctioneer's lien

An auctioneer has a lien by the custom of the business on the goods entrusted to that auctioneer for

sale and on the deposit and purchase money for the charges and remuneration of that auctioneer.

31. Vendor to indemnify auctioneer

A vendor shall indemnify the auctioneer for the expenses incurred or damages sustained by the

auctioneer in the ordinary course of the employment of that auctioneer and as the natural consequence of

the contract of agency.

32. Auctioneer to interplead

Where adverse claims are made to goods or money in the hands of an auctioneer, the auctioneer may

interplead, subject to the Rules of Court governing interpleader.

Miscellaneous

33. Failure to sign binding contract

(1) Subject to subsection (2), where the property is knocked down at an auction, the purchaser has a

right of action against the auctioneer where the auctioneer fails to sign a binding contract.

(2) An auctioneer is not under an obligation to sign a binding contract where the property is

advertised to be sold with a reserved price and the bid of the highest bidder, to whom the property is

knocked down, does not reach the reserved price.

34. Breach of warranty of authority and fraud

(1) An auctioneer who sells property without or in excess of the authority conferred on that auctioneer

is liable to the purchaser for breach of warranty of authority.

(2) The purchaser is entitled to sue the auctioneer personally for a fraud to which the auctioneer is

privy.

35. Auctioneer to sue in own name

(1) An auctioneer may, by reason of the lien of the auctioneer on, or special interest in, the property

for sale by auction, maintain an action in the name of that auctioneer for the price of the goods sold and

delivered by the auctioneer.

(2) Where the goods sold are not the property of the vendor and are claimed by the true owner before

payment is made by the purchaser, the auctioneer shall not maintain an action for the price even though

the purchaser has taken away the goods under an express promise to pay.

(3) An auctioneer by virtue of the lien of that auctioneer and the special interest in the property for

sale by auction, may maintain an action of trespass or detinue against a person who wrongfully interferes

with or destroys the goods.

36. Privilege from distress

(1) Except as otherwise provided in subsection (2) goods delivered to an auctioneer for sale are privileged from distress whilst at the auctioneer's ordinary place of business or on the premises temporarily hired for the auction.

(2) The privilege conferred by subsection (1) does not apply to goods on the vendor's premises even

though the goods are the subject-matter of an auction sale.

37. Action for conversion

(1) Subject to subsection (2), an action for conversion may lie against an auctioneer who, with or without knowledge of the true ownership of goods in cases not covered by the Sale of Goods Act, 1962

(Act 137), deals with the property.

(2) An act does not amount to conversion,

- (a) if it is a mere advertisement for sale without an actual sale;
- (b) where there is a contract of sale between the vendor and the purchaser and the auctioneer acting as agent of the vendor has not taken possession or interfered with the title in the property;
- (c) where there is a private contract between the vendor and a purchaser and the auctioneer who has possession of the goods merely delivers the goods to the purchaser; or
- (d) where, without a physical interference with the goods, the auctioneer merely arranges the price and the goods are delivered by the vendor.

38. Order of suspension or revocation from the Court

(1) Where it appears to the Court imposing a fine under this Act on an auctioneer, that the offence is

of a nature that requires the licence of the auctioneer to be suspended or revoked, the Court shall make an

order to that effect and accordingly the Board shall suspend or revoke the licence.

(2) The Court shall, on making an order of suspension or revocation of a licence, forthwith notify the

Board which shall publish the order of suspension or revocation in the Gazette and in one daily newspaper with national circulation.

39. Auctioneer to keep accounts

An auctioneer shall open and keep separate bank accounts for the moneys of the clients and shall, in

respect of these accounts, provide particulars and other information, moneys received, held and paid by

the auctioneer for or on account of the client.

40. Annual report of the Board

The Board shall submit to the Minister, not later than three months after the end of each financial year,

a report on its activities in respect of that year, together with a statement of income and expenses for the

year.

41. Audit

(1) The books and account of the Board shall be audited each year by the Auditor-General.

(2) The Auditor-General shall examine the statement of income and expenses of the Board and certify

whether they are in conformity with the Board's records.

(3) The Auditor-General shall submit the report on the audit under this section to the Minister within

three months after the end of each financial year.

(4) The Minister shall, within one month of the receipt of the report, lay the report before Parliament.

42. Financial year of the Board

The financial year of the Board shall be the same as the financial year of the Government.

43. Interpretation

In this Act, unless the context otherwise requires,

“Auditor-General” includes an auditor appointed by the Auditor-General;

“Board” means the Board established by section 1;

“Court” includes the High Court and any other court of competent jurisdiction;

“district” means the area of authority of a District Assembly;

“member” means a member of the Board;

“Minister” means the Minister responsible for the Interior;

“register” means the register of auctioneers.

44. Regulations

The Minister responsible for the Interior may, by legislative instrument, make Regulations prescribing

the matters that by this Act are required or permitted to be prescribed and for carrying out or giving full

effect to this Act.

45. Repeal

Omitted.2(2)

SCHEDULES

First Schedule

AUCTIONEER’S LICENCE

[Section 6]

LICENCE is hereby granted toto carry
on the business of an auctioneer until the day of, 20,
subject to the Auction Sales Act.3(3)

Dated at this day of, 20

Fee paid ¢

.....

Chairman of the Board

Second Schedule

BOND

[Section 8]

Wedeclare

ourselves bound unto the Republic in the sum of ¢to

be paid to the Republic to which payment we bind ourselves jointly and severally our heirs,

executors, and administrators, and every one of them firmly by this bond.

.....

.....

Sealed with our Seals

.....

.....

Dated this day of, 20.....

WHEREAS the above bounded has (or have) applied for a licence under the Auction Sales Act,4(4) authorising..... to carry on the business of an auctioneer from the day of untilnext and the application has been approved, and the above bounded has (or have) also been approved as the surety (or sureties) of

Now the condition of this obligation is that if complies with the provisions of the Auction Sales Act,5(5) then this obligation shall be void, otherwise it shall

remain in full force.

Signed, sealed and delivered by the said

.....} L.S.

In the presence of

.....

Signed, sealed and delivered by the said

.....} L.S.

In the presence of

.....

Signed, sealed and delivered by the said

.....} L.S.

In the presence of

.....

Endnotes

1 (Popup - Footnote)

1. This Act was issued as the Auction Sales Law, 1989 (P.N.D.C.L. 230) made on the 25th day of July, 1989

and notified in the Gazette on 22nd June, 1990.

2 (Popup - Footnote)

2.

The provision reads,

“(1) The Auction Sales Ordinance (Cap. 196) and the Auction Sales Ordinance (Amendment), 1983

(P.N.D.C.L. 56) are hereby repealed.

(2)

Notwithstanding the repeals in subsection (1) of this section—

(a) any regulations made thereunder and in force immediately before the commencement of this

Law shall so far as they are consistent with the provisions of this Law remain in force; and

(b) any licence issued under the repealed enactment and in force immediately before the

commencement of this Law shall continue in force until the expiration of such licence.”

3 (Popup - Footnote)

3.

Formerly the Amendment Law, 1989 (P.N.D.C.L. 230).

4 (Popup - Footnote)

4.

Formerly the Amendment Law, 1989 (P.N.D.C.L. 230).

5 (Popup - Footnote)

5.

Formerly the Amendment Law, 1989 (P.N.D.C.L. 230).