

Chapter 184, AUCTIONS AND AUCTIONEERS

[HISTORY: Adopted by the City Council of the City of Binghamton 10-5-1970 (Ch. 12, §§ 12-16 through 12-36, of the 1970 Code). Amendments noted where applicable.]

GENERAL REFERENCES

- Collateral loan brokers -- See Ch. 275, Art. II.
- Secondhand dealers -- See Ch. 275, Art. III.
- Transient retail merchants -- See Ch. 331, Art. I.
- Going-out-of-business sales -- See Ch. 331, Art. II.

§ 184-1. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

PERSONAL PROPERTY -- All goods, wares, merchandise, commodities, compounds, things, chattels, jewelry, and all other personal property of whatever form or nature, but does not include real property.

PUBLIC AUCTION -- Any public offer to sell personal property to the highest bidder or to the person offering to pay the highest price therefor, and shall be without qualifications or reservations, unless at the time of the offer of each article or parcel and before any bids are asked thereon a minimum price therefor be publicly stated.

SALE AT PUBLIC AUCTION -- Includes judicial sales, sales by public officers in the manner prescribed by law, sales pursuant to statute to satisfy any lien on the property sold, resales pursuant to statute or property retaken under a conditional sale contract.

§ 184-2. Public auctioneer to conduct auction; license required.

No sale at public auction of any personal property, as defined in this chapter, shall be held within the City unless such sale be directly conducted by an auctioneer licensed pursuant to the provisions of this chapter.

§ 184-3. Application for auctioneer's license.

Every applicant for a license as auctioneer, pursuant to this chapter, shall present to the City Clerk a written application signed and duly verified by him or her. Such application shall contain the following information:

- A. Applicant's full name, age, residence by street, number and place, present occupation.
- B. Whether applicant is a citizen of the United States and a resident of the State of New York.
- C. Applicant's qualifications, including education and business engaged in during the past five years.
- D. Where and when applicant has been previously licensed as an auctioneer.
- E. Whether any previous license as an auctioneer was cancelled or revoked.
- F. Such further facts as may be required by the City Clerk to show the good character, competency and integrity of the applicant.

§ 184-4. Bond required for auctioneer's license.

The applicant for an auctioneer's license to be issued under the provisions of this chapter shall present to the City Clerk with his application for such license a bond to the City executed by a duly authorized surety company in the penalty of \$5,000, conditioned that he or she will faithfully observe the laws of the State of New York, and the ordinances of the City, then in effect or thereafter enacted, and that he or she will faithfully perform his or her duties as such auctioneer and render such accounts and pay such debts as may be required of him or her by law. Such bond shall be approved by the Corporation Counsel.

§ 184-5. Issuance of auctioneer's license.

Upon the City Clerk being satisfied of the good character, competency and integrity of the applicant for an auctioneer's license, and upon payment of the license fee as provided in § 184-6 of this chapter, the Clerk shall issue to the applicant an auctioneer's license, authorizing him or her to conduct auction sales in the City as provided by law and by this chapter.

§ 184-6. Term of auctioneer's license; fee; transferability.

Each auctioneer's license issued pursuant to this chapter shall expire on the 31st day of December following the date of issuance of such license. The fee for such license shall be payable to the City Clerk in an amount set from time to time by resolution of the City Council. An auctioneer's license shall not be assignable or transferable.

§ 184-7. Permit required for sales at public auction.

No person shall sell, dispose of or offer for sale at public auction or cause to be sold, disposed of or offered for sale at public auction within the City any personal property except used household furniture and effects purchased from or sold on account of a householder who has actually used such furniture and effects in his or her household in the City, or livestock, without a permit by the City Council to hold such sale, which permit shall fix the time of commencement and the duration of such sale.

§ 184-8. Permit fee.

The fee for a permit to conduct a sale at public auction shall be payable to the City Clerk before the granting of the permit in an amount set from time to time by resolution of the City Council.

§ 184-9. Application for permit to hold public auction.

- A. Required. Any person intending to sell at public auction any personal property as defined in this chapter within the City except used household furniture and effects purchased from or sold on account of a householder who has actually used such furniture and effects in his or her household in the City of Binghamton, or livestock, shall make application to the City Council for a permit to hold such sale at public auction and if such permit be granted, the sale may be conducted as provided in this chapter.
- B. Form, contents of application; time for filing.
 - (1) Such permit application shall be in writing and shall be verified, and must be filed with the City Clerk not less than 15 days before the time for the commencement of any such sale.
 - (2) The application shall contain the following information:
 - (a) The name and address of the applicant.
 - (b) The name and address of the public auctioneer.
 - (c) The street and number of the premises in which it is proposed to conduct such sale.
 - (d) The length of time for which it is desired to conduct such sale.
 - (e) The place or places within the City at which, for the two years last preceding the filing of said application, the applicant has continuously conducted his or her business.
- C. Verification of application. Such permit application shall be verified by the applicant if he or she is an individual, or if the applicant be a partnership, by one of the partners, or if such applicant be a corporation, by an officer of such corporation.

§ 184-10. Inventory to accompany permit application.

There shall be attached to the application for a permit to conduct a sale at public auction, a written, sworn inventory of the personal property to be offered for sale, specifying as to each item the quantity, quality, kind and grade, and the material of which it is composed, with a distinctive number for each item; and that each

and every article contained in said inventory is a part of the stock of goods of said person and has been a part of the stock of goods of said person for a period of at least 90 days prior to the date of the filing of the application, and that no property purchased, procured or placed in stock specifically for such public auction is included therein.

§ 184-11. Review of property specified in inventory.

The City Council, before issuing a permit to conduct a sale at public auction, shall have the right, either personally or by such person or persons duly authorized by it, to examine the personal property specified in the inventory of items to be offered for sale to determine whether said inventory correctly sets forth the items to be sold.

§ 184-12. Qualifications of person to sell property.

No permit shall be issued to any person to conduct a sale at public auction unless each and every article contained in the inventory of the property to be sold has been a part of the stock of goods of said person for a period of at least 90 days prior to the date of the filing of the application with the City Clerk, and unless he or she shall have been for a period of at least two years preceding the date of the filing of such application continuously engaged in business in the City, in dealing in the same kind of personal property as is to be offered for sale at such public auction.

§ 184-13. Term of sale permit.

No permit shall be issued to conduct a sale at public auction for a longer period than 15 consecutive days, Sundays and legal holidays excepted, at any one place in the City, and a period of at least 12 months must have elapsed after the conclusion of any auction sale conducted either before or after the enactment of the ordinance from which this article is derived before another permit shall be issued to the same applicant, or to any person for sale to be conducted at the same place, except that the City Council in its discretion may extend such period of 15 days for an additional period of 15 days, which shall run consecutively from the date of the expiration of the first fifteen-day period, Sundays and legal holidays excepted.

§ 184-14. Revocation of auctioneer's license and permit to conduct sale; notice and hearing; fees not to be refunded.

- A. The Mayor may revoke any license granted to a public auctioneer or any permit for the conduct of any sale at public auction, issued pursuant to the provisions of this chapter, if he shall have cause to believe that the holder of such auctioneer's license and/or permit to conduct such sale is violating any statute of the State of New York relative to auctions and auctioneers, or any provision of this chapter. A conviction by a court of competent jurisdiction of such offense or recovery upon a bond pursuant to the provisions of this chapter shall be conclusive evidence of such violation.
- B. The Mayor may, upon the complaint of any person, cause notice to be served upon the holder of such auctioneer's license, and/or holder of such permit to conduct a sale, specifying the grounds of complaint or reason assigned for the revocation of such auctioneer's license and/or permit to conduct a sale, which notice shall fix a time and place at which the Mayor shall hear the evidence of the person making such complaint and such other evidence as may be presented to him or her or be in his or her possession, and the holder of such auctioneer's license and/or the holder of such permit to conduct a sale shall have an opportunity to be heard in his or her own defense. If the Mayor shall believe that sufficient grounds therefor exist, the Mayor shall revoke such auctioneer's license and/or such permit to conduct a sale.
- C. Whenever any auctioneer's license and/or permit to conduct a sale at public auction is so revoked, no refund of any unearned portion of the fee for such license and/or permit shall be made to the holder thereof.

§ 184-15. Hours during which sale may be conducted.

Sales at public auction shall be held only between the hours of 8:00 a.m. and 6:00 p.m., and at no time within the hours beginning at 6:00 p.m. and ending at 8:00 a.m.

§ 184-16. Limit of sale.

It shall be unlawful for any auctioneer or any other person, through such auctioneer, to sell, dispose of or offer to sell or dispose of any personal property as defined in this chapter, at a sale at public auction which has not been included and described in the inventory filed with the application for a permit to hold such sale.

§ 184-17. Private sales and sales of articles not listed in inventory.

- A. During the time when and while an auction sale is being conducted, no sales of any property, whether or not it be a part of the inventoried property, shall be permitted within the same room or in any room opening therefrom by private sale or otherwise than by public auction sale.
- B. No property not included in the inventory filed as required in § 184-10 shall be sold or offered for public auction or private sale in the same room or in a room opening therefrom during the time that such auction sale is being conducted .

§ 184-18. Tagging of articles offered for sale.

There shall be attached securely to each article to be offered for sale a tag or label, upon which shall be plainly written or printed in the English language a true and correct statement of the kind and quality of the material or substance of which such article is made or composed and the distinctive number of such articles on the itemized inventory filed with the City Clerk; if said article be one of those commonly classed as jewelry or articles commonly carried by persons engaged in the jewelry business, the tag shall state the percentage or carat of purity of such material; in case the article be plated or overlaid, a true statement of the kind of plate and the percentage of purity thereof, and the kind of material or metal under the plating; if the article be one commonly known as precious, semiprecious, synthetic or imitation stones, the true names, weight, quality and color of said stones; if watches or clocks, the true name of the manufacturers; the number of jewels and adjustments, the country of manufacture; and if any of such articles, or part thereof, be used or secondhand, the length of time the same has been in use and in a conspicuous place on said tag the words "secondhand" or "used." Said tag in each and every case shall remain upon the article and be delivered with the article to the purchaser.

§ 184-19. Article to be sold to highest bidder.

When any article or combination of articles is offered for sale at public auction, unless the auctioneer states a minimum price therefor before any bid or offer is asked, the article or combination of articles shall be sold to the person whose bid or offer is the highest offered if there be more than one bid or offer therefor.

§ 184-20. Acts prohibited during sales.

No auctioneer or any other person shall:

- A. Misrepresentation. Make any false representations as to the character, quality, or condition, value or ownership of any property offered for sale, or falsely represent that such property is in whole or in part bankrupt or insolvent stock or damaged goods or goods saved from fire.
- B. Substitution. Substitute any other article for the article sold to a bidder.
- C. Withdrawal of articles, etc. Bid in or withdraw from sale any article after receiving a second bid therefor, or receive any bid from a person not a bona fide bidder at such sale, or any person acting as a "capper," "booster" or "shiller."

- D. Noise to attract public. Employ or permit to be employed any bellperson, crier, instrument of music or means of attracting the attention of passersby other than a sign or flag.
- E. Entertainment of bidders. Conduct a sale where entertainment for the prospective bidders is provided on the premises where the sale is conducted.
- F. Items not in inventory. Offer for sale or sell any article or property not included in the inventory filed as provided in § 84-10 of this chapter.
- G. Compliance with chapter. Open or conduct any public auction sale until all the provisions of this chapter have been complied with and a permit for such sale has been obtained from the City Council of the City.

§ 184-21. Daily reports of sales.

At or before 10:00 a.m. during the continuation of an auction sale, the person conducting the same shall file or cause to be filed with the City Clerk a complete list of the articles sold at such sale on the previous day and the true price received for each article sold, attaching to such record an affidavit that the same is a true and correct statement of all sales made on such previous day and that no other articles were sold on said day. Such daily reports shall be kept on file by the City Clerk and shall be open for public inspection.