



# CODE OF CONDUCT

**SOUTH AFRICAN INSTITUTE OF AUCTIONEERS**

# Part A

## Preamble

SAIA is the professional organization for practicing auctioneers, their associates, affiliated businesses and other related professionals. Membership in SAIA although voluntary, carries with it a requirement of professional commitment to other professionals, clients, customers and the public at large that extends beyond that of laws and professional regulations. Members of SAIA accept this obligation to conduct themselves and their business in a manner that serves public interest, protects the public trust and furthers the goals of their profession.

While the activities of Auctioneers are governed by statute, specifically the Consumer Protection Act (CPA Act), No. 68 of 2008, and the provisions contained within, as stipulated below, it is, none-the-less, desirable that Members of the Association recognize the social and moral obligations and responsibilities demanded of them by both the public and their peers. Members should, therefore, be zealous to improve the standards of the profession and should at all times act in such a way as to bring to it both honour and integrity.

SAIA is a voluntary guild of likeminded auctioneers who subscribe to a strict code of ethics and conduct which has become the benchmark for the auction profession. SAIA is recognized by stakeholders in the industry as the vanguard of ethical business practice and the gatekeeper of good governance

The Code of Conduct of SAIA and the accompanying standards of practice guides the Members in the performance of their professional responsibilities and duties. Complaints can be filed against SAIA Members who do not adhere to the Code of Conduct and shall be handled in accordance with the procedure established by the Board of Directors.

## Part I - GENERAL

- 1) In the best interest of the public, the Auctioneer profession, and his/her own business, the Auctioneer should be loyal to SAIA and active in its works, willingly sharing the lessons of his/her experience with fellow Auctioneers.
- 2) The Auctioneer should so conduct business as to avoid disputes with fellow Auctioneers. In the event of a dispute between two Auctioneers who are members of SAIA, they should not resort to a lawsuit, but should submit their difference to arbitration by SAIA, and the decision of such arbitration should be accepted as final and binding. If the dispute should be with a non-member, the Auctioneer should offer the services of this Board to arbitrate.
- 3) The Auctioneer shall not publicly criticize a competitor's business practice or transaction; where an opinion is especially requested and the Auctioneer deems it appropriate to respond, it shall be rendered in conformity with strict professional courtesy and dignity.
- 4) A member may be held responsible for a breach of, or failure to comply with this code on the part of all persons who are;
  - a) his employees; or
  - b) under his supervision; or
  - c) his partners; or
  - d) fellow shareholders in or directors or employees of a company or members or employees of a close corporation controlled by the member or the member and his partners which offers auctioneering services to the public or government departments
- 5) Every member should act in a manner consistent with developing and maintaining the good reputation of the auctioneering profession and refrain from any conduct which may bring discredit to the auctioneering profession.
- 6) It is the duty of every member of the Institute to ensure that there are proper and adequate systems employed within the auctioneering business of the member such that accurate data of all the facts concerning an auction sale are available at all times. Members are further obliged to carefully collate the factual data of the results of an auction sale.
- 7) If a Member's auctioneer license is revoked by a licensing authority in any jurisdiction within the Republic of South Africa, for misconduct, wrongdoing, or another violation that occurred in connection with the Member acting as an auctioneer, or otherwise participating in an auction shall result in a Member being deemed in violation of the Code of Conduct and subject to discipline as determined by the Board of Directors.
- 8) Members should not practice discrimination against any person based on race, colour, religion, sex, marital status, age or origin in the engagement, promotion, dismissal, salary, transfer, training or other practices relating to employment within his or her auctioneering business
- 9) Members shall report violations of the Code of Conduct and participate in all investigations and disciplinary proceedings when requested.
- 10) A Member's conviction of a offence involving the Member acting as an auctioneer, or otherwise participating in an auction, shall be deemed a violation of the Code of Conduct and result in discipline determined by the Board of Directors.
- 11) During the period that a Member owes an unpaid and unsatisfied civil, criminal, or regulatory cost, damage, fine, judgment, penalty, sanction, or other amount which was awarded, entered, levied, or ordered against the Member by an agency, authority, board, bureau, commission, court, department, or other arm of government shall result in the Member being in violation of the Code of Conduct and subject to discipline determined by the Board of Directors.

- 12) A member may not, under the guise or through the medium of a partnership, company, close corporation or any other entity, do anything or allow anything to be done which he or she would not be permitted to do as an individual in terms of this code of conduct.
- 13) Members shall maintain a separate and designated account in an appropriate financial institution to maintain monies coming into their possession in trust for other persons such as escrows or trust funds.

## **Part II- RELATIONSHIP WITH CLIENTS**

- 1) Members pledge to lawfully and ethically protect and promote the interests of the seller (herein referred to as the client).
- 2) The Auctioneer is expected to provide the highest level of competent service in those fields in which the Auctioneer customarily engages. In justice of those who place their interests in his/her hands, the Auctioneer shall keep informed of matters affecting the auction profession, of business conditions, and of matters of law and proposed legislation affecting such interests, so as to give intelligent business advice and effective service.
- 3) In accepting an assignment for sale of real or personal property, the Auctioneer pledges to protect and promote the interests of his/her client. This obligation of responsibility to the Seller is primary, but does not relieve the Auctioneer of responsibility to treat fairly all parties to the transaction. The Auctioneer shall not undertake an assignment in which he/she has a direct or indirect interest, without full disclosure of such interest to the client, and other affected parties.
- 4) When consulted for an appraisal of value or liquidation problem, the Auctioneer shall give a well-considered opinion, reflecting expert knowledge and sound judgment, taking requisite time for study, inquiry and deliberation. The Auctioneer shall not undertake to give an appraisal or offer an opinion on any proposition in which he/she has a direct or even indirect interest, without full disclosure of such interest to the client, and other affected parties.
- 5) Before accepting assignment of a sale, it is the duty of the Auctioneer to seek out and understand the motivation, objective(s) and interest(s) of the Seller, and thereupon to advise the Seller intelligently and honestly regarding the likelihood of achieving those expectations.
- 6) Members shall disclose any potential conflict of interest to a current or potential Client.
- 7) In the event that in any particular instance, the buyer is to pay the member's commission in respect of an auction, this fact shall be clearly displayed and advertised and the seller shall be advised thereof on submission of assets for auction.
- 8) Members shall not accept compensation related to the Client's matter from any third party, even if permitted by law, without the full knowledge of all the parties to the transaction.
- 9) Members shall not disclose any confidential Client information without the Client's prior, expressed consent, unless required by law.
- 10) A member entrusted with monies belonging to others (for example sellers or liquidators) in the course of his or her professional work should:
  - a) keep such monies separate from personal or firm money;
  - b) use such monies only for the purpose for which they are intended; and
  - c) at all times be ready to account for those monies to any person entitled to such accounting.

- 11) Members are obliged to keep such books of account as will enable them, at any time, to establish clearly their dealings with clients' monies in general, in respect of monies derived from the proceeds of auction sales and the details of the auction sales themselves. Proper statements of account should be provided to the seller and/or liquidator within a reasonable period of time following upon the auction.

### **Part III- RELATIONSHIP TO THE PUBLIC**

- 1) It is the duty of the Auctioneer to protect the public against fraud, misrepresentation or unethical practices in connection with the sale, disposal or liquidation of any real or personal property the Auctioneer is called upon to dispose of at public auction.
- 2) The Auctioneer shall be careful at all times to present a true picture in advertising and representations to the public. It is the duty of the Auctioneer to ascertain all pertinent facts concerning every sale for which he/she is engaged to avoid error, exaggeration and misrepresentation.
- 3) The Auctioneer is the confidential trustee of the information given by the Seller or otherwise gained by him through the Seller/Auctioneer relationship. The Auctioneer must never disclose the gross receipts of a sale or any other information that would tend to be a violation of the Seller's right to privacy, without the consent of the Seller and/or being in receipt of legally constituted instructions to release that information.
- 4) For the protection of all parties, the Auctioneer shall ensure that financial obligations and commitments regarding auction transactions are fully understood and agreed by the Seller. Where appropriate, the Auctioneer shall commit the exact agreement in writing, furnishing a copy to each party.
- 5) In the event that a member is supplied with confidential information by any user or liquidator or government department then in that event the member shall be obliged not to disclose this information to any other parties without the consent of the party from whom he received the information.
- 6) Every member shall make every reasonable endeavour to ensure that users who place their proprietary interests in his hands are given the proper business advice and effective service to the best of the member's ability and knowledge.
- 7) Members are obliged in advertising movable or immovable property for sale at a public auction to take every reasonable care to avoid errors, exaggeration and misrepresentation in such advertising.
- 8) Monies derived from an auction which do not belong to the member or are not due to the member in terms of the member's fees for such auction, should be placed in an appropriately designated bank account for clients' monies.

### **Part IV- STATUTORY OBLIGATIONS**

- 1) Members shall not engage in activities that constitute the unauthorised practice of law.
- 2) Members are duty bound at all times to abide by the laws and regulations which govern them, as provided by Consumer Protection Act contained in Part C below. The CPA purpose is to promote a fair, accessible and sustainable marketplace for consumer products and services.

The Consumer Protection Act (the "CPA") applies to every transaction concluded within the Republic of South Africa between suppliers and natural persons or between suppliers and juristic persons whose annual turnover or asset value is equal to or less than R2, 000, 000.00.

The CPA makes reservation for the regulation of the auction industry, interpreting the manner in which all auctions must be conducted. The purpose of the CPA and of SAIA is to promote transparency within the industry.

- 3) Every member is required to have a detailed knowledge of and to abide by any legislation, statutory enactments, regulations and any other binding sources of authority to which any such member is subjected, including but not limited to:-
  - a) the Insolvency Act, Act No 24 of 1936 as amended;
  - b) the Second Hand Goods Act, Act No 23 of 1955;
  - c) the Companies Act, Act No 61 of 1973 as amended;
  - d) the Estate Agency Affairs Act, Act No 112 of 1976 as amended;
  - e) the Close Corporations Act, Act No 69 of 1984 as amended;
  - f) the Agricultural Produce Agents Act, Act No 12 of 1992 as amended;
  - g) and the Prevention and Combating of Corrupt Activities Act, Act No 12 of 2004, and particular attention is required to be given to the provisions of Section 14 of the Prevention and Combating of Corrupt Activities Act which is specifically entitled "Offences in Respect of Corrupt Activities Relating to Auctions", and any legislation, statutory enactments and/or regulations imposed in substitution and/or in addition to the sources of authority referred to above.

## **Part V – DISCIPLINARY GUIDELINE OF CODE OF CONDUCT**

- 1) No Member shall do any act (whether in business or otherwise) which:
  - a) Involves dishonesty, deceitful behavior, or misrepresentation; or
  - b) Involves unprofessional practice or practice that is unfair to the Members or to the public; or
  - c) In any other way bring the SAIA or any of its bodies or Members into disrepute.
- 2) Members shall co-operate with disciplinary proceedings taken against them or any other members.
- 3) Members shall comply with the timescales described in the disciplinary procedures and are expected to attend disciplinary hearings. If these procedures result in sanction and that sanction is not adhered to within the prescribed period of time, then membership will be automatically terminated and SAIA will undertake civil action against the member if necessary.
- 4) SAIA regulation reserves the right to take disciplinary action regardless of any ombudsman's actual or potential adjudication arising from the same matter.
- 5) Members must co-operate with compliance visits concluded by SAIA staff or others acting on their behalf.
- 6) Members or their representatives are obliged to provide accounts or other records on demand.
- 7) This rule applies to work undertaken during the period of membership, even if the member has subsequently left membership for whatsoever reason.
- 8) Members are under a duty to provide SAIA with details of any other member who they suspect has breached the Code of Conduct and membership rules.
- 9) Upon receipt of a written complaint alleging that a Member has violated the Code of Conduct, Governance Committee / Compliance Officer shall forward a copy of such written complaint to the accused Member and request that the accused Member provide a response in writing to

such charges. The complainant and the written response shall be forwarded by the Governance Committee / Compliance Officer to the Disciplinary Committee with the names of the complainant and accused Member redacted. The Disciplinary Committee shall thereafter undertake an investigation of the complaint and make a written report to the Board of Directors concerning said complaint. If there is a finding of no violation, the Member shall be notified.

- 10) If the finding includes a recommendation to the Board of Directors stating that there is a reasonable cause to believe that such Member has engaged in conduct in violation of the Code of Conduct, the Member against whom the complaint has been made will be notified of that decision and afforded an opportunity to respond to the complaint including allowing the accused to appear before the Board of Directors and present evidence in support of the Member position with the right of the Member to hire and be represented by counsel at such or hearing, at his/her own cost.
- 11) The parties may introduce such documentary evidence and present such testimony of witnesses, as the Board of Directors shall reasonably deem relevant to the issues and both sides of the controversy shall be accorded a full opportunity to be heard. At the conclusion of the hearing, the Board of Directors, as soon as it is practically possible, but not later than two (2) weeks thereafter, shall consider the evidence and render a written opinion and decision.
- 12) Should the Board of Directors find a violation of the Code of Conduct, the Board of Directors shall also determine the discipline to be assessed which may include private censure, public censure, suspension and/or revocation from Membership. The decision shall be conveyed to the Member and this decision will or can be published.
- 13) The Board of Directors reserve the right to act in their own discretion in respect of any conduct of the members of SAIA that are contrary to the principles and guidelines contained within this Code of Conduct. The Board shall be entitled to use their discretion to discipline those members that display a pattern of misconduct or unethical behavior and such discipline may comprise of (i) a written letter of caution detailing the Board's concern with the relevant party's action, (ii) a sanctioned fine, (iii) a period of suspension from SAIA, (iv) expulsion from SAIA.

## **Part B**

### **Standards of Practice**

The following Standards of Practice are provided to encourage the highest standards of conduct among the Membership of SAIA. These guidelines are a companion section to the Code of Conduct for the Members of SAIA. While the Standards of Practice may not be enforced with Membership sanctions, these guidelines should nonetheless be promoted, practiced and encouraged by SAIA Members. Non-compliance of these guidelines should be self-policed by fellow SAIA Members.

- 1) Members must not build unreasonable expectations about the outcome of an auction in the mind of a potential Client in order to secure the Client's business.
- 2) Members should conduct their business affairs so as to promote a positive image of their business and therefore the auction profession.
- 3) Members shall provide customers with a clear understanding of all the terms and conditions of the auction. Prior to the auction, customers for real estate auctions should be provided a copy of the contract to be signed. Following the auction, customers for personal property auctions should be provided a written deed of sale.
- 4) It is highly recommended that Members communicate terms and conditions of the sale in written form prior to the commencement of the bidding.

- 5) Members should, to assure better service to the seller and to prevent misunderstandings, enter into written agreements or, at a minimum, clear oral agreements that set forth the specific terms and conditions of the engagement.
- 6) Members have an obligation to conduct their business affairs in a professional manner, developing their contract forms with this Article in mind.
- 7) Members should discuss all aspects of the services to be provided and include them in written form where appropriate including: duties and obligations of the parties; services provided by the Member; insurance coverage relating to liability, theft and casualty loss; use of a buyer's premium, if applicable; handling of funds received and controlled by the Member; sales tax, if applicable; and form of payment by buyers. Additionally, Members must provide the Client with a timely, detailed written accounting of the sale, which must include information concerning the handling and timely disposition of all funds received or controlled by the Member.
- 8) Members shall provide the highest level of competent service in those fields in which Members are customarily engaged. This competency is attained by education, training, study, practice and experience. Competence also includes the wisdom to recognize the limitations of that knowledge and when to seek the counsel, assistance or Client referral appropriate for the circumstances.
- 9) The concept of competency also extends to Members who are requested or required to travel to geographic areas where they do not have recent auction experience. Members not in a position to spend the necessary time in a market area to obtain the appropriate understanding of market conditions, may find affiliating with a qualified local auctioneer the appropriate response to ensure a competently conducted auction.
- 10) Members must ascertain all pertinent facts necessary to implement a professional marketing campaign.
- 11) Members should never publicly criticize a competitor using false or deceptive information. Where an opinion of a competitor's transaction is especially requested, it should be rendered in conformity with strict professional courtesy and dignity.
- 12) Members shall not directly or indirectly solicit the affiliation of an employee or independent contractor in the organization of other Members without the prior notice to said Member.
- 13) Members should willingly share with other Members the lessons learned through experience and study to better the profession, Members' business practices and how the profession is perceived by society. Members shall be loyal to the SAIA; this includes active participation in educational, civic and charitable endeavors.
- 14) In order for any professional organization to earn and maintain the confidence of the constituencies it serves, it must demonstrate to them the ability to "police" its own. Members have the unique ability to observe and therefore assist in the stewardship of this trust. Members have an obligation to assist the SAIA and its officers in all matters, including the investigation, censure, discipline, or dismissal of Members who engage in violations of the Code of Conduct.



## CONTENTIOUS ISSUES

### **Vendor / Proxy Bidding:**

It is incumbent upon auctioneers to at all material times be totally transparent with and open the floor for questions to members of the public in regard to vendor bidding and or proxy bidding.

An auctioneer is obliged to announce, in advance, the rules of the auction which must include the following: the conditions of sale should be made available on the website which must also be clearly stated and emphasized in any advertising and it must be confirmed that the auction house is fully compliant with the aforesaid rules. Once the rules has been disclosed the auctioneer can feel safe in the knowledge that everybody has been advised thereof, the auctioneer should nonetheless advise the members of the public that anybody can still object to these rules.

### **Default Buyers:**

Insofar as the position of default buyers is concerned where funds of such buyer are held in the auctioneer's trust, the auctioneer shall be entitled to retain such amounts to which he/she is entitled by virtue of the buyer's default as are permitted in the rules of the auction and any refunds, including deposits or portions thereof, must be returned to the defaulting buyer as soon as is practicably possible.

### **Latent & Patent Defects**

It is the responsibility of the Seller to disclose all latent and patent defects. Having said this the Auctioneer, in practicing standards of full transparency, should seek to explore all avenues and information from the Seller. It is advisable that a clause is incorporated into mandate agreements with Sellers to clearly define and explain the responsibility and relationship between the parties relating to latent and patent defects.

### **Property Sales: Improvements:**

If there is a latent or patent defect, the onus rests on the Seller to disclose same. If he/she does not disclose the information to the auctioneer, the auctioneer cannot be held accountable and for all intents and purposes the auctioneer has acted in good faith.

Improvements on a property must be compliant. It is not the auctioneer's responsibility to check on the Seller.

To alleviate brought about by assumptions and to have clarity and transparency, this will be a "safety net" for auctioneers to fall back on in that it will be clear that they have fulfilled their obligations and that any cancellation or breach that occurs forthwith will be as a result of a fault on the part of the Seller and that will not prejudice the auctioneers (in the form of due commission) or the buyer and both will be entitled to their benefits. This will also ensure that the buyer has the comfort that the auctioneer is selling the property with improvements that are compliant. Any auctioneer that sells a property with improvements must contain a disclaimer in their conditions of sale that addresses and lists any latent and patent defects and such disclaimer will therefore exonerate any auctioneer who acts in good faith against any third party claims.

Therefore the following is recommended:

It is incumbent upon any auctioneer who desires to act in the interest of both parties to a sale to include the following in their Conditions of Sale the following:

*"The property and any improvements made thereof are presented to the auctioneer for sale on the understanding that the improvements on the property comply with all statutory and other requirements with regard being had to; approved plans, zoning certificates, clearances and any other onerous conditions that may unfold at a later date."*

### **Suggestion to Auctioneers in regards to the sale of Movable Assets:**

(Regarding goods received from Seller)

In the mandate it should become a standard clause that the auctioneer will endeavor to achieve the reserve price or better, either on auction or by private treaty.

*(Example) "The Seller agrees that the Auctioneer may dispose of the asset/s should the mandate be fulfilled in terms of the reserve price and means of disposal, either on auction or by private treaty. In the event that an offer is received by the auctioneer then it is incumbent of the auctioneer to confirm the sale thereof as a courtesy to the seller, if the seller is unobtainable and a decision needs to be made swiftly, the auctioneer would have the right at his discretion to conclude the sale if the mandate in terms of the reserve price is met. "*

1st right of refusal should also apply to the sale of movable assets.

### **Clauses to be included in all conditions relating to the Sale of Immovable Property:**

The following clauses are to be uniformly applied by all Auctioneers of SAIA to ensure there is uniformity amongst the members of SAIA in regard to the conditions of sale of immovable property.

## **ACCEPTANCE:**

- 1) This document constitutes an Offer to Purchase by the Purchaser, which is subject to written acceptance by the Seller within **21 (twenty one)** calendar days (hereinafter referred to as "the offer period") from date hereof and shall remain irrevocable and open for acceptance by the Seller at any time during the offer period. For the sake of clarity, the Purchaser's offer is open for acceptance until 17h00 on the **21<sup>st</sup> (twenty one)** calendar day after the signature hereof by the Purchaser, the counting of the **21 (twenty one)** calendar days to commence on the **1<sup>st</sup> (first)** calendar day after date of signature hereof and shall endure until 17h00 on the **21<sup>st</sup> (twenty first)** calendar day thereafter. If the **twenty first** day falls on a public holiday, Saturday or Sunday, then the **twenty one** days shall expire at 17h00 on the first business day thereafter.
- 2) During the offer period, the Seller or the Auctioneer may continue to market the property in the normal course of business as they may deem fit and in consequence of same, they may take in further and better written Offers to Purchase from prospective Purchasers, to be submitted for the Seller's consideration.
- 3) The Auctioneer shall advise the Purchaser in writing (which may either be by telefax or by electronic mail) of any higher written offer (hereinafter referred to as "a competing offer") which is received from any third party during the offer period. The Purchaser shall, for a period of 24 (twenty-four) hours (hereinafter referred to as "the option period") after transmission of the written advice of the competing offer by the Auctioneer as aforesaid, have the option to increase the purchase price offered by him in terms of this agreement to an amount equal to the purchase price of the competing offer, but subject otherwise to all other terms and conditions of this agreement.
- 4) If the Purchaser wishes to exercise the option to match the competing offer during the option period, the Purchaser must do so in writing in clear and unambiguous terms, which notice must be delivered to the Auctioneer before the expiry of the 24 (twenty-four) hour option period. This written notice must either be hand delivered to the business premises of the Auctioneer and a receipt signed in respect thereof, or may be telefaxed to the Auctioneer at the indicated telefax numbers or email, provided that in such an instance the Purchaser must telephonically confirm receipt of the said telefax or email at the business premises of the Auctioneer, as the onus rests upon the Purchaser to confirm receipt of the said notice by the Auctioneer.

- 5) If the Purchaser fails to exercise the option during the option period, the Seller shall be entitled, but not obliged, to accept the competing offer. Should the Seller however elect not to accept the competing offer, the offer contained in this agreement shall remain irrevocable and of full force and effect and open for acceptance by the Seller until the lapse of the offer period as set-out above.
- 6) Should the Purchaser exercise the option within the option period and match the competing offer, the purchase price in terms of this agreement shall be the increased amount. The Seller shall be entitled until the lapse of the offer period to accept this agreement at any increased purchase price. This option process is a continuation of the original process and any sale thus concluded shall be a sale by auction.
- 7) The date of sale of the property shall, for purposes of this agreement, be deemed to be the date of written acceptance of this offer, or the increased offer, by the Seller. The Auctioneer will at the sole discretion of the Auctioneer thereafter notify the Purchaser in writing of such acceptance by pre-paid registered post, by hand delivery, by e-mail transmission or facsimile transmission.
- 8) Should the Seller not accept the Purchaser's offer, the Auctioneer shall immediately repay to the Purchaser any deposit paid by him (including any amount paid in terms of clause 2.3).
- 9) The Seller reserves the right to decline the Purchaser's offer. The Seller shall have no obligation to accept the offer and shall not be obliged to furnish a reason for the rejecting of an offer. If the Seller rejects the Purchaser's offer, the Seller shall be entitled to accept any other offer that may be received in respect of the property.
- 10) In the event of the Seller requiring the consent of the Master of the High Court to effect transfer, then transfer of the property will be subject to such consent being obtained in writing as soon as possible and in the normal course of the conveyancing process. If such consent is refused or not obtained for whatever reason within a reasonable period (solely within the discretion of the Seller), then this offer will be voidable at the instance of the Seller and neither party shall have a claim against the other arising here from and both will reasonably be restored to their prior position.

## **Part C**

### **ALIGNMENT WITH CONSUMER PROTECTION ACT**

This Code of Conduct has been developed in accordance with section 2 of the Consumer Protection Act, and has been drafted in alignment with the object and spirit of section 82 of the CPA Act. An extract of section 82 of the CPA Act appears hereunder:

#### **Section 82 – INDUSTRY CODES**

- 1) In this section—
  - a. "industry code" means a code—
    - i. regulating the interaction between or among persons conducting business within an industry; or
    - ii. regulating the interaction, or providing for alternative dispute resolution, between a person contemplated in subparagraph (i) and consumers; and
  - b. "proposal" or "proposed industry code" includes any existing scheme that has been voluntarily established within an industry to regulate the conduct of persons conducting business within that industry

- 2) The Minister, by regulation, may—
  - a. prescribe an industry code on the recommendation of the Commission in terms of subsection (3); or
  - b. withdraw all or part of a previously prescribed industry code, on the recommendation of the Commission in terms of subsection (5).
  
- 3) The Commission, acting on its own initiative, or in response to a proposal from persons conducting business within a particular industry, may recommend a proposed industry code to the Minister after—
  - a. publishing the proposed industry code for public comment;
  - b. considering any submissions made during the public comment period;
  - c. consulting with—
    1. persons conducting business within the relevant industry; and
    2. relevant accredited consumer protection groups; and
  - d. making any revisions to the proposed industry code as published for comment. 136 5  
10 15 20 25 30 35 40 45 50
  
- 4) An industry code must be consistent with the purposes and policies of this Act.
  
- 5) The Commission—
  - a. on the request of the Minister, must review the effectiveness of any industry code relative to the purposes and policies of this Act;
  - b. may otherwise conduct a review contemplated in paragraph (a) at intervals of at least five years; and
  - c. after conducting a review contemplated in this subsection, and taking the steps required by subsection (3), may make further recommendations to the Minister, including a recommendation to amend or withdraw all or part of a previously prescribed code.
  
- 6) If—
  - a. a proposed industry code provides for a scheme of alternative dispute resolution; and
  - b. the Commission considers that the scheme is adequately situated and equipped to provide alternative dispute resolution services comparable to those generally provided in terms of any public regulation, the Commission, when recommending that code to the Minister, may also recommend that the scheme be accredited as an ‘accredited industry ombud’
  
- 7) The Commission—
  - a. must monitor the effectiveness of any industry code relative to the purposes and policies of this Act; and
  - b. may reasonably require persons conducting business within the relevant industry to provide information necessary for the purposes of—
    - i. monitoring in terms of paragraph (a); or
    - ii. a review in terms of subsection (5)
  
- 8) A supplier must not, in the ordinary course of business, contravene an applicable industry code.

This Code adheres to the provisions of section 45 (1-6) of the CPA and any other other law wherever applicable, and in the event of any inconsistency, the CPA Act or such other law applies. An extract of section 45 (1-6) of the CPA Act appears hereunder: -

## Section 45 – AUCTIONS

- 1) In this section, "auction" includes a sale in execution of or pursuant to a court order, to the extent that the order contemplates that the sale is to be conducted by an auction.
- 2) When goods are put up for sale by auction in lots, each lot is, unless there is evidence to the contrary, regarded to be the subject of a separate transaction.
- 3) A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in any other customary manner, and until that announcement is made, a bid may be retracted.
- 4) Notice must be given in advance that a sale by auction is subject to –
  - a) a reserved or upset price; or
  - b) a right to bid by or on behalf of the owner or auctioneer, in which case the owner or auctioneer, or any one person on behalf of the owner or auctioneer, as the case may be, may bid at the auction.
- 5) Unless notice is given in advance that a sale by auction is subject to a right to bid by or on behalf of the owner or auctioneer –
  - a) the owner or auctioneer must not bid or employ any person to bid at the sale;
  - b) the auctioneer must not knowingly accept any bid from a person contemplated in paragraph (a);
  - c) the consumer may approach a court to declare the transaction fraudulent, if this subsection has been violated.
- 6) The Minister may prescribe requirements to be complied with by an auctioneer, or different categories of auctioneer, in respect of –
  - a) the conduct of an auction;
  - b) the records to be maintained with respect to property placed for auction;
  - c) the sale of any such property by auction.

The Code adheres to regulations 18 to 33 of the CPA Act and any other regulation wherever applicable, and in the event of any inconsistency, the regulations of the CPA Act or such other regulation applies. An extract of regulations 18 to 33 appears hereunder:-

## **Regulation 18 - DEFINITIONS INTERPRETATION AND APPLICATION**

- 1) Auction house: Company or juristic person conducting auctions from time to time as part of its business  
Auction without reserve: Auction at which:
  - a. Goods are sold to the highest bidder without reserve;
  - b. The auction does not require a minimum bid;
  - c. The auction does not allow competing bids of any type by the seller or the agent and
  - d. The seller of the goods cannot withdraw the goods from auction after the auction has opened and there is public solicitation or calling for bids.Auctioneer: The person conducting the auction.  
Bidders' record: The document contemplated in regulation 26.  
Closed Auctions: An auction where the auctioneer issues an invitation to take part in an auction only to a finite list of consumers.  
Game: As defined in section 1 of the Game theft Act, 1991 (Act No. 105 of 1991).  
Goods: Include where appropriate services.  
Livestock: Cattle, sheep, goats, pigs, horses, mules and donkeys.  
Lot: Any group of goods sold or offered for sale as a unit and identified as such.  
Vendor's roll: The document contemplated in regulation 28(4).  
URL: Operational Uniform Recourse locator providing access to information on the internet.
- 2) Provides that the regulations are to be read together with section 45 of the Act:
- 3) Subject to sub regulation (4), these regulations apply to all auctions, irrespective of the nature of the goods offered on auction, the value of the property or the reason for conducting the auction.
- 4) These regulations do not apply to -
  - a) Transactions of stock exchange or auction for goods declared to be donated and the proceeds are paid to a bond fides religious, educational, cultural, welfare, social or sports organisation.
  - b) But an auction conducted as a sale in execution or ordered by a court of law does not constitute an auction contemplated in paragraph (a).
- 5) Any provisions in any agreement relating to goods sold or bought at an auction or advertised or offered for sale at an auction, or any agreement providing for conducting the auctions itself, in conflict with the regulations does not have any force or effect.
- 6) These regulations do not detract from any law relating to advertising, sale, purchase, delivery, rendering or financing of goods.
- 7) An auctioneer selling immovable property must comply with all other applicable laws in respect thereof including the legislation regulating the activities of estate agents.
- 8) An auctioneer must comply with all general provisions of the regulations.

## **Regulation 19 - MANDATORY ADVERTISING OF AUCTIONS**

- 1) Subject to regulation 33, no goods under any circumstances whatsoever be sold by auction unless it has been advertised in compliance with the regulations so that the general public has had a reasonable opportunity to become aware of the auctions, the goods on offer and of the rules governing the auction.
- 2) The onus to prove that an auction was advertised rests on the auctioneer.
- 3) An auctioneer must advertise the auction at least 24 hours prior to the commencement of the auction but –
  - a) any goods may be withdrawn at any time prior to the auction but not after commencement;
  - b) immovable property auctions must be advertised at least 5 business days prior to the auction.
- 4) If any auction or part thereof relates to goods sold in execution or by order of court the advertisement must clearly state that fact.

## **Regulation 20 - GENERAL RULES ON ADVERTISING AUCTIONS**

- 1) all advertising must be:
  - a) Accurate; and
  - b) Provide sufficient information for a reasonable consumer to –
    - i) understand that it relates to an auction; and
    - ii) be able to find the place where the auction is to be held.
- 2) Advertising relating to an auction must be:
  - a) Be in a legible format and size;
  - b) Contain reference to the regulations together with a URL where a copy of these regulations be obtained;
  - c) State the date, place and time of the auction;
  - d) State the name of the auctioneer and the auction house and if registration or licensing of auctioneer or auction houses are mandatory then the registration or licensing number;
  - e) State where the Rules of auction can be obtained;
  - f) State the particulars of the goods offered on auction;
  - g) If applicable, state the auction will be held over a number of days;
  - h) State, if applicable that a sale by auction is subject to:
    - i) A reserved or upset price; or
    - ii) A right to bid by or on behalf of the owner or auctioneer, in which case the owner or auctioneer, or any other person on behalf of the owner or the auctioneer may bid at the auction; and
    - iii) Contain a reminder that all prospective bidders must register as such prior to making a bid during the auction and that such registration requires proof of identity and residence.
  - i) Disclose as accurately as possible the total costs of advertising and conducting the auction.
- 3) The requirements in regulation 20(2) above do not apply to roadside advertising or classified advertisements printed in the newspapers but such advertising must:
  - a) At the top prominently display the word "Auction";
  - b) Indicate where the full advertisement as contemplated in regulation 20(2) above can be obtained;
  - c) State the date, time and place of auction.

- 4) A consumer may at any time during business hours request the auctioneer to provide him with access to the advertisement and the auctioneer must, without charging a fee, comply with such request but:
  - a) consumer is only entitled to one free copy;
  - b) the auctioneer may provide a URL which will provide a copy of the full advertisement.
- 5) Any material, advertisement or publication not meeting all the requirements of this regulations does not constitute advertising for the purposes of regulations 19 and 20.
- 6) An auction may not be advertised as a "sale in execution" or similar wording implying court action unless-
  - a) At least 75% of the items or lots in the auction are being offered pursuant to a court order;
  - b) The items or lots were clearly not purchased or attained for the purpose of resale at auction; and
  - c) The advertising contains an explanation of the court order including identification of the court.
- 7) Unless all items or lots offered at auction are pursuant to a court order, then the advertisement must indicate that the auctions is "with additions", "supplemented" or similar wording
- 8) Sub regulation (6) and (7) above do not prohibit clear, non misleading advertising of the inclusions of specific goods being offered pursuant to a court order in an auction if such goods are offered pursuant to a court order and were clearly not purchased or attained for the purpose of resale at auction.
- 9) An auction may not be advertised as an "insolvency auction" or use similar wording implying insolvency unless –
  - a) At least 75% of the items or lots in the auction are being offered pursuant to an order of the Master of the High Court;
  - b) The items or lots were clearly not purchased or attained for the purpose of resale at auction; and
  - c) The advertising contains the order number of the Master of the High Court.
- 10) Unless all items or lots being offered at the auction are pursuant to an order of the Master of the High Court, then the advertising must indicate that the auction is "with additions", "supplemented" or use similar wording.
- 11) Sub regulations (9) and (10) do not prohibit clear, non-misleading advertising of the inclusion of specific goods being offered pursuant to an order of the Master of the High Court in an auction if such goods are offered pursuant to an order of the Master of the High Court and were clearly not purchased or attained for the purpose of resale at auction.
- 12) An auction may not be advertised as "deceased auction" or use similar wording implying insolvency unless –
  - a) At least 75% of the items or lots in the auction are being offered pursuant to an order of the Master of the High Court;
  - b) The items or lots were clearly not purchased or attained for the purpose of resale at auction; and
  - c) The advertising contains the order number of the Master of the High Court.
- 13) Unless all items or lots being offered at the auction are pursuant to an order of the Master of the High Court, then the advertising must indicate that the auction is "with additions", "supplemented" or use similar wording.



- 14) Sub regulations (12) and (13) do not prohibit clear, non-misleading advertising of the inclusion of specific goods being offered pursuant to an order of the Master of the High Court in an auction if such goods are offered pursuant to an order of the Master of the High Court and were clearly not purchased or attained for the purpose of resale at auction.
- 15) An auction shall not be advertised as "divorce auction" or use similar wording implying court action unless –
  - a) At least 75% of the items or lots in the auction are being offered pursuant to a court order;
  - b) The items or lots were clearly not purchased or attained for the purpose of resale at auction; and
  - c) The advertising contains an explanation of the court order including identification of the court.
- 16) Unless all items or lots being offered at the auction are pursuant to a court order, then the advertising shall clearly indicate that the auction is "with additions", "supplemented" or use similar wording.
- 17) Sub regulations (15) and (16) do not prohibit clear, non-misleading advertising of the inclusion of specific goods being offered pursuant to a court order in an auction if such goods are offered pursuant to a court order and were clearly not purchased or attained for the purpose of resale at auction.
- 18) No auction may be advertised as "absolute" or "without reserve", no advertising may contain the words "auction without reserve", "absolute auction" or "without reserve", or the word "absolute" or words with similar meaning and no auctioneer may offer or sell any goods at auction without reserve unless –
  - a) There are no liens or encumbrances on the goods, except property tax obligations, easements, or restrictions on record, in favour of any person other than the seller, or unless each and every holder of each and every lien and encumbrance has in writing agreed to the unqualified acceptance of the highest bid for the property, without regard to the amount of the highest bid or the identity of the high bidder, or that a financially responsible person in writing absolutely guarantees the immediate and complete discharge and satisfaction of any and all liens and encumbrances immediately after the sale or at the closing, without regard to the amount of the highest bid received, or the identity of the high bidder; and
  - b) There is the bona fide intention at the time of the advertising and at the time of the auction to transfer ownership of the goods, regardless of the amount of the highest and last bid, to the highest bidder, that intent existing without reliance on any agreement that any particular bid or bid level must be made or be reached, below which level the goods will not be transferred to the highest bidder; and
  - c) The rules of auction contain a binding requirement that the auction be conducted without reserve.
- 19) Sub regulation (18) does not prohibit –
  - a) A secured party or other lien holder who is not the seller from bidding at an auction without reserve, but such bidding does not constitute, nor is it tantamount to the direct or indirect establishment or agreement to the establishment of a reserve price on the goods by the seller or by the auctioneer, or by anyone aiding or assisting, or acting upon behalf of, the seller or the auctioneer;
  - b) Any individual party to the dissolution of any marriage, partnership, or corporation from bidding as an individual entity apart from the selling entity, on goods being sold at auction pursuant to that dissolution;
  - c) Any individual party or heir of a deceased person's estate from bidding as an individual entity, apart from the selling entity, on goods being offered at auction pursuant to that estate being settled; or

- d) The inclusion of non-misleading advertising of certain goods to be sold at "auction without reserve" and the non-misleading advertising of certain goods to be offered at auction with reserve, within the same advertisement, or for sale at the same date and place, but that advertisement must make clear, through appropriate emphasis, which goods are being offered by each method.

## **Regulation 21 - RULES OF AUCTION**

- 1) An auctioneer must –
  - a) In writing compile the rules of auction; and
  - b) Except in the case of a livestock or game auction or a closed auction, make the document available to the general public at least 24 hours prior to the commencement of the auction.
- 2) The rules of auction must, as a minimum –
  - a) On the first page of the document in large letters display the words "rules of auction", and immediately beneath that the date, place and time of the auction;
  - b) Contain the full names, physical address and contact details of the auctioneer, and where applicable, of the auction house;
  - c) Contain all mandatory information required by these regulations, and if applicable, the information contemplated in section 45(4) or (5) of the Act;
  - d) Contain a statement to the effect that the rules of auction comply with section 45 of the Act and with these regulations;
  - e) Contain the text of subsection (2) of section 45 of the Act;
  - f) Provide that an auction will commence at the published time and that it will not be delayed to enable any specific person or more persons in general to take part in the auction;
  - g) Provide that a person who attends at the auction to bid on behalf of another person must produce a letter of authority meeting the requirements of regulation 26(3) in order to so bid on behalf of that person;
  - h) Unless the auctioneer is also the owner or rightful holder (who has the right to sell) of the goods to be auctioned, contain a statement to the effect that the auctioneer has a trust account into which all moneys will be paid for the benefit of the seller, minus the agreed commission;
  - i) Contain a statement to the effect that the auctioneer will during the auction announce the reason for the auction unless that reason is the normal and voluntary disposal of goods by the owner;
  - j) Provide that a person who intends to bid at the auction must register prior to the commencement as contemplated in regulation 26(2) together with a description of the requirements for registration;
  - k) Provide that the bidders' record contemplated in regulation 26 and the vendor roll contemplated in regulation 28(4) are available for inspection during normal hours without the charge of a fee; and
  - l) Contain a breakdown of the total cost of advertising and conducting an auction and a statement indicating whether additional costs may be added and if so, how such additional costs will be computed.
- 3) The rules of auction may not –
  - a) Exclude liability in respect of inaccurate information provided in the advertising of the auction;
  - b) Exclude liability in respect of the rules of auction not meeting the requirements of these regulations; or
  - c) Contain any qualification, reservation or diminution of the requirements of these regulations unless expressly provided for.
- 4) In the event that the rules of auction are amended after their initial publication, the auctioneer must expressly indicate that the new version is an amended version.

- 5) The rules of auction must be signed by the auctioneer who is going to conduct the auction and he or she must certify that the rules of auction to the best of his or her knowledge meets the requirements of this regulation 21.
- 6) If on the day of the auction the auctioneer who signed the rules of auction as contemplated in sub regulation (5) is unavailable to conduct the auction, the auctioneer who then conducts the auction will be deemed to have so certified the rules of auction.
- 7) An auctioneer is personally accountable and liable for the contents of the rules of auction applicable to a specific auction.
- 8) The rules of auction need not be read out at an auction to be valid, but only if –
  - a) The rules of auction were, where applicable, available to the general public at least 24 hours prior to the commencement of the auction;
  - b) In the case of a livestock or game auction contemplated in regulation 33 are the same as for previous auctions and are generally available on the auction house or the auctioneer's website or at the auction house or the auctioneer's business premises during normal business hours;
  - c) In the case of a closed auction, were made available to all persons to whom an invitation to take part in that auction was issued; or
  - d) At an auction other than an internet auction, the auctioneer invites any person present to object to the rules of auction not being read upon, and nobody does.
- 9) The rules of auction may not exclude the right of inspection as contemplated in regulation 28(5).

## **Regulation 22 - AUCTIONEER AND AUCTION HOUSE TO HOLD AND ACCOUNT FOR CONSUMER'S PROPERTY**

- 1) An auctioneer and auction house must at all times strictly comply with section 65(2) of the Act. Section 65(2) states that when a supplier has possession of any prepayment, deposit, membership fee, or other money, or any other property belonging to or ordinarily under the control of a consumer, the supplier –
  - a) Must not treat that property as being the property of the supplier;
  - b) In the handling, safeguarding and utilisation of that property, must exercise the degree of care, diligence and skill that can reasonably be expected of a person responsible for managing any property belonging to another person; and
  - c) Is liable to the owner of the property for any loss resulting from a failure to comply with paragraph (a) or (b).
- 2) Unless the auctioneer is also the owner or rightful holder of the goods to be auctioned, no auctioneer may sell goods on auction until he or she has first entered into a written agreement with the owner or rightful holder (who has the right to sell) of such goods to be sold, whether for a specific auction or auctions on general, which agreement contains the terms and conditions upon which that auctioneer accepts the goods for sale.
- 3) An agreement contemplated in sub regulation (2) must as a minimum contain –
  - a) The name and physical address of owner of the goods to be sold or the owner's agent or the rightful holder (who has the right to sell) thereof;
  - b) If the goods are to be sold at a specific auction, the date of the auction or if the goods are to be sold at a number of auctions, a termination date of the agreement;
  - c) The address of the premises where the auction is to be held;
  - d) The rules of auction;
  - e) A description of all of the fees to be charged by the auctioneer or the auction house, which must include commissions, storage, advertising and labour, or a method by which such fees will be determined;

- f) An explanation of the settlement of the auction that includes the disbursement of interest money, if applicable;
  - g) A statement indicating whether the auction is an auction without reserve or not;
  - h) A brief description of the goods to be sold;
  - i) If the sale is of goods at auction without reserve, a statement affirming that the seller of the goods has a bona fide intention to transfer ownership of the property to the highest bidder;
  - j) An exact copy of section 65(2) of the Act;
  - k) An exact copy of subsections (1) to (5) of section 45 of the Act.
- 4) An auctioneer must retain a copy of every agreement contemplated in sub regulation (2) signed by the owner or rightful holder of the goods to be auctioned for a period of at least three years from the date of the auction.
  - 5) In performing the duties of an auctioneer, every auctioneer –
    - a) Is the agent of the owner or rightful holder (who has the right to sell) of the goods for all aspects of an auction;
    - b) Must follow all lawful and reasonable requests of the owner or rightful holder of the goods or immovable property sold at auction;
    - c) Must perform his or her duties so that the highest or most favorable offer made by a bidder is accepted; and
    - d) Must otherwise perform his or her duties in accordance with the highest standards applicable to auctions.
  - 6) An auctioneer must keep abreast of current market conditions of goods at all times in order to be in a position to advise and perform services for his or her clients to the best of his or her ability.
  - 7) An auctioneer –
    - a) Owes a duty of care towards his or her client;
    - b) Must protect and secure the goods whilst under his or her control or in his or her possession;
    - c) Must at all times preserve a professional, confidential relationship with his or her client;
    - d) Must timeously reveal estimated costs and services for conducting the auction; and
    - e) If he or she is aware or ought reasonably to be aware of any risks associated with the auction of particular goods, must forthwith disclose such risks to the client.
  - 8) All unsold property must be returned to the owner or rightful holder immediately upon the completion of an auction unless otherwise agreed.
  - 9) The owner or rightful holder (who has the right to sell) must be provided with an itemised account of all goods sold immediately upon completion of the auction unless otherwise agreed, which as a minimum must contain –
    - a) The item or lot sold,
    - b) Amount received for the sold item or lot; and
    - c) The name of the buyers of every item or lot.

## **Regulation 23 – DISQUALIFICATION TO CONDUCT AUCTION**

A person who –

- a) Has been found guilty by a court of law, whether in the Republic or elsewhere, of an offence of which fraud or dishonesty is an element, or of any other offence for which such person has been sentenced to imprisonment exceeding five years without the option of a fine;
- b) Is of unsound mind; or
- c) Is an unrehabilitated insolvent, may not conduct an auction or in any other way act as an auctioneer or hold him or herself out as an auctioneer.

## **Regulation 24 – PROHIBITED BEHAVIOUR**

An auctioneer may not –

- a) Charge or receive any fee or commission in respect of the sale of movable goods unless such goods have been delivered to the purchaser;
- b) Charge or receive any fee or commission in respect of the sale of immovable property until the purchaser and the seller have signed a written agreement in respect of the sale of such immovable property;
- c) Charge or receive any fee or commission from the purchaser if the seller defaults or where such fee or commission has already been paid by the purchaser to the auctioneer, the auctioneer shall immediately refund the purchaser the amount paid, including deposit;
- d) Charge or receive any fee or commission from the purchaser, if the purchaser defaults, exceeding ten percent of the purchase price or the total cost of advertising and conducting an auction and such additional costs as may have been reasonably incurred in accordance with regulation 21 (2)(1), whichever is the lesser;
- e) Charge or receive any fee or commission from the seller, unless agreed otherwise in writing, if the buyer defaults or where such fee or commission has already been paid by the seller to the auctioneer, the auctioneer shall immediately refund the seller the amount paid;
- f) Charge or receive any fee or commission from the seller if the seller defaults, unless agreed otherwise, exceeding ten percent of the purchase price or the total cost of advertising and conducting an auction and such additional costs as may have been reasonably incurred in accordance with regulation 21 (2)(1), whichever is the lesser;
- g) Enter into any agreement or arrangement with the seller to sell any goods unless the auctioneer has first provided the seller with an estimate of the total cost of the auction;
- h) Accept a bid from a person unless he or she is registered in the Bidders' Record as contemplated in regulation 26;
- i) Set a minimum or reserve price without the express written permission of the seller;
- j) Remove an item or lot from an auction without the express written permission of the seller;
- k) Allow bidding on an item or a lot if the auction thereof has not been advertised as contemplated in regulations 19 and 20;
- l) During an auction deviate from the sequence of goods as advertised;
- m) Knowingly misrepresent, or cause or permit to be misrepresented the value, composition, structure, character or quality or manufacture of the goods put up for sale at an auction;
- n) Hinder the access of any person to any advertisement contemplated in these regulations, rules of auction or vendor's roll; or
- o) Pay any other person in order to be appointed as auctioneer, whether in general or for a particular auction or in respect of any specific goods.

## **Regulation 25 – FALSE ENTRY IN AUCTION RECORD**

Without detracting from any other applicable law, an auctioneer, including an employee of the auctioneer or the auction house, may not knowingly enter in any record kept or required to be kept by the auctioneer under or in terms of these regulations or any other applicable law, any name or other details other than the real name and details of the actual successful bidder.

## **Regulation 26 – BIDDER'S RECORD**

- 1) An auctioneer must for every auction have a bidders' record to record the identity of all bidders at an auction.
- 2) Subject to regulation 30(2), the auctioneer must ensure that every prospective bidder must prior to the commencement of an auction register his or her identity in the bidder's record, and such registration must with the necessary changes meet the requirements of Chapter 1 of the regulations in terms of the Financial Intelligence Centre Act, 2001, published in Notice No. R.1595

in Gazette No. 24176 of 20 December 2002, in respect of establishment and verification of identity, and sign that entry.

- 3) The auctioneer must ensure that a person who intends to bid on behalf of another, produces a letter of authority expressly authorising him or her to bid on behalf of that person, and both that person and the person bidding on his or her behalf must meet the requirements of sub regulation (2)
- 4) The auctioneer must ensure that if a person will be bidding on behalf of a company, the letter of authority contemplated in sub regulation (3) must appear on the letterhead of the company and must be accompanied by a certified copy of the resolution authorising him or her to do so.
- 5) The bidders' record is available for public inspection in respect of the names of bidders and the bidders numbers referred to in sub regulation (6) only, at any time, free of charge –
  - a) During an auction, at the premises where the auction is being held; and
  - b) Before or after an auction, at the auction house or auctioneer's place of business and during normal business hours.
- 6) An auctioneer must record the bidder number contemplated in regulation 28(1) in the bidders' record.

### **Regulation 27 – OWNERSHIP**

The auctioneer must ensure that a person who wishes to dispose of his or her property by way of an auction signs a declaration stating that he or she is the owner or rightful holder of the goods (who has the right to sell) and submits that declaration to the auctioneer.

### **Regulation 28 - BIDDING**

- 1) An auctioneer must provide a prospective bidder whose name appears in the bidders' record with a bidder number before he or she may bid, as well as a paddle or other device to which that number is attached in such a way that it is clearly visible to the persons present at the auction.
- 2) A bid taken from an unregistered person is invalid.
- 3) The place where an auction is held must be open and accessible to any member of the public, subject to the auctioneer's right to refuse a person the right to remain on the auction's premises in the event that that person repeatedly behaves in such a way so as to disrupt the auction.
- 4) An auctioneer must have a vendor's roll in which all details of the auction are recorded, which must, as a minimum, include –
  - a) The advertising of the auction;
  - b) The rules of auction;
  - c) The bidders' record;
  - d) The declarations contemplated in regulation 21 (2)(h) and 27;
  - e) A list of all goods on auction, including goods which were withdrawn from auction;
  - f) The names of the successful bidders, the goods or lots bought and the prices paid in respect thereof;
  - g) The details of any challenges to the validity of the auction or the conduct thereof, and the particulars of the persons making such challenges, if available;
  - h) Any items or lots not sold;
  - i) The details of any reserved price or any matter contemplated in subsections (4) and (5) of section 45 of the Act.

- 5) The auctioneer must afford consumers a reasonable period of time and opportunity to inspect the goods on offer prior to the commencement of an auction, and no fee may be charged for such opportunity, but an auctioneer may –
  - a) Refuse or restrict access to such goods if the consumer after gaining access in any way acts unlawful or in contravention of the applicable rules of auction;
  - b) Require the consumer to adhere to or submit to any security measures reasonably applicable in the circumstances.
- 6) Subject to any reserved price and acceptance of the highest bid by the seller, the highest bidder, when the auctioneer announces the completion of a sale by the fall of the hammer, or in any other customary manner, is the purchaser of the goods or lots on auction.
- 7) No fee may be charged for participation in an auction, but this does not apply to refundable deposits.
- 8) The auctioneer must upon concluding the proceedings of an auction –
  - a) Announce that the auction has come to an end;
  - b) Sign the vendor's roll; and
  - c) Certify that the proceedings of the auction were to the best of his or her knowledge conducted in accordance with these regulations, any other applicable law and the rules of auction.

### **Regulation 29 - MOCK AUCTION**

- 1) A mock auction is an auction in which –
  - a) Goods are sold for less than the highest bid, or part of the purchase price is repaid or credited to the purchaser;
  - b) The right to bid for goods is restricted to persons who have bought or have agreed to buy other goods; or
  - c) Any goods are given away as gifts.
- 2) No person may promote, facilitate, conduct or take part in a mock auction.
- 3) If it can be proved that the reduction in the purchase price or the repayment credit was due to a defect which the auctioneer only became aware of after the highest bid was made, or because of damage sustained after the highest bid was made, the auction will not be considered to be a mock auction.
- 4) No person may promote, organize, participate in or benefit from any kind of conspiracy between an auctioneer, any participants in an auction or any other persons who agree not to bid against each other at an auction or who otherwise conspire to decrease or increase the number or amounts of bids offered at auction.

### **Regulation 30 – INTERNET OR ELECTRONIC AUCTIONS**

- 1) An auction may be conducted via the internet or other electronic medium or platform, irrespective of where the server or other electronic medium or platform is situated, only if –
  - a) It meets all requirements in respect of an auction provided for in these regulations or other applicable law, but with the necessary changes, if any, to suit an electronic medium or platform;
  - b) The relevant internet website or electronic medium or platform is generally available to anyone over the age of 18 years at any time of the day;
  - c) The relevant internet website or electronic medium or platform provides high standards of security for electronic transactions;
  - d) The relevant internet website or electronic medium or platform provides for easy access to all records prescribed in these regulations in a generally used or accepted medium or format;

- e) The internet auction provider keeps the information contemplated in regulation 28(4).
- 2) For purposes of regulation 26(2), a prospective bidder in an auction to be held via the internet or other electronic medium or platform must register by providing –
  - a) His or her full names, identification or passport number, age, physical address, internet protocol address, and where applicable, login code or name, and password; and
  - b) The details of the means by which payment will be effected.
- 3) An auctioneer conducting an auction via the internet or other electronic medium or platform may not exclude liability if any goods purchased by auction are not delivered to the purchaser thereof.

### **Regulation 31 – RECORDS**

- 1) Irrespective of any other provision to the contrary in these regulations, all records prescribed in regulations 18 to 33 must be kept for a period of at least three years.
- 2) Any person in possession of any record contemplated in regulations 18 to 33 must –
  - a. Forthwith upon receipt of a written request at his or her own cost provide the Commission or any forum empowered to administer the Act or an owner or rightful holder (whose goods were on auction at the auction in question) or a registered bidder (at the auction in question) with true copies of the record so requested or which may be relevant to any record so requested, but if the original record is expressly requested, that original record must be made available for inspection.
  - b. The Commission may not provide copies of any documents which have come into its possession pursuant to paragraph (a) of this sub regulation to anyone, unless by order of court, or where it is the interests of justice to do so.

### **Regulation 32 – MOTOR VEHICLE AUCTIONS**

In addition to any other requirement in these regulations, an auctioneer may not conduct an auction unless a notice containing the particulars and statements required in this sub regulation relating to the vehicle, being a motor vehicle as defined in section 1 of the National Road Traffic Act, 1996 (Act No 93 of 1996), is attached to the vehicle and has been attached to the vehicle at all times when the vehicle was available for inspection by prospective bidders, which must include –

- a. The name and business address of the auctioneer;
- b. If the auctioneer or auction house is conducting the sale on his, her or its own behalf, whether the auctioneer or auction house is liable to discharge the duty of repair, or not;
- c. If the auctioneer or auction house is conducting the sale on behalf of –
  - i) a motor vehicle dealer or bank or other financing entity, the name in which that dealer, bank or entity is licensed and the business address of the dealer, bank or entity and whether the dealer, bank or entity is liable to discharge the duty of repair, or not; or
  - ii) another person, a statement on whether there is a duty to repair, who is liable to discharge that duty to repair and the details of the repair, and if applicable, the name and address of the last owner of the vehicle who was not a dealer, bank or entity, or alternatively a statement that the last owner's name and address are available on request from the auctioneer or auction house.
- d. If the owner let the vehicle on hire to another person under a vehicle leasing agreement, the name and address of such other person, alternatively a statement that such person's name and address are available on request from the auctioneer;
- e. The vehicle's year of manufacture, if known;
- f. The vehicle's year of first registration;
- g. The vehicle's manufacturer and model designation;
- h. The vehicle's registration number;
- i. The vehicle's engine number;



- j. The vehicle's identification number (VIN);
- k. A statement whether or not the reading of the odometer of that vehicle is guaranteed; and
- l. A statement contemplated in regulation 21(2) (i).

## **Regulation 33 – LIVESTOCK, GAME AND CLOSED AUCTIONS**

The provisions of regulation 19(1) does not apply to –

- a) A closed auction; or
- b) A live stock or game auction, if such is conducted regularly on a weekly or monthly basis –
  - i) At the same time, the same place and by the same auctioneer or auction house;
  - ii) Subject to the same rules of auction; and
  - iii) Nothing but livestock or game is on offer.

As from 1 April 2011, the Consumer Protection Act is applicable. For more information about the Act itself visit the Department of Trade and Industry website: [www.thedti.gov.za](http://www.thedti.gov.za).

Below are the rules of the Auction as from 1 April 2011.

### **GENERAL RULES OF THE AUCTION AUCTION WITH RESERVE (SUBJECT TO SELLER'S CONFIRMATION)**

- 1) Auction with Reserve means that the property will be sold to the highest bidder but subject to confirmation by the Seller who has 14-21 business' days to accept or reject the offer.
- 2) The conduct of the auction is subject to the control of the Auctioneer of the day who has the sole right to regulate the bidding procedure.
- 3) Auctions commence at 10h00 unless otherwise advertised and will not be delayed to accommodate any persons who arrive late. The Rules of Auction will be read out at 10h00.
- 4) A prospective bidder cannot participate in the bidding process if not registered as a bidder. The registration process includes -
  - i) registration of the prospective bidder's identity,
  - ii) residential address,
  - iii) contact details, and
  - iv) full signature on the bidder's roll prior to the commencement of the auction. The bidder's roll will be made available for inspection at the auction and at the Auctioneer's offices during normal business hours without the charge of a fee.
- 5) All registered bidders must
  - i) thoroughly inspect the property and/or goods and
  - ii) read the offer to purchase ("the Sales Contract") before the bidding starts and must not bid unless he or she has done so.
- 6) We are selling per rising bid in South African Rand.
- 7) The Vat status of the Seller will be read out at the auction.
- 8) The auctioneer or his/her agent shall be entitled to bid up to the reserve price on behalf of the owner, but shall not be entitled to make a bid equal to or exceeding the reserve price.
- 9) Any error by the Auctioneer shall be entitled to be corrected by him/her.
- 10) A person who attends the auction to bid on behalf of another person, must produce a letter of authority that expressly authorises him/her to bid on behalf of that person. Where a person is bidding on behalf of a company, the letter of authority must appear on the letterhead of the

company and must be accompanied by a certified copy of the resolution authorising him or her to bid on behalf of the company.

- 11) In the event of any dispute between the bidders, the decision of the Auctioneer shall be final and binding.
- 12) The Rules of the Auction are read out at the auction and a copy thereof will be available to all registered bidders and will be filed at the Auctioneer's office for a period of 5 (five years).
- 13) At the auction, after reading of the Rules of the Auction and before the bidding starts, bidders will be able to ask questions regarding the auction procedure and/or the property for sale.
- 14) The Purchaser shall not be held liable for any arrears unless otherwise stipulated in the Sales Contract.
- 15) Every bid shall constitute an offer to purchase the property for the amount bid, which the Seller or the Auctioneer may accept or reject in their absolute discretion. The Seller and the Auctioneer are entitled to withdraw the property from sale prior to acceptance by the Seller.
- 16) The highest bidder ("the Purchaser") shall sign the Sales Contract immediately on the fall of the hammer at the Auctioneer Assistant's desk.
- 17) If no bid equals or exceeds the reserve price, the property may be withdrawn from the auction. The Seller shall be entitled to instruct the auctioneer to accept any lower bid.
- 18) The Seller has 2 business' days ("the Confirmation Period") to accept or reject the offer. No bid may be withdrawn after the fall of the hammer until the expiry of the Confirmation Period. During this time the offer shall be open for acceptance by the Seller or his agent and if the offer is accepted, the sale shall be deemed to be a sale by auction for purposes of the Act.
- 19) The Purchaser's offer shall remain open for acceptance by the Seller or by the Auctioneer on behalf of the seller, until expiry of the confirmation period. The Purchaser and the Auctioneer acknowledge and agree that this provision is for the benefit of the Seller.
- 20) The Purchaser's offer shall be deemed to have been accepted only when the Seller or the Auctioneer, whichever may be applicable, has signed the Sales Contract on behalf of the Seller and the Seller shall not be required to notify the Purchaser of the acceptance of its offer prior to expiry of the confirmation period.
- 21) Should the Seller reject the Purchaser's offer, the Auctioneer will repay to the purchaser any deposit and commission paid to it in terms of the Sales Contract within a reasonable time.
- 22) In the event of the sale requiring the consent of any statutory authority or any court of law, then this auction sale is subject to the granting of such consent.
- 23) We have a 10% auctioneers' fee. As soon as the Seller accepted the Purchaser's offer, the Auctioneer's attorneys will send a statement to the Purchaser who must pay the auctioneers' commission plus VAT directly into the trust account of the Auctioneer's Attorneys.
- 24) The rules of the auction meet the requirements of the Consumer Protection Act, Act 68 of 2008 ("the Act") to the best of the Auctioneer's knowledge.
- 25) Section 45 (1) to (4) are brought to the registered bidders' attention: "Auctions 45.
  - i) In this section, 'auction' includes a sale in execution of or pursuant to a court order, to the extent that the order contemplates that the sale is to be conducted by an auction.

- ii) When goods are put up for sale by auction in lots, each lot is, unless there is evidence to the contrary, regarded to be the subject of a separate transaction.
- iii) A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in any other customary manner, and until that announcement is made, a bid may be retracted.
- iv) Notice must be given in advance that a sale by auction is subject to –
  - i) A reserved or upset price; or
  - ii) A right to bid by or on behalf of the owner or auctioneer, in which case the owner or auctioneer, or any one person on behalf of the owner or auctioneer, as the case may be, may bid at the auction."

26) Section 55 (1) expressly states that the cooling off period does not apply to goods bought on auction: "Consumer's rights to safe, good quality goods 55 (1).  
This section does not apply to goods bought at an auction, as contemplated in section 45."