

Common Advertising Mistakes
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The department conducts random ad audits every month. In the course of these audits, there are several common errors that are generally found. Several years ago, I wrote an article discussing the common advertising mistakes that the department finds. As these errors are still common today, I thought it was time to revisit the topic.

Section 4707.22 of the Ohio Revised Code specifically addresses advertisements. The most common advertising error seen is the failure to list the licensed auctioneer's name **or** the registered trade/fictitious name in the advertisement. Additionally, if an apprentice auctioneer is going to be bid calling, the apprentice's name and the sponsor's name must both appear in the ad with equal prominence. All apprentices must provide copies of their advertisements, along with signed slips from their sponsor, as proof of the twelve sales needed to complete their auctioneer license application.

Another area of concern is the incorrect advertising of an absolute auction. In Ohio, all auctions are "with reserve" unless otherwise stated. The courts have found, and it is the department's position, that terms such as "sells to the highest bidder", "no minimums", and "no reserves" refer to absolute auctions. The law does not prohibit using these phrases in conjunction with the term "absolute". However, when you advertise an absolute auction, R.C. 4707.22(C) requires that you use the word "absolute" in your advertisement. Please note that in order to advertise an absolute auction, you must have a contract with your seller that clearly identifies the auction as absolute and also includes the definition of an absolute auction found in R.C. 4707.01. If you have questions regarding absolute auctions, you should review R.C. 4707.023 and R.C. 4707.22. If you advertise an auction as an absolute auction, you must conduct the auction as an absolute auction. Failure to conduct an auction as advertised may result in disciplinary action.

Another common error is the use of the phrase "licensed and bonded by the State of Ohio". It is not required under Ohio law that you put in your ads that you are licensed by the department and bonded in favor of the State of Ohio. This term is required to be in the auction contract, not the advertisement. Improper use of the phrase "bonded in favor of the State" can also lead to problems. You should use this phrase only if you are covered under a surety bond. If you are in the recovery fund, you should instead refer to the recovery fund.

The last area of concern is the advertisement of estate auctions. Remember, you must contract directly with the executor or administrator, and you must include the county probate court and court case number in the advertisement. If the court has not assigned a case number, do not advertise the court case number as "to be determined". If the court case number is not available at the time of advertising, do not use "estate auction" in the advertisement. Additionally, because R.C. 4707.01(l) defines an "estate auction" as "the auction of real or personal property of a deceased person", it is not possible to advertise a "living estate" auction.

All licensees are required to keep copies of all auction advertisements on file for two years following the date of the auction. This includes internet auction advertisements on sites such as AuctionZip.com, nationalauctionlist.com, AuctionServices.com, or www.luv2bid.com. It is recommended that you print a hard copy of each of the advertisements for your records.

One final note regarding advertisements: the department has been receiving calls regarding the recent changes in R.C. 5322, the self-storage facility law, which went into effect on March 22, 2013. It is my understanding that there are changes to the requirements for advertising self-storage default auctions. Please note, however, that the department does not have jurisdiction over storage unit auctions, as they are exempt under R.C. 4707.02(B)(1). We therefore are unable to provide information regarding compliance with the new law. The Ohio Revised Code may be found online at: <http://codes.ohio.gov/orc>.

As a reminder, all license renewal applications have been mailed to all apprentice auctioneers and all auction firms, as well as auctioneer licensees whose business name or last name begins with A through J or X through Z. You have until June 30, 2013 to renew in order to avoid the \$100.00 late fee. If you did not receive or have misplaced your application, please feel free to contact the department via email to request a new one at auctioneer@agri.ohio.gov or call 614-728-6240. Please do not pay your license fees from your client trust account. This is considered improper usage of the client trust account and if you pay your fees from this account, you will be audited and it is grounds for disciplinary action.

The information provided in this article is general in nature; it serves to highlight specific sections of the Ohio Auction Law. Therefore, it is recommended that you consult a legal professional regarding any specific questions or concerns that you may have on this topic or regarding compliance with Chapter 4707 of the Ohio Revised Code or any Chapter of the Ohio Revised Code.