

Reserve vs. Absolute Auctions
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All too often I hear if a seller does not specifically place a reserve or minimum bid on an article or lot it is automatically an absolute auction. Does it shock you to hear me say, not necessarily? If it does, you are not in the minority. The auction contract, advertisements, and stated terms and conditions of the sale will determine the type of auction not the presence or absence of a stated reserve or minimum.

The Uniform Commercial Code (UCC) is a uniform law drafted by the National Conference of Commissioners on Uniform State Laws that was adopted in part by the State of Ohio in 1963. The UCC §2-328 was codified in R.C. §1302.41. R.C. §1302.41(C) states in part: "... In an auction with reserve the auctioneer may withdraw the goods at any time until he announces the completion of the sale. ...". Further, R.C. §1302.41(C) states that "such a sale [sale by auction] is with reserve unless the goods are in explicit terms put up without reserve." You might ask yourself, why is this important. It goes to the very heart of the difference between a reserve auction and an absolute auction. The provision, "all auctions are with reserve unless otherwise stated" is what allows a seller to avoid the unwanted sacrifice of their property. A reserve auction does not require that the seller state a reserve or minimum price on the articles or lots being sold.

For example: an auction is advertised as a public auction. The auctioneer is calling for bids on a brand new, never used, state of the art washer and dryer set worth \$1,500.00. The highest bid is \$35.00. In a reserve auction, the auctioneer can elect to pass or not sell the washer and dryer for such a low price. If the auction was an absolute auction, the auctioneer would have no choice but to sell the washer and dryer at a fraction of the value. As an agent of the seller, it is your fiduciary duty to act in the best interest of the client. Is it in the best interest of the client to sell the washer and dryer at a fraction of the value or is it in their best interest to pass or no sale the item? Depending on what type of auction is held, however, you may not have a choice in the matter. Therefore, it is important to keep in mind that protecting your client's best interests begins, first and foremost with counseling them on what type of auction to hold, reserve or absolute.

What makes an auction an absolute auction? An absolute auction is an auction where the seller explicitly waives the right to a reserve and the legal rights associated with conducting an auction with reserve. Under provisions of R.C. Chapter 4707, you must first contract with the seller to have an absolute auction. There are specific requirements for an absolute auction found within R.C. §4707.023 which you must meet. Further, the owner must have a bonafide intention to sell the property to the highest bidder regardless of the identity of the bidder and the amount of the bid. This means that once you open the bidding on a particular article or lot, you must sell the item to the highest bidder unless no bid is received within a reasonable time; no bid can be refused. R. C. §1302.41(C). Further, under R.C. §4707.22, you must advertise the auction explicitly as an absolute auction. If you are unsure of the provisions in R.C. §1302.41 and R.C. Chapter 4707 as it pertains to reserve and absolute auctions, these laws can be found in the Ohio Auctioneer Guide which can be found on the department's website at: www.ohioagriculture.gov/auction/. The department also recommends that you consult with your own legal counsel.

The Ohio Auctioneer Commission is seeking recommendations for future educational seminars. This is your opportunity to let them know what you would like to see presented. Please email your thoughts to auctioneer@agri.ohio.gov or fax to 614-728-6328.