

CHAPTER 480

AUCTIONEER BOARD

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Cross-reference: See definitions in s. 440.01.

480.01 Definitions. In this chapter:

(1) "Auction" means a sale transaction conducted by means of oral or written exchanges between an auctioneer and prospective purchasers of goods or real estate that consist of a series of invitations made by the auctioneer to the prospective purchasers for offers for the purchase of goods or real estate and that culminate in the acceptance by the auctioneer of the highest or most favorable offer made by one of the prospective purchasers.

(2) "Auction company" means a person who manages an auction or who has primary responsibility for handling sales proceeds, downpayments, earnest money deposits or other trust funds received by an auctioneer, the person's principal or any other person at or as a result of an auction.

(3) "Auction company representative" means:

(a) If the auction company is an individual, that individual.

(b) If the auction company is a partnership, association or corporation, any partner of the partnership, officer or director of the association or officer or director of the corporation.

(4) "Auctioneer" means an individual who engages in, or who by advertising or otherwise holds himself or herself out as being available to engage in, the calling for and the recognition and acceptance of offers for the purchase of goods or real estate at an auction.

(5) "Board" means the auctioneer board.

(6) "Registrant" means a person who is registered under this chapter.

History: 1993 a. 102.

480.02 Applicability. (1) This chapter applies after February 28, 1995.

(2) This chapter does not apply to any of the following:

(a) An auction conducted by or under the direction of an official of the United States or of this state or a county, city, village or town in this state.

(b) An auction required by a court order or judgment.

(c) A sale of goods or real estate required by law to be a sale by auction.

(d) An auction conducted by the owner of the goods or real estate for sale if the owner has held the goods or real estate for his or her personal use for at least one year immediately preceding the date of the auction.

(e) An auction conducted by or under the direction of a religious, fraternal or benevolent society, a school or a nonprofit organization.

(f) An auction conducted by or under the direction of a political organization or candidate if the proceeds of the auction will be used for political purposes.

(g) An auction in which the total appraised value of the goods or services for sale is less than \$500.

(h) Fur auctions and fur auctioneers licensed by the department of natural resources under ch. 29.

(i) Motor vehicle auction dealers licensed by the department of transportation under subch. VIII of ch. 218.

(j) A person, other than a licensee as defined in s. 452.01 (5), who conducts an auction, or manages or has primary responsibility for handling sales proceeds, downpayments, earnest money deposits or other trust funds received at or as a result of an auction, while lawfully practicing within the scope of a license, permit or certificate granted to that person by a state governmental agency other than the department.

History: 1993 a. 102.

480.04 General duties and powers of board. (1) In addition to the other duties and powers of the board under this chapter, the board shall advise the secretary on matters relating to auctioneers or auction companies or to the board.

(2) The board does not have rule-making authority.

History: 1993 a. 102.

480.06 Rules; review of rules. (1) Before submitting any proposed rules relating to auctioneers or auction companies or to the board to the legislative council staff under s. 227.15, the department shall submit the proposed rules to the board for comment. The board shall have 30 days to submit comments on the proposed rules to the secretary.

(2) When promulgating emergency rules under s. 227.24, the department shall provide a copy of the rules to the board prior to publication of the rules in the official state newspaper.

(3) The chairperson of the board, or his or her designee from the board, may cochair with the secretary, or the secretary's designee, any public hearing held by the department on proposed rules relating to auctioneers or auction companies or to the board.

(4) The department shall submit to the board a copy of the report required under s. 227.19 (2) on any proposed final rules relating to auctioneers or auction companies or to the board. The board may prepare a dissenting report stating its recommendations on the proposed final rules. Any dissenting report shall be prepared within 10 days from the date of receipt of the department's report, attached to the department's report and sent to the presiding officer of each house of the legislature and distributed under s. 227.19 (2). The department shall publish a statement to appear in the Wisconsin administrative register indicating that a dissenting report of the board has been submitted to the presiding officer of each house of the legislature.

(5) The department shall provide staff to assist the board in the review of administrative rules and preparation of comments or dissenting reports.

History: 1993 a. 102.

480.08 Registration. (1) REGISTRATION REQUIRED (a) No person may act as an auctioneer or use the title "auctioneer", "registered auctioneer", "certified auctioneer", "licensed auctioneer" or any similar title unless the person is registered as an auctioneer under this chapter.

(b) No person may act as an auction company unless the person is registered as an auction company or as an auctioneer under this chapter.

(2) AUCTIONEER REGISTRATION. The department shall register as an auctioneer an individual who is at least 18 years old and does all of the following:

- (a) Submits an application for registration as an auctioneer to the department on a form provided by the department.
- (b) Pays the fee specified in s. 440.05 (1).
- (c) Subject to ss. 111.321, 111.322 and 111.335, submits evidence satisfactory to the department that he or she does not have an arrest or conviction record.
- (d) Submits evidence satisfactory to the department that he or she holds a current permit issued under s. 77.52 (9).
- (e) Passes an examination conducted by the department to determine fitness as an auctioneer.

(2m) EXAMINATION NOT REQUIRED. Notwithstanding sub. (2) (e), the department shall register as an auctioneer under sub. (2) an individual who, not later than December 1, 1997, satisfies the requirements under sub. (2) (intro.) and (a) to (d); submits to the department a statement, signed by the individual, verifying that he or she has knowledge of the requirements for auctioneers under ss. 29.134, [95.70,] 402.328 and 406.108, subch. III of ch. 77, subch. VIII of ch. 218, this chapter, and all other state laws that include requirements for auctioneers; and submits evidence satisfactory to the department that he or she has done any of the following:

NOTE: Section 95.70 was repealed eff. 7-1-94 by 1993 Wis. Act 16.

(a) Been practicing as an auctioneer in this state for at least one year during the 2-year period immediately preceding the date on which the application is submitted, and has either conducted at least 2 auctions in this state or has had primary responsibility for handling the proceeds of at least 2 auctions in this state during the 2-year period immediately preceding the date on which the application is submitted.

(b) Had experience conducting auctions in this state or handling the proceeds of auctions in this state during the 5-year period immediately preceding the date on which the application is submitted that is substantially equivalent to the experience described in par. (a) in preparing the applicant to practice as an auctioneer in this state in a manner that does not adversely affect the public health, safety or welfare.

(3) AUCTION COMPANY REGISTRATION. The department shall register as an auction company a person who is not registered as an auctioneer under this chapter and does all of the following:

- (a) Submits an application for registration as an auction company to the department on a form provided by the department.
- (b) Pays the fee specified in s. 440.05 (1).
- (c) Subject to ss. 111.321, 111.322 and 111.335, submits evidence satisfactory to the department that the person does not have an arrest or conviction record and, if the person is a partnership, association or corporation, that no partner of the partnership, officer or director of the association or officer or director of the corporation has an arrest or conviction record.
- (d) Submits evidence satisfactory to the department that the person holds a current permit issued under s. 77.52 (9).

(4) ISSUANCE OF CERTIFICATE. The department shall issue a certificate of registration to each registrant.

(5) EXPIRATION AND RENEWAL. The renewal date and renewal fee for certificates granted under this chapter, other than temporary certificates granted under sub. (7), are specified under s. 440.08 (2) (a). Renewal applications shall include evidence satisfactory to the department that the applicant holds a current permit issued under s. 77.52 (9). A renewal application for an auctioneer certificate shall be accompanied by proof of completion of continuing education requirements under sub. (6).

(6) AUCTIONEER CONTINUING EDUCATION. The department may promulgate rules establishing requirements and procedures for registered auctioneers to complete continuing education programs or courses of study in order to qualify for renewal.

(7) TEMPORARY AUCTIONEER CERTIFICATE. (a) Upon application, the department shall register as an auctioneer and issue a temporary certificate of registration to an individual who satisfies the requirements under sub. (2) (intro.) and (a) to (d) and has submitted an application to take the next available examination for registration as an auctioneer under s. 480.10.

(b) A temporary certificate issued under this subsection shall be valid for a period designated by the department, not to exceed one year, and may not be renewed. An applicant for a temporary certificate shall pay the fee specified in s. 440.05 (6).

History: 1993 a. 102

480.10 Auctioneer examination. (1) The department shall conduct examinations for auctioneer registration at least semiannually at times and places determined by the department. The department shall provide public notice of each examination at least 60 days before the date of the examination.

(2) Examinations shall consist of written or oral tests, or both, requiring applicants to demonstrate minimum competency in services and subjects substantially related to conducting an auction.

(3) An individual is not eligible for examination unless the individual has satisfied the requirements for registration under s. 480.08 (2) (intro.) and (a) to (d) at least 30 days before the date of the examination.

(4) The department shall promulgate rules establishing standards for public notice of examinations and for acceptable examination performance by an applicant for registration as an auctioneer.

History: 1993 a. 102.

480.12 Reciprocity. (1) Upon application and payment of the fee specified in s. 440.05 (2), the department shall register as an auctioneer an individual who holds an auctioneer certificate in another state if the department determines that the requirements for obtaining the certificate in the other state are substantially equivalent to the requirements under s. 480.08 (2).

(2) The department may enter into reciprocal agreements with officials of other states for registering auctioneers and issue certificates to applicants who are registered in those states according to the terms of the reciprocal agreements.

History: 1993 a. 102.

480.14 Conduct of auctions. (1) No auctioneer may conduct an auction unless the auctioneer or the auction company that is managing the auction has entered into a written contract with each owner or consignor of goods or real estate that may be sold at the auction. The contract shall specify the terms and conditions upon which the auctioneer or auction company accepts the goods or real estate for sale.

(2) An auctioneer shall comply with all reasonable requests of each owner or consignor of goods or real estate that may be sold at an auction that is conducted by the auctioneer and shall conduct the auction in a manner that ensures that the highest or most favorable offer for the goods or real estate is accepted.

(3) Unless otherwise provided by the terms of a contract described under sub. (1), within 30 days after the sale of goods or real estate at an auction, the auctioneer who conducts the auction shall do all of the following:

(a) Provide to each owner or consignor of goods or real estate that was sold or attempted to be sold at the auction an accounting of all moneys due the owner or consignor.

(b) Pay to each owner or consignor of goods or real estate that was sold at the auction all moneys due the owner or consignor.

(4) An auctioneer shall comply with all requirements for auctioneers under ss. 402.328 and 406.108 and the rules promulgated under ss. 402.328 and 406.108.

History: 1993 a. 102.

480.16 Trust accounts. All downpayments, earnest money deposits or other trust funds received by an auctioneer or

auction company on behalf of the auctioneer's or auction company's principal or any other person shall be deposited in a common trust account maintained by the auctioneer or auction company for that purpose in a bank, savings and loan association or credit union which is authorized to do business in this state and is designated by the auctioneer or auction company pending the consummation or termination of the transaction, except that the money may be paid to one of the parties pursuant to an agreement between the parties. The name of the bank, savings and loan association or credit union shall at all times be registered with the department, along with a letter authorizing the department to examine and audit the trust account when the department determines that an examination or audit of the trust account is necessary.

History: 1993 a 102.

480.18 Maintenance of records by auctioneers.

(1) Unless a longer period of retention is required under sub. (2), for at least 2 years after an auctioneer conducts an auction, the auctioneer shall maintain complete and accurate records of the auction, including the name and address of each owner or consignor of goods or real estate that was sold or attempted to be sold at the auction, a description of the goods or real estate that was sold or attempted to be sold at the auction, the originals or true copies of the contracts described in s. 480.14 (1) and accounts of all moneys received and disbursed at or as a result of the auction.

(2) An auctioneer shall retain the records described in sub. (1) for at least 2 years after the termination of any litigation related to any goods or real estate that was sold or attempted to be sold at an auction conducted by the auctioneer.

(3) An auctioneer shall, upon reasonable notice, make the records described in sub. (1) available for inspection and copying by the department or the board.

History: 1993 a 102.

480.20 Advertisements of auctions. No person may advertise that an auction will be conducted unless the advertisement includes all of the following:

(1) The name of the auctioneer who will conduct the auction and the name of any auction company that is managing the auction.

(2) A statement that the auctioneer under sub. (1) is a "registered Wisconsin auctioneer".

History: 1993 a 102.

480.22 Auction consumer protection fund. (1) In this section, "consumer" means a person who has purchased or intends to purchase goods or real estate at an auction.

(2) If the department determines that the establishment of a consumer protection fund is necessary to protect consumers and reimburse consumers who claim losses resulting from the illegal, unprofessional or unethical conduct of auctioneers or auction companies, the department shall prepare a report that includes relevant data related to consumers and a recommendation to establish a consumer protection fund that is similar to the cemetery consumer protection fund described in s. 440.92 (8), 1991 stats., and shall submit the report to the legislature under s. 13.172 (2).

History: 1993 a 102, 491.

480.24 Disciplinary proceedings and actions.

(1) Subject to the rules promulgated under s. 440.03 (1), the board may make investigations or conduct hearings to determine whether a violation of this chapter or any rule promulgated under this chapter has occurred. The board may require a registrant or an auction company representative of an auction company that is a registrant to undergo and may consider the results of one or more

physical, mental or professional competency examinations if the board believes that the results of any of those examinations may be useful to the board in conducting its investigation.

(2) Subject to the rules promulgated under s. 440.03 (1), the board may reprimand a registrant or deny, limit, suspend or revoke a certificate under this chapter if it finds that the applicant or registrant or an auction company representative of an auction company that is an applicant or registrant has done any of the following:

(a) Made a material misstatement in an application for a certificate or renewal of a certificate.

(b) Engaged in conduct while practicing as an auctioneer or as an auction company which evidences a lack of knowledge or ability to apply professional principles or skills.

(c) Subject to ss. 111.321, 111.322 and 111.335, been arrested or convicted of an offense committed while registered under this chapter.

(d) Advertised in a manner which is false, deceptive or misleading.

(e) Advertised, practiced or attempted to practice as an auctioneer or as an auction company under another person's name.

(f) Allowed the registrant's name to be used by another person while the other person was practicing or attempting to practice as an auctioneer or as an auction company.

(g) Subject to ss. 111.321, 111.322 and 111.34, practiced as an auctioneer or as an auction company while the individual's ability to practice was impaired by alcohol or other drugs.

(h) Failed to renew or had suspended or revoked the person's permit issued under s. 77.52 (9).

(i) Failed to submit to a physical, mental or professional competency examination required under sub. (1) or (3) (a).

(j) Violated this chapter or any rule promulgated under this chapter.

(3) The board may, as a condition of removing a limitation on a certificate issued under this chapter or of reinstating a certificate that has been suspended or revoked under this chapter, do any of the following:

(a) Require the registrant or an auction company representative of an auction company that is a registrant to obtain minimum results specified by the board on one or more physical, mental or professional competency examinations if the board determines that obtaining the minimum results is related to correcting one or more of the bases upon which the limitation, suspension or revocation was imposed.

(b) Require the registrant to obtain insurance against loss, expense and liability resulting from errors and omissions or neglect in the performance of services as an auctioneer or as an auction company.

(c) Require the registrant to file with the department a bond that is furnished by a company authorized to do business in this state and is in an amount approved by the department.

History: 1993 a 102.

480.26 Penalties. (1) Any person who violates this chapter or any rule promulgated under this chapter may be fined not more than \$1,000 or imprisoned for not more than 6 months or both.

(2) In addition to or in lieu of the penalties under sub. (1) and the remedies under s. 480.24, any person who violates this chapter or any rule promulgated under this chapter may be required to forfeit not more than \$1,000 for each separate offense. Each day of continued violation constitutes a separate offense.

History: 1993 a 102.