

98-135 R/L 12/1/22 - AUCTIONEERS/
AUCTION COMPANIES

RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 98-135

AN ORDER to repeal RL 121.07 (1); to renumber RL 121.07 (2); to renumber and amend RL 125.11 and 125.12; to amend RL 121.04 (1) (c) 3., the Note following RL 122.02, 122.04, chapter RL 125 (title), 125.02, 125.05 (title), 125.06 (title), 125.07 (title), 125.08 (title) and 125.11 (title); to repeal and recreate RL 123.03 and 125.03; and to create RL 120.02 (12), a Note following 121.02 (2), 125.035, 125.08 (3) and (4), 125.11 (1), (2), (3) and (4) and 126.02 (11), (12) and (13), relating to the registration and regulation of auctioneers and auction companies.

Submitted by **DEPARTMENT OF REGULATION AND LICENSING**

09-04-98 RECEIVED BY LEGISLATIVE COUNCIL.

10-05-98 REPORT SENT TO AGENCY.

RS:GAA;jal;ksm

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

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CLEARINGHOUSE RULE 98-135

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

Section 480.20 (2), Stats., provides that an advertisement for an auction must include a statement that the auctioneer is a "registered Wisconsin auctioneer." Section RL 123.03 (2) provides that instead of using the term "registered Wisconsin auctioneer," the advertisement may use the abbreviation "RWA." What statutory authority exists for using an acronym?

2. Form, Style and Placement in Administrative Code

a. The headings to ss. RL 122.04, 123.03, 125.02, 125.025, 125.03, 125.035, 125.05, 125.06, 125.07, 125.08 and 125.12 should be written with an initial capital letter and in bold print, in accordance with the latest format of the Legislative Reference Bureau. [See s. 1.05 (2) (b), Manual.]

b. In s. RL 125.035, "is required to" should be replaced by "shall." [See s. 1.01 (2), Manual.]

c. In s. RL 125.035, "pursuant to" should be replaced by "under." [See s. 1.01 (9) (c), Manual.]

d. Following s. RL 125.08 (3) and (4), "notes" should be included explaining where the forms may be obtained. [See s. 1.09 (2), Manual.]

e. In s. RL 125.11 (2), the phrase "except in the case where" should be replaced by the word "unless."

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Section RL 122.02 provides that an applicant may not “violate the rules of conduct of the examination, or otherwise act dishonestly.” What are the rules of conduct? Are they written? Are they provided to the applicants? What is the meaning of “otherwise act dishonestly”? Also, does this prohibit dishonest conduct before, during and after the exam? The provision is vague.

b. Section RL 125.03 requires that an auctioneer or auction company, which is not required to maintain a trust account, “shall maintain a record, called an account summary sheet, which shows the receipts, deposits, expenses and disbursements as they affect each individual auction.” It is suggested that “a record, called” be deleted and “as they affect” be replaced by “for” or “of.” The sentence would then read:

An auctioneer or auction company that is not required to maintain a trust account shall maintain an account summary sheet which shows the receipts, deposits, expenses and disbursements for each individual auction.

This same change should be made in s. RL 125.11 (4).

c. Section RL 126.02 (11) prohibits “cheating on the registration or soliciting or knowingly disclosing registration examination content.” Is it intended that this provision prohibit a candidate for examination from soliciting, and a person who has taken the examination previously from disclosing, the general nature of the questions? Is it intended to prohibit only disclosure of specific questions? Is it intended to apply to all persons who might take the examination in the future or does it include disclosing registration examination content to members of the person’s family? The provision is vague.

d. Section RL 126.02 (12) prohibits “failing to post written notice at and prior to the commencement of an auction of the terms and conditions under which the registrant will accept payment by buyers.” It is suggested that following “at,” “and” be deleted and “the location where the auction is to be conducted” be inserted.

This change should also be made in s. RL 126.02 (13).

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF REGULATION
DEPARTMENT OF REGULATION : AND LICENSING ADOPTING RULES
AND LICENSING : (CLEARINGHOUSE RULE 98-)

PROPOSED ORDER

An order of the Department of Regulation and Licensing to *repeal* RL 121.07 (1); to *renumber* RL 121.07 (2); to *renumber and amend* RL 125.11 and 125.12; to *amend* RL 121.04 (1) (c) 3., the Note following RL 122.02, 122.04 (title) and 122.04, ch. RL 125 (title), 125.02, 125.05 (title), 125.06 (title), 125.07 (title), 125.08 (title), 125.11 (title); to *repeal and recreate* RL 123.03 and RL 125.03; and to *create* RL 120.02 (12), a Note following RL 121.02 (2), 125.035, 125.08 (3) and (4), 125.11 (1), (2), (3) and (4) and 126.02 (11), (12) and (13), relating to the registration and regulation of auctioneers and auction companies.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: ss. 227.11 (2) and 480.06, Stats.

Statutes interpreted: ss. 480.08, 480.10, 480.14, 480.16, 480.18, 480.20 and 480.24, Stats.

This proposed rule-making order of the Department of Regulation and Licensing primarily addresses three distinct areas respecting the registration and regulation of auctioneers and auction companies under Chapter 480, Stats., and Chapters RL 120 to 128. First, all current rules have been reviewed for the purpose of providing clarification and making technical modifications to increase their readability. Second, the advertising rules contained in Ch. RL 123, are modified to remove unnecessarily burdensome and costly requirements existing in the current provisions. Third, ch. RL 125 has been revised to set forth a required bookkeeping system for auctioneers and auction companies, whether or not they must maintain an auction trust account, in order to assure their ability to account for all auction proceeds as required under ss. 480.14 (3) and 480.18, Stats.

SECTION 1 moves the definition of "trade name" from s. RL 121.07 (1) to ch. RL 120, the chapter that contains terms generally applicable throughout the rules. Registrants are permitted to use a trade name in their advertising or practice under current s. RL 121.07, as long as it is submitted in writing to the department. As the definition is proposed to be placed in ch. RL 120, SECTION 4 repeals the definition in current s. RL 121.07 (1), and SECTION 5 will renumber s. RL 121.07 (2) accordingly.

SECTION 2 creates a Note following s. RL 121.02, to provide the address at which applications for registration may be obtained. It also informs potential registrants that otherwise qualified applicants will be provided with reasonable accommodations, consistent with the requirements of the Americans With Disabilities Act.

SECTION 3 makes a correction to s. RL 121.04 (1) (c) 3. to provide that an auctioneer must take and pass the registration examination in order to renew a registration which expired 5 or more years prior to the renewal application, rather than "retake" a "licensing" examination.

SECTION 6 creates a Note following s. RL 122.02 to provide the address at which examination applications may be obtained. It also informs examination applicants that candidates otherwise qualified to take the examination will be provided with reasonable accommodations, consistent with the requirements of the Americans With Disabilities Act.

SECTION 7 expands current s. RL 122.04, which prohibits the receipt of unauthorized assistance on the auctioneer examination, to additionally prohibit any form of cheating or dishonesty in taking the examination. SECTION 21 would create s. RL 126.02 (11) to make it unprofessional conduct for an individual granted registration to be subsequently found to have cheated on the examination, or to have disclosed the contents of the examination to others.

SECTION 8 repeals the current requirements in ch. RL 123, that the address, telephone number and state registration numbers of auctioneers and auction companies must be obtained in advertisements for a specific auction. It also would repeal the requirements that auction advertisements must set forth the terms and conditions for payment at the auction, as well as the amount of any buyer's premium or surcharge that may be charged at the auction. The proposal would also permit auctioneers to abbreviate the phrase "registered Wisconsin auctioneer" under the advertising requirement in s. 480.20 (2), Stats. As the alternative to using the precise phrase "registered Wisconsin auctioneer," the rule would permit an auctioneer to utilize the abbreviation "RWA" followed by the auctioneer's state registration number (e.g. "RWA #98765"). The department believes that the current advertising requirements in the rule are unduly burdensome and costly to registrants. It should be noted that SECTION 21 would require that the terms and conditions for payment and the amount of any buyer's premium or surcharge be posted in writing at the auction itself. } auth.

SECTION 9 would change the title of ch. RL 125 from "Trust Accounts" to "Maintenance of Records." The proposed modifications to the chapter relate to the bookkeeping system which must be maintained by all registrants, whether or not they are required to maintain an auction trust account.

SECTION 10 deletes the reference to "principal" in the definition of "trust funds" of s. RL 125.02, as it is unnecessary. A "principal" is already included in the phrase "any other person," but the current language may inappropriately suggest there is a distinction between the two for trust account purposes.

SECTION 11 describes the information to be provided on an "account summary sheet" which would be required of registrants who do not maintain an auction trust account specifying the general items to be included on an account summary sheet assures that registrants will be able to meet the statutory requirement in s. 480.14 (3), Stats., for providing an accounting to sellers of the auction proceeds, as well as the duty to keep "complete and accurate records of the auction" for a period of at least 2 years after the auction is conducted under s. 480.18, Stats.

SECTION 12 creates s. RL 125.035 to specifically state a registrant must maintain a trust account if the proceeds of an auction are not paid out within 24 hours after the auction. Although this requirement may be inferred from the definition of "trust funds" in s. RL 125.02, a specific statement to this effect will eliminate any confusion or inadvertent oversight of the requirement.

SECTIONS 13 through 16 amend current section titles to indicate that they are specifically applicable to auction trust accounts.

SECTION 17 would require that registrants notify the department within 10 days after any change in an auction trust account name or number, depository institution name change, or that an auction trust account has been closed.

SECTIONS 18 and 19 would amend and create provisions relating to a trust account bookkeeping system to assure that adequate records are created and maintained to enable the registrant, department and others to determine whether trust funds have been appropriately received, handled and disbursed by the registrant.

SECTION 20 expands the current authorization to use a computerized system to maintain trust account records to cover all records required under ch. RL 125.

SECTION 21 creates three additional causes for disciplinary action against a registrant, as discussed in this analysis under SECTIONS 7 and 8.

TEXT OF RULE

SECTION 1. RL 120.02 (12) is created to read:

RL 120.02 (12) "Trade name" means a name other than the name appearing on an auctioneer's or auction company's registration certificate, under which an auctioneer or an auction company advertises or does business.

SECTION 2. A Note following RL 121.02 (2) is created to read:

Note: Applications may be obtained from the department located at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708. An otherwise qualified applicant shall be provided with reasonable accommodations.

SECTION 3. RL 121.04 (1) (c) 3. is amended to read:

RL 121.04 (1) (c) 3. The applicant has ~~retaken~~ taken and passed the ~~licensing registration~~ examination within one year prior to the date of the application for renewal of registration.

SECTION 4. RL 121.07 (1) is repealed.

SECTION 5. 121.07 (2) is renumbered RL 121.07.

SECTION 6. The Note following RL 122.02 is amended to read:

Note: Applications may be obtained from the department located at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708. An otherwise qualified applicant shall be provided with reasonable accommodations.

SECTION 7. RL 122.04 (title) and 122.04 are amended to read:

RL 122.04 (title) CHEATING ON EXAMINATION. An applicant may not give or receive unauthorized assistance during the examination, violate the rules of conduct of the examination, or otherwise act dishonestly. The action taken by the department ~~when unauthorized assistance occurs~~ shall be related to the seriousness of the offense. These actions may include withholding the score of the applicant, entering a failing grade for the applicant, and suspending the ability of the applicant to sit for the next scheduled examination after the examination in which the unauthorized assistance occurred.

What rules of conduct?

1.05(2) (b)

SECTION 8. RL 123.03 is repealed and recreated to read:

RL 123.03 CONTENTS OF ADVERTISING. All advertisements that an auction will be conducted shall contain the following information:

during the course here

(1) The name or trade name of an auctioneer responsible for the auction conducted pursuant to the contract required under s. 480.14 (1), Stats., and the name or trade name of any auction company that is managing the auction.

(2) A statement that the auctioneer is a 'registered Wisconsin auctioneer' or the abbreviation 'RWA' and the state registration number of the auctioneer.

auth?

SECTION 9. Chapter RL 125 (title) is amended to read:

CHAPTER RL 125 (title)

TRUST ACCOUNTS
MAINTENANCE OF RECORDS

SECTION 10. RL 125.02 is amended to read:

RL 125.02 DEFINITION. In this chapter, "trust funds" means cash, checks, share drafts, drafts or notes received by an auctioneer or an auction company on behalf of a ~~principal or~~ any other person while acting as an auctioneer or auction company for an auction of goods. "Trust funds" does not include proceeds received by an auctioneer or an auction company on behalf of a ~~principal or~~ any other person pursuant to an auction in which the written contract under s. 480.14, Stats., requires the registrant to pay the owner or consignor within 24 hours after the auction.

SECTION 11. RL 125.03 is repealed and recreated to read:

RL 125.03 ACCOUNT SUMMARY SHEET FOR REGISTRANTS NOT MAINTAINING A TRUST ACCOUNT. An auctioneer or auction company which is not required to maintain a trust account shall maintain a record, called an account summary sheet, which shows the receipts, deposits, expenses and disbursements as they affect each individual auction.

Note: This provision applies only to registrants not required to maintain a trust account. Registrants for whom a trust account is required must use the trust account bookkeeping system described in s. RL 125.11.

SECTION 12. RL 125.035 is created to read:

RL 125.035 TRUST ACCOUNT REQUIRED. An auctioneer or auction company ^{shall} ~~is~~ required to maintain a trust account when the registrant receives and holds auction funds which are not disbursed to the owner or consignor ^{be in den} pursuant to a written contract under s. 480.14, Stats., within 24 hours after the auction.

SECTION 13. RL 125.05 (title) is amended to read:

RL 125.05 (title) TIME OF TRUST ACCOUNT DEPOSIT.

SECTION 14. RL 125.06 (title) is amended to read:

RL 125.06 (title) OPENING AND CLOSING TRUST ACCOUNTS.

SECTION 15. RL 125.07 (title) is amended to read:

RL 125.07 (title) TRUST ACCOUNT DESIGNATION.

SECTION 16. RL 125.08 (title) is amended to read:

RL 125.08 (title) NOTIFICATION OF THE DEPARTMENT REGARDING TRUST ACCOUNT.

SECTION 17. RL 125.08 (3) and (4) are created to read:

RL 125.08 (3) An auctioneer or auction company shall notify the department no later than 10 days after a change has been made to an auction trust account name, auction trust account number or depository institution name. The notification shall be provided on a form prepared by the department.

NOTE where form can be obtained
(4) An auctioneer or auction company shall notify the department no later than 10 days after an auction trust account has been closed. This notification shall be made in writing to the department.

NOTE — where form can be obtained
SECTION 18. RL 125.11 is renumbered RL 125.12 (intro.) and RL 125.12 (title) and (intro.) are amended to read

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RL 125.12 (title) TRUST ACCOUNT BOOKKEEPING SYSTEM. (intro.) An auctioneer or an auction company required to maintain a trust account shall maintain a bookkeeping system that enables the auctioneer or auction company to adequately account for all trust funds in a trust account, to maintain an accurate and sufficient balance in the account and to account for all trust funds received from specified buyers and paid to specified sellers for specified purchases. The bookkeeping system shall consist of at least the following:

SECTION 19. RL 125.11 (1) to (4) are created to read:

RL 125.11 (1) CHECK REGISTER. An auctioneer or an auction company shall maintain a record regarding a trust account, called a check register, which shall show the date, the payee, the number of the check, share draft or draft and the amount.

(2) BANK RECONCILIATION. An auctioneer or an auction company shall reconcile the trust account in writing each month (except in the case where) there has been no activity during the month. The written reconciliation shall include all of the following: *unless*

- (a) The ending bank statement balance.
- (b) The date and amounts of the deposits in transit.
- (c) The check number and amounts of outstanding checks.
- (d) The resulting reconciled bank statement ending balance.

(3) VALIDATION. The auctioneer or auction company shall review the reconciled bank statement ending balance, the account summary sheets described in sub. (4), and the check register to ensure that all of the records are accurate and in agreement as of the date the trust account statement has been reconciled.

(4) ACCOUNT SUMMARY SHEET. An auctioneer or auction company shall maintain a record, called an account summary sheet, which shows the receipts, deposits, expenses and disbursements as they affect each individual auction.

SECTION 20. RL 125.12 is renumbered RL 125.025 and RL 125.025 (intro.) is amended to read:

RL 125.025 USE OF COMPUTERS. (intro.) An auctioneer or an auction company may maintain ~~trust account~~ any records required by this chapter in a computerized system, provided that:

SECTION 21. RL 126.02 (11), (12) and (13) are created to read:

RL 126.02 (11) Cheating on the registration examination or soliciting or knowingly disclosing registration examination content.

(12) Failing to post written notice at and prior to the commencement of an auction of the terms and conditions under which the registrant will accept payment by buyers.

(13) If a buyer's premium or surcharge is a condition of sale, failing to post written notice at and prior to the commencement of an auction of the percentage or other amount of the buyer's premium or surcharge.

(END OF TEXT OF RULE)

The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register pursuant to s. 227.22 (2) (intro.), Stats.

Dated _____

Agency _____

Marlene A. Cummings, Secretary
Department of Regulation and Licensing

FISCAL ESTIMATE

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.
2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

INITIAL REGULATORY FLEXIBILITY ANALYSIS

These proposed rules will be reviewed by the department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

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9/3/98