

Chapter SPS 125

MAINTENANCE OF RECORDS

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Note: Chapter RL 125 was renumbered chapter SPS 125 under s. 13.92 (4) (b) 1., Stats., Register November 2011 No. 671.

SPS 125.01 Authority. The rules in this chapter are adopted pursuant to ss. 227.11 (2), 480.06, 480.14, 480.16 and 480.18, Stats.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

SPS 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 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 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.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95; am. Register, July, 1999, No. 523, eff. 8-1-99.

SPS 125.025 Use of computers. An auctioneer or an auction company may maintain any records required by this chapter in a computerized system, provided that:

(1) A backup copy of the bookkeeping records is made on any day on which entries are made in the computerized bookkeeping system. The backup copy shall be made on a disk or other medium which is separate and distinct from that on which the source documents reside.

(2) All records which are not maintained as written paper records are capable of being immediately converted to written paper records and immediately made available without charge to the department for the purposes of department audit or investigation.

History: Renum. from RL 125.12 and am. (intro.), Register, July, 1999, No. 523, eff. 8-1-99.

SPS 125.03 Account summary sheet for registrants not maintaining a trust account. 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 of 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. SPS 125.12.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95; r. and recr., Register, July, 1999, No. 523, eff. 8-1-99.

SPS 125.035 Trust account required. An auctioneer or auction company shall maintain a trust account when the registrant receives and holds auction funds which are not disbursed to the owner or consignor under a written contract under s. 480.14, Stats., within 24 hours after the auction.

History: Cr. Register, July, 1999, No. 523, eff. 8-1-99.

SPS 125.04 Type of account. An auctioneer or auction company may place trust funds in an interest-bearing or non-in-

terest-bearing account, provided that none of the interest inures to the benefit of the auctioneer or auction company.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

SPS 125.05 Time of trust account deposit. An auctioneer or auction company shall deposit trust funds in a trust account within 48 hours after receipt by the auctioneer or auction company.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

SPS 125.06 Opening and closing trust accounts.

(1) The department may not require an auctioneer or auction company to open a trust account before the auctioneer or auction company receives trust funds which must be deposited, unless the department finds, in a specific case, that an earlier opening of an account is needed in order to assure compliance with this chapter.

(2) An auctioneer or auction company may close a trust account when no trust funds remain in the auctioneer’s or auction company’s possession.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

SPS 125.07 Trust account designation. An auctioneer or auction company shall:

(1) Include the words “trust account” in the name of the trust account maintained by the auctioneer or auction company.

(2) Imprint the name of the auctioneer or auction company on the trust account checks, share drafts or drafts.

(3) Designate the account with the name appearing on the auctioneer’s or auction company’s registration certificate or with a trade name submitted to the department under s. SPS 121.07.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95; correction in (3) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.

SPS 125.08 Notification of the department regarding trust account. (1) An auctioneer or an auction company shall provide the department with the name and number of every trust account maintained by the auctioneer or auction company and the name of the depository institution in which the auctioneer or auction company holds each trust account. The auctioneer or auction company shall provide this notification to the department on a form prepared by the department no later than 10 days after opening a trust account. The auctioneer or auction company shall authorize representatives of the department to examine and audit all of the auctioneer’s or auction company’s trust accounts.

(2) An auctioneer or an auction company shall obtain the certification of every depository institution in which the auctioneer or auction company maintains a trust account, in which the depository institution attests to the existence of the account and consents to the examination and audit of the account by a duly authorized representative of the department.

Note: A Consent to Examine and Audit Auctioneer Trust Account form may be obtained from the department located at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

(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 deposi-

tory institution name. The notification shall be provided on a form prepared by the department.

Note: Forms may be obtained from the department at 1400 East Washington Avenue, P. O. Box 8935, Madison, Wisconsin 53708.

(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 written correspondence to the department.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95; cr. (3) and (4), Register, July, 1999, No. 523, eff. 8-1-99.

SPS 125.09 Withdrawal of trust funds. An auctioneer or auction company shall withdraw funds to reimburse the auctioneer or auction company for expenses incurred and commissions and fees earned by the auctioneer or auction company within the 30 days specified in s. 480.14 (3), Stats., or as otherwise provided by the terms of a contract.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

SPS 125.10 Commingling prohibited. (1) Except as provided in subs. (2) and (3), an auctioneer or an auction company may not commingle the auctioneer's or auction company's personal or company funds which are not trust funds in a trust account maintained pursuant to this chapter.

(2) An auctioneer or auction company may place personal or company funds in a trust account under the following conditions:

(a) Funds equal to the amount of any checks received by the auctioneer or auction company on behalf of an owner or consignor when such funds are deposited by the auctioneer to cover potential or actual "non-sufficient funds" checks received from purchasers.

(b) Funds sufficient to cover service charges relating to the trust account.

(3) An auctioneer or an auction company shall deposit additional personal or other funds in the trust account within 10 busi-

ness days following receipt of a statement or other notification from a depository institution that the trust account is overdrawn.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

SPS 125.12 Trust account bookkeeping system. 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:

(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 unless there has been no activity during the month. The written reconciliation shall include all of the following:

(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 regarding a trust account, called an account summary sheet, which shows the receipts, deposits, expenses and disbursements as they affect each individual auction.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95; renum. from RL 125.11, am. (intro.), cr. (1) to (4), Register, July, 1999, No. 523, eff. 8-1-99.