

Auction Business Trust Accounts

This publication is intended to provide general information and is not a substitute for legal advice.

Auction sales businesses (auction businesses) have certain responsibilities under Alberta's *Consumer Protection Act* and Public Auctions Regulation. The business, consignors and buyers of goods could all be affected if a business has not acted according to the legislation.

WHAT RESPONSIBILITY DOES AN AUCTION BUSINESS HAVE FOR MONEY IT RECEIVES AT AN AUCTION SALE?

An auction business is responsible for all money it receives for goods sold by public auction. An auction business must deposit all money received from the sale of these goods into a trust account.

If a consignor intended to sell goods by public auction, but the goods were sold by another method, money from the sale of those goods must also go into the business's trust account.

These deposits must be made within three days after the end of the sale. If an auction business receives money after the sale is over, that money must be deposited within three days after the business gets the money.

An auction business operating in Alberta must keep the trust account in a financial institution operating in this province. The financial institution can be a chartered

bank, a trust company, a credit union or an Alberta Treasury Branch.

IF AN AUCTION BUSINESS CHARGES A "BUYER'S PREMIUM," DOES THAT MONEY GO INTO THE TRUST ACCOUNT?

A "buyer's premium" is a fee added to the high bid to determine the total contract price paid by the buyer. It is part of the money received from the sale of goods, so it must go into the business's trust account.

Within 21 days of the sale, the buyer's premium must be transferred into the business's general account. This process is similar to the transfer of fees and commissions.

HOW DOES AN AUCTION BUSINESS CALCULATE WHAT MONEY GOES TO THE BUSINESS AND WHAT MONEY GOES TO THE CONSIGNOR?

To calculate the consignor's share: add up the business's out-of-pocket expenses (e.g., title searches, fuel, cleaning, transport on behalf of the consignor) plus the business's commission for selling the goods. Subtract this total from the purchase price. The remaining amount goes to the consignor.

Fees and commissions should be described in the consignment contract. If an auction business charges a buyer's premium, the full premium goes to the auction business.

Example:

A consigned travel trailer sells at a purchase price of \$15,000.

- The auction business collects \$15,750 from the bidder. This represents the purchase price of \$15,000 plus GST of \$750 (five per cent).
- The auction business puts the \$15,750 into its trust account within three days after the sale.
- The auction business calculates 10 per cent of the purchase price (i.e., \$1,500 - as its commission).
- The auction business conducted a title search on behalf of the consignor, to make sure there were no liens against the travel trailer. That search cost \$50.

Within 21 days of the sale, the auction business writes the following cheques:

- \$13,450 to the consignor (purchase price of \$15,000 less \$1,500 commission and \$50 expense).
- \$750, deposited to the business's tax account. (Eventually, this money will be paid, along with other GST owing, to Canada Revenue Agency).

- \$1,550 to transfer the remaining amount to the business's general account.

The balance in the trust account from this auction sale would now be zero.

IF AN AUCTION BUSINESS WISHES TO PAY CONSIGNORS RIGHT AFTER THE SALE, WHAT CAN THE AUCTION BUSINESS DO?

An auction business may issue a cheque to the consignor from the business's general account for the consignor's share of the purchase price. The auction business would calculate the amount owing to the consignor the same way as if paying from the trust account.

When the auction business receives the money from the buyer, the money would still be deposited to the trust account. Then, the auction business would transfer an amount equal to the consignor's share into the business's general account to re-pay the business for the amount it paid to the consignor immediately after the sale.

Early payment may increase the risk to auction businesses regarding their liability for unpaid liens on consigned goods. (See heading: What if there is a lien on the goods sold at auction?)

Fees and commissions should be described in the consignment contract.

WHEN DOES THE AUCTION BUSINESS GET ITS FEES AND COMMISSIONS?

The auction business must transfer all fees, commissions or other money owed to the business from the trust account to the business's general account within 21 days of the date of the sale. This money can be transferred sooner than 21 days, if the consignor – and any lien holder – has been paid.

WHAT IF THERE IS A LIEN ON THE GOODS SOLD AT AUCTION?

For goods with a market value over \$1000, the auction business identifies liens and payment obligations through a statutory declaration completed by the consignor. An auction business may also consider completing a title search on items offered for sale. These procedures help to minimize the risk of the auction business being liable for unpaid liens on goods sold at a public auction.

The auction business must issue a cheque to the lien holder from the trust account for the amount of the lien. The auction business must take reasonable steps to make sure that the lien holder receives the amount owing for the lien.

After paying the lien holder, the auction business subtracts GST, out-of-pocket expenses and the business's commission

for selling the goods. The consignor gets the balance.

WHAT RECORDS DOES AN AUCTION BUSINESS NEED TO KEEP?

An auction business must keep trust records for all money it receives for goods consigned for sale at public auction. An auction business must also keep records for any payments made to a consignor from the business's general account. (See heading: If an auction business wishes to pay consignors right after the sale ...)

An auction business also must keep the following records:

- all statutory declarations for goods with a value over \$1000
- all statements provided to lien holders setting out the amount received for goods that are subject to a lien.

HOW LONG MUST A BUSINESS KEEP THE RECORDS?

An auction business must keep the records for a period of at least three years following the sale date and must make these records available for inspection in Alberta.

An auction business must keep trust records ...

WHAT KIND OF INFORMATION MUST BE RECORDED?

The trust records must include

- the municipal address or legal description of the location where the sale was held
- the date on which the sale was held
- the name and address of each consignor
- a description of the goods sold (detailed enough to identify each of the goods)
- the name and address of the purchaser, or the bid number of the purchaser, for any goods that sold for \$500 or more
- the amount paid for each of the goods sold
- the fee or commission payable to the auction sales business for each of the goods sold
- the amount of the taxes paid for each of the goods sold
- the amount to be paid to each consignor and to each lien holder

The records for any payments from the business's general account to a consignor must contain the same information as the trust records.

FOR MORE INFORMATION

Consumer Contact Centre

Edmonton: (780) 427-4088

Toll-free in Alberta: 1-877-427-4088

www.servicealberta.ca

Queen's Printer Bookstore

You may purchase Acts and regulations from the Queen's Printer Bookstore. These are also free for you to download in the "pdf" or "html" formats.

10611 - 98 Avenue

Edmonton, Alberta T5K 2P7

Edmonton: 780-427-4952

Toll-free in Alberta: 310-0000 then

780-427-4952

www.qp.alberta.ca