

BUSINESS INFOSHEET



Auction Business Trust Accounts

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

Auction businesses have certain responsibilities under Alberta's Fair Trading Act and Public Auctions Regulation. The business, the consigner and buyers of the goods could all be affected if a business has not acted according to the legislation. For example, consigners could lose the value of goods they offered for sale if trust account requirements are not met.

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

A public auction sale business (auction business) is responsible for all money it receives for the goods sold at each auction.

An auction business must deposit all of the money received from the sale of goods into a trust account. This deposit 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 must keep the trust account in a financial institution operating in Alberta. The financial institution can be a chartered bank, a trust company, a credit union or an Alberta Treasury Branch.

WHAT MONEY GOES INTO A TRUST ACCOUNT?

Only money received from the sale of goods by public auctions goes into the trust account. Any other money should be held in the auction business's general account.

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

To calculate the consigner's share, first add up the business's out-of-pocket expenses (e.g., title searches,

fuel, cleaning, transport done on behalf of the consigner) plus the business's commission for selling the goods. Then subtract this total from the purchase price. The remaining amount goes to the consigner.

Fees and commissions should be described in the consignment contract.

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 consigner, 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 consigner (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 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 would be transferred into the business’s general account. This process is similar to the transfer of fees and commissions.

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

If any goods have a lien against them, 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.

An auction business gathers information about any liens by using a statutory declaration and doing a title search.

After paying the lien holder, the auction business subtracts GST, out-of-pocket expenses and the business’s commission for selling the goods. The consigner gets the balance.

WHAT RECORDS DOES AN AUCTION BUSINESS NEED TO KEEP?

An auction business must keep trust records for all the money it receives at its public auction sales.

HOW LONG MUST A BUSINESS KEEP THE RECORDS?

The records must be kept for a period of at least three years following the sale date. The auction business must make these records available for inspection in Alberta.

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 consigner
- 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 consigner and to each lien holder

FOR MORE INFORMATION**Consumer Contact Centre**

Edmonton: 780-427-4088

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

Or visit the Service Alberta website:

<http://www.servicealberta.ca/ConsumerTipsheets.cfm>

The Public Auctions Regulation is available at:

Queen’s Printer Bookstore

Edmonton: 780-427-4952

or the Queen’s Printer website:

www.qp.gov.ab.ca