

New York City Department of Consumer Affairs

Notice of Adoption

Notice of Adoption to add new rules relating to auctioneers and auction houses to subchapter M of chapter 2 of title 6 of the Rules of the City of New York. First, the Department is adding a new rule to clarify that auction houses must receive an auction house license to engage in the business of auctioneering and must use only licensed auctioneers to conduct auctions. Second, the Department is adding a new rule to require that auctioneers must notify a winning bidder within seven days of the auction if the auctioneer opts to cancel the sale of the lot or reoffer and resell the lot.

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN the Commissioner of Consumer Affairs by Sections 1043 and 2203(f) of the New York City Charter and Sections 20-104(b) and 20-278 of the New York City Administrative Code, and in accordance with the requirements of Section 1043 of the New York City Charter, that the Department adds Sections 2-120, 2-122(m), and 2-122(n) to Title 6 of the Rules of the City of New York.

This rule was proposed and published on May 3, 2019. A public hearing was held on June 3, 2019.

Statement of Basis and Purpose of Rule

The Department of Consumer Affairs (“DCA” or “Department”) is adding new rules relating to auctioneers and auction houses to subchapter M of chapter 2 of title 6 of the Rules of the City of New York.

First, the Department is adding a new rule to clarify that auction houses must receive an auction house license to engage in the business of auctioneering. Section 20-278 of the New York City Administrative Code states that it is “unlawful for any person to engage in the business of auctioneer without a license therefor.” “Person” is defined broadly in the Administrative Code to include both businesses and individuals. *See* NYC Admin. Code § 20-102. Auction houses, which are businesses that conduct auctions and employ auctioneers, are required to be licensed under this provision. Accordingly, the Department has long issued two separate licenses: one for auctioneers and one for auction houses. Many sections of the Department’s rules already reference licensed auction houses separate from auctioneers. *See* 6 R.C.N.Y. § 2-121(f); 6 R.C.N.Y. § 2-123(c)(1), (c)(2). This new rule clarifies the requirements of the Administrative Code and longstanding Department practice that auction houses must be licensed. It also clarifies that an auction house must use only licensed auctioneers to conduct auctions.

Second, the Department is adding a new rule to require that auctioneers must notify a winning bidder within seven days of the auction if the auctioneer opts to cancel the sale of the lot or reoffer and resell the lot. Currently, many auctioneers and auction houses have significant discretion under their own auction terms and conditions to cancel sales at any time because of potential errors or disputes related to bidding. Such cancelations create significant confusion for buyers. To prevent abuse and ensure finality with respect to auction sales, the new rule establishes a deadline by which an auctioneer or auction house must identify an error or dispute and notify the successful buyer of its decision to cancel the sale or reoffer and resell the lot.

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Rule Amendment

Section 1. Subchapter M of Chapter 2 of Title 6 of the Rules of the City of New York is amended by adding a new section 2-120 to read as follows:

§ 2-120 Auction Houses.

(a) It shall be unlawful for any organization to engage in auctioneering without an auction house license. An organization that holds an auction house license does not need an auctioneer license.

(b) Auction house license applicants and auction house licensees must comply with this subchapter and subchapter 13 of chapter 2 of title 20 of the Administrative Code, as applicable.

(c) The attainment of an auction house license by an organization does not satisfy the obligation of any individual to obtain and hold an auctioneer license or the obligation of an auction house to use only licensed auctioneers to conduct auctions.

§ 2. Section 1-122 of Title 6 of the Rules of the City of New York is amended by adding new subdivisions (m) and (n) to read as follows:

§ 2-122 Requirements and Obligations of Licensees.

(m) In the case of a bidding error or a dispute related to bidding raised in a claim to the auctioneer by a bidder registered to bid in the auction, the auctioneer must notify the successful bidder no later than by the end of the seventh calendar day following the date of the auction if the auctioneer opts to cancel the sale of the lot or reoffer and resell the lot. If the auctioneer does not notify the successful bidder of its decision by the end of the seventh calendar day following the date of the auction, the auctioneer shall be prohibited from canceling the sale of the lot and from reoffering and reselling the lot as a result of any bidding error or bidding dispute, unless required by law or court order, or with the written consent of the successful bidder.

(n) An auction house must use only licensed auctioneers to conduct auctions.