

1730

2009-2010 Regular Sessions

I N A S S E M B L Y

January 9, 2009

Introduced by M. of A. BRODSKY -- read once and referred to the Committee on Tourism, Arts and Sports Development

AN ACT to amend the general business law, in relation to auction requirements

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative intent. The legislature declares that the  
2 following provisions of law are in addition to other provisions of law  
3 and regulations applicable to auctions.

4 S 2. The general business law is amended by adding a new section 29 to  
5 read as follows:

6 S 29. AUCTION REQUIREMENTS. 1. THE AUCTIONEER WILL BE HELD RESPONSIB-  
7 BLE FOR THE TRUTH OF ANY STATEMENT CONTAINED IN ANY CATALOGUE, ADVER-  
8 TISEMENT, ANNOUNCEMENT, PRESS RELEASE OR OTHER PUBLIC STATEMENT MADE BY  
9 THE AUCTIONEER RELATING TO ANY AUCTION.

10 2. A. NO PERSONAL PROPERTY MAY BE AUCTIONED EXCEPT PURSUANT TO A WRIT-  
11 TEN CONTRACT BETWEEN THE CONSIGNOR OR HIS OR HER AGENT OR AUTHORIZED  
12 REPRESENTATIVE AND THE AUCTIONEER, UNLESS AUCTIONED PURSUANT TO AN ORDER  
13 OF A COURT OF COMPETENT JURISDICTION.

14 B. EVERY CONTRACT REQUIRED PURSUANT TO PARAGRAPH A OF THIS SUBDIVISION  
15 MUST CONTAIN THE FOLLOWING PROVISIONS:

16 (I) ALL FEES, COMMISSIONS AND CHARGES TO BE PAID BY THE CONSIGNOR TO  
17 THE AUCTIONEER OR HIS OR HER AGENTS, PRINCIPALS, EMPLOYEES, EMPLOYERS OR  
18 ASSIGNS SHALL:

19 (1) TO THE EXTENT PRACTICABLE, BE ITEMIZED AND SPECIFIED AS TO AMOUNT  
20 (WHICH MAY BE STATED AS A PERCENTAGE OF THE RESERVE PRICE OR ANY FINAL  
21 BID), AND

22 (2) IF SUCH ITEMIZATION AND SPECIFICATION AS TO AMOUNT IS NOT PRACTI-  
23 CABLE, BE DESCRIBED WITH SUFFICIENT PARTICULARITY TO INFORM THE CONSIG-  
24 NOR OF THE NATURE OF THE SERVICES FOR WHICH SUCH FEES, COMMISSIONS AND  
25 CHARGES WILL BE IMPOSED.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 (II) THAT AS OF THE DATE OF THE AUCTION THE CONSIGNOR WARRANTS THAT HE  
2 OR SHE HAS COMPLETE AND LAWFUL RIGHT, TITLE AND INTEREST IN THE PROPERTY  
3 AUCTIONED, AND THAT THE CONSIGNOR SHALL INDEMNIFY THE AUCTIONEER, HIS OR  
4 HER AGENTS, PRINCIPALS, EMPLOYEES, EMPLOYERS OR ASSIGNS IN THE EVENT OF  
5 ANY DEFECT IN TITLE, AND THAT AN INTENDED BENEFICIARY OF THIS WARRANTY  
6 IS THE ULTIMATE PURCHASER AT AUCTION.

7 C. WHERE ARTICLES ARE REFERRED TO BY CATALOGUE OR ADVERTISEMENT AS  
8 HAVING BEEN OBTAINED FROM ANY SPECIFIC PERSON, PLACE OR SOURCE, SUCH  
9 ARTICLES MUST BE SEPARATELY ENUMERATED AND IDENTIFIED.

10 D. IF AN AUCTIONEER OR AUCTION HOUSE HAS ANY INTEREST, DIRECT OR INDI-  
11 RECT, IN AN ARTICLE, INCLUDING A GUARANTEED MINIMUM, OTHER THAN THE  
12 SELLING COMMISSION, THE FACT SUCH INTEREST EXISTS MUST BE DISCLOSED IN  
13 CONNECTION WITH ANY DESCRIPTION OF THE ARTICLE OR ARTICLES IN THE CATA-  
14 LOGUE OR ANY OTHER PRINTED MATERIAL PUBLISHED OR DISTRIBUTED IN RELATION  
15 TO THE SALE. SUCH NOTICE MAY BE DENOTED BY A PROMINENT SYMBOL OR LETTER  
16 WHICH WILL REFER THE READER TO AN EXPLANATION OF THE NATURE OF THE  
17 INTEREST THE SYMBOL OR LETTER DENOTES. IN ADDITION, PRIOR TO THE  
18 COMMENCEMENT OF THE AUCTION, THE AUCTIONEER SHALL ORALLY ANNOUNCE THAT  
19 THOSE LOTS IN WHICH THE AUCTIONEER HAS AN INTEREST COVERED BY THIS  
20 SUBDIVISION HAVE BEEN DESIGNATED IN THE AUCTION CATALOGUE AND THE SYMBOL  
21 USED TO DENOTE SUCH INTEREST.

22 E. WHERE A CONSIGNOR IS TO RECEIVE A REBATE COMMISSION IN WHOLE OR IN  
23 PART, OR WHERE HE OR SHE WILL BE PERMITTED TO BID UPON AND TO BUY BACK  
24 HIS OR HER OWN ARTICLE AT THE SALE, DISCLOSURE OF SUCH A CONDITION MUST  
25 BE MADE IN CONNECTION WITH ANY DESCRIPTION OF THE ITEM OR ITEMS SO  
26 AFFECTED IN THE CATALOGUE OR ANY OTHER PRINTED MATERIAL PUBLISHED OR  
27 DISTRIBUTED IN RELATION TO THE SALE. THE EXISTENCE OF SUCH A CONDITION  
28 MAY BE DENOTED BY A SYMBOL OR LETTER WHICH WILL REFER THE READER TO AN  
29 EXPLANATION OF THE NATURE OF THE INTEREST THE SYMBOL OR LETTER DENOTES.

30 F. (I) IF THE CONSIGNOR HAS FIXED A PRICE BELOW WHICH AN ARTICLE WILL  
31 NOT BE SOLD, THE "RESERVE PRICE", THE FACT THAT THE LOT IS BEING SOLD  
32 SUBJECT TO RESERVE MUST BE DISCLOSED IN CONNECTION WITH THE DESCRIPTION  
33 OF ANY LOT SO AFFECTED IN THE CATALOGUE OR ANY OTHER PRINTED MATERIAL  
34 PUBLISHED OR DISTRIBUTED IN RELATION TO THE SALE. THE EXISTENCE OF A  
35 RESERVE PRICE MAY BE DENOTED BY A SYMBOL OR LETTER WHICH WILL REFER THE  
36 READER TO AN EXPLANATION OF RESERVE PRICE. FOR THE PURPOSE OF PARAGRAPHS  
37 (D), (E) AND (F) OF THIS SUBDIVISION, ADVERTISEMENTS IN NEWSPAPERS OR  
38 OTHER PERIODICALS SHALL NOT CONSTITUTE PRINTED MATERIAL. WHERE NO PRINT-  
39 ED MATERIAL IS PROVIDED IN CONNECTION WITH THE AUCTION AN AUCTIONEER  
40 SHALL HAVE AVAILABLE DURING ANY ADVERTISED INSPECTION PERIOD INFORMATION  
41 AS TO WHETHER A PARTICULAR LOT IS TO BE SOLD SUBJECT TO RESERVE AND  
42 SHALL ANNOUNCE BEFORE HE OR SHE COMMENCES THE AUCTION THAT SUCH INFORMA-  
43 TION IS AVAILABLE UPON REQUEST.

44 (II) WHEN A LOT IS NOT SUBJECT TO A RESERVE PRICE, THE AUCTIONEER  
45 SHALL NOT INDICATE IN ANY MANNER THAT THE LOT IS SUBJECT TO A RESERVE  
46 PRICE.

47 G. IN THE EVENT AN AUCTIONEER EXTENDS A LOAN TO A PURCHASER, THE  
48 AUCTIONEER SHALL DISCLOSE IN A GENERAL ANNOUNCEMENT AT THE COMMENCEMENT  
49 OF THE AUCTION THAT BIDDERS MAY BE PARTICIPATING IN THE SALE WHO HAVE  
50 BEEN OFFERED A LOAN BY THE AUCTIONEER. IN ADDITION, THIS DISCLOSURE MUST  
51 ALSO BE MADE ON SIGNS PROMINENTLY DISPLAYED IN THE AUCTION ROOM AND AT  
52 THE ENTRANCE THERETO. SUCH SIGNS SHALL INCLUDE THE FOLLOWING DISCLOSURE,  
53 OR CONVEY SUBSTANTIALLY THE SAME MESSAGE:

54 "BIDDERS MAY BE PARTICIPATING IN THE SALE WHO HAVE BEEN OFFERED A LOAN  
55 BY THE AUCTIONEER."

56 H. THE AUCTIONEER SHALL:

1 (I) PROVIDE INFORMATION AS TO THE NUMBER OF JEWELS, APPROXIMATE NUMBER  
2 OF CARATS, NUMBER OF POINTS (DIAMOND), PRINCIPAL METAL CONTENT, AND  
3 MANUFACTURER'S NAME, IF KNOWN, FOR ALL ARTICLES OF JEWELRY, INCLUDING  
4 WATCHES. THE INFORMATION REQUIRED BY THIS PARAGRAPH SHALL BE PROVIDED  
5 EITHER IN THE CATALOGUE DESCRIPTIONS OF SUCH ITEMS OR BY ATTACHING TO  
6 EACH SUCH ITEM A TAG OR MARKING CONTAINING THE INFORMATION.

7 (II) ISSUE OR CAUSE TO BE ISSUED TO EACH PURCHASER AN INVOICE WHICH  
8 SHALL CONTAIN ALL THE FOLLOWING INFORMATION:

9 (1) THE AUCTIONEER'S NAME, BUSINESS ADDRESS AND LICENSE NUMBER;  
10 (2) THE NAME AND ADDRESS OF THE AUCTIONEER'S EMPLOYER OR PRINCIPAL;  
11 (3) THE DATE OF SALE;  
12 (4) THE LOT NUMBER, DESCRIPTION, QUANTITY AND SELLING PRICE OF EACH  
13 LOT;  
14 (5) THE TOTAL AMOUNT OF PURCHASE WITH A SEPARATE STATEMENT OF SALES  
15 TAX;  
16 (6) ALL DEPOSITS MADE AGAINST THE PURCHASE PRICE.

17 (III) ADVERTISE EACH AUCTION SALE AT LEAST ONCE IN THE SEVEN DAY PERI-  
18 OD IMMEDIATELY PRECEDING THE AUCTION.

19 (IV) NOTIFY THE PERSON WHOSE PROPERTY IS BEING AUCTIONED (AND ANY  
20 OTHER PERSON ENTITLED TO BE NOTIFIED ACCORDING TO LAW) AS TO THE DATE,  
21 PLACE AND TIME OF SALE.

22 (V) PERMIT (PRIOR TO THE START OF THE AUCTION) PROSPECTIVE PURCHASERS  
23 TO INSPECT EACH AND EVERY ARTICLE TO BE OFFERED FOR SALE.

24 (VI) FURNISH TO ANY BUYER, CONSIGNOR OR OWNER OF AN ARTICLE, UPON  
25 REQUEST, INFORMATION AS TO THE WHEREABOUTS OF THAT ARTICLE THAT COMES  
26 INTO HIS OR HER POSSESSION OR THAT IS SOLD OR OFFERED FOR SALE BY HIM OR  
27 HER.

28 (VII) SEND CHECKS FOR THE NET AMOUNT RECEIVED ON ALL SALES TO PERSONS  
29 ENTITLED TO THE PROCEEDS THEREOF WITHIN FOURTEEN DAYS OF DATE OF SALE  
30 (EXCEPT AS OTHERWISE AGREED IN WRITING OR OTHERWISE PROVIDED BY LAW)  
31 TOGETHER WITH A COMPLETE DETAILED STATEMENT INCLUDING LOT NUMBER, QUAN-  
32 TITY, DESCRIPTION AND SELLING PRICE OF EACH LOT; TOTAL AMOUNT RECEIVED  
33 ON SALE; AND DISBURSEMENTS LISTING COMMISSION, COST OF ADVERTISEMENT,  
34 LABOR, CHARGES AND ALLOWANCES, AND SUNDRY EXPENSES.

35 (VIII) WHEN AN AUCTIONEER HAS A NUMBER OF THE SAME KIND OF ARTICLES TO  
36 BE SOLD AND INTENDS TO DISPOSE OF EACH OF THEM AT THE AMOUNT AT WHICH  
37 THE FIRST IS SOLD, HE OR SHE SHALL MAKE AN ANNOUNCEMENT TO THAT EFFECT  
38 PRIOR TO OPENING THE SALE OF THE FIRST ARTICLE.

39 I. IF AN AUCTIONEER MAKES LOANS OR ADVANCES MONEY TO CONSIGNORS OR  
40 PROSPECTIVE PURCHASERS, THIS FACT MUST BE CONSPICUOUSLY DISCLOSED IN THE  
41 AUCTIONEER'S CATALOGUE OR PRINTED MATERIAL. IF THE AUCTIONEER DOES NOT  
42 PROVIDE ANY SUCH PRINTED MATERIAL, HE OR SHE SHALL MAKE THE DISCLOSURE,  
43 EITHER BY CONSPICUOUSLY POSTING A SIGN, OR IN ANOTHER SIMILARLY CONSPIC-  
44 UOUS MANNER, AT THE TIME OF ANY ADVERTISED INSPECTION PERIODS PRIOR TO  
45 THE AUCTIONS. FOR THE PURPOSE OF THIS PARAGRAPH ADVERTISEMENTS IN NEWS-  
46 PAPERS OR OTHER PERIODICALS SHALL NOT CONSTITUTE PRINTED MATERIAL.

47 J. EXCEPT TO IMPLEMENT A RESERVE PRICE, AND SUBJECT THE REQUIREMENTS  
48 OF PARAGRAPH B OF SUBDIVISION THREE OF THIS SECTION, NO AUCTIONEER, HIS  
49 OR HER CONSIGNOR, EMPLOYEE, EMPLOYER, ASSIGNEE OR AGENT FOR ANY OF THEM  
50 MAY BID FOR HIS OR HER OWN ACCOUNT AT ANY AUCTION IF ANY OF THEM SHALL  
51 HAVE ACCESS TO INFORMATION NOT OTHERWISE AVAILABLE TO THE PUBLIC REGARD-  
52 ING RESERVES, VALUE OR OTHER MATERIAL FACTS RELATING TO THE ARTICLES  
53 WHICH ARE THE SUBJECT OF THE AUCTION, UNLESS THEIR STATUS AS A PERSON  
54 WITH INSIDE INFORMATION AND INTENDED PARTICIPATION IS DISCLOSED IN THE  
55 AUCTIONEER'S CATALOGUE AND ANY PRINTED MATERIAL AND ON SIGNS POSTED AT  
56 THE AUCTION.

1 K. WHEREVER AN ESTIMATE OR ESTIMATED VALUE OF AN ITEM OR LOT IS  
2 PUBLISHED IN A CATALOGUE OR ANY OTHER PRINTED MATERIAL PUBLISHED OR  
3 DISTRIBUTED IN RELATION TO AN AUCTION SALE, A GENERAL DESCRIPTION OF THE  
4 ESTIMATE AND ITS MEANING AND FUNCTION MUST BE INCLUDED IN SUCH PRINTED  
5 MATERIAL. FOR THE PURPOSE OF THIS PARAGRAPH, ADVERTISEMENTS IN NEWSPA-  
6 PERS OR OTHER PERIODICALS SHALL NOT CONSTITUTE PRINTED MATERIAL. WHERE  
7 NO PRINTED MATERIAL IS PROVIDED, AND AN ESTIMATE OR ESTIMATED VALUE IS  
8 ANNOUNCED OR DISSEMINATED IN ANY MANNER, A GENERAL DESCRIPTION OF THE  
9 ESTIMATE AND ITS MEANING AND FUNCTION MUST BE AVAILABLE FOR DISTRIBUTION  
10 AND ITS AVAILABILITY MUST BE ANNOUNCED AT THE COMMENCEMENT OF THE  
11 AUCTION.

12 L. IN ANY ADVERTISEMENT INDICATING AN AUCTION SALE DUE TO A BUSINESS'  
13 LOSS OF LEASE OR LIQUIDATION, THE AUCTIONEER MUST INCLUDE THE NAME OF  
14 THE CONSIGNOR OR BUSINESS AUTHORIZING THE AUCTION. IN ANY SALE ADVER-  
15 TISED AS PURSUANT TO A SECURITY AGREEMENT, THE NAME OF THE DEBTOR SHALL  
16 BE INDICATED CONSPICUOUSLY.

17 3. A. IF THE RESERVE PRICE IS NOT BID, THE AUCTIONEER MAY WITHDRAW A  
18 LOT FROM SALE. AT THE TIME OF SUCH WITHDRAWAL, AND BEFORE BIDDING ON  
19 ANOTHER LOT BEGINS, THE AUCTIONEER SHALL ANNOUNCE THAT THE WITHDRAWN LOT  
20 HAS BEEN "PASSED", "WITHDRAWN", "RETURNED TO OWNER" OR "BOUGHT-IN".

21 B. BEFORE BIDDING ON ANY LOT HAS REACHED ITS RESERVE PRICE NO AUCTIO-  
22 NEER MAY MAKE OR PLACE CONSECUTIVE OR SUCCESSIVE BIDS, OR PLACE BIDS IN  
23 RESPONSE TO BIDS FROM OTHERS, ON BEHALF OF THE CONSIGNOR, UNLESS THE  
24 FACT THAT THE AUCTIONEER WILL OR MAY BID IN SUCH A MANNER IS CLEARLY AND  
25 CONSPICUOUSLY DISCLOSED IN ANY CATALOGUE AND ANY OTHER PRINTED MATERIAL  
26 PUBLISHED OR DISTRIBUTED IN CONNECTION WITH THE SALE. FOR THE PURPOSES  
27 OF THIS PARAGRAPH ADVERTISEMENTS IN NEWSPAPERS OR OTHER PERIODICALS  
28 SHALL NOT CONSTITUTE PRINTED MATERIAL. THIS DISCLOSURE MUST ALSO BE MADE  
29 ON SIGNS PROMINENTLY DISPLAYED IN THE AUCTION ROOM AND AT THE ENTRANCE  
30 THERETO, AND MUST BE ANNOUNCED BY THE AUCTIONEER IMMEDIATELY PRIOR TO  
31 THE COMMENCEMENT OF ANY AUCTION.

32 THE SIGN REQUIRED BY THIS PARAGRAPH MUST BE AT LEAST TWELVE INCHES BY  
33 EIGHTEEN INCHES IN DIMENSION WITH LETTERS AT LEAST ONE INCH HIGH, AND  
34 MUST READ AS FOLLOWS, OR CONVEY A SUBSTANTIALLY SIMILAR DISCLOSURE:

35 THE AUCTIONEER MAY OPEN BIDDING ON ANY LOT BY PLACING A BID ON BEHALF  
36 OF THE SELLER. THE AUCTIONEER MAY FURTHER BID ON BEHALF OF THE SELLER,  
37 UP TO THE AMOUNT OF THE RESERVE, BY PLACING SUCCESSIVE OR CONSECUTIVE  
38 BIDS FOR A LOT, OR BY PLACING BIDS IN RESPONSE TO OTHER BIDDERS.

39 C. AFTER BIDDING HAS REACHED THE RESERVE PRICE OF A LOT:

40 (I) THE AUCTIONEER MAY NOT BID ON BEHALF OF THE CONSIGNOR OR THE  
41 AUCTION HOUSE; AND

42 (II) THE AUCTIONEER MAY ONLY ACCEPT BIDS FROM PERSONS OTHER THAN THE  
43 CONSIGNOR OR THE AUCTION HOUSE EXCEPT ABSENTEE TELEPHONE, ORDER OR OTHER  
44 AGENT'S BIDS;

45 (III) THIS PARAGRAPH SHALL NOT APPLY TO AUCTION SALES CONDUCTED PURSU-  
46 ANT TO AN ORDER OF A COURT OF COMPETENT JURISDICTION, INCLUDING AN ORDER  
47 OF A BANKRUPTCY JUDGE OR TRUSTEE, OR A SALE OF SECURED PROPERTY PURSUANT  
48 TO THE UNIFORM COMMERCIAL CODE, OR THE SALE OF PROPERTY WHICH IS SUBJECT  
49 TO A LIEN OR ASSIGNMENT PURSUANT TO THE LAWS OF THE STATE OF NEW YORK.

50 D. IN NO EVENT SHALL THE RESERVE PRICE FOR ANY LOT EXCEED THE MINIMUM  
51 ESTIMATED VALUE OF THE LOT AS PUBLISHED IN ANY CATALOGUE OR OTHER PRINT-  
52 ED MATERIAL DISTRIBUTED BY THE AUCTIONEER.

53 4. A. AN AUCTIONEER MAY NOT DISCLAIM WARRANTY OF TITLE OF ANY ITEM  
54 SOLD AT AUCTION. THE AUCTIONEER SHALL REIMBURSE ANY PURCHASER IN AN  
55 AMOUNT EQUAL TO THE SUCCESSFUL BID AT AUCTION PLUS ANY BUYER'S COMMIS-

1 SION PAID IN THE EVENT IT IS DETERMINED THAT THE PURCHASER HAS NOT  
2 ACQUIRED TRANSFERABLE TITLE TO THE ITEM.

3 B. AT THE AUCTION SALE PREMISES ONLY EXTERIOR SIGNS MAY BE DISPLAYED  
4 ADVERTISING THE AUCTION SALE BUT THE SAME SHALL NOT BE EXCESSIVE IN  
5 SIZE.

6 C. AN AUCTIONEER MAY NOT:

7 (I) OFFER MORE THAN ONE ARTICLE FOR SALE AT ANY ONE TIME UNLESS THE  
8 COMBINING OF ARTICLES OR LOTS IS SO INDICATED PRIOR TO THE INITIAL BID.

9 (II) REPRESENT AN ARTICLE TO BE GUARANTEED BY THE MANUFACTURER OR THE  
10 OWNER UNLESS A MANUFACTURER'S OR OWNER'S GUARANTEE ACCOMPANIES THE ARTI-  
11 CLE.

12 (III) OFFER AN ARTICLE CONTAINED IN A CARTON, PACKAGE OR OTHER  
13 CONTAINER COMMONLY KNOWN AS A BLIND ARTICLE UNLESS PRIOR TO THE OFFER IT  
14 IS ANNOUNCED THAT THE HIGHEST BIDDER MAY REJECT THE ARTICLE IF NOT  
15 SATISFACTORY TO HIM OR HER. THIS PROVISION DOES NOT REFER TO AN AUCTION  
16 OF ARTICLES IN BULK WHERE A SAMPLE IS DISPLAYED AND BALANCE OF ARTICLES  
17 ARE REPRESENTED TO CONFORM TO THE SAMPLE.

18 (IV) ACCEPT AS PAYMENT OR EXCHANGE ANY ARTICLE PREVIOUSLY KNOCKED DOWN  
19 OR SOLD TO A SUCCESSFUL BIDDER. THE ARTICLE KNOCKED DOWN OR SOLD MUST BE  
20 DELIVERED TO THE BIDDER OR, IF THE AUCTIONEER IS WILLING AND AT THE  
21 BIDDER'S ELECTION, THE PURCHASE PRICE REFUNDED IN FULL. NO OTHER ARTICLE  
22 MAY BE OFFERED TO SAID BIDDER AS A SUBSTITUTE OR REPLACEMENT. SUCH  
23 REFUND SHALL TAKE PLACE WITHIN A REASONABLE TIME OR MAY BE APPLIED AS  
24 PART PAYMENT OR PAYMENT FOR ANY OTHER ARTICLE PURCHASED AT AUCTION BY  
25 THE SAME BIDDER.

26 5. THE PROVISIONS OF THIS SECTION SHALL BE ENFORCED BY THE COUNTY  
27 OFFICER CHARGED WITH ENFORCEMENT OF CONSUMER PROTECTION WITHIN SUCH  
28 COUNTY, EXCEPT THAT IN THE CITY OF NEW YORK, BY THE COMMISSIONER OF  
29 CONSUMER AFFAIRS OF SUCH CITY.

30 S 3. This act shall take effect on the sixtieth day after it shall  
31 have become a law.