

SYNOPSIS OF PROPOSED REVISIONS TO THE
GEORGIA AUCTIONEERS COMMISSION RULES,
CHAPTER 55-10, "ABSOLUTE AUCTION," RULE
55-10-.01, "ABSOLUTE AUCTION.AMENDED"

Rule 55-10-.01 is repealed and a new rule of the same number is proposed for adoption.

Purpose: To tighten the definition of an absolute auction.

Main Features: Provides further clarification of when an absolute auction may be advertised.

DIFFERENCES BETWEEN THE EXISTING RULE AND THE
PROPOSED AMENDMENTS TO THE
GEORGIA AUCTIONEERS COMMISSION RULES FOR
ABSOLUTE AUCTION. AMENDED 55-10-.01

[Note: underlined text is proposed to be added; lined-through text is proposed to be deleted.]

55-10-.01 Absolute Auction

~~(1) No auction may be advertised, promoted, or announced as absolute or as an absolute auction unless all items sold or offered for sale at the auction are conveyed to the high bidder without reservation and without any competing bids of any type by the owner or an agent of the owner of the property.~~

~~(2) If some items at an auction are sold or offered for sale as absolute and some are sold or offered for sale with reserve, then any advertisements, promotions, or announcements either must not use the words "absolute," "absolute auction," or similar words, or must clearly specify that some items are to be sold at absolute and some items are to be sold with reserve. Further, with regards to such an auction, any advertisement, promotion, or announcement which uses the term "absolute" or similar term must also use with equal prominence the terms "with reserve" or "with reservation."~~

55-10-.01 Absolute auction

(1) No auction shall be advertised as "absolute" nor shall any advertising contain the words "absolute auction" or the word "absolute" or words with similar meaning nor shall any licensee offer or sell any property at absolute auction unless:

(a) There are no liens or encumbrances on the property, except current tax obligations, easements, or restrictions of record, in favor of any person, firm, or corporation other than the seller, or unless each and every holder of each and every lien and encumbrance, by execution of the auction listing contract, or otherwise furnishing to the auctioneer written evidence of a binding commitment therefor, shall have agreed to the unqualified acceptance of the highest bid for the property, without regard to the amount of the highest bid or the identity of the high bidder; or, alternatively, that a financially responsible person, firm, or corporation, by execution of the auction listing contract or by

otherwise furnishing to the auctioneer written evidence of a binding commitment therefor, shall have absolutely guaranteed the forthwith and complete discharge and satisfaction of any and all liens and encumbrances immediately after the sale or at the closing, without regard to the amount of the highest bid received, or the identity of the high bidder; and

(b) There is the bona fide intention at the time of the advertising and at the time of the auction sale, to transfer ownership of the property, regardless of the amount of the highest and last bid, to the high bidder, that intent existing without reliance on any agreement that any particular bid or bid level must be made or be reached, below which level the property would not be transferred to the high bidder; and

(c) The auction listing contract contains a binding requirement that the sale be conducted without reserve, by specific inclusion of an acknowledgment by the seller that the seller, or anyone acting upon behalf of the seller, shall not bid at the absolute auction, or otherwise participate in the bidding process.

(2) Compliance with subsection (1) of this section shall not prohibit:

(a) A secured party or other lien holder who is not the seller from bidding at an absolute auction sale, providing that such bidding does not constitute, nor is it tantamount to the direct or indirect establishment or agreement to the establishment of a reserve price on the property by the seller or by the auctioneer, or by anyone aiding or assisting, or acting upon behalf of, the seller or the auctioneer; or

(b) The inclusion of nonmisleading advertising of certain property to be sold at "absolute auction" and the nonmisleading advertising of certain property to be sold at auction with reserve, within the same advertisement, or for sale at the same date and place, providing that advertisement shall make clearly apparent through equal or appropriate emphasis, which property is being sold by each method.

(3) Any auction sale is, without requirement of announcement at any time, presumed to be with reserve unless the property are in explicit terms put up at absolute auction. An auction without reserve means an absolute auction. An auction with reserve means the property may be put up subject to the seller's confirmation or subject to a certain reserve price.

(4) (a) Except as provided in subsection (2) of this section, the seller may not bid at an absolute auction, nor may anyone bid upon his behalf. No licensee shall knowingly receive such a bid by or on behalf of the seller at an absolute auction.

(b) Bids may be made by the seller, or upon the seller's behalf, at any auction with

reserve, provided that full disclosure has been made that liberty for such bidding is retained. No licensee shall knowingly receive such a bid in the absence of full disclosure.

(c) There shall be no requirement at a with reserve sale that the reserve be announced when it is attained.

O.C.G.A. §§ 43-1-19, 43-1-24, 43-1-25, 43-6-1, and 43-6-18.