

## **CONSUMER PROTECTION ACT**

This is a new Act that is mandatory in all sales and is therefore equally applicable in sales in terms of the High Court and The Magistrates Court Acts and due to its requirements sheriffs sales are subject to various additional implications when the requirements of this Act is applied. This has become mandatory and shall be implemented.

Amongst other, the sheriff is required to draw up and display a proper Rules of Auction.

### **RULES OF AUCTION**

#### **PUBLIC AUCTION**

#### **CONDUCTED BY THE SHERIFF OF [ NAME AND APPOINTMENT ]**

1.

The envisaged auction sale will take place as per notice of sale in execution on **(date)** at **(time)** at **(place)**. The sale in execution will commence at the above mentioned time and will not be delayed to enable any specific person or other persons in general to take part in the sale in execution.

2.

The auction will be conducted by either or **(NAME OF THE SHERIFF), (+ name), (+ name)**, the first mentioned the duly appointed sheriff for **( JURISDICTION )** in terms of **section 2 of the Sheriff Act 90 of 1986**, as amended, or the duly appointed deputies .

3.

**Section 45(2) of the Consumer Protection Act states:**

"... (2) When goods one put up for sale by auction in lots, each lot is, unless there is evidence to the contrary, regarded to the subject of a separate transaction."

4.

A person attending an auction to bid, must register as a bidder and comply with the requirements of;

The **Consumer Protection Act 68 of 2008**, as amended

The **Financial Intelligence Centre Act 2001 (FICA)\*** in respect of the establishment and verification of identity.

The further requirements for registration as a bidder.

Conditions of sale.

A person attending the auction to bid on behalf of another entity, must produce a letter of authority, expressly authorising him/her to bid as such. If a person will be bidding on behalf of a company, the letter of authority must appear on the letterhead of the company and must be accompanied by a certified copy of the resolution authorising him/her to do so. Both the bidder and the mandator must comply with

## GENERAL NOTIFICATION TO ALL CONSUMERS

In order to further comply the sheriff should make available, display or announce further Information related to the auction such as :

### GENERAL NOTIFICATION

This is a sale in execution pursuant to a judgment obtained in the above court  
Rules of this auction is available 24 hours foregoing the sale at the office  
of the [name of the sheriff and address ] and is subject to :

1. Registration as a buyer, subject to certain conditions, is required in terms of the **Consumer Protection Act 68 of 2008**
2. Fica requirements: proof of identity & address particulars
3. Payment of registration monies and compliance of the registration conditions
4. All other conditions of sale imposed by the sheriff in terms of relevant legislation
5. The Sheriff or his deputy [name ] will conduct the sale [auction]
6. Advertising costs at current publication tariffs & sale costs according court rules will apply

## REGISTRATION OF BIDDERS

It is further required that every buyer should be properly registered, and comply with the requirements of [FICA] and this register should be available for inspection and should contain the following:

### REGISTRATION CONDITIONS

1. A prospective buyer is by virtue of the **Consumer Protective Act 68 of 2008**, as amended, compelled to register as a buyer according to its guidelines. (Reg 26(2))
2. A prospective bidder must comply with the requirements of **Financial Intelligence Centre Act 38 of 2001 (FICA)**, as amended. (Reg 26(2))
3. Registration as buyer enables a prospective buyer to bid at an auction.
4. By registering as buyer, the prospective buyer confirms that he / she has familiarized him / herself fully with the applicable rules of the auction and conditions of sale of the property to be offered for sale.
  1. The following essential information should also be noted :-
  2. The bid shall be knocked down to the highest accepted bidder who shall be the purchaser;
  3. at the knockdown of a bid, the risk of the goods purchased, rests in the bidder;
  4. Failing immediate payment, the property will summarily be re-auctioned;
  5. Payment is made strictly by way of cash, bank guaranteed cheque or immediate electronic transfer (with proof of payment). Bank charges will be levied on payments other than bank guaranteed cheque ;
  6. Proprietary right is reserved and will only pass to the purchaser after receipt of the full purchase price;
  7. The purchaser shall be held liable for wasted costs and damages failing to comply with the conditions of sale, and the registration fee [see Par 6] will be set off to secure possible damages if any
  8. A R10, 000.00 registration fee [ fixed property sales ] is payable and conditionally refundable after conclusion of the sale, or, after complying with all the conditions of sale in the event of a successful bid, which ever is applicable.
9. If a bid has not been awarded to a prospective buyer, the registration fee is refundable, only after conclusion of the auction.

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SIGNATURE

**NB: The above noted examples is an indication of the additional requirements of the CPA and should be complied with at all auctions and should be available or on displayed at the auction to any potential purchaser**



# CONSUMER PROTECTION ACT REQUIREMENTS FOR REGISTRATION SHERIFFS PROFESSION

## FICA COMPLIANCE

- 1.1 Identity Document (CERTIFIED COPY).
- 1.2 If married in community of property -marriage certificate and spouse's Identity Document (CERTIFIED COPY) :OR
- 1.3 If unmarried,please advise;
- 1.4 Income tax Number for yourself and spouse;
- 1.5 Any **ONE** of the undermentioned documents provided that they specify the purchaser's **NAME** and physical **residential** address (NOT A POSTAL ADDRESS)
  - > Rates and taxes or utilities (e.g water,electricity account)(**less than three months old**); or
  - > Notification of residential address from the S A Department of Home Affairs;or
  - > Pay Slip / salary advice (**less than 3 months old**); or
  - > Telkom account (**less than 3 months old**); or
  - > Banks statement (**less than 3 months old**); or
  - > Mortgage Statement (**less than 6 months old**); or
  - > SARS tax return,IRP5 (**less than one year old**); or
  - > Valid television licence documentation(**less than 3 months old**).

## COMPANY DOCUMENTS

- 1.1 CM1 -Certificate of Incorporation (CERTIFIED COPY)
  - 1.2 CM2 -Memorandum of Association (CERTIFIED COPY)
  - 1.3 CM22 -Notice of Registered Office (CERTIFIED COPY)
  - 1.4 CM29-Contents of Register of Directors,Auditors and officers (CERTIFIED COPY)
  - 1.5 CM46-Certificate to commence business (CERTIFIED COPY);
  - 1.6 Tax reference number;
  - 1.7 Copy of Vat Registration Number (CERTIFIED COPY)
  - 1.8 Utility Bill or Telephone account or Bank Statement or any such document which reflects the **COMPANY NAME AND PHYSICAL BUSINESS ADDRESS** of the company
2. **DIRECTORS** (we require all the of this for **ALL** of the Directors)
- 2.1 Identity Document (CERTIFIED COPY)
  - 2.2 If married in community of property – marriage certificate ; or  
If married out of community of property- marriage certificate and ANC; or  
If unmarried,please advise;
  - 2.3 Income Tax Number;
  - 2.4 Any **one** of the documents as per item 2 to 4 above

## CPA Rules of Auction - Sheriffs Profession

<https://www.fic.gov.za/siteContentPage.aspx?id=14>

### CONSUMER PROTECTION ACT 68 OF 2008 as amended : THE SHERIFFS ROLE IN COMPLYING

#### SHERIFFS PROFESSION.:

The following information is a requirement for sheriffs when complying with the CPA.

It must be noted that should a sheriff not comply with the provisions of the Act you can be held liable for damages .

The Notice of sale must comply with specific requirements. You are now required to inform all attorneys to make the following adjustments to the sales notice;

1. This sale is a sale in execution pursuant to a judgement obtained in the above honourable court.  
(note in terms of the CPA the buyers must be informed of the reason for the auction).
2. The Rules of the auction is available 24 hours before the auction and can be inspected at the office of the Sheriff of the Court for  
\_\_\_\_\_ (type name and address of sheriff).
3. Registration as a buyer is a pre-requisite subject to specific conditions, inter alia :
  - a). In accordance to the Consumer Protection Act 68 of 2008.  
(<http://www.info.gov.za/view/downloadfileAction?id=9961>)
  - b). FICA-legislation : requirement proof of ID and residential address
  - c). Payment of registration of R10000.00 in cash for Immovable property and R(set an amount ) for movable property.
  - d). Registration conditions

State that the office of the Sheriff will conduct the auctions insert names of the Sheriff and /or his/her assistant.

This information must appear on all sales notice in order to comply with CPA.

## HOW DO YOU COMPLY WITH THE REQUIREMENTS

The following information is important :

1. The sales notice and advertisements must comply with specific requirements;
2. Rules of the auction must be made available for inspection 24 hrs before the auction;
3. The reason for the sale in execution must be disclosed at the start of the auction;
4. Buyers must register prior to the start of the auction, in accordance with the requirements and proper record of this must be kept;
5. A bidder may, prior to the bid being knocked down on him/her, withdraw his/her bid;
6. The Sheriff/Auctioneer, must at the conclusion of the auction, formally announce the end of the auction;
7. At the conclusion of the sale the vendu roll must be signed by the Sheriff/Auctioneer and he/she must certify that the auction has been conducted in accordance with all the relevant laws, rules and regulations and rules of the auction;
8. Records of the auctions must be kept for at least 3 years;

These are the relevant documents that every Sheriff must have in place prior to the start of the auction:

1. Rules of the Auction
2. Notice of Sale (with recommended amendments)
3. Registration conditions AND Bidders buying Card
4. Record of the registered buyer/bidders
5. Conditions of the Sale (As agreed with all banks)
6. Vendue roll (this is a requirement of the CPA and the Magistrate's and High Court Act)