

# ARTS

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Jan Ambrose summarises the information contained in the new RICS guidance note

# Selling personal property at auction



# A

team of experts has contributed to the second edition of this guidance note: Alice Farren-Bradley (Art Recovery

Group) is technical author and the working group comprises Paul Davidson (Bonhams), Alistair Morris, Rupert Toovey (Rupert Toovey Antiques & Fine Art Valuations Ltd), Wei Jiang (Shenyang University), with contributions from Paul Britton (Paul Britton Art Surveyor and Valuer) and Alan Fausel (Bonhams).

## Before the sale

Auctioneers are reminded not to offer property that they are not competent to sell, to have the appropriate insurance and to undertake due diligence. Sellers should be fully aware of the auctioneer's conditions of business.

Auctioneers must ensure that the venue is suitable, there are no covenants forbidding its use for conducting an auction, the room size is adequate, and the premises comply with health and safety and fire regulations. Some local authorities have additional requirements.

Sale property must be kept secure and properly insured, and there must be

satisfactory parking and access to and from the venue at viewing times, on sale days and for the removal of property. There are additional requirements for country house sales.

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**RICS members' accounts rules state that clients' money must be kept separate from other money in a designated client account**

The auctioneer must ensure that there is no prohibition against holding an auction at off-site premises, the hirer has no objection to the venue being open to the public and the permitted size of the room will accommodate the anticipated number of bidders. The venue must comply with fire and health and safety regulations; the auctioneer must ensure that the insurance cover maintained by the hirers of the auction room is satisfactory and

that any local authority regulations can be observed.

The auction house is responsible for marketing the sale. Auctioneers should judge whether to use the internet, press and other media or direct mail and posters, ensuring that information on any website does not conflict with the hard copy catalogue. Interested parties should be made aware of any amendments following first publication of the catalogue via both print and online media. The auctioneer should state prior to starting the auction if any items are withdrawn and advertise the results as soon as practicable afterwards. Viewing times depend on the size and nature of the sale. All items on display must be marked with a dedicated lot number.

The guidance note offers assistance on substantially reducing the risk of third-party claims. There is advice on arrangements where the bids are in the room, by telephone, live internet or commission bids.

Telephone, proxy or internet bids should be governed by written terms that are signed by the bidder. Procedures need to be understood and agreed by both seller and bidder. Telephone, proxy and internet bidders must be made aware that they should enquire immediately prior to the sale if there have been any material variations

or amendments. Online auction houses must set a closing date and time for receipts of online bids and other contractual terms to which the sale is subject.

### Pre-auction

On occasion, sellers who purported to be the legal vendor have subsequently been found not to have the right to sell. This could either be because of oversight or fraud. The auctioneer should be aware that these circumstances can arise and may wish to obtain appropriate indemnities from the seller.

Where appropriate, the auctioneer should obtain confirmation from the seller's solicitor that relevant money laundering checks have been carried out and that the seller giving instructions has the power to sell. For further information, see RICS Regulation *Money laundering guidance* (<http://bit.ly/1En9QI9>).

Terms should be agreed in writing and incorporate a definition of the auctioneer's basis of appointment and information regarding fees and expenses and how deposits are accepted and held. They should also cover the auctioneer's rights regarding bids and bidders, whether they are empowered to sign the auction contract on behalf of the seller and if they can repudiate a contract after the gavel has fallen.

The auctioneer has a responsibility to ensure that prospective buyers recognise the possibility of the seller selling or withdrawing the property at any time before the sale. Buyers should verify the availability of the lot immediately prior to auction, although the auctioneer should use reasonable endeavours to notify interested parties and update online listing if a property is sold or withdrawn beforehand.

### The sale

The auctioneer should announce at the commencement of the auction that it is being conducted under published conditions and indicate where these can be found. Attendees should be advised at the start and during the sale of any alterations made since the catalogue was printed or listed online. Any material variations to the item that may have arisen in the lead-up to the auction should be incorporated in a notice prominently displayed in the saleroom.

Where a sale is advertised as having no reserve price, an auctioneer must not withdraw the property because bidding has failed to reach a particular level, but must sell it to the highest bidder. Any auctioneer who withdraws property in those circumstances is likely to incur personal liability under a collateral contract with the highest bidder. Consecutive bids on behalf of the seller should not be accepted nor made by the auctioneer.

The auctioneer's right to settle a dispute should be included in the conditions of sale. It is good practice for the auctioneer to indicate where the bid lies before the fall of the gavel. The auctioneer should clearly indicate the highest bidder and the final bid amount before bringing down the gavel. It may be a breach of the auctioneer's legal obligations for them to bid for property within their own sales. Where a lot fails to reach the reserve price, the auctioneer should state that it has not been sold, not bring down the gavel and not give the impression that the bidding is at or above the reserve price.

Auctioneers should have procedures in place in the event of public disorder during a sale. All professional auctioneers are advised to carry professional indemnity insurance.

Buyers are responsible for insuring the property on the fall of the gavel. Prospective buyers should be advised of this in the conditions of sale.

### After the sale

Arrangements for the buyer to take possession of the property will normally cover payment, associated documentation and any additional charges. For successful sales, the seller will expect payment in line with the contract. Where property fails to sell, the client should be advised promptly and action agreed.

RICS members' accounts rules state that clients' money must be kept separate from other money in a designated client account.

### Property governed by special statutes

Auctioneers are reminded that certain categories of property (e.g. firearms, artefacts and cultural objects) may be covered by special legislation. Auctioneers should make it clear in

their conditions of sale that the buyer is responsible for any subsequent export of the purchased property.

### Post auction

Published results must be accurate. Subject to the seller's agreement, 'after sales of property' may be concluded after the auction.

### Conditions of business

Generally, these should include:

- the capacity in which the auction house acts
- the auctioneer's rights
- the circumstances in which the bidder will become the buyer
- the title of the seller, lien of the auctioneer, and passing of title to the buyer
- caveats as to the description of the items
- the availability of condition reports
- the assumption that the bidder has legal capacity
- the means through which bids may be made
- indemnities and liabilities
- terms governing storage and insurance
- the treatment of property unclaimed and not paid for
- taxes
- glossary.

RICS guidance notes are intended to represent best practice. Although members are not required to follow the recommendations contained in the note, they should be aware that when an allegation of professional negligence is made against a surveyor, a court or tribunal may take account of any relevant RICS guidance note in deciding whether the member had acted with reasonable competence. **A**

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### Further +info



The RICS guidance note *Selling personal property at auction 2nd edition* is available for members to download at <http://bit.ly/1zoYKGG>

**Colin Young** explains why his auction house complies with RICS best practice

# Working by the rules

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The RICS guidance note *Selling personal property at auction* (<http://bit.ly/1zoYKGG>) contains a wealth of good advice. But why is it so important for the client to go to an auction house that applies these standards, and how difficult is it for the auctioneer to adhere to them on a daily basis?

The publication of this guidance note is timely: an article in *Antiques Trade Gazette* (ATG) is a cautionary tale of what can happen if clients use unregulated auction houses (<http://bit.ly/1KdXo5X>).

## A case of fraud

In December 2014, Cameo Fine Art Auctioneers was found guilty on nine out of 11 charges of having defrauded customers of up to £250,000. The case was brought by West Berkshire Council's Trading Standards. According to both ATG and *Newbury Weekly News* the jury at Reading Crown Court heard

how Cameo's boss Jonathan King "lived the high life while fleecing customers. Clients were routinely fobbed off or sent dud cheques; goods went 'missing' and the bank accounts of online bidders were raided. King's defence was that his brother-in-law, who also worked for the firm, was bleeding the company dry".

In 2012, King and his brother-in-law were both arrested, following an investigation by trading standards officers that involved contacting hundreds of former Cameo customers both in the UK and abroad. Beset by allegations of non-payment, missing goods and credit card irregularities, Cameo suspended trading.

The unfolding scandal was covered by stories in ATG and the local press. Cameo was also the subject of *The sheriffs are coming*, a BBC documentary regarding county court judgments. Prior to the arrests, *the-saleroom.com* had suspended Cameo from its online bidding platform after conducting an investigation

into its activities following a number of complaints. Simon Berti, Managing Director of Arts and Antiques at ATG Media, owner of *the-saleroom.com*, says: "Although Trading Standards had not become involved at that stage, we felt we had to act in the interests of both buyers and sellers, as well as those of all the other auctioneers using the site. People have to be able to rely on the integrity of such a service and those using it. That is why we chose to take these precautionary measures."

## RICS-regulated organisations

So how do I consider myself qualified to comment on 'fly-by-night' auction houses and RICS-regulated organisations?

I am managing director of Golding Young & Mawer, an organisation that started out in 1864 and now has four sites in Lincolnshire (Bourne, Grantham, Lincoln and Stamford). Both William Gregory, Head of Private Client and Professional



Services Department, and I are former RICS/ATG award winners.

Recently, the firm has won an important international contract, and I am a member of the team that is undertaking a four-year worldwide antiques valuation programme. Undoubtedly, one of the major reasons why the firm was awarded the contract was because its valuations are the responsibility of RICS-registered valuers, who work to *Red Book* standards and are regulated by a professional organisation. This gave Golding Young & Mawer a huge advantage over many unregulated firms, both large and small.

## Terms and conditions

Consumer protection law is increasingly impacting on the sale of chattels by auction. The Unfair Terms in Consumer Contracts Regulations 1994 stipulates that contractual

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**It is vital to have good systems in place, to check them and work in a team with your colleagues**



▶ Surveying the world of fine art valuation: Colin Young [centre] with Senior Valuers John Leatt [left] and William Gregory [right]

terms are expressed in “plain intelligible language”.

Accordingly, I firmly believe it is in the interests of auction houses to set out comprehensive terms and conditions for the benefit and protection of all parties. Golding Young & Mawer’s were taken from the model provided by RICS (visit <http://bit.ly/1HLENRQ>).

The auction house, buyer and seller’s responsibilities and liabilities are explained here; the golden rule is that all parties should have notice of them before or at the time of making the contract.

### Due diligence

The guidance note states that valuers should be competent to sell property and undertake due diligence. How does this work in practice?

I first experienced the excitement of the auction house when I was taken on

as a manager’s assistant at the age of 18. Three years later, I moved on to take the saleroom manager’s role at Goldings. With the arrogance of youth, at 21, I thought I knew everything about antiques; I think I believed it too. I could deal with 90% of the work and simply guessed the last 10%.

Now, with over 28 years in the profession, and more than one and a half million lots under the hammer, very little has changed. I still can deal with 90% of the work but I ask a colleague about the remaining 10%. Of course, the secret to staying at a 90% performance level is to keep your CPD up to date and maintain your skills.

### Check your systems

It is vital to have good systems in place, to check them and work in a team with your colleagues. Look

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## I first experienced the excitement of the auction house when I was 18

at the items for sale, assess them and ensure that all the necessary bases are covered. It is crucial to adhere to your instructions and check all the details before sending it to the client. Always resolve potential queries before they go the other side of the counter.

In terms of valuations, it is good practice to ask a colleague to give a final check of your work prior to signing off and to ensure there is a proper paper trail of instruction.

Given that your company has such systems, does the RICS guidance note

offer sound advice to an auction house?

Ultimately, common sense overrides everything. You apply the recommended best practice wherever it is possible, but auctions are not black and white. Best practice has to be flexible and adaptable to circumstance, which is why it has the status of guidance note.

It is the responsibility of the saleroom manager at each of Golding Young & Mawer’s four sites to ensure that the auction venue complies with health and safety and other legislation. This is done by reviewing

▶ the premises on an ongoing basis, with a major inspection undertaken annually.

Legislation dictates that this risk assessment includes signage and ensuring the safety of staff as well as buyers and sellers. The results may mean it is not possible to conduct the auction at offsite premises and you also have to consider risks for your team working at clients' premises and on transport contracts.

Although no auction house can ever completely eradicate the possibility of money laundering or third-party claims, the risk can be minimised. A reciprocal due diligence comes from taking instructions from a regulated law firm, which will instruct a firm regulated by RICS to have exhibited its own due diligence to the beneficiaries and HM Revenues and Customs.

But not all instructions are straightforward and you have to establish that the person instructing has the authority to do so. A signed indemnity is a further precaution, and you should always be wary and very suspicious if something does not appear to stack up.

### Bidders behaving badly

By very virtue of our business, the atmosphere at a sale can become very excited and tense, and passions can run high. In extreme cases, it can lead to disruptive behaviour. The RICS/Society of Fine Art Auctioneers and Valuers terms and conditions model states that *"we shall have the right to refuse admission to our premises or attendance at our auctions by any person"*.

In the event of public disorder during a sale, the auctioneer should assert their authority and advise the offenders that it may be a public auction, but it is being held in private premises,



requesting calm or giving the opportunity to leave. If that fails, they are within their rights to call the police and report a breach of the peace. You should be prepared for every eventuality.

### Professional regulation

While I generally view the world of antiques and fine art through critical eyes, I have an absolute passion and serious focus about my profession.

In my view, no-one should conduct auctions or provide valuations if not regulated by a professional body such



Being regulated by RICS is without question the most potent piece of ammunition in the armoury

as RICS or the National Association of Valuers and Auctioneers. It seems to me that the auctioneering business is made up roughly by 50% of qualified professionals and 50% who are not. I know many very good unqualified people, most of whom do not see the point of spending time and money to become a member of a professional organisation. This is a great shame. Legislation is what is needed; they would qualify if they had to and it would also cut out the rogue elements who can come into the business by the back door.

Sadly, the story of Cameo Fine Art Auctioneers is not an isolated one. I have read the same stories time and again over the years, so when will the profession ever learn?

UK government pushes professional self-regulation over legislation. That can only work if the legislation means that everyone has to be regulated by RICS or another professional body. Until that happens, the public will never truly be protected, and unfortunately, many potential sellers still look at gloss over substance. A flashy website

with smiling faces and fancy words are currently the only qualifications required.

As I said at the beginning, the fact that the firm is regulated by RICS was a huge bonus when we were tendering for the international valuation programme. It is also an excellent way of seeing off the competition from unregulated firms. Let us shout about RICS regulation and the fact that members' accounts rules state that clients' money must be kept separate from other money in a designated client account.

Being regulated by RICS is without question the most potent piece of ammunition in the armoury. It not only promotes your own profession standing, but the inadequacies of those unqualified and unregulated players who you may view as competition.

Use the RICS logo with pride. It is the hallmark of a professional auctioneer and valuer. **A**

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