



**CODE OF CONDUCT AND ETHICS FOR SAPAA AUCTION
PROFESSIONALS**

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1. Establishment of a Code of Conduct and Ethics for SAPAA Auction Professionals

- (1) A Code of Conduct and Ethics for SAPAA Auction Professionals is hereby established.
- (2) All SAPAA Auction Professionals, auction companies and auction houses are governed and regulated by the Code of Conduct and Ethics for SAPAA Auction Professionals.
- (3) The establishment of the Code of Conduct and Ethics for SAPAA Auction Professionals does not override the jurisdiction of other codes which govern the professional conduct of auctioneers practicing in the different auction sub-sectors and specialties, including:–
 - (a) Estate Agents Affairs Board established in terms of section 2 of the Estate Agency Affairs Act, No, 112 of 1976;
 - (b) Agricultural Produce Agents Council established in terms of section 12 of the Agricultural Produce Agents Act. No. 12 of 1992;
 - (c) Sheriffs Board established in terms of section 7 of the Sheriffs Act, No. 90 of 1986;
 - (d) South African Police Services with regard to the Second-Hand Goods Act, No. No. 6 of 2009;
 - (e) Law Society of South Africa
 - (f) South African Federation of Livestock Agents (SAFLA) representing livestock auctioneers; and
 - (g) South African Art Dealers Association (SAADA) representing art auctioneers.
- (4) The Code of Conduct and Ethics for SAPAA Auction Professionals does not override the requirements of the codes of the above-mentioned associations; instead, it aims to enhance the holistic behavioural requirements of auctioneers licensed under this Code.

2. Principles underpinning the Code of Conduct and Ethics for SAPAA Auction Professionals

- (1) The principles underpinning the Code of Conduct and Ethics for SAPAA Auction Professionals are:–
 - (a) **Integrity** – practitioners shall be ethical, honest and true to their word and shall ensure that their behaviour is consistent with this Code of Conduct and Ethics at all times.
 - (b) **Confidentiality and privacy** – privileged information shall be treated appropriately so as not to infringe on any party’s constitutional rights.
 - (c) **Collegiality** –including mutual respect and co-operation with colleagues, integrity within working relationships and the protection of one another’s reputations in the working environment and auction industry.
 - (d) **Trustworthiness** – including honesty and transparency in relationships with all stakeholders and reliability in the business environment.
 - (e) **Competency** – practitioners shall engage in lifelong learning in order to maintain currency of knowledge and skill.

3. Conduct of SAPAA Auction Professionals towards sellers

SAPAA Auction Professionals:-

- (1) pledge to protect and promote the interests of the seller;
- (2) have a primary obligation of absolute fidelity to the seller's interests, but this obligation does not relieve SAPAA Auction Professionals of their obligation to treat all parties to the transaction fairly;
- (3) shall not build unreasonable expectations about the outcome of an auction in the mind of a potential seller in an effort to secure the seller's business, when prospecting for business;
- (4) shall not make a profit on expenditures made for their sellers without the seller's prior knowledge and consent;
- (5) shall, subject to the provisions of Regulation 22 (2–4) of the CPA, enter into written agreements setting forth the specific terms and conditions of their engagement with sellers, in order to ensure better service to the sellers and to prevent misunderstandings;
- (6) shall discuss all aspects of the services to be provided and included in their written mandate; which as a minimum, such description of services shall include:
 - (a) duties and obligations of the parties;
 - (b) services to be provided by SAPAA Auction Professionals;
 - (c) safe-keeping of the goods, including storage, theft and casualty loss, insurance coverage relating to liability; and
 - (d) handling of funds received and controlled by SAPAA Auction Professionals.
- (7) shall not accept compensation from any party other than the seller, even if permitted by law; without the full knowledge of all the parties to the transaction;
- (8) shall at all times advise the seller, and clearly display and advertise any particular instance where the buyer is to pay for the SAPAA Auction Professionals' commission in respect of an auction;
- (9) shall at all times ensure that the seller is informed of the rate of the seller's commission, the buyer's commission and all other expenses to be levied in respect of the auction.
- (10) shall render full and proper accounting of the proceeds of an auction sale to the seller within a reasonable period of time after the auction;
- (11) are required to develop and advertise and have available for sellers, such rules of auction under which the auction sales are conducted;
- (12) shall strive to provide the highest level of competent service in their respective fields of expertise, by attaining competency through education, training, study, practice and experience;
- (13) shall be honest enough and have the wisdom to recognize the limitations of their competence and knowledge contemplated in subsection 4 (12) herein, and know when to seek the counsel, assistance or seller referral, where appropriate;
- (14) shall use due diligence and due care when providing auction services on behalf of sellers;

- (15) shall not undertake to provide professional services where either they, members of their immediate family, members of their company, or any entity in which they have an ownership interest has presently or contemplates an interest; without first specifically disclosing such interest or contemplated interest;
- (16) shall ensure that privileged information is treated appropriately and not disclose any confidential seller information without the seller's specific consent, except as required by law, or in the public interest;
- (17) shall act with integrity at all times, including behaving in a polite, honest, trustworthy, objective and reliable manner when interacting with sellers; and
- (18) shall provide statutory compliant services and strive to meet contractual obligations at all times.

4. Conduct towards customers

SAPAA Auction Professionals:-

- (1) owe the customer the duties of honesty, integrity and fair dealing at all times;
- (2) shall; when conducting auctions, deal with customers in a manner exhibiting the highest standards of professionalism and respect;
- (3) shall conduct their business affairs in a manner that promotes a positive image of their business and the auction profession;
- (4) shall provide customers with a clear understanding of the rules of auction; in particular:
 - (a) prior to the auction, customers for real estate auctions should be provided a copy of the offer to purchase to be signed; and
 - (b) following the auction, customers for personal property auctions should be provided a written statement of sale; and
- (5) shall; subject to sub-regulation 21 (1) [a] of the CPA, communicate rules of auction in written form and emphasize critical terms and conditions orally prior to the commencement of the auction.

5. Conduct towards the public

SAPAA Auction Professionals:-

- (1) shall avoid misrepresentation or concealment of pertinent facts;
- (2) shall not enter into agreements with sellers to withhold information from the public that would prove to be unsafe, illegal, and detrimental to the public or material to making a decision to bid;
- (3) owe an affirmative obligation to disclose adverse factors of which they have personal knowledge;
- (4) shall create and retain for a reasonable period of time; an audio and/or video record of each auction conducted, in order to protect the public and to avoid misunderstandings;
- (5) shall be careful at all times to present a true picture in their advertising and representations to the public;

- (6) are obliged in advertising movable or immovable property for sale at a public auction to take every reasonable care to avoid errors, exaggeration and misrepresentation in such advertising;
- (7) should not practise discrimination against any person based on race, colour, religion, sex, marital status, age or origin in the engagement, promotion, dismissal, salary, transfer, training or other practices relating to employment within their auction businesses;
- (8) are obliged to conduct their auction businesses in a manner which is fair, honest and free of conflicts of interest, prejudice and bias;
- (9) shall keep abreast and informed of matters affecting the auction profession and their areas of specialization so as to fulfill the expectations of the public, including participation in continuing education programs;
- (10) have a general duty to protect the public's interest, and in terms of this duty:-
 - (a) shall not in any manner in the conduct of their business do or omit to do any act which is or may be contrary to the integrity of auctioneers in general;
 - (b) shall protect the interests of their sellers at all times to the best of their ability with due regard to the interests of all the other parties concerned;
 - (c) shall not in their capacity as SAPAA Auction Professionals, wilfully or negligently fail to perform any task or duty with such degree of care and skill as might reasonably be expected of an auctioneer;
- (11) shall not publish or cause to be published any advertisement which would create an incorrect impression of the nature and description of the immovable or movable property to be sold at an auction;
- (12) shall not wilfully or negligently in relation to their activities prepare, make or assist any other person to prepare or make any false statement, whether orally or in writing, or sign any false statement in relation thereto knowing it to be false, or knowingly or recklessly prepare or maintain any false books of account or other records;
- (13) shall not wilfully or negligently mislead or misrepresent in regard to any matter pertaining to property to be sold at an auction in respect of which they have a mandate to sell such property;
- (14) shall not use any harmful or misleading marketing technique or method to influence any user to confer upon them a mandate to conduct an auction in respect of that user's movable or immovable property;
- (15) are obliged to take all reasonable and necessary steps to prevent the manipulation of an auction, *inter alia* by bidders who are "*planted*" with a view to manipulating the price of a particular item obtained at an auction and in circumstances where the "*planted*" bidder is not a genuine prospective purchaser;
- (16) are obliged to take all reasonable and necessary steps to prevent what is known as "*ghost bidding*", which is the acceptance of a bid from a purchaser who doesn't exist;
- (17) are obliged to ensure that they do not collude with buyers in any manner whatsoever and, if a they become aware of any collusion between any buyers, they are obliged to inform the seller of that knowledge;
- (18) are obliged to desist from all conduct which would have a negative or prejudicial impact upon the Fidelity Fund or any premiums which are payable in terms of that insurance;

- (19) are duty bound at all time to abide by the laws and regulations which govern the auction profession as well as those which; if violated, would negatively affect their ability to present to the public an image of behavior and conduct that appropriately represents the professionalism of the auction industry;
- (20) are required to have a detailed knowledge of, and to abide by any legislation, statutory enactments, regulations and any other binding sources of authority to which any they are subjected, including but not limited to the:–
- (a) Agricultural Produce Agents Act, No. 12 of 1992;
 - (b) Alienation of Land Act, No. 68 of 1981;
 - (c) Attorney’s Act, No. 53 of 1979;
 - (d) Banks Act, No. 94 of 1990;
 - (e) Companies Act; No. 71 of 2008;
 - (f) Consumer Protection Act, No. 68 Of 2008, with specific reference to Section 45 (1-6) and Regulations 18-33;
 - (g) Close Corporations Act, No. 69 of 1984 as amended;
 - (h) Electronic Communications and Transactions Act, No. 25 of 2002;
 - (i) Estate Agency Affairs Act, No. 112 of 1976;
 - (j) Financial Intelligence Centre Act, No. 38 of 2001;
 - (k) Housing Development Schemes for Retired Persons Act, No. 65 of 1988;
 - (l) Insolvency Act, No 24 of 1936;
 - (m) Magistrate Court Act, No. 32 of 1932 as amended
 - (n) Matrimonial Property Act, No. 88 of 1984;
 - (o) National Credit Act, No.34 of 2005;
 - (p) Prevention and Combating of Corrupt Activities Act, Act No 12 of 2004, and particular attention is required to be given to the provisions of Section 14 of the Prevention and Combating of Corrupt Activities Act which is specifically entitled "*Offences in Respect of Corrupt Activities Relating to Auctions*";
 - (q) Rent Control Act, No. 80 of 1976;
 - (r) Second Hand Goods Act, No. No. 6 of 2009;
 - (s) Sectional Titles Act, No. 95 of 1986
 - (t) Sheriffs Act, No. 90 of 1986;
 - (u) Supreme Court Act, No. 59 of 1959 as amended
 - (v) Upgrading of Land Tenure Rights Act, No. 112 of 1991

and any legislation, statutory enactments and/or regulations imposed in substitution and/or in addition to the sources of authority referred to above.

6. Conduct towards peers, employers and employees

SAPAA Auction Professionals:-

- (1) shall conduct themselves in a manner which will promote co-operation and good relations between auctioneers and within the auction profession;
- (2) have an obligation to:

- (a) act in a manner that upholds the professional reputation and practice of the auction industry;
 - (b) co-operate with peers to ensure that the principles of this Code of Conduct and Ethics is upheld;
 - (c) act with respect for colleagues, employers, employees and the auction industry; and
 - (d) report unethical behaviour through the appropriate mechanisms, if they have personal knowledge of an act by another auctioneer which; in their opinion, is a material violation of the ethical principles of this Code of Conduct.
- (3) shall never publicly criticize a competitor using false or deceptive information, and where an opinion of a competitor's transaction is especially requested, it should be rendered in conformity with strict professional courtesy and dignity;
 - (4) shall not engage in practices or take actions inconsistent with the general acceptable practice of the auction profession, and shall not seek unfair advantage over other auctioneers and should conduct their business so as to avoid controversies and disputes with other auctioneers; and
 - (5) shall not knowingly or recklessly file false or unfounded ethical complaints.

7. Conduct with regard to the handling of trust funds and accounts

SAPAA Auction Professionals:-

- (1) shall keep seller's monies coming into their possession in trust and avoid the comingling of personal and business funds;
- (2) entrusted with monies belonging to others in the course of their professional work shall:
 - (a) keep such monies separate from personal or firm money;
 - (b) use such monies only for the purpose for which they are intended; and
 - (c) at all times be ready to account for those monies to any person entitled to such accounting.
- (3) shall place monies derived from an auction which belong to third parties or are not due to them in terms of their agreed fees for such auction in an appropriately designated bank account for sellers' monies;
- (4) are obliged to keep such books of account as will enable them; at any time, to establish clearly their dealings with sellers' monies in general, in respect of monies derived from the proceeds of auction sales and the details of the auction sales themselves, it being recorded that proper statements of account should be provided to the seller and/or liquidator within a reasonable period of time after the conclusion of the auction.

8. Conduct towards professional bodies

SAPAA Auction Professionals:-

- (1) shall support activities and initiatives introduced by industry professional bodies;
- (2) shall respect the authority of professional bodies recognised by the industry;
- (3) have an obligation to assist relevant authorities in all matters governed by this Code of Conduct and Ethics, including the investigation, censure, discipline, or dismissal of auctioneers who violate of this Code of Conduct and Ethics;
- (4) who are charged with unethical practice or who are asked to present evidence in any disciplinary proceeding or investigation shall promptly and voluntarily place all pertinent facts and information before the appropriate body;
- (5) shall conduct their affairs when engaging with all stakeholders with integrity in a manner that will assist professional bodies and associations tasked with the enforcement of the compliance of auctioneers.

9. Unprofessional conduct

SAPAA Auction Professionals:-

- (1) shall conduct their activities in a professional manner that will reflect positively upon themselves and the auction profession;
- (2) shall not engage in unprofessional conduct; which includes, but is not limited to the following:
 - (a) failure to account to and pay over all monies and tangible personal property coming into their possession which belong to third parties including buyers at auction within the time period agreed by the parties to remit or deliver the said monies or tangible personal property; and
 - (b) payment of compensation in money or other valuable thing to any person other than another auctioneer or agent for the rendering of any service or doing any of the acts forbidden by law.
- (3) shall refrain from buying or selling at their own auction for personal gain; unless full disclosure has been made;
- (4) have a duty to the best of their knowledge and belief and with the exercise of reasonable care and without negligence, to protect auction users against:
 - (a) fraud;
 - (b) misrepresentations; and
 - (c) unethical practices in connection with the sale, disposal or liquidation of any movable or immovable property.

10. Monitoring of the Code of Conduct and Ethics for SAPAA Auction Professionals

SAPAA Auction Professionals:-

- (1) may be held responsible for a breach of, or failure to comply with this Code of Conduct and Ethics for SAPAA Auction Professionals on the part of all persons who are:
 - (a) his employees; or
 - (b) under his supervision; or
 - (c) his partners; or
 - (d) fellow shareholders in or directors or employees of a company or members or employees of a close corporation controlled by the member or the member and his partners which offers auction services;
- (2) may not; under the guise or through the medium of a partnership, company, close corporation or any other entity, do anything or allow anything to be done which he or she would not be permitted to do as an individual in terms of this Code of Conduct and Ethics;
- (3) shall promptly advise any customer or a seller or any user of auction services who alleges that such a SAPAA Auction Professional acted in an unethical or improper that the customer or a seller or any user of auction services is entitled to lay a complaint before SAPAA and/or National Consumer Commissioner;
- (4) are obliged in the circumstances of subsection 11 (4) herein to promptly place all pertinent facts before SAPAA and/or the National Consumer Commissioner for investigation and reporting in terms of this Code of Conduct and Ethics;
- (5) have a duty to ensure that there are proper and adequate systems employed within their auction businesses such that accurate data of all the facts concerning an auction sale are available at all times; and
- (6) are further obliged to carefully collate the factual data of the results of an auction sale.