

## **WASHINGTON STATE ATTORNEY GENERAL'S OFFICE**

### ***GOING OUT OF BUSINESS SALES***

#### **What is the Going Out of Business Sales Act?**

The Washington state Going Out of Business Sales Act is designed to ensure that when a seller holds a "distress" sale, the sale is conducted in a manner consistent with what consumers expect when they respond to advertising for such a sale. It applies to retailers, including individual separate locations of a multi-location business.

#### **How is Going Out of Business Sale Defined?**

A Going Out of Business Sale is defined in RCW 19.178.010 as "a sale or auction advertised or held out to the public as the disposal of merchandise in anticipation of cessation of business."

This can include sales advertised as, but not limited to: a "going out of business sale," a "loss of lease sale," a "must vacate sale," a "liquidation sale," a "bankruptcy sale," a "selling out to the bare walls" sale, or another description suggesting prices will be reduced due to the impending closure of the business.

#### **What requirements does the Going Out of Business Sale Act impose on the seller?**

- ***Record a notice with the county auditor (RCW 19.178.030)***

The notice must be recorded in the county where the sale is to take place at least fourteen days before the sale begins. A copy must be displayed in a prominent place at the Going Out of Business Sale location.

- ***Prepare a merchandise inventory (RCW 19.178.040)***

Before recording the notice, the seller must make either an inventory list of the merchandise to be sold or compile all of the purchase orders made within the thirty days before recording the sale notice with the auditor's office.

The inventory or compilation does not need to be filed with the notice of the sale, but must be attached to a notarized written statement signed under oath, stating the inventory list is a true and correct inventory as of the date the written statement is made, and must be kept for three years after the ending date of the sale.

- ***Going Out of Business Sales have a time limit of sixty days***

The business may not be continued in any other form after the end of the sale. The seller may continue business at another separate location that was already open before recording the notice for the closing business location, subject to the transfer and consignment restrictions.

- ***Transferred or consigned merchandise may not be sold at a Going Out of Business Sale (RCW 19.178.070)***

Merchandise sold at a Going Out of Business Sale may not be transferred from other business locations in contemplation of holding a Going Out of Business Sale. Nor may merchandise be bought or ordered from an affiliated business or business location in order to sell it at the sale.

Consigned merchandise or other merchandise not owned by the seller may not be sold.

Merchandise ordered within thirty days of the recording the sale notice may consist only of bona fide orders made in the usual course of business and may not contain consigned merchandise.

At the end of the sale, the merchandise from the Going Out of Business Sale location may not be sold to the general public by the owner of the merchandise at another business location, on consignment or otherwise.

- ***Advertising***

Advertisements for a going out of business sale may not begin more than fourteen days before the sale.

All advertising, including signs at the Going Out of Business Sale location, must state the beginning date and clearly and prominently state the ending date of the sale.

All advertising (except radio, see below) must be limited to the place of business identified in the notice as going out of business and may not state that other locations are participating in the sale unless they are included in the notice.

Radio advertising is not required to list the address of the business identified in the notice as Going Out of Business, but must meet all other conditions of the Going Out of Business Sales Act.

Price representations in advertising sale must be genuine and substantiated. Advertising for the sale must not, in any other way, be false, misleading, or deceptive.

### **Does bankruptcy affect the application of the Going Out of Business Sales Act?**

Businesses in bankruptcy are required to comply with the Act.

At least seven days notice must be given to the Attorney General's office prior to the presentation to any court of any proposed order which might allow a going out of business sale to be conducted. RCW 19.178.020(3). Documents should be directed to the Consumer Protection Division, Attn: Division Chief, 800 Fifth Avenue, Suite #2000, Seattle, WA 98104.

### **What are the Penalties for not complying with the Going Out of Business Sales Act?**

Violation of the Going Out of Business Sales Act is a violation of the Washington State Consumer Protection Act, and the violator may be subject to civil penalties, court orders barring future illegal conduct, restitution to injured consumers, and payment to the State for its legal costs.

A person who violates the Going Out of Business Sales Act or who gives false or incorrect information in a notice required by this chapter may be guilty of a gross misdemeanor.