

CHAPTER 7

AUCTIONEERS, PAWNBROKERS, SCRAP METAL DEALERS, AND SECONDHAND DEALERS

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5-7-1: DEFINITIONS:

In addition to the definitions prescribed in A.R.S. §§44-1601, -1621, and -1641, the terms of this Chapter shall have the following meanings: (2993)

AUCTIONEER: Any person who either operates an establishment in which is carried on the business of auctioning articles or who as principal or agent offers any articles for sale by public outcry, where such items offered for auction are sold immediately to the highest bidder. (2993)

CITY: City of Mesa, Arizona. (2993)

CITY MANAGER: The City Manager pursuant to Chapter 20 of Title 1 of the Mesa City Code or such other person as the City Manager may designate. (2993)

FINANCE DIRECTOR: The Finance Director of the City or authorized deputy, agent, or representative. (2993)

HEARING OFFICER: A person appointed by the City Manager to hear appeals under the supervision of the presiding judge of the Mesa City Court. (2993)

LICENSEE: Any person to whom the City has issued a license under this Chapter or any person acting on behalf of such person. (2993)

PERSON: Any corporation, company, partnership, firm, association, organization, joint venture, business trust, proprietor, agent, or society, as well as a natural person. (2993)

POLICE DEPARTMENT: The Police Department for the City pursuant to Chapter 1 of Title 3 of the Mesa City Code. (2993)

SECONDHAND: Has been owned previously by someone other than the manufacturer or dealer whose business it is to sell such items to the public. (2993)

SECONDHAND DEALER: Any person, other than a person who deals exclusively in secondhand books, magazines, audio or video recordings regardless of media, handbills or posters engaged in conducting, managing or carrying on the business of buying, selling, trading, exchanging or otherwise dealing in secondhand goods, wares, merchandise or articles, whether such business be the principal or sole business so carried on, managed or conducted or be merely incidental to, in connection with or a branch or a department of some other business. This definition does not include trade-ins, dealers or auctioneers in articles of property, the transfer of title to which is required by state law to evidence by written instrument and recorded properly. This definition does not include garage sales, rummage sales or similar nonrecurring sales between individuals. (2993,3600,4916)

5-7-2: LICENSES:

- (A) Any person who operates a business in the City as an auctioneer, pawnbroker, scrap metal dealer, or secondhand dealer shall obtain a license from the Finance Department as provided in this Section. (2993)
- (B) A person shall apply for a license under this Section on forms furnished or approved by the Police Department. The forms shall include requests for information deemed necessary by the Police Department consistent with the requirements of this Section. Applicants for licensing as auctioneers, pawnbrokers, scrap metal dealers, or secondhand dealers shall provide to the City of Mesa Police Department a full set of fingerprints for themselves, all officers and directors of a corporation along with shareholders who own ten percent (10%) or more of the corporation, and for other business entities, all persons having ten percent (10%) or more ownership in the business. Applicants for licensing as pawnbrokers shall also provide a full set of fingerprints for all employees of the applicant. The Police Department shall forward those fingerprints to the Arizona Department of Public Safety for the purpose of obtaining a state and federal criminal records check. The Arizona Department of Public Safety is authorized to exchange this fingerprint data with the Federal Bureau of Investigation. Every application shall be accompanied by a nonrefundable application fee as established in the current Schedule of Fees and Charges. The Finance Department shall grant a license unless it determines that the application is incomplete or that any other applicable requirement prescribed by paragraphs 1 and 2 of this Subsection has not been met. In the event a license is not issued, the application fee shall not be returned to the applicant but shall be applied to the cost of processing the application. (2993,3203,3424,4982)
1. A person applying for a license to act as a pawnbroker shall comply with all requirements contained in A.R.S. §44-1627 as amended or as may be amended and all other applicable state laws. (2993,4916)
 2. A person applying for a license to act as an auctioneer, scrap metal dealer, or secondhand dealer shall comply with all of the following requirements and all other applicable state laws: (2993,4916)
 - (a) If any person operates in more than one (1) location, the person shall obtain a separate license for each location. (2993)
 - (b) Licenses shall not be sold or transferred. (2993)
 - (c) A person shall be either a bona fide resident of the State or qualified to do business in the State. (2993)
 - (d) A person shall not receive a license if within one (1) year of the application date the person has violated any provision of this Chapter or has had a license revoked by the Finance Director. (2993)
 - (e) A person shall not receive a license if within ten (10) years of the application date the person, including for corporations any of the individuals listed in paragraph (B) of this Section, has been convicted of a felony involving trafficking in stolen property, fraudulent schemes, forgery, theft, extortion or conspiracy to defraud, or a misdemeanor or felony involving moral turpitude. (2993,3203)
 - (f) A person shall not make any false statements or material misrepresentations in the application. (2993,3203)

- (C) Applicants shall be required to pay a first year license fee as established in the current Schedule of Fees and Charges. All licenses shall be issued for a period of one (1) year. A licensee may request to renew a license by submitting to the Finance Department a renewal application indicating any changes in information from that provided in the previous year's application and accompanied by a renewal fee as established in the current Schedule of Fees and Charges. A licensee who fails to renew the license within thirty (30) days of the renewal deadline shall be subject to a penalty of twenty percent (20%) of the renewal fee. The Finance Department shall determine whether to renew a license based upon the applicable standards prescribed in Subsection (B) of this Section and whether the licensee has received more than two (2) suspensions of the license within the preceding twelve (12) calendar months. (2993,3203,4982)
- (D) A licensee shall display a license issued pursuant to this Section in a conspicuous place at the business location. (2993)
- (E) The Finance Director may suspend a license for a period of not more than thirty (30) days if the Finance Director determines that the licensee has violated or is violating any of the provisions of this Chapter or applicable State laws. (2993)
- (F) The Finance Director may revoke a license if more than two (2) suspensions of the license have occurred within the preceding twelve (12) calendar months or if the licensee has been convicted of a felony involving trafficking in stolen property, fraudulent schemes, forgery, theft, extortion or conspiracy to defraud, or a misdemeanor or felony involving moral turpitude. (2993,3203)
- (G) Before suspending or revoking a license pursuant to Subsection (E) or (F) of this Section, the Finance Director shall give the licensee an opportunity to appear in a hearing before the Finance Director to argue that there is not good and sufficient reason for suspension or revocation. If the licensee does not appear or if the Finance Director determines after hearing that good and sufficient reason exists for suspension or revocation, then the Finance Director shall issue a written order of suspension or revocation which shall become effective five (5) days after the date of the order. If the licensee contested the action at the hearing, then the licensee may appeal the Finance Director's written order to the City Manager within five (5) working days of receiving the written order. The City Manager may designate a Hearing Officer to hear the appeal. (2993)

5-7-3: REPORTS TO THE POLICE DEPARTMENT; FRUITS OF A CRIME:

- (A) Pawnbrokers shall file reports with and in a manner approved by the Police Department consistent with all of the requirements contained in A.R.S. §44-1625 as amended or as may be amended upon forms provided or approved by the Police Department. The required forms are paid for in advance at a location designated by the Police Department. The cost of the report form is in accordance with the current Schedule of Fees and Charges. Proof of payment shall be taken to the Police Department and the report forms will be assigned to the licensee. (2993,4916,4917)
 - 1. No article shall be sold or exchanged by any pawnbroker until it shall have been in the custody thereof for twenty (20) calendar days after making out and delivering to the Police Department the report required under Subsection (A) above. Any article held in custody pursuant to the paragraph shall not be altered or transformed in any way but shall be held in the same condition in which it was delivered to the reporting party. This Subsection shall not apply to redemption of pawned or pledged articles. (3203,4916)
- (B) Pawnbrokers shall furnish a full set of fingerprints with the Police Department for each employee hired within ten (10) days after such employee has been hired. (3424)

- (C) Scrap metal dealers shall file reports with the Police Department consistent with all of the requirements contained in A.R.S. §44-1644 as amended or as may be amended. (2993,3424)
- (D) Secondhand dealers shall file reports with and in a manner approved by the Police Department consistent with all of the requirements contained in A.R.S. §44-1602(C) as amended or as may be amended and the requirements of this Chapter upon forms provided or approved by the Police Department. The required forms are paid for in advance at a location designated by the Police Department. The cost of the report form is in accordance with the current Schedule of Fees and Charges. Proof of payment shall be taken to the Police Department and the report forms will be assigned to the licensee. Secondhand dealers may pass on the cost of the report form to their customers. (2993,3424,4916,4917)
1. Any person subject to the provisions of this chapter who is engaged in the business of secondhand dealer shall, at the time of the transaction, include in the report all goods or articles received on deposit, consignment, trade, exchange or purchase which bear a serial number, owner applied number (O.A.N.) or have a fair market value in excess of one hundred dollars (\$100.00). (4916)
 2. A secondhand dealer shall retain any property obtained in a reportable transaction at its place of business or other storage location approved by the Police Department for a period of ten (10) calendar days after making out and delivering to the Police Department the report required under this Subsection. Any article held in custody pursuant hereto shall not be altered or transformed in any way but shall be held in the same condition in which it was delivered to the reporting party. If a secondhand dealer comes into possession of abandoned property, the dealer shall turn over such property to the Police Department. (4916)
 3. Notwithstanding the foregoing, the provisions of this Subsection shall not apply to purchases by a secondhand dealer from a business with a fixed business location of either business inventory or business equipment, provided that the licensee has acquired by the time of the transaction documentation of:
 - (a) the name and address of the business;
 - (b) the state and local privilege (sales) tax license number of the business, if applicable;
 - (c) a copy of the invoice or other document showing the business' bona fide purchase of or right to possess the article sold, or a representative of the business with authority to on its behalf had completed and signed the report required by this Section in all its particulars, without regard to the amount of the transaction. (4916)
 4. The provisions of this Subsection shall not apply to secondhand dealers' purchases of household items from a place of residence provided that:
 - (a) the purchase is made by the licensee by check or other negotiable instrument made payable to the seller, or the purchase is made in cash and the licensee has obtained a receipt for that cash payment from the seller bearing the seller's name and address verified to be accurate by the licensee. (4916)
 - (b) the seller has produced for the licensee's inspection documentary evidence which establishes that the seller is either the lawful occupant of the premises or has the legal right to sell the items offered for sale. The licensee shall record from the documentary evidence produced a description of the document, including the name or nature of the document, and, to the extent available, its date, the individual's name and address thereon, and any account number. (4916)

- (c) notwithstanding the fair market value of one hundred dollars (\$100.00) or more rule contained in Subsection 5-10-7(D)(1), the licensee records the serial numbers and descriptions of all items bearing serial numbers. (4916)
5. The provisions of this Subsection shall not apply to consignments to secondhand dealers, other than a firearm, provided that no payment is made by the licensee to the consignor for a period of ten (10) calendar days after the date of consignment. (4916)
 6. The provisions of this Subsection shall not apply to articles of used clothing or furniture received by a secondhand dealer in trade, exchange, purchase or on consignment, excluding electronic appliances and equipment. (4916)
 7. The provisions of this Subsection shall not apply to goods or articles received by a secondhand dealer in trade, exchange or by purchase from a business engaged in the lawful liquidation of its business. (4916)
 8. The provisions of this Subsection shall not apply to goods or articles received by a secondhand dealer in trade, exchange, purchase or on consignment from an auction house or pawnbroker possessing a valid license issued pursuant to this Chapter. (4916)
 9. The business premises of any secondhand dealer, along with their transaction records and stock of goods and articles shall be open to reasonable inspection by any peace officer of this state when the business premises are lawfully occupied and during regular business hours. All documentation required to substantiate the above exclusions shall be retained on the business premises for a period of twenty-four (24) months. Each secondhand dealer shall maintain a current copy of this Chapter on the premises and shall make it available upon request to any employee or customer and to local law enforcement. (4916)
- (E) Auctioneers shall file true, complete, and legible reports with the Police Department of all goods and articles received except clothing, books, records, and audio tapes. The reports shall be made upon forms provided or approved by the Police Department and shall be delivered or postmarked within twenty-four (24) hours after receipt of the property. An auctioneer shall describe the property using either of the following methods: (2993,3424)
1. By attaching a legible copy of the auctioneer's consignment agreement, purchase receipt, purchase invoice, or other similar document containing a property description or (2993,3424)
 2. For groups of items that are received as part of one (1) business transaction that are not readily distinguishable or identifiable as individual items, by furnishing on one (1) report a general description of the group of items. (2993,3424)
- (F) It shall not be considered a violation of this Section if the violation is the result of a bona fide error, provided that the pawnbroker, scrap metal dealer, secondhand dealer, or auctioneer maintains procedures reasonably adapted to avoid the occurrence of such bona fide error. For purposes of this Section, "bona fide error" shall mean clerical, calculation, computer malfunction, programming, printing, and other similar errors. (2993,3424)

- (G) Upon notification by any peace officer or representative of the Police Department that goods or articles received on deposit or consignment, in pawn, pledge, trade, or exchange, or by purchase are the fruits of a crime, no pawnbroker, scrap metal dealer, secondhand dealer, or auctioneer shall dispose of such property. (2993,3424)
1. A peace officer or representative of the Police Department may place a hold on property in person, on the telephone, or by any other reasonable means if the pawnbroker, scrap metal dealer, secondhand dealer, or auctioneer is notified in writing within five (5) working days after the hold is placed. This written notice shall include all of the following information: (2993,3424)
 - (a) The date of the hold; (2993,3424)
 - (b) A description of the property, including serial number if applicable; (2993,3424)
 - (c) The representative's name and, if applicable, badge number; (2993,3424)
 - (d) The telephone number of the representative; and (2993,3424)
 - (e) The Police Department report number. (2993,3424)
 2. If a peace officer or representative of the Police Department declares a "police hold" on the property, the person shall attach a tag supplied by the Police Department to the property. The tag shall include the representative's name and serial number, telephone number, and the date of the hold. The tag shall remain on the property until the Police Department releases the hold or until the hold expires pursuant to paragraph 3 of this Subsection. (2993,3424)
 3. A hold shall expire ninety (90) days after the date of the hold. A hold may be extended by the Police Department in ninety- (90-) day increments by written notification to the pawnbroker, scrap metal dealer, secondhand dealer, or auctioneer if the notification is received prior to the expiration of the hold. (2993,3424)
 4. Interest upon such goods and articles pawned or pledged shall cease to accrue on the date of official notification. (2993,3424)
 5. Upon receiving a receipt from any peace officer or representative of the Police Department, the pawnbroker, scrap metal dealer, secondhand dealer, or auctioneer shall turn over such items to the peace officer or representative of the Police Department. (2993,3424)
- (H) The reporting requirements of this Section on goods and articles received on deposit or consignment, trade or exchange, or by purchase shall not apply to organizations qualified under Section 501(C) of the Internal Revenue Code. (4916)

5-7-4: PENALTY:

Among other penalties that may apply, any person, firm, or corporation that violates any provision of this Chapter shall be guilty of a misdemeanor. Upon conviction, persons shall be punished by a fine not to exceed two thousand five hundred dollars (\$2,500.00) or by imprisonment for a period not to exceed six months, or by such fine and imprisonment. Upon conviction, firms or corporations shall be punished by a fine not to exceed twenty thousand dollars (\$20,000.00). Each violation continued shall be a separate offense, punishable as described above. (2993,3424,4916)