

Chapter 8 - CLOSING OUT AND SIMILAR SALES

***Cross reference**—Special license for closing out business, §§ 20-656, 20-696.

***State law reference**—Counties and cities to issue permits for "going out of business" sales, Code of Virginia, § 18.2-224; permit required, Code of Virginia, § 18.2-223.

Sec. 8-1. - Purpose of chapter.

This chapter is adopted to promote and preserve public morals and welfare, economic integrity and fair dealing between sellers and buyers, and to prevent fraud, deceit and dishonesty in business dealings and transactions, by regulating the conduct of certain sales of goods, wares and merchandise.

(Code 1980, § 6-2; Code 1995, § 8-1)

Sec. 8-2. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Sale means an event or a series of events during which goods, wares and merchandise are offered for sale to the public, called an insurance sale, bankruptcy or bankrupt sale, mortgage sale, removal sale, closing-out sale, going out of business sale, quitting business sale, assignee's sale, fire sale, smoke sale or water sale, and sales bearing similar names or names of similar import.

(Code 1980, § 6-1; Code 1995, § 8-2)

Cross reference—Definitions and rules of construction, § 1-2.

Sec. 8-3. - Permit; filing of inventory.

(a) *Permit required; application.* It shall be unlawful for any person to conduct a sale regulated by this chapter in the county unless the director of public safety shall have issued a permit. Every person proposing to conduct any such sale shall apply in writing to the director for such permit, in form approved by him. In such application, the applicant shall state under oath:

- (1) The kind of sale to be conducted and its purpose;
- (2) The place at which the sale is to be conducted;
- (3) The name of the person who is to conduct the sale;
- (4) The source from which the goods, wares and merchandise were obtained;
- (5) The date on which the sale is to commence and the date on which it will terminate; and
- (6) The total of the prices at which the goods, wares and merchandise will be offered for sale.

(b) *Filing of inventory.* There shall also be filed with the application and as a part thereof a complete and itemized inventory of the kind and quantities of the goods, wares and merchandise to be sold or offered for sale and a statement fully identifying the goods, wares and merchandise and indicating how and in what manner such goods, wares and merchandise can be identified. Only those goods, wares or merchandise specified on the list may be advertised or sold during the sale. Goods, wares and merchandise not included on the inventory list shall not be commingled with or added to the sale items. It shall be unlawful for any person to make any false statement or representation as an inducement to obtain such permit. The director shall not issue the permit when he finds that a false statement or representation has been made with respect thereto; and, if the permit has been issued, he shall revoke it and shall not thereafter issue a permit for the

sale of such goods, wares and merchandise at a sale. It shall be unlawful for any person conducting a sale or intending to conduct a sale to publish or advertise the sale in a newspaper, magazine, book, notice, handbill, poster, circular, pamphlet, letter, billboard, sign, or radio or television broadcast, or in any other manner, before the permit required by this article has been issued.

(c) Issuance of permit; duration; extensions. When the application for a permit has been filed, the director of public safety, when he is satisfied that the provisions of this article have been complied with in making such application, shall issue a permit for conducting the sale described in the application and for the purpose stated therein, commencing on the date specified by the applicant and terminating on a day not exceeding 60 days from the date of the issuance of the permit. Any extension of that time shall constitute a new sale and shall require an additional permit and inventory. If the purpose of the sale is not accomplished at the termination thereof, the director shall extend the time a maximum of one additional permit beyond the initial permit, solely for the purpose of liquidating only those goods contained in the initial inventory list and which remain unsold. It shall be unlawful for any person to conduct such sale after the day for the termination of the permit has expired or before an extension of the time for the sale has been granted. Any person who advertises such sale shall conspicuously include in the advertisement the permit number assigned for the sale and the effective dates of the sale as authorized in the permit.

(d) Permit fee. There shall be paid to the county, at the time an initial or extended application is filed for the conduct of a sale, a fee of \$25.00, to aid in defraying the cost of administering and enforcing the provisions of this chapter. No permit shall be issued by the director until the prescribed fee has been paid to the county, which fee shall not be refunded.

(Code 1980, §§ 6-7, 6-8; Code 1995, § 8-3)

State law reference—Permit, Code of Virginia, § 18.2-224.

Sec. 8-4. - Deceptive advertising.

It shall be unlawful for any person proposing to conduct or conducting a sale to induce or to attempt to induce the public to purchase or otherwise acquire title to or an interest in goods, wares and merchandise at a special sale by means of any publication or advertisement in a newspaper, magazine, book, notice, handbill, poster, circular, pamphlet, letter, billboard, sign, or radio or television broadcast, or in any other manner, which advertisement or publication contains any promise, assertion, representation or statement of fact that is untrue, deceptive or misleading, or which uses any other method, device or practice which is fraudulent, deceptive or misleading or which induces the public to enter into any obligation. The term "untrue, deceptive and misleading," as used in this section, shall mean:

- (1)** In the case of an insurance sale, the goods, wares and merchandise are not or were not in fact the subject of or insured or covered by an insurance contract.
- (2)** In the case of a bankruptcy sale or bankrupt sale, the goods, wares and merchandise are not or were not in fact the estate or assets or part of the estate or assets of a bankrupt or other insolvent.
- (3)** In the case of a mortgage sale, the goods, wares and merchandise are not or were not in fact subject to a lien, mortgage or other claim to secure the payment of money or performance of some other act.
- (4)** In the case of a removal sale, the seller did not in fact and in good faith intend to move his place of business to another location.
- (5)** In the case of a closing-out sale, the seller did not in fact and in good faith intend to abandon the continued sale of the goods, wares and merchandise or go out of business.
- (6)** In the case of a going out of business sale or a quitting business sale, the seller did not in fact and in good faith intend to go out of business.

- (7) In the case of an assignee's sale, the goods, wares and merchandise are not or were not in fact subject to an assignment for the benefit of creditors or other persons.
- (8) In the case of a fire sale, smoke sale or water sale or any combination thereof, the goods, wares and merchandise have not been subject to damage by fire, smoke or water.
- (9) In the case of a sale bearing a similar name or name of similar import, the representations made with respect thereto or to the goods, wares and merchandise are not in fact true.

(Code 1980, § 6-4; Code 1995, § 8-4)

State law reference—Deceptive, untrue, misleading advertising, Code of Virginia, § 18.2-216.

Sec. 8-5. - Merchandise to be same as advertised.

It shall be unlawful for any person to sell or offer for sale at or during a sale goods, wares and merchandise unless such goods, wares and merchandise or the circumstances under which they are sold or offered for sale are in fact and in good faith the same as those set forth in any advertisement for such special sale.

(Code 1980, § 6-5; Code 1995, § 8-5)

Sec. 8-6. - Separation of merchandise.

It shall be unlawful for any person to add to or commingle with the goods, wares and merchandise offered for sale at or during a sale any other goods, wares or merchandise. The goods, wares and merchandise offered for sale shall, before they are sold or offered for sale, be separated from other goods, wares and merchandise on the premises being offered for sale, and marked with symbols distinguishing them from such other goods, wares and merchandise.

(Code 1980, § 6-6; Code 1995, § 8-6)

State law reference—Similar provisions, Code of Virginia, § 18.2-224.