



VILLAGE OF JOHNSON CITY
243 Main St., Johnson City, NY 13790 • 607-798-7861 • www.villageofjc.com

Application for a Going Out Of Business License

This application is to be filed at least 15 days prior to the sale.

1) Name and address of the applicant, or names and addresses of all partners, or if a corporation, the date and place of incorporation or organization, address of principal office within the State, the names and address of all officers of corporation:

2) Person(s) in charge of sale: _____

3) Place where proposed sale is to be conducted and length of time at this address: _____

4) Date sale is to begin (license duration is 60 days): _____

5) Nature of Occupancy (lease or otherwise): _____

6) Reason for disposal of goods, wares or merchandise: _____

PLEASE NOTE – A full, complete, detailed and itemized inventory of goods, wares and merchandise offered at the sale is to be submitted with this application including a list of the total retail value of the inventory of goods.

THE LICENSE AND INVENTORY MUST BE POSTED WHERE “GOING OUT OF BUSINESS” IS CONDUCTED. THE LICENSE NUMBER MUST BE REFERRED TO IN ANY ADVERTISEMENTS. NO GOODS, WARES OR MERCHANDISE WILL BE ADDED TO THE INVENTORY LIST AFTER APPLICATION IS MADE.

The undersigned, being duly sworn, deposes and says that he/she is the owner/applicant or authorized agent of the owner/applicant and that everything contained in this application is an accurate statement and representation of the proposal.

Signature (s): _____ Date: _____

_____ Date: _____

Sworn to before me this _____ day of _____, 20____

Notary Public

VILLAGE USE ONLY

Date Received: _____ Fee: \$500.00 Receipt #: _____

Approval by Village Clerk: Yes _____ No _____ Date of Issuance: _____ Expiration Date: _____

NYS GENERAL BUSINESS LAW - ARTICLE 29-F GOING OUT OF BUSINESS SALES

§580. Purpose and intent.

It is hereby determined and declared that sales to be licensed and regulated pursuant to the provisions of this article have often been conducted and advertised in such a manner as to mislead and defraud the public and otherwise to result in harm to the public interest. Such fraud and imposition on the public has included, by way of partial enumeration only: the misrepresentation of the condition or necessity which is the occasion of such sale; the misrepresentation of the identity of the person conducting such sale, and the name and style in which such sale is to be conducted; the misrepresentation that the goods offered at such sale are selling at sacrifice prices; the misrepresentation that the operator of the sale is selling merchandise on hand at the time when the necessity, which is the occasion of such sale, arose, when in fact he is replenishing his stock with additional merchandise both prior to the commencement and during the conduct of such sale so as to foist upon the public such added merchandise as though it were part of the original stock; and the excessive valuation and misrepresentation of the quality, former price and ownership of the goods to be sold at such sale. In order to prevent such fraud and imposition, the public interest requires the regulation of such sales and the duration and conduct thereof; and the public interest, therefore requires that no such sale should be conducted without a license or otherwise than in accordance with this article.

§581. Definitions.

- (a) The term "closing out sale" shall include, but not be limited to, all sales advertised, represented, or held forth under the designation of "quitting business," "going out of business," "discontinuance of business," "closing out," "selling out," "liquidation," "lost our lease," "must vacate," "forced out," "removal," "branch store discontinuance sale," "building coming down," "end," "final days," "final clearance," "last days," "lease expires," "we give up sale," "we quit sale," "warehouse closing sale," "warehouse removal sale," "reorganization sale," or any other advertising or designation by any other expression or characterization similar to any of the foregoing giving notice to the public that the sale will precede the abandonment of a business location.
- (b) The term "sale of goods damaged by fire, smoke or water" shall include, but not be limited to, all sales advertised, represented or held forth under the designation of "fire sale," "smoke damage sale," "water damage sale," "flood damage sale," "insurance sale," or any other advertising or designation by any other expression or characterization similar to any of the foregoing giving notice to the public that the goods, wares or merchandise offered for sale have been damaged.
- (c) The term "defunct business sale" shall include, but not be limited to, all sales advertised, represented or held forth under the designation of "adjuster's sale," "administrator's sale," "assignee's sale," "bankrupt sale," "bankrupt stock sale," "benefit of administrator's sale," "benefit of creditor's sale," "benefit of trustee's sale," "creditor's committee sale," "creditor's sale," "executor's sale," "insolvent sale," "mortgage sale," "receiver's sale," "trustee's sale," or any other advertising or designation by any other expression or characterization similar to any of the foregoing conveying the same meaning or giving notice to the public of a sale resulting from death, business failure, or other adversity.
- (d) "Unusual purchase or addition" shall mean any purchase of goods, wares or merchandise during the ninety days preceding the application for a license, the total value of which is at least twenty-five per cent greater than purchases made by the applicant for a like ninety-day period during the year next preceding the year in which the application is made or the total value of which is at least twenty-five per cent greater than the purchases made by the applicant for any ninety-day period if the applicant has been in business for less than one year.
- (e) "Person" shall mean any individual, partnership, association, firm or corporation.
- (f) "Licensee" shall mean any person granted a license pursuant to the provisions of this article.

- (g) "Licensing authority" shall mean that department or officer of any city, town or village established for the specific purpose of issuing licenses, and where there is no such department or officer, it shall mean the clerk of such city, town or village.

§582. Unlawful advertisement.

It shall be unlawful for any person to advertise or hold out by any means that the sale of any goods, wares or merchandise to the public is a "closing out sale," "a sale of goods damaged by fire, smoke or water," or a "defunct business sale," unless a license is first obtained to conduct such a sale from the licensing authority of the appropriate city, town or village in which such sale is to be held.

§583. Application requirements.

- (a) Any person desiring to conduct any sale as defined in section five hundred eighty-one shall make a written application under oath to the licensing authority of the appropriate city, town or village in which the sale is to be held.
- (b) If the application is for a "closing out sale" or a "defunct business sale," it shall be filed at least fifteen days prior to the date on which such sale is to commence.
- (c) If the application is for a "sale of goods damaged by fire, smoke or water," it may be made at any time prior to the date on which such sale is to commence.
- (d) Such application shall set forth and contain the following information:
 - (1) The name and address of the applicant, whether the applicant is the true owner of the goods, wares or merchandise to be sold, and if the applicant be a partnership, the names and addresses of all partners, or if the applicant be a corporation or association, the date and place of incorporation or organization, the address of the principal office within the state, the names and addresses of all the officers of the applicant and whether controlling interest in the corporation or association was transferred within six months prior to the date of the filing of the application.
 - (2) The name and address of the person or persons who will be in charge and responsible for the conduct of such sale.
 - (3) The exact address of the place at which the proposed sale is to be conducted and the length of time the applicant has been engaged in business at such location.
 - (4) The date on which it is proposed to begin the sale.
 - (5) The nature of the occupancy where such sale is to be held, whether by lease or otherwise, and the effective date of termination of such occupancy.
 - (6) The reason for the urgent and expeditious disposal of the goods, wares or merchandise to be offered at such sale.
 - (7) A statement of the descriptive name of the sale.
 - (8) If the application is for a "closing out sale" or a "defunct business sale," a statement whether the business is to be terminated permanently or reopened at another location; the location of the premises at which the business is to be reopened; whether the applicant intends to resume the operation of the business upon the termination of the sale; and the name or designation under which such business is to be resumed.
 - (9) A full, complete, detailed, and itemized inventory of the goods, wares, and merchandise to be offered at such sale as disclosed by applicant's records, which inventory shall:
 - (i) Itemize the goods, wares and merchandise to be offered for sale and contain sufficient information concerning each item, including quantity, make, brand name, model and manufacturer's number, if any, to clearly identify it;
 - (ii) List separately any goods, wares and merchandise to be offered for sale which were purchased and received during a ninety-day period immediately prior to the date of making application for the license;
 - (iii) List the total retail value of the inventory of goods, wares and merchandise to be offered at such sale based on the inventory used for applicant's most recent federal income tax return adjusted for sales and purchases.

- (10) If the application is for a license to conduct a "sale of goods damaged by fire, smoke, or water" and the applicant was not the owner at the time when the goods, wares and merchandise to be offered at the contemplated sale were damaged, he shall attach to the said application copies of the bill of sale and all other documents connected with such transfer obtained by him from the previous owner of such goods, wares and merchandise.
 - (11) If the application is for a license to conduct a "defunct business sale," and the applicant was not the owner of the goods, wares and merchandise to be offered at the contemplated sale at the time of occurrence of the circumstances warranting the termination of such business, he shall attach to the application copies of the bill of sale and the official appraisal made by the trustee, receiver, assignee for benefit of creditors, referee in bankruptcy, or the personal representative of a decedent.
 - (12) A statement that no goods, wares and merchandise will be added to the inventory after the application is made.
 - (13) A statement that all goods, wares and merchandise included in such inventory have been purchased by the applicant for resale on orders without cancellation privileges and that said inventory comprises no goods, wares and merchandise purchased on consignment.
 - (14) A statement that no goods, wares and merchandise listed in the inventory have been the subject of a licensed sale conducted within one year prior to the date of the application, unless they were damaged by fire, smoke, or water while in the possession of the applicant.
- (e) Upon compliance with the foregoing and subject to the provisions of subdivision (a) of section five hundred eighty-seven, the licensing authority of the appropriate city, town or village in which the sale is to be held shall, within forty-eight hours after submission of the application to it, exclusive of Saturdays, Sundays and public holidays, issue a license to conduct the sale which is the subject of the application.

§584. Exceptions.

The provisions of this article shall not apply to any sale advertised as an "alteration sale," "remodeling sale," "clearance sale," "surplus stock liquidation sale," "floor sample sale," "inventory reduction sale," "special purchase sale," or any other advertising or designation by any other expression or characterization similar to any of the foregoing giving notice to the public that the sale will not precede the abandonment of a business location, nor shall this article apply to the following persons:

- (a) Persons acting pursuant to an order or process of a court of competent jurisdiction;
- (b) Persons who are required to file an accounting with a court of competent jurisdiction;
- (c) Persons acting in accordance with their powers and duties as public officers;
- (d) Any publisher or employee of a newspaper, magazine, or any operator or employee of a radio or television broadcasting station, who publishes or broadcasts any such advertisement in good faith without knowledge of its false, deceptive and misleading character, or without knowledge that the provisions of this article have not been complied with;
- (e) Any duly licensed auctioneer, selling at auction;
- (f) Any insurance corporation, or any association, firm or corporation, the controlling interest in which is owned by any insurance corporation or corporations, which, pursuant to the terms of a policy or policies of insurance, acquires title in or to any goods, wares or merchandise damaged by fire, smoke, water or otherwise, and which advertises and sells such goods, wares and merchandise as salvage.

§585. Branch stores and warehouses.

If the applicant for a license hereunder owns, conducts or operates more than one store, or a warehouse in connection with such store or stores, the license issued will apply only to the one store or warehouse for which it was issued, and no other store, branch or warehouse may advertise or represent in any way that it is cooperating with or participating in any way in the licensed sale, nor shall a store licensed pursuant to this article or any person advertise or represent that any other store or warehouse is cooperating with or participating in the licensed sale. The licensed sale conducted by any store of a chain or group of stores shall be conducted

solely at the location of the store for which the license was issued and no goods, wares or merchandise shall be brought from any other store and placed on sale at the store licensed pursuant to this article.

§586. *Substitution, addition and commingling of goods; license void; certain purchases prohibited.*

- (a) Any substitution for or addition to goods described in an inventory filed pursuant to this article, or any change in the time or place of a sale conducted pursuant thereto, shall be unlawful and any license issued for such sale shall thereupon become void.
- (b) Where an applicant, conducting a sale licensed under this article, also conducts a business of selling other goods, wares or merchandise not included in the inventory accompanying the application, the goods, wares and merchandise to be sold at such sale shall be clearly and distinctly segregated, marked or identified, and advertised, if at all, so that, both on display and in advertising, such goods, wares and merchandise may be readily distinguished from other goods, wares and merchandise and their identity readily ascertained. Any commingling of such goods, wares and merchandise with other goods, wares and merchandise of the licensee in such a manner as to cause them to lose their separate identity, either on display or in advertising, shall be unlawful and any license issued pursuant for such sale shall thereupon become void.

§587. *Investigation of application; grounds for denial; revocation of license.*

- (a) Upon receipt of the application, the licensing authority of the appropriate city, town or village in which such sale is to be held may make or cause to be made an examination into any or all the facts contained in the application and inventory in relation to the proposed sale. A license shall be denied or refused if any one or more of the following facts or circumstances is found to exist:
 - (1) That the applicant is not the true owner of the goods, wares and merchandise to be sold.
 - (2) That the applicant has not been the owner of the business advertised or described in the application for a license hereunder for a period of at least six months prior to the date of the application, or, if the applicant be a corporation or association, controlling interest in the corporation or association had been transferred within six months prior to the date of the application for a license hereunder, except-
 - (i) Where the application is for a license for a "sale of goods damaged by fire, smoke, or water," or a "defunct business sale," and the inventory listed in the application contains only those goods, wares or merchandise which were on the premises at the time of the occurrence of the circumstances warranting the granting of a license hereunder;
 - (ii) Upon the death of a person doing business in the state, the representatives of his estate, or his or her heirs, distributees, devisees, legatees, or their successors and assignees, shall have the right to apply at anytime for a license hereunder;
 - (iii) Where a business is required or compelled to be discontinued because the premises upon which it is being conducted have been taken by eminent domain or because the premises must be vacated pursuant to legal or judicial proceedings.
 - (3) That in the case of a "closing out sale," the applicant, either as owner, partner, member of an association, or principal stockholder of a corporation, was granted a prior license hereunder within one year preceding the date of the filing of the application, or the applicant, within one year prior to the date of filing of the application, has conducted a sale in connection with which he advertised or represented that the entire business conducted at the particular location for which the license is sought was to be closed out or terminated.
 - (4) That the inventory contains goods, wares or merchandise not purchased by the applicant for resale on bona fide orders without cancellation privileges.
 - (5) That the inventory contains goods, wares or merchandise purchased by the applicant on consignment, except if the consigned goods, wares or merchandise have been damaged while in the applicant's actual possession.

- (6) That the applicant has within one year prior to the filing of the application been convicted of a violation of this act.
 - (7) That the goods, wares or merchandise as described in the inventory were transferred or assigned to the applicant prior to the date of the filing of the application and that said transfer or assignment was not made for a valuable and adequate consideration.
 - (8) That in the case of a "closing out sale" or a "defunct business sale," the inventory contains goods, wares or merchandise purchased by the applicant or added to his stock in contemplation of such sale and for the purpose of selling the same at such sale. Any unusual purchase or addition shall be presumptive evidence that such purchase or additions were made in contemplation of such sale and for the purpose of selling the same at such sale.
 - (9) That any representation made in the application is knowingly false.
- (b) Revocation. The licensing authority shall revoke any license granted under the provisions of this article if, after investigation, it shall determine:
- (1) That any sale by the applicant has been or is being conducted in violation of any provision of this article, or;
 - (2) That the applicant has made any material misstatement in his application for said license, or;
 - (3) That the applicant has knowingly failed to include in the inventory, filed with this application, all goods, wares or merchandise required to be contained in such inventory, or;
 - (4) That the applicant has added or permitted to be added to said sale or offered or permitted to be offered at said sale, any goods, wares or merchandise not described in the original application and inventory, or;
 - (5) That the applicant made or permitted to be made any false, misleading or deceptive statements, whether written or oral, in advertising said sale, or in displaying, ticketing, or pricing goods, wares or merchandise offered for sale.
- (c) Any complaint filed with the licensing authority concerning any violation of this article shall be in writing and duly verified by the complainant.
- (d) If the licensing authority shall revoke any license pursuant to the provisions of subsection (b), it shall serve notice of such revocation upon the licensee within twenty-four hours of the revocation. Notice of revocation shall be served on the licensee in the same manner as a summons as prescribed by the civil practice law and rules or by registered or certified mail, return receipt requested. The failure of the licensee to discontinue said sale upon receipt of such notice shall constitute a violation of this article.

§588. Appeal from denial or revocation of license.

Any applicant for a license who is aggrieved by the denial or revocation of a license may apply to the supreme court in the judicial district in which the place of the proposed sale is located for a review of such denial or revocation by a proceeding under article seventy-eight of the civil practice law and rules. Such proceeding shall be instituted within thirty days of the date of the receipt of such denial or revocation.

§589. Copy of application; inventory and license to be posted; license to be referred to in advertisements.

A copy of the application for a license to conduct a sale under this article, including the inventory filed therewith, shall be posted in a conspicuous place in the sales room or place where the inventoried goods, wares or merchandise are to be sold, so that the public may be informed of the facts relating to such goods, wares and merchandise before purchasing them. Any advertisement or announcement published in connection with the sale shall conspicuously show on its face the number of the license, the date of its expiration, and if applicable, the location where the business is to be resumed.

§ 590. Duration of sale; license fee.

- (a) A license to conduct a sale issued pursuant to this article shall be good for no more than a period of thirty consecutive calendar days and may be renewed for one consecutive period not exceeding thirty consecutive calendar days upon the affidavit of the applicant that the goods,

wares and merchandise listed in the inventory have not been disposed of and that no new goods, wares and merchandise have been or will be added to the inventory previously filed pursuant to this article by purchase, acquisition, on consignment or otherwise. The application for renewal shall be made not more than ten days prior to the date of the expiration of the license and shall contain an inventory of the goods, wares and merchandise remaining on hand at the time the application for renewal is made, which inventory shall be prepared and furnished in the same manner and form as the original inventory. The licensing authority of the appropriate city, town or village in which such sale is to be conducted shall receive from the applicant for such license, upon the filing of an application therefor, a fee of five hundred dollars, and upon the renewal thereof, a fee of fifty dollars. The applicant shall not be entitled to a refund of the fee paid if said application is revoked.

- (b) Any person desiring to conduct any sale defined in subdivision (a) of section five hundred eighty-one of this article shall place the fees prescribed in subdivision (a) of this section with the licensing authority, all except seventy-five dollars of which shall be returned to such person provided the store is closed within sixty days of the receipt of such a license. In the event that the person going out of usiness and which is holding the closing out sale does not close his doors within sixty days of the receipt of such a license, the applicant shall not be entitled to a refund of such fees.

§ 591. *Opening of a similar business.*

Opening of a business similar to the one for which the sale, licensed pursuant to this article, was conducted, except the licensed "sale of goods damaged by fire, smoke or water," by the person, partnership, association, corporation, or partner of a partnership, officer of an association or principal stockholder of a corporation, who or which conducted the sale upon the same premises within a period of one year of the termination of the sale, shall constitute a violation of this article, and every day in which business is conducted within such period shall constitute a separate violation of this article.

§592. *Records.*

- (a) Suitable books and records concerning any sale licensed pursuant to this article shall be kept by the licensee for the duration of the licensed sale and one year thereafter, and shall be open for inspection by the licensing authority of the appropriate city, town or village in which such sale was held.
- (b) Upon the termination of a sale licensed hereunder the applicant shall, within thirty days of such termination, file a statement with the licensing authority of the appropriate city, town or village in which the sale was held stating the total retail value of the goods, wares or merchandise not disposed of during the sale and the ultimate disposition thereof and, if transferred to another, the name, address and business, if any, of the transferee.

§593. *Injunctions.*

Upon application by the licensing authority of the appropriate city, town or village in which a "closing out sale," "a sale of goods damaged by fire, smoke or water," or a "defunct business sale" is being held, the supreme court of the county wherein a violation of this act occurred may restrain and enjoin any act forbidden or declared illegal by any provision of this article.

§594. *Penalties.*

Any person violating any provision of this article shall be guilty of an unclassified misdemeanor punishable by a fine of two hundred fifty dollars or imprisonment for one year or both, and each day upon which any sale is conducted in violation of this article shall be a separate violation.

§595. *Application of article.*

This article shall apply only to any city, town or village having a population of less than one million.

§596. *Saving clause.*

If any section or provision of this article shall at any time be declared to be unconstitutional, it is the expressed legislative intent that no other section or provision hereof be thereby affected.