



Undertaking a Closing-Out or Going-Out-of-Business Sale in Newton

To undertake a Closing-Out or Going-Out-of-Business Sale in Newton, the business owner must complete the following steps as laid out in Chapter 93 of Massachusetts General Law, and deliver the required material listed below to the Newton City Clerk's Office at least three days before the start of the sale.

1. The business owner must provide the City Clerk with a complete and detailed inventory, signed by the owner under the penalties of perjury, which inventory shall include:

A list of all items to be included in such sale which shall consist of only the goods, wares and merchandise actually in the place of business wherein or whereat such sale is to be conducted, at the opening of such sale, describing same by name or kind and the quantity of each thereof, and

Whether or not previously listed, a listing separately in the same manner of any goods, wares and merchandise to be included in such sale which had been purchased during a sixty day period immediately prior to the filing of the inventory.

2. The fee to file this inventory is \$1.00 per page payable by check to the City of Newton.

3. A good and sufficient bond, payable to the City of Newton, in the penal sum of one thousand dollars, with sureties approved by the Mayor of Newton.

Your Insurance Company should be able to assist with this performance/surety bond. The Bond Company used must be licensed to issue bonds in Massachusetts. Once submitted, the City's Law Department will review, and if sufficient, the Mayor will approve.

All of the above items must be delivered to the City Clerk's Office with a copy sent to the Massachusetts Attorney General's Office.

4. If your business has filed a Business Certificate (DBA) with the City Clerk's Office, a Withdrawal From Business Form should also be filed. A copy of this form is attached. The fee to file this form is \$10.00 and must be paid by check to the City of Newton.

For additional details on what can be included in a Closing-Out Sale, how long it can last, and what Massachusetts Law allows, please see the text of M.G.L. Chapter 93, Section 28A below.

MASSACHUSETTS GENERAL LAWS

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XV. REGULATION OF TRADE

CHAPTER 93. REGULATION OF TRADE AND CERTAIN ENTERPRISES REGULATING CLOSING OUT SALES, SO CALLED, AND SIMILAR TYPES OF SALES

Chapter 93: Section 28A. Removal or termination sales

(1) The following words, as used in this section, shall have the following meanings:—

“Person” shall include any natural person, corporation, trust, partnership, incorporated or unincorporated association, assignees under voluntary assignments for the benefit of creditors or insurers, persons required by law to sell personal property, or any other legal entity, but shall not

include any executors, administrators, guardians, conservators, receivers, sheriffs, deputy sheriffs, constables, collectors of taxes, or those persons conducting a sale in accordance with sections eighteen to twenty-one, inclusive, of chapter one hundred, all acting in their capacity as such.

“Removal sale” shall include any sale by any person of a stock of goods, wares, or merchandise under the designation of “lost our lease”, “must vacate”, “forced out”, or any designation signifying cessation of the business by such person only at the sale location.

“Termination sale” shall include any sale by any person of a stock of goods, wares, or merchandise under the designation of “closing out”, “going out of business”, “discontinuing business”, “selling out”, “retirement sale”, or any designation signifying cessation of business by such person at all locations within the commonwealth, provided that a seller may use the words “manufacturer’s closeout” where there has been an actual discontinuance by a manufacturer of a model or line of merchandise and where a seller is not otherwise engaged in a removal or termination sale.

(2) No person shall conduct a removal or termination sale in any city or town at any place, without having first paid the fee provided by clause (69) of section thirty-four of chapter two hundred and sixty-two and filed with the clerk of any such city or town with a copy thereof to the attorney general at least three days prior to the opening of such sale the following:—

(a) A complete and detailed inventory, signed by the owner under the penalties of perjury, which inventory shall include:

- (i) A list of all items to be included in such sale which shall consist of only the goods, wares and merchandise actually in the place of business wherein or whereat such sale is to be conducted, at the opening of such sale, describing same by name or kind and the quantity of each thereof, and
- (ii) Whether or not previously listed, a listing separately in the same manner of any goods, wares and merchandise to be included in such sale which had been purchased during a sixty day period immediately prior to the filing of the inventory, and

(b) A good and sufficient bond, payable to the city or town, in the penal sum of one thousand dollars, with sureties approved by the mayor or selectmen or by a justice of the district court in whose judicial district is situated the city, town or ward in which such sale is to be conducted, conditioned upon compliance with this section. Every bond given in connection with any such sale shall be kept by the clerk of the city or town until the expiration of three years from the final date of such sale as filed as aforesaid, and shall then be surrendered to the principal if he has so requested, otherwise to one of the sureties; provided, however, that if at the expiration of said three years such clerk has reason to believe a pending action relates to such bond, he shall retain such bond until final disposition of such action.

(3) No person shall advertise a removal or termination sale unless such sale is for the purpose designated in the advertising of such sale.

(4) No person, in the course of a removal or termination sale, shall offer any goods, wares, or merchandise purchased on consignment or not in the usual course of business for resale on bona fide orders without cancellation privileges, nor shall such stock of goods include any items purchased for the purpose of selling same at such sale or any items not listed in the inventory for such sale. Any unusual addition to the stock made within sixty days prior to the filing of the inventory shall be prima facie evidence that such addition was made in contemplation of such sale and for the purpose of selling same at such sale.

- (5) No person shall conduct a removal or termination sale if the owner, or partnership or corporation with which he is associated in such business, has conducted a removal sale at the same location within two years prior to the date of the subsequent sale or has conducted a termination sale at the same location or elsewhere in the commonwealth within two years prior to the date of the subsequent sale.
- (6) No person shall conduct a removal sale if any means have been established by the owner for continuation of the business at the same location at the conclusion of such sale.
- (7) No person shall conduct a termination sale if any means have been established by the owner for continuation of the business by the same owner, directly or indirectly, by partnership, corporation or otherwise under the same name or under a different name, at the same location, or elsewhere within the commonwealth.
- (8) No person shall conduct a removal or termination sale for a period of more than sixty days from the opening of such sale.
- (9) No person shall advertise a removal or termination sale without prominently stating the final date of said sale and that the sale includes no goods other than those listed in the inventory as required by this section, and all such advertising shall be confined to or refer only to the address and place of business specified in the inventory which is to be discontinued.
- (10) No person shall make a sale of any of the goods, wares and merchandise previously offered in the course of a removal or termination sale except in bulk to a new owner.
- (11) Every inventory and all other records required by this section to be filed with the city or town clerk and the attorney general shall be a public record as provided in clause Twenty-sixth of section seven of chapter four.

MASSACHUSETTS GENERAL LAWS
CHAPTER 262. FEES OF CERTAIN OFFICERS
TOWN CLERKS

Chapter 262: Section 34. Enumeration of fees

Section 34. Unless otherwise established in a town by town meeting action and in a city by city council action; and in a town with no town meeting by town council action, by adoption of appropriate bylaws and ordinances to set such fees, the fees of city and town clerks shall be as follows:—

- (69) For receiving and filing of a complete inventory of all items to be included in a “closing out sale”, “going out of business sale”, “discontinuance of business sale”, “selling out”, “liquidation”, “lost our lease”, “must vacate”, “forced out”, or other designation of like meaning, one dollar per page.

Commonwealth of Massachusetts
City of Newton

Statement of Discontinuance, Withdrawal from, or Deceased from Business or Partnership

In conformity with the Provisions of Massachusetts General Law Chapter 110, Section 5, the undersigned hereby declare that the individual(s) listed below is(are) deceased , retired from or withdrawn from the following business; or the business has been discontinued

Business Name: _____

Location of Business: _____
(street address as it appears on the Business Certificate)

as set forth in the certificate filed in the City Clerk's Office on: _____ Book: _____ Page: _____
(date of filing)

The full name and address of each person conducting such business:

- | | | |
|----------|---------|--------|
| 1. _____ | _____ | _____ |
| Name | Address | Signed |
| 2. _____ | _____ | _____ |
| Name | Address | Signed |
| 3. _____ | _____ | _____ |
| Name | Address | Signed |

Signature of Executor/Administrator of Estate if Deceased

On this _____ day of _____, 20____. Before me, the undersigned notary public, personally appeared _____ and proved to me through satisfactory evidence of identification, which were _____, to be the person/s whose name is signed above and swore or affirmed to me that the contents of the document are truthful and accurate to the best of his/her knowledge and belief.

(seal)

_____ My Commission Expires: _____
Notary Public

This business was discontinued on: _____
Date