

WAREHOUSEMEN'S LIENS ACT.

Act No. 19, 1935.

An Act to amend the law respecting certain possessory liens. [Assented to, 28th March, 1935.] George V.
No. 19, 1935.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. This Act may be cited as the "Warehousemen's Liens Act, 1935." Short title.

2.

Warehousemen's Liens Act.**No. 19, 1935.**Interpreta-
tion.**2.** In this Act, unless the context otherwise requires—

“ Goods ” shall include personal property of every description that may be deposited with a warehouseman as bailee.

“ Warehouseman ” shall mean a person lawfully engaged in the business of storing goods as a bailee for hire.

Declaration
of ware-
houseman's
lien.

3. Subject to the provisions of section five of this Act, every warehouseman shall have a lien on goods deposited with him for storage, whether deposited by the owner of the goods or by his authority, or by any person entrusted with the possession of the goods by the owner or by his authority.

Charges
covered
by lien.

4. The lien shall be for the amount of the warehouseman's charges, that is to say—

- (a) all lawful charges for storage and preservation of the goods; and
- (b) all lawful claims for money advanced, interest, insurance, transportation, labour, weighing, cooping, and other expenses in relation to the goods; and
- (c) all reasonable charges for any notice required to be given under the provisions of this Act, and for notice and advertisement of sale, and for sale of the goods where default is made in satisfying the warehouseman's lien.

Necessity of
notice by
warehouse-
man where
goods
deposited by
person
entrusted
with
possession.

5. (1) Where the goods on which a lien exists were deposited not by the owner or by his authority, but by a person entrusted by the owner or by his authority with the possession of the goods, the warehouseman shall, within two months after the date of the deposit, give notice of the lien—

- (a) to the owner of the goods, including any person who has served upon the warehouseman a prescribed notice of his claim to be the owner of the goods or of some interest therein; and
- (b) to the grantee of the goods under any bill of sale registered at the date of the deposit under the Bills of Sale Act, 1898, as amended by subsequent Acts.

- (2) The notice shall be in writing and contain—
- (a) a brief description of the goods; and
 - (b) a statement showing the location of the warehouse where the goods are stored, the date of their deposit with the warehouseman, and the name of the person by whom they were deposited; and
 - (c) a statement that a lien is claimed by the warehouseman in respect of the goods under this Act; and
 - (d) such other particulars as are prescribed.

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 of notice.

(3) The notice may be given personally or by registered post.

(4) Where the warehouseman fails to give the notice required by this section, his lien, as against the person to whom he has failed to give notice, shall be void as from the expiration of the period of two months from the date of the deposit of the goods.

Effect of
 failure to
 give notice.

6. (1) In addition to all other remedies provided by law for the enforcement of liens or for the recovery of warehouseman's charges a warehouseman may sell by public auction, in the manner provided in this section, any goods upon which he has a lien for charges which have become due.

Power to
 sell goods.

(2) The warehouseman shall give written notice of his intention to sell—

Notice of
 intention
 to sell.

- (a) to the person liable as debtor for the charges for which the lien exists; and
- (b) to the owner of the goods, including any person who has served upon the warehouseman a prescribed notice of his claim to be the owner of the goods or of some interest therein; and
- (c) to the grantee of the goods under any bill of sale or chattel mortgage registered (or filed) under the Bills of Sale Act, 1898, as amended by subsequent Acts, at the date of the deposit of the goods.

(3) The notice may be given personally or by registered post.

(4)

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of notice.**

- (4) The notice shall contain—
- (a) a brief description of the goods; and
 - (b) a statement showing the location of the warehouse where the goods are stored, the date of their deposit with the warehouseman, and the name of the person by whom they were deposited; and
 - (c) an itemized statement of the warehouseman's charges showing the sum due at the time of the notice; and
 - (d) a demand that the amount of the charges as stated in the notice and such further charges as may accrue shall be paid on or before a day mentioned, not less than one month from the delivery of the notice if it is personally delivered, or from the time when the notice should reach its destination according to the due course of post if it is sent by post; and
 - (e) a statement that unless the charges are paid within the time mentioned the goods will be advertised for sale and sold by public auction at a time and place specified in the notice.

**Advertisement
of
sale.**

(5) Where the charges are not paid on or before the day mentioned in the notice, an advertisement of the sale, describing the goods to be sold, and stating the time and place of the sale, shall be published at least once a week for two consecutive weeks in a newspaper circulating in the locality where the sale is to be held, and in one metropolitan daily newspaper.

The sale shall be held not less than fourteen days from the date of the first publication of the advertisement.

(6) A court of petty sessions holden before a stipendiary or police magistrate in the district in which the premises of the warehouseman are situated may, on the application of the owner, made in the manner prescribed, at any time after the service of the notice by order, stay further proceedings under this section, for such period and on such terms as it deems just, and any proceedings under this section taken after due service of such order on the warehouseman, and during the period specified in the order, shall be illegal

(7)

(7) This section shall apply only to cases in which some part of the charges in arrear are in respect of a period more than twelve months prior to the date upon which the notice of intention to sell is given.

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7. (1) Where a notice of lien under the provisions of section five of this Act, or a notice of intention to sell under the provisions of section six of this Act has been given, but such provisions have not been strictly complied with, if any court before whom any question respecting the notice is tried or inquired into considers that such provisions have been substantially complied with, or that it would be inequitable that the lien or sale shall be void by reason of such non-compliance, no objection to the sufficiency of the notice shall in any such case be allowed to prevail so as to release or discharge the goods from the lien or vitiate the sale.

Notices.

(2) A notice given under this Act by registered post shall be deemed to be sufficiently addressed to the person to whom it is sent if it is addressed to him at the last address of such person known to the warehouseman.

(3) Regulations made under this Act may provide for the giving of notice by advertisement in cases where any person to whom notice may be given pursuant to section five or section six of this Act is unknown to the warehouseman, or where no address of any such person is known to the warehouseman, and for the ascertainment of the day upon which such notice shall be deemed to have been given, and for any other matter relating to such advertisement.

Any notice given by advertisement in accordance with such regulations shall for the purposes of this Act be deemed to have been given personally on the date ascertained pursuant to the regulations.

8. (1) From the proceeds of the sale the warehouseman shall satisfy his lien, and shall pay over the surplus, if any, to the person entitled thereto; and the warehouseman shall when paying over the surplus deliver to the person to whom he pays it a statement of account showing how the amount has been computed.

Disposition
of proceeds
of sale.

(2).

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(2) If the surplus is not demanded by the person entitled thereto within ten days after the sale, or if there are different claimants or the rights thereto are uncertain, the warehouseman shall pay the surplus to the Public Trustee.

(3) The warehouseman at the time of paying the amount to the Public Trustee shall furnish duplicate copies of the statement of account, showing how the amount has been computed, verified in the manner prescribed, and such other particulars relating to the transaction as may be prescribed by regulation made under this Act.

(4) Any money so paid to the Public Trustee shall be held by him on behalf of the person for the time being entitled thereto and such person shall be entitled to be repaid such sum, less any charges prescribed by regulations made under this Act. The regulations may prescribe the manner in which sums lying unclaimed in the hands of the Public Trustee for a period of six years shall be disposed of.

Provision
for payment
before sale
of goods.

9. (1) At any time before the goods are sold any person claiming an interest or right of possession in the goods may pay the warehouseman the amount necessary to satisfy his lien, including the expenses incurred in serving notices and advertisement and preparing for the sale up to the time of the payment.

Duty of
warehouse-
man on
payment.

(2) The warehouseman shall deliver the goods to the person making the payment if he is the person entitled to the possession of the goods on payment of the warehouseman's charges thereon, otherwise the warehouseman shall retain possession of the goods according to the terms of the contract of deposit.

Application
of Act.

10. The provisions of this Act shall apply to cases in which the goods were deposited for storage before as well as to cases in which the goods are deposited after the commencement of this Act but no notice pursuant to section six shall be given before the expiration of three months from such commencement.

In applying section five of this Act to a case in which the deposit was made before such commencement that section shall be read as if, in subsection one, the words

“after

"after the commencement of this Act" were substituted for the words "after the date of the deposit"; and as if the words "at the commencement of this Act" were substituted for the words "at the date of the deposit"; and as if, in subsection four, the words "from the commencement of this Act" were substituted for the words "from the date of the deposit of the goods."

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11. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act. Regulations.

(2) The regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of such publication or from a later date to be specified in the regulations; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is then in session, and if not, then within fourteen sitting days after the commencement of the next session.

(3) If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.