

Warehousemen's Liens Act 1935 No 19

[1935-19]



New South Wales

Status Information

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
 - Miscellaneous Acts (Local Court) Amendment Act 2007 No 94* (not commenced)
 - NSW Trustee and Guardian Act 2009 No 49* (not commenced)

Authorisation

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Warehousemen's Liens Act 1935 No 19



New South Wales

An Act to amend the law respecting certain possessory liens; and for other purposes.

1 Name of Act

This Act may be cited as the *Warehousemen's Liens Act 1935*.

2 Definitions

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.

3 Declaration of warehouseman's lien

Subject to the provisions of section 5, every warehouseman shall have a lien on goods deposited with him or her for storage, whether deposited by the owner of the goods or by his or her authority, or by any person entrusted with the possession of the goods by the owner or by his or her authority.

4 Charges covered by lien

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, coopering, 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.

5 Necessity of notice by warehouseman where goods deposited by person entrusted with

possession

- (1) Where the goods on which a lien exists were deposited not by the owner or by his or her authority, but by a person entrusted by the owner or by his or her 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 or her claim to be the owner of the goods or of some interest therein, and
 - (b) to the grantee of the goods under any security instrument registered at the date of the deposit under the *Security Interests in Goods Act 2005*.
- (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.
- (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 or her lien, as against the person to whom he or she 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.

6 Power to sell goods

- (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 or she has a lien for charges which have become due.
- (2) The warehouseman shall give written notice of his or her 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 or her claim to be the owner of the goods or of some interest therein, and

(c) to the grantee of the goods under any security instrument registered under the *Security Interests in Goods Act 2005* at the date of the deposit of the goods.

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

(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.

(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 Local Court constituted by a 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) Nothing in this section authorises:

(a) the sale of goods deposited prior to the commencement of the *Warehousemen's Liens (Amendment) Act 1989*, unless at least some part of the charges in arrears relates to a period more than 12 months before the date on which the notice of intention to sell the goods is given, or

- (b) the sale of goods deposited after the commencement of that Act, unless at least some part of the charges in arrears relates to a period more than 6 months before the date on which the notice of intention to sell the goods is given.

7 Notices

- (1) Where a notice of lien under the provisions of section 5, or a notice of intention to sell under the provisions of section 6 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.
- (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 or her 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 5 or section 6 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 Disposition of proceeds of sale

- (1) From the proceeds of the sale the warehouseman shall satisfy his or her 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 or she pays it a statement of account showing how the amount has been computed.
- (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 or her 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.

9 Provision for payment before sale of goods

- (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 or her lien, including the expenses incurred in serving notices and advertisement and preparing for the sale up to the time of the payment.
- (2) The warehouseman shall deliver the goods to the person making the payment if he or she 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.

9A Intermingled goods

- (1) This section applies to goods that have been deposited with a warehouseman by their owner, or by his or her authority, and that have become intermingled with other goods of the same kind owned by, or deposited with, the warehouseman so as to form a single bulk quantity (**the bulk**).
- (2) Unless the parties otherwise agree:
 - (a) the owner's property in the goods becomes property in an undivided share in the bulk, and
 - (b) the owner becomes an owner in common of the bulk, and
 - (c) subject to paragraph (d), the owner and warehouseman each have, in relation to the owner's undivided share in the bulk, the same obligations as they would have had in relation to the goods had they not become part of the bulk, and
 - (d) the warehouseman's obligation to deliver the goods to, or to the order of, the owner becomes an obligation to deliver an equivalent quantity of goods out of the bulk to, or to the order of, the owner,as from the time the goods become part of the bulk.
- (3) The owner's undivided share in the bulk at any time is such share as, at that time, is equivalent to the quantity of goods that have been deposited by the owner less the quantity of goods that have been delivered out of the bulk to, or to the order of, the owner.
- (4) If at any time the aggregate of all owners' undivided shares in the bulk exceeds the whole of the bulk, those shares are to be reduced proportionately so that their

aggregate is equal to the bulk.

- (5) A person who becomes an owner in common of the bulk is taken to consent to:
- (a) any delivery of goods out of the bulk to any other owner in common of the bulk, being goods to which this section applies, and
 - (b) any dealing with, or removal, delivery or disposal of, goods in the bulk by any other owner in common of the bulk, but only to the extent of that other owner's undivided share in the bulk.
- (6) No cause of action lies against any person by reason of that person's having acted in accordance with subsection (5) (a) or (b) in reliance on the consent that exists by virtue of that subsection.
- (7) This section does not apply to goods deposited with a warehouseman before the commencement of the *Sale of Goods and Warehousemen's Liens Amendment (Bulk Goods) Act 2006*.

10 Application of Act

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 6 shall be given before the expiration of three months from such commencement.

In applying section 5 to a case in which the deposit was made before such commencement that section shall be read as if, in subsection (1), the words "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 (4), the words "from the commencement of this Act" were substituted for the words "from the date of the deposit of the goods".

11 Regulations

- (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.
- (2), (3) (Repealed)