

Recommended Procedure to Satisfy **WAREHOUSEMEN'S LIEN**
By the Sale of Goods

FORWARD

In Illinois, the "Uniform Commercial Code" is the principal source of statutory law pertaining to enforcement of a warehouseman's lien by the sale of goods.¹

Every warehouseman should be aware of a 1972 amendment to the Code which was successfully sponsored by your Association and which provides for a priority of lien in respect to household goods. This amendment provides that a warehouseman's lien on household goods is effective against all persons if the depositor was the legal possessor of the goods at the time of the deposit.² This provision took effect July 1, 1973.

The following procedures for enforcing warehousemen's liens are set forth as a guide only and are not intended to take the place of competent legal advice, which should always be sought prior to any sale to satisfy a lien. *These procedures, compiled specifically for the benefit and guidance of the members of the Illinois Movers' & Warehousemen's Association, were prepared by the Springfield law firm of Drach, Terrell & Deffenbaugh at the request of the Association.*

INDEX:

I. BEFORE THE SALE

- A. When to sell
- B. Examination of each file
- C. Security instrument of search
- D. Notice to all interested parties
 - 1. form of notice
 - 2. form of legal ad
 - 3. form of mailing affidavit

II. AT THE SALE

- A. How much to sell
- B. Accepting payment prior to actual sale
- C. Preparation of goods for sale
- D. Securing interested buyers
- E. Warehouseman bidding at own sale

III. AFTER THE SALE

- A. What title does buyer receive
- B. Retention of excess money
- C. Retention of records of sale

I. BEFORE THE SALE.

The Uniform Commercial Code provides that a warehouseman has a lien (a hold) on the goods covered by a warehouse receipt for charges for storage or transportation (including demurrage and

terminal charges), insurance, labor, or charges present or future in relation to the goods and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law,³ and provides for the method of disposing of goods in order to satisfy a warehouseman's lien.⁴

The following facts will be presumed for the purpose of this discussion:

- a) a storage lot has been placed in your warehouse;
- b) a proper warehouse receipt has been issued in the name of the depositor or depositors;
- c) the depositor owes money to the warehouseman due to non-payment of warehouse charges, including labor in wrapping, packing, etc.
- d) the warehouseman has attempted through all reasonable means to collect his storage charges from the depositor but has been unsuccessful.

The first decision is when to sell a delinquent lot. The law does not say that it is necessary that the goods be stored for a specific time prior to sale. There have been some early decisions by the courts (not in Illinois) that indicate that a warehouseman should not leave goods on deposit for an unreasonable length of time so that accrued charges equal or exceed the value of the goods. It seems advisable that a warehouse sale be conducted semi-annually, or at least annually.

Once the warehouseman has decided to hold a sale, then each file containing the records of the lot to be sold should be carefully examined. The purpose of this examination is to determine the names and last-known addresses of each party to be served with notice. In the event a storage lot is stored in more than one name, separate notices should be addressed to each of the parties. If a depositor is in the armed services, then court approval and compliance with the Soldiers and Sailors Relief Act is required. If it is known that a depositor is deceased, the warehouseman is required to notify the executor or administrator of the estate or a public administrator or known heirs before sale.

The records in the office of the County Recorder and the Secretary of State should be searched to determine whether or not there is a security instrument filed against the particular goods.⁵

Then the sale may be held after taking the following steps:

1. Notice⁶

- a) All persons known to claim an interest in the goods must be notified;
- b) The notification must be delivered in person or sent by registered or certified letter to the last known address of any person to be notified;
- c) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specific time not less than ten days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specific time and place.

2. Advertisement and Sale after Notice⁷

- a) The sale must conform to the terms of notification;
- b) The sale must be held at the nearest suitable place to that where the goods are stored;
- c) After expiration of the time given in the notification, an advertisement must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held;
- d) The advertisement must include a description of the goods, the name of the person on whose account they are being held, and the time and place of the sale. The sale must take place at least fifteen (15) days after the first publication. If there is not a newspaper of general circulation where the sale is to be held, the advertisement must be posted at least ten days before the sale in not less than six conspicuous places in the neighborhood of the posted sale.

It is recommended that some one person of authority in the warehouseman's office handle all the details and supervise the sale, place the notice of sale in the envelope and mail it, submit an affidavit stating name and address on envelope containing notice, date mailed, and address of post office or postal box mailed from.

All inquiries regarding the sale should be referred to

the above person, and no one else in the organization should be permitted to answer inquiries regarding the goods to be sold. *This is very important*, as there have been cases where goods had been sold and the depositor claimed that he had arranged with someone in the office to postpone the sale. The warehouseman is then put to considerable expense defending a lawsuit brought by the depositor for conversion.

II. AT THE SALE

The Uniform Commercial Code states a sale should only be made of those items sufficient to insure satisfaction of the obligation due the warehouseman, including storage charges, demurrage, and reasonable expenses for the preparation of the sale.⁸

It should be remembered that before any sale any person claiming the right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred by the warehouse. In that event, the goods must not be sold but must be retained by the warehouseman subject to the terms of the receipt. The advisability of accepting partial payment of the total storage charges must be left to the discretion of the individual warehouseman. If, after serving notice of the sale, the warehouseman accepted a part-payment of the amount due, the acceptance of this payment would invalidate the service of the notice, and if the warehouseman sold the goods under the notice that had been served, he would be liable for conversion. *The warehouseman is not required to accept a part-payment after serving the sale notice; but if he does so, the goods must be withdrawn from the sale.*

In view of the fact that the law is not specific that only so much of the goods as is necessary to satisfy the indebtedness should be sold, it becomes necessary for the warehouseman to prepare the goods for sale in such a manner that they can be inspected by interested bidders at the sale in order to bring the highest price. This necessitates opening containers, boxes, barrels, trunks, suitcases, and displaying the articles. The warehouseman is given specific authority to buy at his own sale.

Advertising the sale other than the legal advertisement required is advisable in order to secure as many buyers as possible. Some warehousemen make it a practice to circularize

second hand furniture dealers, operators of rooming houses, antique shops, etc., and having specific hours prior to the sale when the goods can be viewed.

A warehouseman should have at least two trusted employees unpack the containers and make a complete itemized list of the contents, enumerating every article and assigning a lot number and piece number. This sheet can be used at the sale; and opposite the item, the price realized can be noted. This will give the warehouseman a check on the sale and the proceeds; and also, if the goods are withdrawn from sale, they can be repacked in the containers from which they are taken. Another reason for this procedure is to guard against claims for shortage.

There is nothing in the Code regarding the disposition of articles of a personal nature, such as family correspondence, photographs, bibles, marriage certificates, and other items of this category. Presumably, they must be sold with the other goods in the lot.

Experienced warehousemen have in the past, in order to prevent them from getting into the hands of strangers, bought them in at the sale and notified the depositor to advise as to the disposition of these items. If they do not hear from the depositor in a reasonable time, the warehouseman destroys them. It is not advisable to withhold these items altogether from the sale, because it may then become necessary to get a court order for permission to dispose of them.

The actual sale must take place at least fifteen days after the first publication of the legal notice referred to.

Local ordinances should be consulted concerning the necessity of having a licensed auctioneer conduct the sale.

III. AFTER THE SALE

One who purchases in good faith at a warehouseman's sale takes the goods free of any rights of persons against whom the lien was valid, even though the warehouseman did not comply with the requirements of the Code.

The warehouseman may satisfy his charges from the proceeds of the sale, but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods had

the sale not taken place. It is suggested that if there is a surplus received from the sale, these funds be placed in a separate bank account so that they will not be commingled with the moneys of the warehouseman. The complete record of the sale should be kept in the file of the warehouseman, including copies of all correspondence, returned registered receipts, notices of sale, articles sold and amounts received, and the name and address of the purchaser. On demand, the depositor has the right to know the name and address of the buyer and the price he paid for each article.

The priority of lien, effective July 1, 1973, constitutes an important change in the law, which goes far to protect the priority of a warehouseman's lien on household goods over other security interests. Through this change, the law now simply provides that a warehouseman's lien on household goods is effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. "Household goods" as defined in the statutes means furniture, furnishings, and personal effects used by the depositor in a dwelling.⁹

[Ed. note: In Illinois, motor vehicles in any delinquent storage lot must be sold by sheriff's action, not via the warehousemen's lien auction.]

FOOTNOTES:

¹Uniform Commercial Code (U.C.C.) Section 7-210

²U.C.C. Section 7-209, par. (3) (b)

³U.C.C. Section 7-209 (1)

⁴U.C.C. Section 7-210

⁵U.C.C. Section 9-401

⁶U.C.C. Section 7-210 (2)

⁷U.C.C. Section 7-210 (2)

⁸U.C.C. Section 7-210 (1)

⁹U.C.C. Section 7-209 (3) (b)