

DISPOSING OF DEAD STORAGE LOTS

What to do with a Storage Lot on which payment is delinquent is a problem Warehouse Operators face on a regular basis. The answer is that the Warehouse Operator may enforce a Warehouse Lien by selling the storage lot at a public Auction in accordance with the Uniform Commercial Code and with the Storage Agreement between the Warehouse Operator and the Customer.

In order to enforce a Warehouse Lien, the Operator must prove the amount the Customer promised to pay, that the Customer failed to pay as promised, and that the Operator enjoys a Lien to enforce payment. In the absence of a written Storage Agreement, it may not be possible to prove any of these requisites. That is why I recommend that a Mover require a signed Storage Agreement before accepting a Storage Lot into Storage-in-Transit. SIT can turn into Permanent Storage with the passage of time. When SIT becomes Permanent Storage, it may not be possible to get the Customer to sign a Storage Agreement. The Operator then has no written promise to pay for Permanent Storage and no Warehouse Lien.

Assuming that a Warehouse Lien exists, the Warehouse Operator must give two forms of Notice prior to sale of the Storage Lot at Auction. First, the Operator must send written Notice by certified mail to the Customer. The Notice must state a deadline for receipt of payment, and a date, time and location for the Auction. The Mailed Notice must be received by the Customer at least 10 calendar days prior to the Auction. Second, the Operator must publish Notice of the Auction in a newspaper of general circulation in the locality where the Warehouse is located and the Auction will be conducted, at least once in each of 2 consecutive weeks. The first Publication must be after the deadline for receipt of payment stated in the Mailed Notice and must be at least 15 calendar days prior to the Auction.

At the auction, any items on which no one bids can be purchased by the Warehouse Operator for a nominal amount (i.e. \$1.00). After purchasing such items, the Operator can keep them or dispose of them in the nearest dumpster. If the Operator does not purchase such items, the Operator has no right to keep or dispose of them.

This is not an exhaustive list of the requirements for a lawful Warehouse Lien Auction. You would be well-advised to use the services of a professional Auctioneer and to consult with an experienced attorney to insure compliance with the law.

I have defended cases where the Warehouse Operator determined the Storage Lot had no value and disposed of it without complying with the law, thinking no one would care. The Customer filed suit, claiming that the Storage Lot was worth tens or even hundreds of thousands of dollars. If the Operator disposed of the Storage Lot without complying with applicable law, a court may be inclined to believe the Customer. I have been successful defending such claims, but would not recommend that a Warehouse Operator risk an unfavorable outcome.

With thanks to industry expert and transportation attorney,
Rory K. McGinty, Downers Grove IL
March 2020