

WAREHOUSEMEN'S LIENS ORDINANCE 1969

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No. 59 of 1969

An Ordinance to amend the law relating to the
warehousing of goods

[Assented to 10 December, 1969]

BE it ordained by the Legislative Council for the Northern Territory of Australia as follows:—

1. This Ordinance may be cited as the *Warehousemen's Liens Ordinance* 1969. Short title
2. This Ordinance shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.* Commencement
3. In this Ordinance unless the contrary intention appears— Definitions
 - "Local Court of Full Jurisdiction" means a Local Court of Full Jurisdiction continued in existence by or constituted and established under the *Local Courts Ordinance* 1941-1965;
 - "warehouseman" means a person lawfully engaged in the business of storing goods as a bailee for hire or reward.
4. Subject to the provisions of section 6 of this Ordinance, every warehouseman shall have a lien on goods deposited with him for storage. Declaration of warehouseman's lien
- 5.—(1.) The lien referred to in the last preceding section shall be for the amount of— Charges covered by the lien
 - (a) all lawful charges of the warehouseman for storage and preservation of the goods;
 - (b) all lawful claims of the warehouseman for insurance, transportation, labour, weighing, packing, cooping and other expenses in relation to the goods; and
 - (c) where default is made in satisfying the lien charged on the goods by virtue of the preceding provisions of this sub-section all reasonable charges of the

* The date fixed was 7 January, 1970 (see *Northern Territory Government Gazette* No. 1 of 7 January, 1970, page 1).

warehouseman for notice and advertisement of an intended sale of the goods and, if the goods are sold, for the sale of the goods.

(2.) Where the charges referred to in paragraph (c) of the last preceding sub-section are incurred with respect to more than one item of goods, those charges shall, with respect to any one item, be deemed to be an amount that bears the same proportion to the total charges as the amount of the lien charged on the item by virtue of the other provisions of that sub-section bears to the amount of the lien charged on all the items by virtue of other provisions.

Necessity of
notice by
warehouseman

6.—(1.) The warehouseman shall within three months after the date of the deposit of the goods give notice of the lien—

(a) to any person who has, before the expiration of the period of two months after the date of the deposit of the goods, served upon the warehouseman a notice of his claim to be the owner of the goods or an interest in the goods or of whose interest the warehouseman has received notice;

(b) to the grantee, or (where a transfer by the grantee has been registered in accordance with the *Instruments Ordinance* 1935-1965) to the transferee, of any bill of sale relating to the goods—

(i) which was granted by the person depositing the goods or by any other person of whose interest in the goods the warehouseman has knowledge;

(ii) which was registered in accordance with the *Instruments Ordinance* 1935-1965 prior to the date of the deposit of the goods; and

(iii) which has not become null and void or in respect of which a discharge has not been entered; and

(c) to any other person of whose interest in the goods the warehouseman at any time before the expiration of two months after the date of the deposit of the goods has knowledge.

(2.) Notice of a lien on goods—

(a) shall be in writing; and

(b) shall contain—

(i) a brief description of the goods;

- (ii) a statement showing the situation 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
- (iii) a statement that a lien is claimed by the warehouseman in respect of the goods.

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

7. A person shall, on depositing goods with a warehouseman for storage, give notice in writing to the warehouseman of the name, and, if known, the address of every person whom the first mentioned person knows has an interest in the goods.

Notice by
person depositing
goods

Penalty: Twenty dollars.

8.—(1.) In addition to all other remedies provided by law for the enforcement of liens or for the recovery of warehousemen's charges a warehouseman may sell by public auction 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—

- (a) to the person liable as debtor for the charges for which the lien exists;
- (b) to any person who has served upon the warehouseman a notice of his claim to be the owner of the goods or of some interest therein or of whose interest the warehouseman has received notice;
- (c) to the grantee, or (where a transfer by the grantee has been registered in accordance with the *Instruments Ordinance* 1935-1965) to the transferee, of any bill of sale relating to the goods—
 - (i) which was granted by the person depositing the goods or by any other person of whose interest in the goods the warehouseman has knowledge;
 - (ii) which was registered in accordance with the *Instruments Ordinance* 1935-1965 prior to the date of the deposit of the goods; and
 - (iii) which has not become null and void or in respect of which satisfaction has not been entered; and

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(d) to any other person of whose interest in the goods the warehouseman has knowledge;

(3.) The notice shall contain—

(a) a brief description of the goods;

(b) a statement showing the situation 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;

(c) an itemized statement of the warehouseman's charges showing the sum due at the time of the notice;

(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, or (as the case may require) by such method and at a time and place specified in the notice.

(4.) 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 twice in a daily newspaper printed and published in the City of Darwin and in a newspaper printed and published in the Town of Alice Springs, the first publication appearing not less than fourteen days before the day of the sale and the second publication appearing not less than seven days after the first.

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

(6.) For the purpose of advertising in accordance with the provisions of this section, the warehouseman may without liability for damage take all reasonable steps (including the opening of sealed or closed boxes or packages) to ascertain the nature and description of the goods to be sold.

(7.) If, pursuant to the last preceding sub-section, any box or package is opened the same shall be opened in the presence of two other persons who shall make, sign and verify by statutory declaration an inventory of the contents thereof.

(8.) The Local Court of Full Jurisdiction nearest to the premises of the warehouseman may, on the application of any person having any interest in the goods made at any time after the service of the notice, make an order staying further proceedings under this section for such period and on such terms as it deems just.

(9.) 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.

(10.) For the purposes of a sale of goods under this section, the warehouseman shall be deemed to be the absolute owner of the goods.

9.—(1.) If, at any time before the goods are sold under section 8 of this Ordinance, a person claiming an interest in, or a right of possession of, the goods or a part of the goods pays to the warehouseman the amount necessary to satisfy the warehouseman's lien on the goods or the part of the goods to which the person's claim relates, as the case may be, no further proceedings for the sale of the goods or the part of the goods to which the person's claim relates, as the case may be, shall be taken.

Payment of charges before sale

(2.) If, after payment is made to satisfy a lien on goods, being payment made in pursuance of the last preceding subsection, the goods are left deposited with the warehouseman for storage, the warehouseman shall be deemed to retain the goods according to the terms of the original contract of deposit.

(3.) A person who, in pursuance of sub-section (1.) of this section, makes a payment to satisfy a lien on goods for charges for which the person is not primarily liable may recover the amount of the payment, together with interest on that amount at the rate of five per centum per annum calculated from the date of payment, as a debt due to him from the person primarily liable to pay the charges.

10. No action lies against any person by reason of a sale of goods in accordance with this Ordinance.

No action by reason of sale

11.—(1.) A warehouseman shall pay into the Local Court of Full Jurisdiction nearest to the premises of the warehouse so much, if any, of the proceeds of a sale of goods made in pursuance of section 8 of this Ordinance as is not required to satisfy his lien on the goods.

Disposition of proceeds of sale

Penalty: One hundred dollars or imprisonment for six months.

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(2.) When making a payment into such a Court under the last preceding sub-section, a warehouseman shall deliver to the Clerk of that Court—

- (a) a statement of account showing how the amount paid in has been computed; and
- (b) a copy of each notice of his intention to sell the goods given by the warehouseman in pursuance of section 8 of this Ordinance.

Penalty: Twenty dollars.

(3.) Moneys paid into the Court under sub-section (1.) of this section may, upon the order of the Court, be applied as the Court thinks fit.

(4.) Where the Court has not, within twelve months after the payment of moneys into the Court under sub-section (1.) of this section, made an order with respect to the moneys, the moneys shall be paid into the Consolidated Revenue Fund.

Service of
notices

12.—(1.) A notice by a warehouseman under this Ordinance may be given to a person—

- (a) personally;
- (b) by registered post addressed to the person at the last address of the person known to the warehouseman; or
- (c) where the warehouseman does not know an address of the person—by an advertisement published twice in a daily newspaper printed and published in the City of Darwin and in a newspaper printed and published in the Town of Alice Springs with an interval of at least seven days between the advertisements.

(2.) A notice given by advertisement in accordance with paragraph (c) of the last preceding sub-section shall, for the purposes of this Ordinance, be deemed to have been given on the date of the second publication of the advertisement.

Notice—
substantial
compliance

13. Where—

- (a) a notice of lien or a notice of intention to sell purports to have been given under this Ordinance but the provisions of this Ordinance with respect to the giving of the notice have not been strictly complied with; and
- (b) a court before which a question respecting the notice is tried or inquired into considers that—
 - (i) those provisions have been substantially complied with; or

- (ii) it would be inequitable that the lien or sale should be deemed to be void by the reason of non-compliance,

an objection to the sufficiency of the notice shall not be allowed to prevail so as to release or discharge the goods from the lien or vitiate the sale.

14.—(1.) The provisions of this Ordinance shall apply to cases in which the goods were deposited for storage before as well as to cases in which the goods were deposited after the commencement of this Ordinance but no notice pursuant to section 8 of this Ordinance shall be given before the expiration of three months from such commencement.

Application of Ordinance

(2.) In applying section 6 of this Ordinance to a case in which the deposit of goods was made before such commencement that section shall be read as if, in sub-section (1.) thereof, the words "after the commencement of this Ordinance" were substituted for the words "after the date of the deposit of the goods", and the words "prior to the commencement of this Ordinance" were substituted for the words "prior to the date of the deposit of the goods"; and as if, in sub-section (3.) thereof the words "from the commencement of this Ordinance" were substituted for the words "from the date of the deposit of the goods".

15. Nothing in this Ordinance shall be construed as abrogating, limiting or in any manner affecting—

Certain liens rights &c. not to be affected by Ordinance

- (a) any lien or power of sale or other right (whether arising under contract or by operation of law) which a warehouseman may have apart from this Ordinance in respect of any goods stored by him; or
- (b) the enforcement of such lien or the exercise of any such power or right.

16.—(1.) This Ordinance does not authorize the sale by public auction by a warehouseman of any goods if the sale by public auction of those goods is prohibited by a law in force in the Territory.

Sales otherwise prohibited are not authorized by Ordinance

(2.) This Ordinance does not authorize the sale by public auction by a warehouseman of any goods if the sale by the warehouseman of those goods is prohibited by any other law in force in the Territory.

17. An auction held in accordance with the provisions of this Ordinance, shall be conducted by a person who holds a licence granted and in force under the *Auctioneers Ordinance* 1935-1964.

Auction to be held by licensed person

