

**NORTHERN TERRITORY OF AUSTRALIA**

**WAREHOUSEMEN'S LIENS ACT**

As in force at 1 January 1991

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 1 January 1991

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## WAREHOUSEMEN'S LIENS ACT

### An Act to amend the law relating to the warehousing of goods

#### 1 Short title

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

#### 2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

#### 3 Definitions

In this Act unless the contrary intention appears:

***warehouseman*** means a person lawfully engaged in the business of storing goods as a bailee for hire or reward.

#### 4 Declaration of warehouseman's lien

Subject to the provisions of section 6 every warehouseman shall have a lien on goods deposited with him for storage.

#### 5 Charges covered by the lien

- (1) The lien referred to in section 4 shall be for the amount of:
- (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, cooperating 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 subsection all reasonable charges of the warehouseman for notice and advertisement of an intended sale of the goods and, if the goods are sold, for the sale of the goods.

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- (2) Where the charges referred to in paragraph (c) of subsection (1) 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 subsection bears to the amount of the lien charged on all the items by virtue of other provisions.

## **6 Necessity of notice by warehouseman**

- (1) The warehouseman shall within 3 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 2 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 Act* 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 Act* 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 2 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

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- (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 3 months from the date of the deposit of the goods.

## **7 Notice by person depositing goods**

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.

Penalty: \$200

## **8 Power to sell goods**

- (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.
- (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 Act* 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 Act 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
  - (d) to any other person of whose interest in the goods the warehouseman has knowledge.

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- (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 14 days before the day of the sale and the second publication appearing not less than 7 days after the first.
- (5) The sale shall be held not less than 14 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 subsection (6), any box or package is opened the same shall be opened in the presence of 2 other persons who shall make, sign and verify by statutory declaration an inventory of the contents thereof.

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- (8) The Local Court 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 12 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 Payment of charges before sale**

- (1) If, at any time before the goods are sold under section 8, 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.
- (2) If, after payment is made to satisfy a lien on goods, being payment made in pursuance of subsection (1), 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 subsection (1), 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 12% 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 by reason of sale**

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

**11 Disposition of proceeds of sale**

- (1) A warehouseman shall pay into the Local Court so much, if any, of the proceeds of a sale of goods made in pursuance of section 8 as is not required to satisfy his lien on the goods.

Penalty: \$500 or imprisonment for 6 months.

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- (2) When making a payment into such a Court under subsection (1), a warehouseman shall deliver to the Registrar:
- (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.

Penalty: \$200.

- (3) Moneys paid into the Court under subsection (1) may, upon the order of the Court, be applied as the Court thinks fit.
- (4) Where the Court has not, within 12 months after the payment of moneys into the Court under subsection (1), made an order with respect to the moneys, the moneys shall be paid into the Consolidated Revenue Fund.

## **12 Service of notices**

- (1) A notice by a warehouseman under this Act 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 7 days between the advertisements.
- (2) A notice given by advertisement in accordance with paragraph (c) of subsection (1) shall, for the purposes of this Act, be deemed to have been given on the date of the second publication of the advertisement.

## **13 Notice – substantial compliance**

Where:

- (a) a notice of lien or a notice of intention to sell purports to have been given under this Act but the provisions of this Act with respect to the giving of the notice have not been strictly complied with; and



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(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.

**15 Certain liens, rights, &c, not to be affected by Act**

Nothing in this Act shall be construed as abrogating, limiting or in any manner affecting:

(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 Act 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 Sales otherwise prohibited are not authorized by Act**

(1) This Act 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.

(2) This Act 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 Auction to be held by licensed person**

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

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**ENDNOTES**
**1****KEY**

Key to abbreviations

<b>amd = amended</b>	<b>od = order</b>
<b>app = appendix</b>	<b>om = omitted</b>
<b>bl = by-law</b>	<b>pt = Part</b>
<b>ch = Chapter</b>	<b>r = regulation/rule</b>
<b>cl = clause</b>	<b>rem = remainder</b>
<b>div = Division</b>	<b>renum = renumbered</b>
<b>exp = expires/expired</b>	<b>rep = repealed</b>
<b>f = forms</b>	<b>s = section</b>
<b>Gaz = Gazette</b>	<b>sch = Schedule</b>
<b>hdg = heading</b>	<b>sdiv = Subdivision</b>
<b>ins = inserted</b>	<b>SL = Subordinate Legislation</b>
<b>lt = long title</b>	<b>sub = substituted</b>
<b>nc = not commenced</b>	

**2****LIST OF LEGISLATION*****Warehouseman's Liens Ordinance 1969 (Act No. 59, 1969)***

Assent date	10 December 1969
Commenced	7 January 1970 ( <i>Gaz</i> No. 1, 7 January 1970)

***Ordinances Revision Ordinance 1973 (Act No. 87, 1973)***

Assent date	11 December 1973
Commenced	11 December 1973 (s 12(2))

**Amending Legislation*****Ordinances Revision Ordinance 1974 (Act No. 34, 1974)***

Assent date	26 August 1974
Commenced	11 December 1973 (s 3(2))

***Ordinances Revision Ordinance (No. 2) 1974 (Act No. 69, 1974)***

Assent date	24 October 1974
Commenced	11 December 1973 (s 3)

***Ordinances Revision Ordinance 1976 (Act No. 27, 1976)***

Assent date	28 June 1976
Commenced	ss 1, 2 and 6: 28 June 1976 (s 6(2)); ss 3 and 4: 11 December 1973; s 5: 24 October 1974

***Local Court (Consequential Amendments) Act 1989 (Act No. 14, 1989)***

Assent date	5 June 1989
Commenced	s 6: 5 June 1989; rem: 1 January 1991 (s 2, s 2 <i>Small Claims Amendment Act 1988</i> (Act No. 43, 1988), <i>Gaz</i> G17, 3 May 1989, p 2, s 2 <i>Local Court Act 1989</i> (Act No. 31, 1989) and <i>Gaz</i> G49, 12 December 1990, p 2)

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**LIST OF AMENDMENTS**

s 3	amd No. 87, 1973, s 7; No. 14, 1989, s 7
ss 4 – 5	amd No. 87, 1973, s 3
s 6	amd No. 87, 1973, ss 2 and 7
s 7	amd No. 87, 1973, s 5; No. 14, 1989, s 7
s 8	amd No. 87, 1973, ss 2, 3 and 7; No. 14, 1989, s 7
s 9	amd No. 87, 1973, ss 2 and 3; No. 14, 1989, s 7
s 11	amd No. 87, 1973, ss 2, 3 and 5; No. 14, 1989, s 7
s 12	amd No. 87, 1973, s 2
s 14	amd No. 87, 1973, s 3
	rep No. 14, 1989, s 7
s 17	amd No. 87, 1973, s 7