

Western Australia

## **Warehousemen's Liens Act 1952**

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## Warehousemen's Liens Act 1952

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## Warehousemen's Liens Act 1952

**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 1952* <sup>1</sup>.

**2. Commencement**

This Act shall come into operation on a day to be fixed by proclamation <sup>1</sup>.

**3. Interpretation**

In this Act, unless inconsistent with the context or subject matter —

“**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, a warehouseman shall have a lien on goods deposited with him for storage.

**5. Charges covered by lien**

The lien shall be for the amount of the warehouseman's charges, namely —

- (a) lawful charges for storage and preservation of the goods;
- (b) lawful claims for insurance, transportation, labour, weighing, packing, coopering, and other expenses in relation to the goods; and

- (c) reasonable charges for a notice required to be given by 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.

**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 a person who has before the expiration of 2 months after the date of the deposit of the goods served upon the warehouseman a notice in the prescribed form of his claim to be the owner of the goods or of an interest in them, and a person of whose interest in them the warehouseman has received notice as prescribed;
  - (b) to the grantee of a bill of sale —
    - (i) which relates to the goods;
    - (ii) which was granted by the person depositing the goods or by any other person of whose interest in the goods the warehouseman has knowledge;
    - (iii) which was registered in accordance with the *Bills of Sale Act 1899*, prior to the date of the deposit of the goods; and
    - (iv) which has not become null and void or in respect of which a satisfaction has not been registered;

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) The notice shall be in the prescribed form and shall contain —
  - (a) a brief description of the goods;
  - (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;
- (c) a statement that a lien under this Act is claimed by the warehouseman in respect of the goods; 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 a notice required by this section, his lien shall be void on and from the expiration of the period of 3 months from the date of the deposit of the goods.

**7. Power to sell goods**

- (1) In addition to other remedies provided by law for the enforcement of liens or for the recovery of warehouseman's charges, a warehouseman may sell goods upon which he has a lien for charges which have become due, by public auction or if any other mode of sale is prescribed in the case of goods of a particular kind, he may sell goods of that kind in that mode.
- (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 a person who has served upon the warehouseman a notice in the prescribed form of his claim to be the owner of the goods or of some interest in them, and a person of whose interest in them the warehouseman has received notice as prescribed;
  - (c) to the grantee of a bill of sale mentioned in section 6(1)(b); and
  - (d) to any other person of whose interest in the goods the warehouseman has knowledge.
- (3) The notice may be given personally or by registered post.
- (4) The notice shall contain —

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- (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 mode as is prescribed for goods of the kind in question, at a time and place specified in the notice.
- (5)(a) 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 with an interval between the advertisements of at least 7 days —
- in a newspaper circulating in the locality where the sale is to be held, and, if the newspaper is not a daily newspaper, in a daily newspaper circulating in the local government district of Perth.
- (b) The sale shall, subject to the provisions of section 8, 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 to ascertain the nature and description of the goods to be sold, but he shall not open a sealed or closed box or package unless in the presence of 2 other persons who shall make and sign, and verify by statutory declaration, an inventory of the contents of the box or package opened.

- (7)(a) The Magistrates Court at the place nearest to the premises of the warehouseman may, on application made in the manner prescribed at any time after the service of the notice, by a person having an interest in the goods, make an order staying further proceedings under this section for such period and on such terms as it deems just.
- (b) The Magistrates Court may exercise the power conferred by this subsection, whatever the value of the goods or the interest may be.
- (8) This section shall apply only to cases in which some part of the charges in arrear are in respect of a period more than 6 months prior to the date upon which the notice of intention to sell is given.

*[Section 7 amended by No. 15 of 1954 s. 2; No. 14 of 1996 s. 4; No. 59 of 2004 s. 141.]*

## **8. Provision for payment of charges before sale**

- (1)(a) If at any time before the goods are sold a person claiming an interest or right of possession in the goods or, as the case may be, in any of the goods pays to the warehouseman the amount necessary to satisfy his lien on the goods to which the claim relates, including the expenses incurred in serving notices and advertising and preparing for the sale up to the time of payment, no further proceedings for the sale of the goods in respect of which the payment is made shall be taken.
- (b) If the person claims an interest or right of possession in some only of the goods, the expenses payable by him shall be a part of the expenses which bears the same proportion to the total

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expenses as the amount otherwise necessary to satisfy the lien on the goods claimed bears to the total amount otherwise necessary to satisfy the lien on all the goods.

- (2) If, after the payment, all or any of the goods are left deposited with the warehouseman for storage, those so left shall, for the purposes of this Act, be deemed to have been again deposited with the warehouseman at the date of the payment.
- (3) If the payment is made by a person who has an interest in the goods and who is not the person who is primarily liable for the charges for which the lien on the goods exists, the person making the payment may recover the amount of it, together with interest on that amount at the rate of 4% per annum or such other rate as is prescribed, calculated from the date of payment, as a debt due to him from the person so primarily liable.

*[Section 8 amended by No. 113 of 1965 s. 8(1).]*

**9. Notices**

- (1) Where a notice of lien under the provisions of section 6, or a notice of intention to sell under the provisions of section 7 has been given, but those provisions have not been strictly complied with, then if a court before which a question respecting the notice is tried or inquired into considers that those provisions have been substantially complied with, or that it would be inequitable that the lien or sale should be deemed to be void by reason of the 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 at the last address of such person known to the warehouseman.
- (3)(a) Regulations made under this Act may provide for the giving of notice by advertisement in cases where a person to whom notice may be given pursuant to the provisions of section 6 or section 7

is unknown to the warehouseman, or where no address of the person is known to the warehouseman, and for the ascertainment of the day upon which the notice shall be deemed to have been given, and for any other matter relating to the advertisement.

- (b) A notice given by advertisement in accordance with the regulations shall for the purposes of this Act be deemed to have been given personally on the date ascertained pursuant to the regulations.

**10. Disposition of proceeds of sale**

- (1)(a) From the proceeds of the sale the warehouseman shall satisfy his lien, and, subject to the provisions of subsections (2) and (3), shall, not less than 10 nor more than 14 days after the sale, pay the surplus, if any, to the person or persons entitled to it.
  - (b) The warehouseman shall when so paying the surplus deliver to the person or persons to whom he pays the surplus or any part of it a statement of account showing how the amount has been computed.
- (2)(a) Where there are conflicting claims to a surplus or the rights of a claimant to it are uncertain, the warehouseman shall within 14 days after the sale pay the surplus, whatever the amount of it may be, into the Magistrates Court at the place nearest to the premises of the warehouseman.
  - (b) Money so paid into the court may, upon the order of the court made in open court or in chambers, be applied as the court thinks fit.
- (3) Where no claim to the surplus is made within 10 days after the sale, the warehouseman shall within 14 days after the sale pay the surplus to the Treasurer who shall credit it to the Consolidated Fund.
- (4) The warehouseman at the time of paying the surplus into the Magistrates Court or to the Treasurer shall furnish duplicate

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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 are prescribed.

- (5)(a) If within 6 years after money is so paid to the Treasurer, a claimant makes a demand against the Treasurer for the money so paid, the Treasurer, upon being satisfied that the claimant is the owner of the money demanded by him, shall order and direct payment of it to him.
- (b) The payment shall, without any further appropriation than this Act, be charged to the Consolidated Fund.
- (c) Where money so paid to a claimant is afterwards claimed by another person, the Treasurer shall not be responsible for the payment, but that person may have recourse against the claimant to whom the money was paid by the Treasurer.
- (6) A warehouseman who fails to pay money into the Magistrates Court or to the Treasurer as required by this section commits an offence.

Penalty: \$4 for every day during which the default continues.

*[Section 10 amended by No. 113 of 1965 s. 8(1); No. 6 of 1993 s. 16(1); No. 49 of 1996 s. 64; No. 59 of 2004 s. 141.]*

**11. Application of Act**

- (1) The provisions of this Act 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 7 shall be given before the expiration of 3 months from such commencement.

*[(2) Omitted under the Reprints Act 1984 s. 7(4)(g).]*

**12. Regulations**

The Governor may make regulations for or with respect to —

- (a) prescribing the form of notice to be served upon a warehouseman by a person claiming to be the owner of goods deposited with the warehouseman or to be the owner of an interest in the goods;
- (b) prescribing the cases where notice of interests of other persons shall be given to the warehouseman by the person depositing goods with him and the form of and particulars to be contained in the notice;
- (c) prescribing the form of and the particulars to be contained in notices given by the warehouseman under section 6;
- (d) prescribing a mode of sale under section 7, other than sale by public auction, in the case of goods of any particular kind;
- (e) prescribing the manner of verification of and the particulars to be contained in statements of account furnished to the Magistrates Court or the Treasurer under this Act;
- (f) prescribing penalties, not exceeding \$20, for breaches of the regulations; and
- (g) generally, prescribing anything authorised to be prescribed or necessary or expedient to be prescribed for carrying this Act into effect.

*[Section 12 amended by No. 113 of 1965 s. 8(1); No. 59 of 2004 s. 141.]*

### **13. Rules of Court**

The Governor may make rules and prescribe forms to regulate applications to the Magistrates Court under section 7 and payments into court under section 9 and otherwise to regulate proceedings and prescribe fees under those sections and to carry those sections into effect.

*[Section 13 amended by No. 59 of 2004 s. 141.]*

**14. Certain liens, rights, etc., not to be affected by Act**

This Act does not affect —

- (a) a 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 goods stored by him; or
- (b) the enforcement of the lien or the exercise of the power or right.

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## Notes

- <sup>1</sup> This is a compilation of the *Warehousemen's Liens Act 1952* and includes the amendments made by the other written laws referred to in the following table <sup>2</sup>. The table also contains information about any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Warehousemen's Liens Act 1952</i>	26 of 1952	28 Nov 1952	20 Feb 1953 (see s. 2 and <i>Gazette</i> 20 Feb 1953 p. 365)
<i>Warehousemen's Liens Act Amendment Act 1954</i>	15 of 1954	22 Sep 1954	22 Sep 1954
<i>Decimal Currency Act 1965</i>	113 of 1965	21 Dec 1965	s. 4-9: 14 Feb 1966 (see s. 2(2)); balance: 21 Dec 1965 (see s. 2(1))
<i>Financial Administration Legislation Amendment Act 1993 s. 16(1)</i>	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
<i>Local Government (Consequential Amendments) Act 1996 s. 4</i>	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Financial Legislation Amendment Act 1996 s. 64</i>	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<b>Reprint of the <i>Warehousemen's Liens Act 1952</i> as at 2 Aug 2002</b> (includes amendments listed above)			
<i>Courts Legislation Amendment and Repeal Act 2004 s. 141</i>	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)

- <sup>2</sup> Marginal notes in the *Warehousemen's Liens Act 1952* referring to legislation of other jurisdictions have been omitted from this reprint.