

## WISCONSIN MOVERS ASSOCIATION

### STEPS NECESSARY TO ENFORCE A WAREHOUSE KEEPER'S LIEN ON STORED HOUSEHOLD GOODS PURSUANT TO WISCONSIN STATUTE [407.210](#)

All of the following “Notification of Intent to Sell” (“Notification”) and “Sale of Goods” requirements must be satisfied to enforce your warehouse keepers lien on stored household goods:

**The Notification must be sent to all persons known to claim an interest in the goods.** The notice must be delivered personally or sent by either certified or registered mail and goes to claim any interest in the goods. Attached is a sample notice, which meets the requirements of subsection 407.210(2)(b) of the applicable Wisconsin statute.

**The Notification of Intent to Sell must contain (see attached sample Notification):**

- **Demand for Payment.** A demand for payment, within a specified time not less than 10 days after receipt of the notification, which: (a) specifies the total amount of storage and other charges due; and (b) states that, in the event of such time for payment expires without payment and the goods are advertised for sale, the reasonable expenses of enforcement of the lien shall be added to the amount due.
- **Conspicuous Statement.** The law requires 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 specified time and place. Full capitalization of the required wording, as set forth in the sample Notification, should satisfy this requirement.
- **Description of Goods Subject to Lien.** If only one or two items are being stored, such as a piano and a piano bench, the description of the goods subject to the lien can be stated in the body of the notification; otherwise, the most sensible thing to do is to attach copies of the inventory sheets.
- **Itemized Statement of the Claim.** If the claim can be stated in simple terms, such as "October of 2009 through June of 2010, nine (9) months at \$225.00 per month, total \$2,025.00", the statement of claim can and should be embodied in the Notification. If the charges are numerous and complex, it may be easier to attach copies of invoices.

**Sale of the Goods, in event of non-payment, is the next step and subject to the following requirements:**

- **Advertisement, Time, Place and Terms of Sale.** After the expiration of the time for payment specified in the Notification, an advertisement of the sale must be published once a week for 2 weeks consecutively in a newspaper of general circulation where the sale is to be held. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least 10 days before the sale in not less than 6 conspicuous places in the neighborhood of the proposed sale (e.g., cell phone photo is reasonable way to preserve proof of posting).

- The advertisement must include a description of the goods, the name of the person on whose account the goods are being held, and the time and place of the sale.
  - The sale must take place at least 15 days after the first publication.
  - The sale must conform to the terms of the Notification.
  - The sale must be held at the nearest suitable place to where the goods are held or stored.
  - The sale may be either a public sale (generally an auction, as in past practice) or at a private sale.
- **The Sale Must Be "Commercially Reasonable"**. This is a legal term, which is used, in many different settings, and lengthy treatises have been written by legal scholars trying to define what "commercially reasonable" means. In this case, the exact language of the statute provides important guidelines. "Best Price Possible" is not determinative. The law provides that:

*"The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the warehouseman is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the warehouseman either sells the goods in the usual manner in any recognized market therefore, or if he sells at the price current in such market at the time of his sale, or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold, he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to insure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence."*

Wis. Stats. § 407.210(1). This deprives the customer of the opportunity to "second guess" the warehouse keeper's judgment by showing that the goods could have been sold for more money at a different time, or by a different method. The burden of proof, in other words, is on the customer to prove that the sale was not commercially reasonable - unless the sale price was so ridiculously low that it could not be considered reasonable under any circumstances.

- **Three Ways To Be "Commercially Reasonable."** The statute sets forth three different standards for what kinds of practices are deemed "commercially reasonable." Satisfying any of these three standards will meet the test of commercial reasonableness.
  - **Selling the goods in the usual manner in any recognized market therefore.** This seems to suggest that a "garage sale" approach would be considered commercially reasonable.
  - **Selling the goods at the price current in such market at the time of sale.** This seems to suggest that the goods could be "wholesaled out" to persons who customarily engage in the purchase of used household goods at established prices.
  - **Selling the goods in conformity with commercially reasonable practices among dealers in the type of goods sold.** This appears to be a catch-all clause that suggests that if some standards in the industry exist for the sale of stored household goods, following those standards will satisfy the "commercially reasonable" test.

- **Selling More Goods Than Necessary.** This is a difficult problem, which fortunately does not appear to arise with great frequency. The law does not allow the warehouse keeper to sell "more goods than apparently necessary to be offered to insure satisfaction of the obligation," except in cases covered by the "three ways to be commercially reasonable" as previously set forth. This seems to offer more confusion than guidance; however, it would appear that the best guide is simply common sense. In a "garage sale" setting it may be necessary to expose the entire lot for sale even if the sale of all the goods would produce more than enough proceeds to satisfy the storage obligation, simply because there is no way of knowing which items will be sold. However, since a "garage sale" approach seems to be sanctioned as inherently commercially reasonable, this would seem to indicate that a sale which happens to yield more than is needed to cover the storage costs would not necessarily be commercially unreasonable.
- **Payment Before Sale.** If any person claiming an interest in the goods pays the amount necessary to satisfy the lien and the reasonable expenses incurred by the warehouse keeper, before the sale, the goods must not be sold.
- **After The Sale.** The warehouse keeper may satisfy his lien from the proceeds of the sale. However, if the proceeds of the sale are more than sufficient to cover the lien and the expenses of the sale, the balance must be held for delivery on demand to "any person to whom he would have been found to deliver the goods."
- **Non-compliance With The Law.** A "purchaser in good faith" (i.e. someone who purchases goods from a warehouse keeper for a fair price and without knowledge of irregularities in the sale) gains title to the goods and the former owner has no claim or recourse against the purchaser. The former owner's remedies are with the warehouse keeper who sold the goods in a manner that does not conform to these provisions. If the violation(s) of the law by the warehouse keeper are "willful", then the warehouse keeper is liable for conversion.

(company letterhead to include address, phone number and email)

**NOTIFICATION OF INTENT TO SELL GOODS SUBJECT TO WAREHOUSE  
KEEPER'S LIEN PURSUANT TO WIS. s.407.210**

TO: (name and last known address of customer)

DATE OF NOTIFICATION: \_\_\_\_\_

**YOU ARE HEREBY NOTIFIED** that this company claims a warehouse keeper's lien on the goods described below, for accrued storage and other charges totaling \$\_\_\_\_\_ as itemized below.

**UNLESS THIS CLAIM IS PAID IN FULL WITHIN TEN (10) DAYS AFTER YOUR RECEIPT OF THIS NOTIFICATION, THE GOODS WILL BE ADVERTISED TO BE SOLD BY PUBLIC OR PRIVATE SALE, as provided in Section 407.210 of the Wisconsin Statutes.** If the claim is not paid within the ten days, the amount due will be increased by the reasonable expenses incurred in complying with the statutory requirement for enforcing the lien.

**DESCRIPTION OF GOODS:** (see attached inventories) \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ITEMIZED STATEMENT OF CLAIM:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Should you have any questions concerning this Notification, please feel free to contact us during normal business hours at the phone number or email address noted above. Your cooperation is necessary to avoid the sale of your goods.**

(signature of company official)