



## Warehouse Liens and the Manufactured Housing Industry (Part 2)

BY JONATHAN C. BOND

As noted in part 1 of this article from the May 2015 issue there are usually at least two types of liens. Both of these lien types are “enforced” – or collected in a similar fashion. For a warehouse lien, the park can begin to enforce the warehouse lien when the former tenant vacates or an unlawful detainer (eviction) judgment has been entered against the former tenant. For a warehouseman’s lien, the park may enforce upon expiration of the required notice to all other persons or entities that may have an interest in the property (such as mortgage holders, other registered owners of the mobile home, or junior and legal owners as well).

The enforcement process for enforcing the two

liens is also very similar. However, the requirements for either type of lien being utilized are stringent, strict, and carefully reviewed by state courts responsible department for enforcements. This is because the resultant lien sale effectively re-titles the home into another name. And while the liens are enforced *after* a legal process such as eviction, the sale process whereby title is altered is *not* a judicial or court process. The power of these lien enforcement sales is very strong. For parties familiar with real property proceedings, the warehouse lien and warehouseman’s lien are both similar to a non-judicial foreclosure. Both a foreclosure and a warehouse lien sale require notice to all junior interest holders,

and further require that the sale date, time, and location be published in a local newspaper of “general circulation.”

In California, and many other states, and as is similar in non-judicial real property foreclosure sales, the park (or creditor causing the sale) will often become the owner of the mobile home following the warehouse or warehouseman’s lien sale. This is because the park has a right to “credit bid” the amount it is owed. What this means is that the park can bid, without verified funds (as is required from all other attendees) up to the amount it is owed – otherwise known as the amount of the item the park has against the unit.

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If the park is outbid, then the winning bidder needs to have verified funds (cash, cashiers' checks, money orders) on hand to complete the purchase. The park is paid the money it is owed, and the remainder of funds waterfalls over into subsequent title interest holders according to a state's statutory procedure. The process of publishing and preparing for these sales can be burdensome and time consuming. The appropriate titling agencies need be informed, and most states will require some form of a general public notice. For most states this comes in the form of publication of the lien sale in a newspaper of "general circulation."

Because of the potentially draconian results, review of warehouse lien sales and the resultant attempt to re-title the mobile home are carefully reviewed by the appropriate agency (in California that is the Department of Housing and Community Development). Again, this is due to the power that these statutory options provide a landlord. In very few instances a subsequent interest lien on title (such as a landlord's lien sale for rent or utilities) might be subordinate to a precedent and superior interest on title, but the warehouse lien process is not usually subordinate to a prior consensual lien mortgage. This is another reason why the reviewing department such

as in California's HCD will carefully scrutinize that all parties received the notice they were entitled to, and that no one is denied full due process by an oversight.

Seeking the advice of counsel in the preparation and execution enforcement of liens is highly advisable. The lien enforcement process represents one of the remaining few "powerful" rights that manufactured housing communities have, and legislation – in any state – attempting to alter the process should be carefully reviewed, questioned, and monitored.

In summary, the use of warehouse and warehouseman liens can be the difference between recovery of past due rent and utilities, and being "stuck" with an uncollectible debt.

TJ

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