



Jim Morris

Head of Dispute Resolution and Construction

 Trusted Partner

 Legal Excellence

 Outstanding Service

Regional Law Firm with National Expertise



- Established 2008
 - Offices in Chester and Liverpool
 - Medium sized law firm with over 75 plus work force
 - Top Tier Legal 500 and Chambers
 - Full -service law firm
 - Dynamic team of solicitors, paralegals and conveyancers
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- We work closely with our clients to become their trusted partners
 - We provide expert legal advice and outstanding service
 - We continuously strive to give proactive, cost effective advice always in our clients' best interest



POINTS FOR DISCUSSION

- Contracts
 - Terms and conditions
 - Arrears – use of a lien
- Abandonment – use of a Torts Notice

CONTRACTS

Key Elements:

- Offer
- Acceptance
- Consideration
- Intention to create legal relations
- Certainty of terms

TERMS AND CONDITIONS

- Incorporated into the contract
- Provision to exercise a lien over goods to assist with the recovery of arrears
 - Terminate the contract in the event of continued non-payment
 - Nominated service address
 - Payment terms
 - Interest rate on default
 - Liability for loss

ARREARS – USE OF A LIEN

- A contractual lien entitles a person in possession of another person's property to retain the property until such time as a debt has been paid.
- Terms and conditions should include the right to recover expenses incurred, such as taking reasonable care of goods.
- A lien does not provide a power of sale.
- Provide clear notice of the lien, inform the debtor of the retention of goods and the outstanding sum. Refer to the contractual clause entitling the lien.

ABANDONMENT – TORTS NOTICE

If a customer has uncollected goods, you are entitled under the Torts (Interference with Goods) Act 1977 to provide notice of your intention to sell the goods and if they are not collected within the specified timeframe, proceed by selling them.

YOU MUST

1. Provide written notice (called a Torts Notice) of the intention to sell – it is required to be a minimum of 3 months.
2. Give notice in writing. Send it via as many channels as possible, including post, email and pinning to any unit.
3. State a clear intention to sell the goods if they are not collected.
4. Provide clear notice of any outstanding sums which are due and owing and confirm that they will be deducted from the sale proceeds.

YOU CANNOT

1. Keep any remaining funds once the sale has taken place, other than the outstanding debt owed to you. Any surplus must be returned otherwise you are unjustly enriched and liable for a claim against you.
2. Rely on a defective Torts Notice as the basis for sale of the goods, otherwise there is a prospective claim against you.
3. Sell the goods if there is any dispute regarding the debt owed and the outstanding amount due to you.

FORM OF TORTS NOTICE

Notice under section 12 of the Torts (Interference with Goods) Act 1977

To: [NAME OF CUSTOMER] of [ADDRESS].

From: [NAME OF OWNER] of [ADDRESS] (X).

1. [I OR WE], [[NAME OF COMPANY] OR [NAME AND ADDRESS OF SOLICITORS] for and on behalf of [COMPANY]] hereby give you notice under section 12(1) and (2) and Part I of Schedule 1 to the Torts (Interference with Goods) Act 1977 (1977 Act) as follows:
 - 1.1 The goods, details of which are set out in the attached Schedule (goods), are being held at [ADDRESS WHERE THE GOODS ARE BEING KEPT].
 - 1.2 The goods are ready for delivery to you and you are under an obligation to [take delivery of the goods OR attend at the address set out in paragraph 1.1 above to collect the goods].
 - 1.3 [The goods will be available to be [delivered to you OR collected by you] until [DATE] (final collection date).]
 - 1.4 [You are required to give the Company not less than [NUMBER] [business days' OR weeks'] notice of the date on which you would like [the goods to be delivered to you and of the address to which you would like the goods to be delivered OR to collect the goods].]
 - 1.5 [The sum of [AMOUNT] is payable by you to the Company in respect of the goods which became due before the date of this notice.]
2. [Pursuant to section 12(3) and Part II of Schedule 1 to the 1977 Act, notice is hereby given that the Company proposes to sell [or otherwise dispose of] the goods after [the final collection date OR [DATE]] if you have not [paid the sum of £[AMOUNT] and] [taken delivery of OR collected] the goods on or before that date.]

SIGNED:

([The Company] OR [For and on behalf of the Company])

DATED:

Any questions?

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