

CaSSOA GUIDANCE

ARREARS - TORT & LIEN PROCESS

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.
1. Give notice in writing. Send it via as many channels as possible, including post, email and pinning to any unit.
1. State a clear intention to sell the goods if they are not collected.
1. 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.
1. Rely on a defective Torts Notice as the basis for sale of the goods, otherwise there is a prospective claim against you.
1. Sell the goods if there is any dispute regarding the debt owed and the outstanding amount due to you.

Example Letter:

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

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

From: [NAME OF SITE OWNER] of [SITE ADDRESS].

1.0 [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 OF 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 to 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: