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CMSA ALERT: ONLINE HHG AUCTIONS

Online Auctions and Foreclosure of a California Warehouse Lien on Household Goods

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The use of online auctions has been introduced to a variety of commercial liquidation venues including estate liquidation, government liquidation, and bankruptcy liquidation. Recently, movers with warehouses have been approached to consider use of online auctions to foreclose warehouse liens on household goods. In contrast to the generally swifter, more flexible lien foreclosure procedure applicable to commercial goods — where the depositor is presumed to be a more sophisticated party — UCC Section 7210, subdivision (b), includes many additional requirements intended to protect the less sophisticated household goods depositor. These additional requirements are intended to slow down the lien foreclosure process and make it more transparent. Most relevant here, is subdivision (b)'s specific choice of language regarding location of the goods and place of the sale. For example, subdivision (b) provides that “the goods will be advertised for sale and sold by auction at a specified time and place,” that “the sale must be held at the nearest suitable place,” and that the sale must be advertised “in a newspaper of general circulation where the sale is to be held.”

In other words, in CMSA's opinion, the drafters of the Uniform Commercial Code were deliberate in their effort to keep the advertising and actual sale of household goods in a specific physical location. The Internet's virtual location is not a physical location. In addition, a review of case law, at both the state and federal level nationwide, shows that very few courts have substantively addressed whether online auctions are a viable, legal alternative to traditional private or public sales in the more lenient and streamlined commercial context. Moreover, no court, to CMSA's knowledge, has considered online auctions in the warehouse lien foreclosure context, and definitely not in the more consumer-protection-oriented household goods context. Internet sales and online auctions may be the wave of the future, but the law has not kept up with technology's advances.

If a warehouse lien sale is deemed by a court to not be in compliance with UCC lien foreclosure provisions, the warehouse, at a minimum, would likely be ordered to forfeit the sale proceeds of the invalid auction and may be subject to additional civil penalties and damages. In CMSA's view, the time is not ripe to safely experiment with online auctions regarding warehouse lien foreclosure of household goods. If the UCC is amended or favorable case law develops, CMSA will reassess its opinion. For greater discussion of online auctions in both the commercial and household goods contexts, a legal opinion letter is available from CMSA that provides additional analysis.