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ADVISORY

FROM: Guy Licciardi, DPS Director of Regulated Activities and Special Licensing

RE: amendment to public warehouse statute

DATE: April 1, 2011

This advisory is being issued for purposes of clarifying the impact of the recent amendment to G.L. c. 239, §4. See chapter 393 of the Acts of 2010.¹ A new sentence was added to the end of the first paragraph of the section leaving it to read as follows (with new language in *italics*):

(a) If an officer, serving an execution issued on a judgment for the plaintiff for possession of land or tenements, removes personal property, belonging to a person other than the plaintiff, from the land or tenements, he shall forthwith cause it to be stored for the benefit of the owners thereof. Such property shall be stored with the licensed public warehouse identified in the notice provided to the defendant pursuant to section 3, except that the officer shall store the property with a warehouse or other storage facility of the defendant's choosing if the defendant notifies the officer of his choice in writing at or before the time of removal of the property. The officer shall file with the court that issued the summary process judgment and provide to the defendant in hand, or if the defendant is not present at the time of execution by receipted mail to the defendant's last and best known address, a receipt containing a description of the goods removed or of the packages containing them, as well as name and signature of the officer. *For the purposes of this section, the term "warehouse or other storage facility" shall mean a public warehouse licensed and bonded pursuant to section 1 of chapter 105, located in the commonwealth and within a 20 mile radius of the land or tenements from which the personal property is removed.*

This new language has two primary effects. First, it limits the locations that a defendant may request the officer serving the execution bring their goods to those within a 20 mile radius from where the property is being removed. Second, if the defendant requests that the property be stored in a location other than that identified in the notice of execution, it must be a warehouse licensed by the Department of Public Safety.

¹ There is legislation pending that if enacted would effectively vacate this interpretation. See H2164 and S759.

I. 20 mile radius

This new language only applies to the specific situation in which the defendant makes a request that the property be stored at a particular location. It does not apply to the situation in which the defendant does not make any request. In this latter instance, the property may be stored at any DPS licensed warehouse, regardless of the location, as long as it is identified in the notice of execution provided to the defendant.

By way of explanation, the specific term that was defined by the new statutory language is “warehouser or other storage facility.” That term only appears in one place in G.L. c. 239, §4(a); that being the section that pertains to the location that a defendant can request that their property be stored in lieu of that identified in the notice of execution. The defined term does not appear in the preceding portion of the statute requiring that the property be stored with the licensed public warehouse identified in the notice of execution. Accordingly, the 20 mile limitation imposed by the new definition does not apply to licensed public warehouses referenced in this portion of the law.

II. Permissible locations for storage requests

Second, if the defendant requests that the property be stored in a location other than that identified in the notice of execution, it must be a warehouse licensed by the Department of Public Safety. That means that a defendant may not request that property be taken to such places as a self storage warehouse, or a private individual's (friend, relative, etc.) property. The property must be stored in a licensed warehouse.