

1 **SHB 2550 - H AMD 188**

2 By Representative Hickel

3 Strike everything after the enacting clause and insert the
4 following:

5 "NEW SECTION. **Sec. 1.** Unless the context clearly requires
6 otherwise, the definitions in this section apply throughout this
7 chapter:

8 (1) "Affiliate" means each person who and entity that,
9 directly or indirectly, through one or more intermediaries, owns an
10 interest in a party or controls or is controlled by or is under
11 common control with a party, and each authorized representative of
12 a party, whether that representative is an officer, director,
13 manager, partner, or otherwise.

14 (2) "Commercial real estate" means any interest in real
15 property located in this state except (a) an interest in real
16 property which is improved with one to four dwelling units, or (b)
17 an interest in unimproved real property on which, under the county
18 or city zoning ordinances applicable to that real property, the
19 maximum permitted development is one to four dwelling units or one
20 residence per lot, or (c) an interest in real property classified
21 as farm and agricultural land for assessment purposes pursuant to
22 chapter 84.34 RCW. Commercial real estate does not include single-
23 family residential units such as condominiums, townhouses,
24 timeshares, or homes in a subdivision when sold, leased, or
25 otherwise conveyed on a unit by unit basis even though these units
26 may be part of a larger building or parcel of real estate
27 containing more than four residential units. Determination of the
28 applicability of the definition of commercial real estate, as
29 defined in this chapter to a transaction, shall be made at the time
30 of conveyance.

1 (3) "Real estate broker" or "broker" means the same as under
2 chapter 18.85 RCW.

3 (4) "Real estate" means an identified parcel or tract of land,
4 including improvements, if any.

5
6 NEW SECTION. **Sec. 2.** (1) A broker has a lien upon commercial
7 real estate in the amount due to the broker:

8 (a) Under a written instrument signed by the owner of an
9 interest in the commercial real estate or the owner's agent; or

10 (b) Under a written instrument signed by a prospective buyer
11 or prospective tenant or their respective agent as to the purchase,
12 lease, or other conveyance to the buyer or tenant of an interest in
13 the commercial real estate.

14 (2) The lien under this chapter is available only to the
15 broker named in an instrument signed by the owner, buyer, or
16 tenant.

17 (3) The lien under this chapter may not attach to the
18 commercial real estate unless the broker is entitled to
19 compensation under a written instrument signed by the owner, buyer,
20 tenant, or their respective authorized agent, as applicable.

21 (4) If a broker has a written agreement with an owner of
22 commercial real estate as provided in subsection (1)(a) of this
23 section, the lien under this chapter attaches to that commercial
24 real estate at the time a claim for lien is recorded in the county
25 in which the commercial real estate is located, but only if the
26 recording occurs at least three business days prior to the actual
27 conveyance or transfer of the commercial real estate against which
28 the broker is claiming a lien. This subsection applies to sales or
29 other conveyances of commercial real estate other than leases.
30 Lease transactions are subject to subsection (6) of this section.
31 The lien attaches as of the date of the recording of the claim for
32 lien and does not relate back to the date of the written agreement.

1 (5) If a broker has a written agreement with an owner of
2 commercial real estate as provided in subsection (1)(a) of this
3 section, and when payment to the broker is due in installments, a
4 portion of which is due after the conveyance or transfer of the
5 commercial real estate, any claim for lien for those payments due
6 after the transfer or conveyance may be recorded at any time
7 subsequent to the transfer or conveyance of the commercial real
8 estate and prior to the date on which the payment is due but shall
9 only be effective as a security interest in any lien or encumbrance
10 held by the transferor to the extent moneys are still owed to the
11 transferor by the transferee. This subsection applies to sales or
12 other conveyances of commercial real estate other than leases.
13 Lease transactions are subject to subsection (6) of this section.
14 The lien attaches as of the recording of the claim for lien and
15 does not relate back to the date of the written agreement.

16 (6) In the case of a lease of commercial real estate, if a
17 broker has a written agreement with the owner as provided in
18 subsection (1)(a) of this section, the claim for lien must be
19 recorded within ninety days after the tenant takes possession of
20 the leased premises. The lien attaches as of the recording of the
21 claim for lien and does not relate back to the date of the written
22 agreement.

23 (7) If a broker has a written agreement with a prospective
24 buyer as provided for in subsection (1)(b) of this section, and the
25 prospective buyer or an affiliate thereof purchases or otherwise
26 accepts a conveyance or transfer of the commercial real estate, the
27 claim for lien must be recorded in the county in which the
28 commercial real estate is located not later than the earlier of
29 ninety days after the buyer delivers to the broker written notice
30 that the deed for conveyance has been recorded, or one year after
31 the date the deed for conveyance has been recorded. The lien
32 attaches as of the date of the recording of the claim for lien and
33 does not relate back to the date of the written agreement, but the

1 lien will not attach prior to the date the commercial real estate
2 is conveyed or transferred to the buyer or an affiliate thereof.
3 The lien will not attach if the commercial real estate is
4 subsequently sold, and a deed for conveyance is recorded, prior to
5 the date that the lien is recorded and the sale is to a party who
6 is not an affiliate of the buyer who entered into the written
7 agreement with the broker as provided in subsection (1)(b) of this
8 section.

9 (8) If a broker has a written agreement with a prospective
10 tenant of commercial real estate as provided for in subsection
11 (1)(b) of this section, and compensation is due to that broker in
12 connection with a lease transaction, and the tenant or an affiliate
13 thereof subsequently purchases the commercial real estate within
14 three years of the date that payment of compensation is due to the
15 broker pursuant to the written agreement with the tenant/buyer,
16 then the claim for lien must be recorded in the county in which the
17 commercial real estate is located not later than the earlier of
18 ninety days after the tenant/buyer delivers to the broker written
19 notice that the deed for conveyance has been recorded, or one year
20 after the date the deed for conveyance has been recorded. The lien
21 shall attach as of the date of the recording of the claim for lien
22 and does not relate back to the date of the written agreement, but
23 the lien will not attach prior to the date the commercial real
24 estate is conveyed or transferred to the tenant/buyer or an
25 affiliate thereof. The lien will not attach if the commercial real
26 estate is subsequently sold, and a deed for conveyance is recorded,
27 prior to the date that the lien is recorded and the sale is to a
28 party who is not an affiliate of the tenant who entered into the
29 written agreement with the broker as provided in subsection (1)(b)
30 of this section.

31 (9) The broker shall within ten days of recording its claim
32 for lien deliver a copy of the claim for lien to the party which
33 entered into the written agreement with the broker and to the owner

1 of record of the commercial real estate. If a claim of lien is
2 recorded pursuant to subsection (4), (5), or (6) of this section,
3 and if the broker is notified in writing of the name and address of
4 a prospective buyer of commercial real estate in a transaction that
5 will result in compensation being due to the broker as described in
6 the claim for lien, the broker shall also deliver a copy of the
7 claim for lien to the named prospective buyer within ten days of
8 the later of the date of recording the claim for lien, or the date
9 the notice of the name and address of the prospective buyer is
10 delivered to the broker. If a claim of lien is recorded pursuant
11 to subsection (4), (5), or (6) of this section, the broker shall,
12 on or before the date the deed for conveyance has been recorded,
13 deliver a copy of the notice of lien to any escrow closing agent in
14 the process of closing the transaction for which the commission is
15 due, if the identity of the escrow closing agent is actually known
16 by the broker prior to the date the deed for conveyance has been
17 recorded. The broker's lien is unenforceable if delivery of the
18 copy of the claim for lien does not occur at the time and in the
19 manner required by this subsection.

20 (10)(a) A broker may bring suit to enforce a lien in the
21 superior court in the county where the commercial real estate is
22 located by filing a complaint and sworn affidavit that the lien has
23 been recorded.

24 (b) The person claiming a lien in compliance with this chapter
25 shall, unless the claim is based upon an option to purchase the
26 commercial real estate, commence proceedings by filing a complaint
27 on or before the earlier of the date which is eight months after
28 the recording of the claim of lien, or three months after the date
29 the broker is notified in writing that the sale or lease
30 transaction that results in the compensation being due to the
31 broker as described in the claim for lien has closed. Failure to
32 commence proceedings within the time specified extinguishes the
33 lien. No claim for lien may thereafter be given for the same claim

1 nor may that claim thereafter be asserted in any proceedings under
2 this chapter.

3 (c)(i) A complaint under this section shall contain a brief
4 statement of the contract or agreements on which the lien is
5 founded, the date when the contract or agreement was made, a
6 description of the services performed, the amount due and unpaid,
7 a description of the property that is subject to the lien, and
8 other facts necessary for a full understanding of the rights of the
9 parties. The plaintiff shall make all interested parties, of whose
10 interest the plaintiff is notified or has knowledge, defendants to
11 the action, and shall issue summons and provide service as in other
12 civil actions. When any defendant resides or has gone out of the
13 state, or on inquiry cannot be found, or is concealed within this
14 state so that process cannot be served on that defendant, the
15 plaintiff shall cause a notice to be given to that defendant, or
16 cause a copy of the complaint to be served upon that defendant, in
17 the manner and upon the same conditions as in other civil actions.

18 (ii) All liens claimed under this chapter shall be foreclosed
19 in a civil action in the court having jurisdiction in the manner
20 prescribed for the judicial foreclosure of a mortgage. The court
21 has the power to order the sale of the commercial real estate. In
22 any action brought to foreclose a lien, the owner shall be joined
23 as a party. The interest in the commercial real estate of any
24 person who, prior to the commencement of the action, has a recorded
25 interest in the commercial real estate, or any part thereof, shall
26 not be foreclosed or affected unless that person is joined as a
27 party.

28 (11) The lien notice shall state the name, address, and phone
29 number of the claimant, the name of the party which entered into
30 the written agreement with the broker, the name of the owner of the
31 commercial real estate, a description of the commercial real estate
32 upon which the lien is being claimed, the amount for which the lien
33 is claimed, and the real estate license number of the broker. The

1 claim for lien shall recite that the information contained in the
2 notice is true and accurate to the knowledge of the signator. The
3 claim for lien shall be signed by the broker or by a person
4 authorized to sign on behalf of the broker and shall be verified.

5 (12) Whenever a claim for lien has been filed and a condition
6 occurs that would preclude the broker from receiving compensation
7 under the terms of the broker's written agreement, the broker shall
8 record, within ten days following demand by a party who owns an
9 interest in the commercial real estate, a written release or
10 satisfaction of the lien.

11 (13) Whenever a claim for lien has been filed and is paid, or
12 where there is a failure to institute a suit to enforce the lien
13 within the time provided by this chapter, the broker shall record
14 a satisfaction or release of the lien, on written demand of a party
15 who owns an interest in the commercial real estate, within five
16 days after payment or expiration of the time in which to file the
17 lien.

18 (14) Upon written demand of the owner of the commercial real
19 estate delivered to the person claiming the lien requiring suit to
20 be commenced to enforce the lien, a suit shall be commenced
21 pursuant to subsection (10)(b) of this section within thirty days
22 thereafter, or the lien is extinguished.

23 (15) The cost of proceedings asserting or defending a broker's
24 claim of lien, including reasonable attorneys' fees, costs, and
25 prejudgment interests due to the prevailing party shall be borne by
26 the non-prevailing party or parties. When more than one party is
27 responsible for costs, fees, and prejudgment interests, the costs,
28 fees, and prejudgment interests shall be equitably apportioned by
29 the court among those responsible parties.

30
31 NEW SECTION. **Sec. 3.** Prior recorded liens, mortgages, deeds
32 of trust, and other encumbrances, including all advances or charges
33 made or accruing thereunder whether optional or obligatory, and all

1 modifications, extensions, renewals, and replacements thereof have
2 priority over a broker's lien. A prior recorded lien includes,
3 without limitation, a valid mechanic's lien claim that is recorded
4 subsequent to recording of the broker's claim for lien but which
5 relates back to a date prior to the recording date of the broker's
6 claim for lien.

7
8 NEW SECTION. **Sec. 4.** A lien recorded under this chapter
9 shall be extinguished at the time, if any, that the party who
10 entered into a written agreement with a broker as provided in
11 section 2(1) of this act, or any other interested party, deposits
12 with the superior court of the county in which the commercial real
13 estate is located an amount equal to one and one-quarter times the
14 amount of the lien claimed, with the amount to be held pending a
15 resolution of amounts due to the broker.

16
17 NEW SECTION. **Sec. 5.** The commercial real estate that is
18 subject to a lien under this chapter is the commercial real estate
19 identified in a written agreement entered into as provided in
20 section 2(1) of this act.

21
22 NEW SECTION. **Sec. 6.** The county auditor shall record the
23 notice of claim of lien in the same manner as deeds and other
24 instruments of title are recorded under chapter 65.08 RCW. Notices
25 of claim of lien for registered land need not be recorded in the
26 Torrens register. The county auditor shall charge no higher fee
27 for recording notices of claim of lien than other documents.

28
29 NEW SECTION. **Sec. 7.** The claim of lien, when filed as
30 required by this chapter, shall be notice to the husband or wife of
31 the person who appears of record to be the owner of the commercial
32 real estate sought to be charged with the lien, and shall subject
33 all the community interest of both husband and wife to the lien.

1 NEW SECTION. **Sec. 8.** Notices to be delivered to a party
2 under this chapter, other than service of process as required in
3 civil actions, may be by registered or certified mail, return
4 receipt requested, or by personal delivery and obtaining evidence
5 of delivery in the form of a receipt or other acknowledgement
6 signed by the party to whom the notice is delivered or an affidavit
7 of service. Delivery is effective at the time of personal
8 delivery, or when deposited in the mail as required by this
9 section. Notice to a broker may be given to the address of the
10 broker that is contained in the written agreement with the broker
11 described in section 2(1)(b) of this act, or such other address as
12 is contained in a written notice from the broker to the party
13 giving the notice. If no address is provided in the written
14 agreement, the notice may be given to the broker at the address
15 which is the broker's address of record with the department of
16 licensing pursuant to chapter 18.85 RCW.

17
18 NEW SECTION. **Sec. 9.** This chapter applies to lien claims
19 based on a written agreement entered into on or after the effective
20 date of this act.

21
22 NEW SECTION. **Sec. 10.** This chapter may be known and cited as
23 the commercial real estate broker lien act.
24

1 NEW SECTION. **Sec. 11.** Sections 1 through 10 of this act
2 shall constitute a new chapter in Title 60 RCW."

3

4 Correct the title

EFFECT: The study of commercial real estate brokers' liens by the house law and justice committee is stricken. A commercial real estate broker's lien is created. A broker has a lien against commercial real estate for the amount due to the broker under a written instrument signed by the owner of an interest in the commercial real estate or under a written instrument signed by a prospective buyer or tenant concerning the conveyance of an interest in the commercial real estate.

"Commercial real estate" is defined as any interest in real property except: (1) an interest in real property which is improved with one to four dwelling units; (2) an interest in unimproved real property which may only be developed with a maximum of four dwelling units; or (3) an interest in real property classified as farm and agricultural land. "Commercial real estate" does not include single family residential units such as condominiums or townhouses.

If a real estate broker claims a lien under a written agreement with an owner for the sale of commercial real estate, the lien must be recorded at least three business days prior to the actual conveyance of the commercial real estate, and attaches as of the date of recording. If a real estate broker claims a lien under a written agreement with an owner for the lease of commercial real estate, the lien must be recorded within 90 days after the tenant takes possession. The lien attaches as of the date of recording.

If a real estate broker claims a lien under a written agreement with a buyer, the lien must be recorded not later than the earlier of 90 days after the buyer delivers to the broker written notice that the deed for conveyance has been recorded, or one year after the date the deed for conveyance has been recorded. The lien attaches as of the date of the recording and will not attach prior to the date the commercial real estate is conveyed. The lien will not attach if the commercial real estate is subsequently sold and a deed for conveyance recorded prior to the date the lien is recorded, as long as the subsequent purchaser is not an affiliate of the buyer.

If a broker claims a lien under a written agreement with a prospective tenant of commercial real estate, and the tenant or an affiliate purchases the real estate within three years after compensation is due to the broker, the lien must be recorded not later than the earlier of 90 days after the tenant/buyer delivers to the broker written notice that the deed for conveyance has been recorded or one year after the date the deed for conveyance has been recorded. The lien will not attach if the commercial real estate is subsequently sold and a deed for conveyance recorded prior to the date the lien is recorded, as long as the subsequent purchaser is not an affiliate of the tenant.

The broker must deliver a copy of the claim for lien to the party who entered into the written agreement with the broker and to the owner of record within ten days of recording the lien. The broker must also deliver a copy of the claim for lien to any known prospective buyer of the commercial real estate within ten days of either the date of recording or the date the notice of the name and address of the prospective buyer is delivered to the broker, whichever is later. The broker must also deliver a copy of the notice of lien to any escrow closing agent actually known to the broker prior to the date the deed for conveyance has been recorded. Failure to deliver copies of the claim for lien as required make the lien unenforceable.

A broker must bring suit to enforce the lien in the superior court in the county where the commercial real estate is located within eight months of recording the lien or three months after the date the broker is notified that the sale or lease transaction giving rise to compensation has closed. The lien is foreclosed in the manner prescribed for judicial foreclosure of a mortgage. The owner of the commercial real estate may deliver a written demand to the broker requiring suit to be commenced to enforce the lien within thirty days.

Any person who has an interest in the commercial real estate subject to foreclosure must be joined in the action. The prevailing party in a suit to enforce a claim of lien is entitled to costs, fees, and prejudgment interest.

Whenever a claim for lien has been filed and the broker is not entitled to enforce it because a condition occurs which precludes the broker from receiving compensation under the contract, the broker must record a written release or satisfaction of the lien within 10 days upon written demand of a person with an interest in the commercial real estate. Whenever a claim for lien has been filed and the broker is not entitled to enforce it because it has been paid or because the

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broker failed to institute a suit to enforce the lien within specified time limits, the broker shall record a satisfaction or release of the lien within five days upon written demand of a person with an interest in the commercial real estate.

A recorded lien shall be extinguished if the party who entered into the written agreement with the broker pays to the superior court an amount equal to one and one-quarter times the amount of the lien claimed.

The recorded lien shall be notice to the spouse of the owner of the commercial real estate sought to be charged with the lien, and shall subject all the community interest of both husband and wife to the lien.

All prior recorded liens, mortgages, deeds of trust, and other encumbrances have priority over a real estate broker's lien.