
SENATE BILL 5404

State of Washington

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By Senators Heavey, Deccio, Fraser, Newhouse, Kohl, Hale, Franklin, McCaslin, Palmer and Wojahn

Read first time 01/23/95. Referred to Committee on Labor, Commerce & Trade.

1 AN ACT Relating to commercial real estate broker's liens; and
2 adding a new chapter to Title 60 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

7 (1) "Commercial real estate" means any interest in real property
8 located in this state except (a) an interest in real property which is
9 improved with one to four dwelling units, or (b) an interest in
10 unimproved real property on which, under the county or city zoning
11 ordinances applicable to that real property, the maximum permitted
12 development is one to four dwelling units, or (c) an interest in real
13 property classified as farm and agricultural land for assessment
14 purposes pursuant to chapter 84.34 RCW. Commercial real estate does
15 not include single-family residential units such as condominiums,
16 townhouses, timeshares, or homes in a subdivision when sold, leased, or
17 otherwise conveyed on a unit by unit basis even though these units may
18 be part of a larger building or parcel of real estate containing more
19 than four residential units.

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

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

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

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

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

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

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

19 (4)(a) If a broker has a written agreement with an owner of
20 commercial real estate as provided in subsection (1)(a) of this
21 section, the lien under this chapter attaches to that commercial real
22 estate at the time a notice of lien is recorded in the county in which
23 the commercial real estate is located. However, the recording must
24 occur prior to the actual conveyance or transfer of the commercial real
25 estate against which the broker is claiming a lien.

26 (b) This subsection applies to sales or other conveyances of
27 commercial real estate other than leases. Lease transactions are
28 subject to subsection (6) of this section. The lien attaches as of the
29 date of the recording of the notice of lien and does not relate back to
30 the date of the written agreement.

31 (5) If a broker has a written agreement with an owner of commercial
32 real estate as provided in subsection (1)(a) of this section, and when
33 payment to the broker is due in installments, a portion of which is due
34 after the conveyance or transfer of the commercial real estate, any
35 claim for lien for those payments due after the transfer or conveyance
36 may be recorded at any time subsequent to the transfer or conveyance of
37 the commercial real estate and prior to the date on which the payment
38 is due but shall only be effective as a lien against the commercial

1 real estate to the extent moneys are still owed to the transferor by
2 the transferee. This subsection applies to sales or other conveyances
3 of commercial real estate other than leases. Lease transactions are
4 subject to subsection (6) of this section. The lien attaches as of the
5 recording of the notice of lien and does not relate back to the date of
6 the written agreement.

7 (6) In the case of a lease of commercial real estate, if a broker
8 has a written agreement with the owner as provided in subsection (1)(a)
9 of this section, the claim for lien must be recorded within ninety days
10 after the tenant takes possession of the leased premises unless written
11 notice of the intended signing of the lease is delivered by the owner
12 to the broker entitled to claim a lien at least ten days prior to the
13 date of the intended signing of the lease in which case the claim for
14 lien must be recorded before the date indicated for the signing of the
15 lease in the notice delivered to the broker. The lien attaches as of
16 the recording of the notice of lien and does not relate back to the
17 date of the written agreement.

18 (7) If a broker has a written agreement with a prospective buyer as
19 provided for in subsection (1)(b) of this section, then the lien
20 attaches upon the prospective buyer purchasing or otherwise accepting
21 a conveyance or transfer of the commercial real estate and the
22 recording of a notice of lien by the broker in the county in which the
23 commercial real estate is located within ninety days after the buyer
24 delivers to the broker written notice that the deed for conveyance has
25 been recorded. The lien attaches as of the date of the recording of
26 the notice of lien and does not relate back to the date of the written
27 agreement.

28 (8) If a broker has a written agreement with a prospective tenant
29 of commercial real estate as provided for in subsection (1)(b) of this
30 section, and compensation is due to that broker in connection with a
31 lease transaction, and the tenant subsequently purchases the commercial
32 real estate within three years of the date that payment of compensation
33 is due to the broker pursuant to the written agreement with the
34 tenant/buyer, then the lien attaches to the commercial real estate at
35 the time the commercial real estate is conveyed to the tenant/buyer and
36 a notice of lien is recorded in the county in which the commercial real
37 estate is located. However, the notice of lien must be recorded within
38 ninety days after the tenant/buyer delivers to the broker written
39 notice that the deed for conveyance has been recorded. The lien shall

1 attach as of the date of the recording of the notice of lien and does
2 not relate back to the date of the written agreement.

3 (9) The broker shall within ten days of recording its notice of
4 lien deliver a copy of the notice of lien to the party which entered
5 into the written agreement with the broker and to the owner of record
6 of the commercial real estate. If the lien is recorded within ten days
7 prior to closing of the transaction which results in payment due to the
8 broker, the broker is not required to deliver a copy of the notice of
9 lien. The broker's lien is unenforceable if delivery of the copy of
10 the notice of lien recording does not occur at the time and in the
11 manner required by this subsection.

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

15 (b) The person claiming a lien shall, unless the claim is based
16 upon an option to purchase the commercial real estate, within eight
17 months after recording the lien, commence proceedings by filing a
18 complaint. Failure to commence proceedings within eight months after
19 recording the lien extinguishes the lien. No notice of lien may
20 thereafter be given for the same claim nor may that claim thereafter be
21 asserted in any proceedings under this chapter.

22 (c) A person claiming a lien based upon an option to purchase has
23 six months after the transfer or conveyance of the commercial real
24 estate under the exercise of the option to purchase to commence
25 proceedings by filing a complaint. Failure to commence proceedings
26 within this time extinguishes the lien. No notice of lien may
27 thereafter be given for the same claim nor may that claim thereafter be
28 asserted in any proceedings under this chapter.

29 (d)(i) A complaint under this section shall contain a brief
30 statement of the contract or agreements on which the lien is founded,
31 the date when the contract or agreement was made, a description of the
32 services performed, the amount due and unpaid, a description of the
33 property that is subject to the lien, and other facts necessary for a
34 full understanding of the rights of the parties. The plaintiff shall
35 make all interested parties, of whose interest the plaintiff is
36 notified or has knowledge, defendants to the action, and shall issue
37 summons and provide service as in other civil actions. When any
38 defendant resides or has gone out of the state, or on inquiry cannot be
39 found, or is concealed within this state so that process cannot be

1 served on that defendant, the plaintiff shall cause a notice to be
2 given to that defendant, or cause a copy of the complaint to be served
3 upon that defendant, in the manner and upon the same conditions as in
4 other civil actions.

5 (ii) All liens claimed under this chapter shall be foreclosed in a
6 civil action in the court having jurisdiction in the manner prescribed
7 for the judicial foreclosure of a mortgage. The court has the power to
8 order the sale of the commercial real estate. In any action brought to
9 foreclose a lien, the owner shall be joined as a party. The interest
10 in the commercial real estate of any person who, prior to the
11 commencement of the action, has a recorded interest in the commercial
12 real estate, or any part thereof, shall not be foreclosed or affected
13 unless that person is joined as a party.

14 (11) The lien notice shall state the name, address, and phone
15 number of the claimant, the name of the party which entered into the
16 written agreement with the broker, the name of the owner of the
17 commercial real estate, a description of the commercial real estate
18 upon which the lien is being claimed, the amount for which the lien is
19 claimed, and the real estate license number of the broker. The notice
20 of lien shall recite that the information contained in the notice is
21 true and accurate to the knowledge of the signator. The notice of lien
22 shall be signed by the broker or by a person authorized to sign on
23 behalf of the broker and shall be verified.

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

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

35 (14) Upon written demand of the owner of the commercial real estate
36 delivered to the person claiming the lien requiring suit to be
37 commenced to enforce the lien, a suit shall be commenced pursuant to
38 subsection (10)(b) of this section within thirty days thereafter, or
39 the lien is extinguished.

1 (15) The cost of proceedings asserting or defending a broker's
2 claim of lien, including reasonable attorneys' fees, costs, and
3 prejudgment interests due to the prevailing party shall be borne by the
4 nonprevailing party or parties. When more than one party is
5 responsible for costs, fees, and prejudgment interests, the costs,
6 fees, and prejudgment interests shall be equitably apportioned by the
7 court among those responsible parties.

8 NEW SECTION. **Sec. 3.** Prior recorded liens and mortgages have
9 priority over a broker's lien. A prior recorded lien includes, without
10 limitation, (1) a valid mechanic's lien claim that is recorded
11 subsequent to recording of the broker's notice of lien but which
12 relates back to a date prior to the recording date of the broker's
13 notice of lien; and (2) prior recorded liens.

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

21 NEW SECTION. **Sec. 5.** The commercial real estate that is subject
22 to a lien under this chapter is the commercial real estate identified
23 in a written agreement entered into as provided in section 2(1) of this
24 act.

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

31 NEW SECTION. **Sec. 7.** The claim of lien, when filed as required by
32 this chapter, shall be notice to the husband or wife of the person who
33 appears of record to be the owner of the commercial real estate sought

1 to be charged with the lien, and shall subject all the community
2 interest of both husband and wife to the lien.

3 NEW SECTION. **Sec. 8.** Notices to be delivered to a party under
4 this chapter, other than service of process as required in civil
5 actions, may be by registered or certified mail, return receipt
6 requested, or by personal delivery and obtaining evidence of delivery
7 in the form of a receipt or other acknowledgement signed by the party
8 to whom the notice is delivered or an affidavit of service. Delivery
9 is effective at the time of personal delivery, or when deposited in the
10 mail as required by this section.

11 NEW SECTION. **Sec. 9.** This chapter applies to lien claims based on
12 a written agreement entered into on or after the effective date of this
13 act.

14 NEW SECTION. **Sec. 10.** This chapter may be known and cited as the
15 commercial real estate broker lien act.

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

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