

HOUSE BILL REPORT

HB 1936

As Reported By House Committee On:

Law & Justice

Title: An act relating to liens on owner's proceeds in favor of commercial real estate brokers.

Brief Description: Regulating notice of claim liens.

Sponsors: Representatives Sterk, Sheahan, Costa, Carrell, Hickel, Radcliff and Quall.

Brief History:

Committee Activity:

Law & Justice: 2/27/97, 3/5/97 [DPS].

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Sheahan, Chairman; McDonald, Vice Chairman; Sterk, Vice Chairman; Costa, Ranking Minority Member; Constantine, Assistant Ranking Minority Member; Carrell; Cody; Kenney; Lambert; Lantz; Radcliff; Sherstad and Skinner.

Staff: Edie Adams (786-7180).

Background: A real estate broker is a person who (1) sells, lists, or buys real estate for others; (2) negotiates the purchase, sale, exchange, lease, or rental of real estate; (3) advertises or holds himself or herself out to the public as engaged in the selling, listing, or buying of real estate, or negotiating the purchase, sale, lease, or rental of real estate; or (4) engages, directs, or assists in procuring prospects, or in negotiating or closing any transaction which results in the selling, listing, or buying of real estate.

Real estate brokers are required to obtain a state license from the Department of Licensing. To receive a broker's license, an individual must meet certain requirements, including pass the broker's license examination established by the Washington Real Estate Commission and have minimum amounts of experience and training.

The amount of a real estate broker's compensation in a commercial real estate transaction is generally agreed to by the parties and memorialized in a contract or

other written instrument. If a party fails or refuses to pay the compensation due to the broker, the broker must seek enforcement of the contract in court.

A lien is a claim or encumbrance against property to secure payment of a debt. There are currently a number of statutory liens, including mechanics' liens, crop liens, and landlords' liens for rent.

Summary of Substitute Bill: A commercial real estate broker's lien is created. Filing and notice requirements and judicial enforcement procedures are established.

A broker has a lien on the property owner's net proceeds from the transfer or conveyance of commercial real estate, or on the net rental proceeds from the lease of commercial real estate, for the amount of commission the owner agreed to pay the broker under a written commission agreement. The lien is only available to the broker named in the commission agreement and is not assignable.

"Commercial real estate" is defined as a fee title or possessory interest in real property, except real property that is (1) improved with one single-family residential unit or one multifamily structure with four or fewer units; (2) unimproved and that may only be developed with a maximum of four residential units; (3) classified as farmland, agricultural land, or timberland; or (4) improved with single-family residential units, such as condominiums or stand-alone houses in a subdivision that may be conveyed on a unit-by-unit basis.

The notice of claim of lien against proceeds must contain specified information, include a copy of the commission agreement, and be signed by the broker. The lien must be recorded at least 30 days before the owner records a deed of conveyance of the property or within 90 days after a tenant takes possession of leased property. The lien becomes effective on the date of the recording.

If, after a notice of claim of lien is recorded, a condition occurs that would preclude the broker from receiving compensation under the commission agreement, the broker must record a written release of the notice of claim of lien within seven days following a demand by the owner.

The broker must deliver a copy of the claim of lien to the owner within 10 days of recording the lien. In the case of a transfer or conveyance of commercial real estate, the broker must deliver a copy of the claim of lien to the escrow closing agent, if known, on or before the date of the recording of the deed of conveyance.

An escrow closing agent is required to pay to the broker the amount of the claim of lien from the owner's net proceeds from the conveyance or transfer of the commercial real estate. The broker must record a satisfaction or release of the claim of lien

within five days after payment of the commission amount upon demand by the owner.

The owner of commercial real estate may contest a notice of claim of lien by filing a motion in superior court. If a broker has a claim of lien against rental proceeds from the lease of commercial real estate, the broker may file a motion with the superior court for the payment of the amount of the claim of lien. The prevailing party is entitled to an award of costs and reasonable attorneys' fees.

The owner of the commercial real estate may ask the broker to waive the right to a broker's lien. If the broker waives the right and then has to sue for payment of the commission, the court may impose double damages, court costs, and attorneys' fees on the owner.

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

Substitute Bill Compared to Original Bill: The substitute bill makes many structural, grammatical, and clarifying changes, provides definitions for "escrow closing agent" and "days," and specifies that the broker's lien is not assignable. The original bill did not provide the option of waiving the right to a broker's lien.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: The concerns expressed in the past about this bill have been addressed. The bill provides a lien against the proceeds of the transaction, not against the property, and there are adequate mechanisms to remove invalid claims. Many other states have this type of law and they have decreased the litigation relating to brokers' commissions by 75 percent.

Testimony Against: This bill is unnecessary government regulation that will cost money in the long run because it will increase the costs of closing and recording. A lien is an extraordinary remedy that should not be created lightly. The contract right a broker has under a commission agreement is no more important than other contract rights. If brokers need security up front, they can negotiate for it. This is an attempt by a group with plenty of bargaining power to strong-arm themselves into a more powerful position.

Testified: Representative Sterk, prime sponsor; Terri Hotvedt and David Cantu, Washington Association of Realtors; Sherwin Korshin and Bill Stigman, citizens (pro); Denny Eliason, Stanley Erickson, and James Harmon, Sabey Companies (con); and Greg Overstreet and Brian Minnick, Building Industry Association of Washington (concerns).