

FINAL BILL REPORT

SHB 1936

C 315 L 97

Synopsis as Enacted

Brief Description: Regulating notice of claim liens.

Sponsors: By House Committee on Law & Justice (originally sponsored by Representatives Sterk, Sheahan, Costa, Carrell, Hickel, Radcliff and Quall).

House Committee on Law & Justice
Senate Committee on Commerce & Labor

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.

A real estate broker is required to obtain a state license from the Department of Licensing. To receive a broker's license, an individual must meet certain requirements, including passing the broker's license examination established by the Washington Real Estate Commission and having 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: 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.

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.

After a notice of claim of lien is recorded, if 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 the owner for payment of the commission, the court may impose statutory interest, court costs, and attorneys' fees.

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

"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.

Votes on Final Passage:

House 94 0

Senate 47 0 (Senate amended)

House 94 0 (House concurred)

Effective: July 27, 1997