

# HOUSE BILL ANALYSIS

## HB 1936

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**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.

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### HOUSE COMMITTEE ON LAW & JUSTICE

**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 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.

"Commercial real estate" is defined as a fee title or possessory interest in real estate, except real estate that is: (1) improved with one single-family home or one multifamily home with four or fewer units; (2) unimproved real property which 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 homes in a subdivision which may be conveyed on a unit-by-unit basis.

The notice of claim lien 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.

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.

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.

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 on a 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.

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

**Fiscal Note:** Not requested.

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

Office of Program Research