
SUBSTITUTE SENATE BILL 5832

State of Washington

55th Legislature

1997 Regular Session

By Senate Committee on Commerce & Labor (originally sponsored by Senators Roach, Heavey and Hargrove)

Read first time 03/05/97.

1 AN ACT Relating to liens on owner's proceeds in favor of commercial
2 real estate brokers; and 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.** The definitions in this section apply
5 throughout this chapter unless the context clearly requires otherwise.

6 (1) "Commercial real estate" means a fee title interest or
7 possessory estate in real property located in this state except an
8 interest in real property which is (a) improved with one single-family
9 residential unit or one multifamily structure with four or less
10 residential units, or (b) unimproved and the maximum permitted
11 development is one to four residential units or structures under the
12 county or city zoning ordinances or comprehensive plan applicable to
13 that real estate, or (c) classified as farm and agricultural land or
14 timber land for assessment purposes pursuant to chapter 84.34 RCW, or
15 (d) improved with single-family residential units such as condominiums,
16 townhouses, timeshares, or stand-alone houses in a subdivision that may
17 be legally sold, leased, or otherwise disposed of on a unit-by-unit
18 basis. Real estate will be considered commercial real estate if the

1 commission agreement so provides, or if it meets the definition
2 contained in this section on the date of the disposition.

3 (2) "Commission agreement" means a written instrument which meets
4 the requirements of RCW 19.36.010 signed by the owner, or by a party
5 duly authorized to sign on behalf of the owner, of commercial real
6 estate, pursuant to which the owner agrees to pay a broker a real
7 estate commission upon either the disposition or lease of commercial
8 real estate or upon entering into an agreement for disposition or lease
9 of commercial real estate.

10 (3) "Days" means calendar days. However, if a period ends on a day
11 other than a business day, then the last day shall be the next business
12 day.

13 (4) "Disposition" means a voluntary transfer or conveyance of
14 commercial real estate.

15 (5) "Escrow closing agent" means the person or entity who receives
16 documents and funds for recording and disbursement in completing a
17 transaction for the disposition of commercial real estate.

18 (6) "Lease" means a written agreement which gives rise to a
19 relationship of landlord and tenant, affecting commercial real estate,
20 such that the holder of a fee simple interest or possessory estate in
21 commercial real estate permits another to possess the commercial real
22 estate for a period, and which meets the requirements of RCW 19.36.010,
23 if applicable.

24 (7) "Net rental proceeds" means the base rent paid by the tenant
25 under a lease, less any amounts currently due under the terms of liens
26 which have priority over the lien created under this chapter. Base
27 rent is the rent so designated in a lease as base rent, or a similar
28 term, for the possession and use of the commercial real estate, but
29 does not include separate payments made by tenants for insurance,
30 taxes, utilities, or other expenses.

31 (8) "Owner" means a person or entity which is vested in record fee
32 title or a possessory estate in commercial real estate.

33 (9)(a) "Owner's net proceeds" means the gross sales proceeds from
34 the disposition of the commercial real estate described in a notice of
35 claim of lien against proceeds pursuant to this chapter, less the
36 following: (i) Amounts necessary to pay all encumbrances and liens
37 which have priority over the lien created by this chapter other than
38 those permitted to remain by the buyer; (ii) owner's closing costs,
39 such as real estate excise tax, title insurance premiums, real estate

1 tax and assessment prorations, and escrow fees payable by the owner
2 pursuant to an agreement with the buyer; and (iii) amounts held by a
3 third party for use by the owner to complete an exchange of real estate
4 which is deferred from federal income tax under section 1031 of the
5 internal revenue code of 1986, as amended.

6 (b) "Owner's net proceeds" shall include any gross sales proceeds
7 which are held by a third party for purposes of completing an exchange
8 of real estate which is deferred from federal income tax under section
9 1031 of the internal revenue code of 1986, as amended, but are
10 subsequently not used for that purpose. "Owner's net proceeds" are
11 personal property, upon which the lien created by this chapter
12 attaches.

13 (10) "Real estate broker" or "broker" means the same as defined in
14 RCW 18.85.010.

15 (11) "Real property" means one or more parcels or tracts of land,
16 including appurtenances or improvements.

17 NEW SECTION. **Sec. 2.** (1) The lien created under this chapter is
18 a lien upon personal property, not upon real property.

19 (2) A broker has a lien upon the owner's net proceeds from the
20 disposition of commercial real estate and a lien upon the net rental
21 proceeds from the lease of commercial real estate in the amount which
22 the owner has agreed to pay the broker under a commission agreement.
23 The lien under this chapter is available only to the broker named in
24 the commission agreement, and may not be assigned voluntarily or by
25 operation of law.

26 (3) Subject to the requirements of subsection (4) of this section,
27 the lien created by this chapter becomes effective on the date of the
28 recording of a notice of claim of lien upon proceeds pursuant to
29 subsection (6) of this section, and is perfected by such recording.
30 Recording must be made with the county auditor or recorder in the
31 county or counties in which the commercial real estate is located.

32 (4) In the case of a disposition of commercial real estate, the
33 lien under this chapter is not effective unless it is recorded at least
34 thirty days prior to the date a deed conveying the commercial real
35 estate is recorded in the office of the county auditor or recorder in
36 the county or counties in which the commercial real estate is located.
37 In the case of a lease of commercial real estate, the lien under this

1 chapter is not effective unless it is recorded within ninety days after
2 the tenant takes possession of the leased commercial real estate.

3 (5) The lien created by this chapter is null and void unless,
4 within ten days of recording its notice of claim of lien against
5 proceeds, the broker delivers a copy of the notice of claim of lien
6 against proceeds to the owner of the commercial real estate in the
7 manner provided in section 8 of this act. In the case of the
8 disposition of commercial real estate, on or before the date the deed
9 conveying the commercial real estate is recorded, the broker shall
10 deliver a copy of the notice of claim of lien against proceeds to the
11 escrow closing agent closing the disposition in the manner provided in
12 section 8 of this act, if the identity of the escrow closing agent is
13 actually known by the broker.

14 (6) To be effective, the notice of claim of lien against proceeds
15 must state the following:

16 (a) The name, address, and telephone number of the broker;

17 (b) The date of the commission agreement;

18 (c) The name of the owner of the commercial real estate;

19 (d) The legal description of the commercial real estate as
20 described in the commission agreement;

21 (e) The amount for which the lien is claimed, which may be stated
22 in a dollar amount or may be stated in the form of a formula for how
23 the amount is to be determined such as a percentage of the sales price;

24 (f) The real estate license number of the broker; and

25 (g) That the lien claimant has read the claim, knows the contents,
26 and believes the same to be true and correct, and that the claim is
27 made pursuant to a valid commission agreement, and is not frivolous,
28 under penalties of perjury.

29 A copy of the commission agreement must be attached to the recorded
30 notice of claim of lien against proceeds. The notice of claim of lien
31 against proceeds must recite that the information contained in the
32 notice of claim of lien against proceeds is true and accurate to the
33 knowledge of the signatory. The notice of claim of lien against
34 proceeds must be acknowledged pursuant to chapter 64.08 RCW. A notice
35 of claim of lien against proceeds substantially in the following form
36 is sufficient:

37 NOTICE OF CLAIM OF LIEN AGAINST PROCEEDS

38 PURSUANT TO CHAPTER 60.-- RCW

39 (sections 1 through 10 of this act)

1 Notice is hereby given that the person named below claims a lien as
2 to owner's net proceeds or net rental proceeds, but not real property,
3 pursuant to chapter 60.-- RCW (sections 1 through 10 of this act). In
4 support of this lien, the following information is submitted:

5 1. Name, telephone number, and address of lien claimant:
6

7 2. Washington state broker's license number of lien claimant: . .

8 3. Date of the written commission agreement on which this claim is
9 based: , a true and complete copy of which is
10 attached to this notice of claim of lien.

11 4. Name of the owner:

12 5. Legal description of the commercial real estate described in the
13 commission agreement:
14

15 6. The amount for which the lien is claimed, which may be stated in
16 a dollar amount or may be stated in the form of a formula for how the
17 amount is to be determined such as a percentage of the sales price:
18

19 7. The undersigned lien claimant, being sworn, states: I have read
20 the foregoing claim, know the contents, and believe the same to be true
21 and correct, and the claim is made pursuant to a valid commission
22 agreement, and is not frivolous, under penalty of perjury.

23
24 Signature of lien claimant
25
26 Name, Street Address, City, State
27 of person signing
28
29 Telephone Number of person signing

30 State of Washington)
31) ss
32 County of)

33
34 Subscribed and sworn to, or affirmed, before me on . . . by . . .
35
36 Signature

1 (Seal or stamp)

2 Title

3 My appointment expires

4 (Add acknowledgment pursuant to chapter 64.08 RCW)

5 (7) Whenever a notice of claim of lien against proceeds is recorded
6 and a condition or event occurs, or fails to occur, that would preclude
7 the broker from receiving compensation under the terms of the
8 commission agreement, including the filing of a notice of claim of lien
9 against proceeds in a manner which does not comply with this chapter,
10 the broker shall record, within seven days following demand by the
11 owner, a written release of the notice of claim of lien against
12 proceeds.

13 (8) Whenever the amount claimed in a notice of claim of lien
14 against proceeds is paid to the lien claimant, the lien claimant shall
15 promptly record a satisfaction or release of the notice of claim of
16 lien against proceeds on written demand of the owner no later than five
17 days after receipt of payment. In the case of a disposition of
18 commercial real estate, the escrow closing agent is required to pay to
19 the lien claimant the owner's net proceeds up to the amount claimed in
20 the notice of claim of lien against proceeds. If the amount claimed in
21 the notice of claim of lien against proceeds is to be fully or
22 partially paid to the lien claimant by the escrow closing agent, upon
23 such disposition, then the lien claimant shall submit a release of the
24 notice of claim of lien against proceeds in the amount of the owner's
25 net proceeds or the amount of the lien, whichever is smaller, to the
26 escrow closing agent to be held in escrow pending such disposition and
27 payment. In a suit brought by the owner to compel delivery of the
28 release by the lien claimant, and the court determines that the delay
29 was unjustified, the court shall, in addition to ordering the release
30 of the notice of claim of lien, award the costs of the action including
31 reasonable attorneys' fees to the prevailing party.

32 (9) An owner of commercial real estate may request that a broker
33 waive the rights to a lien under this chapter, and such a waiver
34 contained in the commission agreement signed by the broker is effective
35 to waive the broker's rights to a lien under this chapter. In a suit
36 filed by a broker to recover amounts due under a commission agreement
37 in which the broker has waived lien rights under this chapter, if the
38 court finds that payment is due to the broker under the commission
39 agreement, the court, in addition to awarding normal damages, shall

1 award to the broker court costs, reasonable attorneys' fees, and
2 statutory interest, as provided in RCW 19.52.010, from the date the
3 deed is recorded in the event of a disposition, or from the date the
4 tenant takes possession in the event of a lease.

5 NEW SECTION. **Sec. 3.** (1) An owner of commercial real estate
6 subject to a recorded notice of claim of lien against proceeds under
7 this chapter, who disputes the broker's claim in the notice of claim of
8 lien against proceeds, may apply by motion to the superior court for
9 the county where the commercial real estate, or some part thereof, is
10 located for an order directing the broker to appear before the court at
11 a time no earlier than seven nor later than fifteen days following the
12 date of service of the motion and order on the broker, to show cause as
13 to why the relief requested should not be granted. The motion must
14 state the grounds upon which relief is asked and must be supported by
15 the affidavit of the owner setting forth a concise statement of the
16 facts upon which the motion is based.

17 (2) The order to show cause must clearly state that if the broker
18 fails to appear at the time and place noted, the notice of claim of
19 lien against proceeds must be released, with prejudice, and the broker
20 must be ordered to pay the costs requested by the owner, including
21 reasonable attorneys' fees.

22 (3) If, following a hearing on the matter, the court determines
23 that the owner is not a party to an agreement which will result in the
24 owner being obligated to pay to the broker a commission pursuant to the
25 terms of a commission agreement, the court shall issue an order
26 releasing the notice of claim of lien against proceeds and awarding
27 costs and reasonable attorneys' fees to the owner to be paid by the
28 broker. If the court determines that the owner is a party to an
29 agreement which will result in the owner being obligated to pay to the
30 broker a commission pursuant to the terms of a commission agreement,
31 the court shall issue an order so stating and awarding costs and
32 reasonable attorneys' fees to the broker, to be paid by the owner.
33 Such orders are final judgments.

34 (4) Proceedings under this section shall not affect other rights
35 and remedies available to the parties under this chapter or otherwise.

36 NEW SECTION. **Sec. 4.** (1) If a broker has a lien on net rental
37 proceeds pursuant to section 2(2) of this act, and the broker has

1 recorded a notice of claim of lien against proceeds and otherwise
2 complied with the requirements of this chapter, the broker may apply by
3 motion to the superior court for the county where the commercial real
4 estate, or some part thereof, is located, for an order directing the
5 owner to appear before the court at a time no earlier than seven nor
6 later than fifteen days following the date of service of the motion and
7 order on the owner, and show cause as to why the relief requested
8 should not be granted. The motion must state the grounds upon which
9 relief is asked, and must be supported by the affidavit of the broker
10 setting forth a concise statement of the facts upon which the motion is
11 based.

12 (2) The order to show cause must clearly state that if the owner
13 fails to appear at the time and place noted, the broker shall be
14 entitled to an order enjoining the owner from paying the net rental
15 proceeds from such lease to any party other than the broker, and that
16 the owner shall be ordered to pay the costs requested by the broker,
17 including reasonable attorneys' fees.

18 (3) If, following a hearing on the matter, the court determines
19 that the owner is, or was, a party to an agreement for the lease of
20 commercial real estate, which did or will result in the owner being
21 obligated to pay to the broker a commission pursuant to the terms of a
22 commission agreement, the court shall issue an order enjoining the
23 owner from paying the net rental proceeds from such lease to any party
24 other than the broker. The court shall also order the owner to pay
25 such net rental proceeds to the broker and award costs and reasonable
26 attorneys' fees to the broker, to be paid by the owner. If the court
27 determines that the owner is not, or was not, a party to an agreement
28 for the lease of commercial real estate, which did or will result in
29 the owner being obligated to pay to the broker a commission pursuant to
30 the terms of a commission agreement, the court shall issue an order so
31 stating and awarding costs and reasonable attorneys' fees to the owner,
32 to be paid by the broker. Such orders are final judgments.

33 (4) Proceedings under this section shall not affect other rights
34 and remedies available to the parties under this chapter or otherwise.

35 NEW SECTION. **Sec. 5.** All statutory liens, consensual liens,
36 mortgages, deeds of trust, assignments of rents, and other
37 encumbrances, including all advances or charges made or accruing
38 thereunder, whether voluntary or obligatory, and all modifications,

1 extensions, renewals, and replacements thereof, recorded prior to the
2 recording of a notice of claim of lien against proceeds have priority
3 over a lien created under this chapter. A prior recorded lien
4 includes, without limitation, a valid materialmen's or mechanic's lien
5 claim that is recorded after the recording of the broker's notice of
6 claim of lien against proceeds but which relates back to a date prior
7 to the recording date of the broker's notice of claim of lien against
8 proceeds.

9 NEW SECTION. **Sec. 6.** A notice of claim of lien against proceeds
10 recorded under this chapter must be released without further act, upon
11 the recording of a receipt showing the deposit with the superior court
12 of the county in which the commercial real estate, or some part
13 thereof, is located, of an amount equal to one and one-quarter times
14 the amount of the lien claimed. The receipt shall be recorded in the
15 office in which the notice of claim was recorded. The amount of the
16 deposit in the superior court shall be held pending a resolution of
17 amounts due to the broker and the owner.

18 NEW SECTION. **Sec. 7.** The county auditor or recorder shall record
19 the notice of claim of lien against proceeds, and any release thereof,
20 in the same manner as deeds and other instruments of title are recorded
21 under chapter 65.08 RCW. Notices of claim of lien against proceeds for
22 registered land need not be recorded in the Torrens register. The
23 county auditor or recorder may not charge a higher fee for recording a
24 notice of claim of lien against proceeds, or for a release thereof,
25 than what the county auditor or recorder charges for other documents.

26 NEW SECTION. **Sec. 8.** Notices to be delivered to a party under
27 this chapter, other than service of process as required in civil
28 actions, shall be by service of process, or by registered or certified
29 mail, return receipt requested, or by personal or electronic delivery
30 and obtaining evidence of delivery in the form of a receipt or other
31 paper or electronic acknowledgment by the party to whom the notice is
32 delivered or an affidavit of service. Delivery is effective at the
33 time of personal service, or personal or electronic delivery, or three
34 days following deposit in the mail as required by this section. Notice
35 to a broker or owner may be given to the address of the broker or owner
36 that is contained in the commission agreement, or such other address as

1 is contained in a written notice from the broker or owner to the party
2 giving the notice. If no address is provided in the commission
3 agreement, the notice to the broker may be given to the broker's
4 address of record with the department of licensing pursuant to chapter
5 18.85 RCW and notice to the owner may be given to the address of the
6 commercial real estate.

7 NEW SECTION. **Sec. 9.** This chapter applies to lien claims based on
8 a commission agreement entered into on, or after, the effective date of
9 this act.

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

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

--- END ---