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**SENATE BILL 5832**

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**State of Washington**

**55th Legislature**

**1997 Regular Session**

**By** Senators Roach, Heavey and Hargrove

Read first time 02/14/97. Referred to Committee on Commerce & Labor.

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 estate located in this state except an  
8 interest in real estate which is (a) improved with one single-family  
9 home or one multifamily structure with four or less residential units,  
10 or (b) unimproved and the maximum permitted development is one to four  
11 residential units or structures under the county or city zoning  
12 ordinances applicable to that real property, or (c) real property  
13 classified as farm and agricultural land or timber land for assessment  
14 purposes pursuant to chapter 84.34 RCW, or (d) improved with  
15 single-family residential units such as condominiums, townhouses,  
16 timeshares, or homes in a subdivision when sold, leased, or otherwise  
17 may be legally conveyed on a unit-by-unit basis. Real property will be  
18 considered commercial real estate if it meets the definition contained

1 in this section on either the date of the commission agreement or the  
2 date of the disposition.

3 (2) "Commission agreement" means a written instrument which meets  
4 the requirements of RCW 19.36.010 signed by or on behalf of the owner  
5 of commercial real estate, pursuant to which the owner agrees to pay a  
6 broker a real estate commission upon the disposition or lease of  
7 commercial real estate.

8 (3) "Disposition" means a voluntary transfer or conveyance of  
9 commercial real estate.

10 (4) "Lease" means a written agreement which gives rise to a  
11 relationship of landlord and tenant such that the holder of a fee  
12 simple interest or possessory estate permits another to possess the  
13 commercial real estate for a period, and which meets the requirements  
14 of RCW 19.36.010, if applicable.

15 (5) "Net rental proceeds" means rental proceeds less any amounts  
16 currently due under the terms of liens which have priority over the  
17 lien created under this chapter as provided in section 4 of this act.

18 (6) "Owner" means a person or entity which is vested in record fee  
19 title or a possessory estate in commercial real estate.

20 (7)(a) "Owner's net proceeds" means the gross sales proceeds from  
21 the disposition of the commercial real estate described in a notice of  
22 claim of lien, less the following: (i) Amounts necessary to pay all  
23 encumbrances and liens recorded against such commercial real estate  
24 recorded prior to the date of recording of the notice of claim of lien;  
25 (ii) owner's closing costs, such as real estate excise tax, title  
26 insurance premiums, real estate tax and assessment prorations, and  
27 escrow fees; and (iii) amounts retained in escrow and actually used by  
28 the owner to complete an exchange of real property which is deferred  
29 from federal income tax under section 1031 of the internal revenue code  
30 of 1986, as amended.

31 (b) "Owner's net proceeds" shall include any sales proceeds which  
32 were retained in escrow for purposes of completing an exchange of real  
33 property which is deferred from federal income tax under section 1031  
34 of the internal revenue code of 1986, as amended, but are subsequently  
35 not used for that purpose.

36 (8) "Real estate broker" or "broker" means the same as defined in  
37 RCW 18.85.010.

38 (9) "Real estate" means one or more identified parcels or tracts of  
39 land, including any improvements.

1 (10) "Rental proceeds" means the rent paid to an owner by the  
2 tenant under a lease.

3 NEW SECTION. **Sec. 2.** (1) A broker has a lien upon the owner's net  
4 proceeds from the disposition of commercial real estate and a lien on  
5 rental proceeds from the lease of commercial real estate in the amount  
6 which the owner has agreed to pay the broker under a commission  
7 agreement as a result of an agreement which the owner enters into for  
8 the disposition or lease of the commercial real estate. The lien under  
9 this chapter is available only to the broker named in the commission  
10 agreement.

11 (2) Subject to the requirements of subsection (3) of this section,  
12 the lien created by this chapter becomes effective on the date of the  
13 recording of a notice of claim of lien pursuant to subsection (5) of  
14 this section, and is perfected by such recording. Recording must be  
15 made with the county auditor in the county or counties in which the  
16 commercial real estate is located.

17 (3) In the case of a disposition of commercial real estate, the  
18 lien under this chapter is not effective unless it is recorded at least  
19 thirty days prior to the date the owner records a deed for conveyance  
20 of the commercial real estate. In the case of a lease of commercial  
21 real estate, the lien under this chapter is not effective unless it is  
22 recorded within ninety days after the tenant takes possession of the  
23 leased premises.

24 (4) The broker shall, within ten days of recording its notice of  
25 claim of lien, deliver a copy of the notice of claim of lien to the  
26 owner of the commercial real estate in the manner as provided in  
27 section 8 of this act or the lien is unenforceable. In the case of the  
28 disposition of commercial real estate, the broker shall, on or before  
29 the date the deed for conveyance has been recorded, deliver a copy of  
30 the notice of claim of lien to the escrow closing agent closing the  
31 transaction in the manner as provided in section 8 of this act, if the  
32 identity of the escrow closing agent is actually known by the broker.

33 (5) The notice of claim of lien must state the following:

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

35 (b) The date of the commission agreement;

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

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

1 (e) The amount for which the lien is claimed, which may be stated  
2 in a dollar amount or may be stated in the form of a formula for how  
3 the amount is to be determined such as a percentage of the sales price;  
4 and

5 (f) The real estate license number of the broker.

6 A copy of the commission agreement must be attached to the recorded  
7 notice of claim of lien. The notice of claim of lien must recite that  
8 the information contained in the notice of claim of lien is true and  
9 accurate to the knowledge of the signatory. The notice of claim of  
10 lien must be signed by the broker or by a person authorized to sign on  
11 behalf of the broker who shall affirmatively state that he or she has  
12 read or heard the claim and believes the notice of claim of lien to be  
13 true and correct under penalty of perjury. The notice of claim of lien  
14 must be acknowledged pursuant to chapter 64.08 RCW. A notice of claim  
15 of lien substantially in the following form is sufficient:

16 NOTICE OF CLAIM OF LIEN  
17 PURSUANT TO CHAPTER 60.-- RCW  
18 (sections 1 through 10 of this act)

19 Date:

20 Notice is hereby given that the person named below claims a lien as  
21 to owner's net proceeds or rental proceeds pursuant to chapter 60.--  
22 RCW (sections 1 through 10 of this act). In support of this lien, the  
23 following information is submitted:

- 24 1. Name, telephone number, and address of broker: . . . . .  
25 . . . . .  
26 2. License number of broker: . . . . .  
27 3. Date of the written commission agreement on which this claim is  
28 based: . . . . ., a copy of which is attached to this notice  
29 of claim of lien.  
30 4. Name of the owner: . . . . .  
31 5. Legal description of the commercial real property described in  
32 the commission agreement: . . . . .  
33 . . . . .  
34 6. The amount for which the lien is claimed, which may be stated in  
35 a dollar amount or may be stated in the form of a formula for how the  
36 amount is to be determined such as a percentage of the sales price:  
37 . . . . .

1 . . . . .  
2 Signature  
3 . . . . .  
4 Name, Street Address, City, State  
5 . . . . .  
6 Telephone Number

7 State of Washington )  
8 ) ss  
9 County of . . . . . )

10 . . . . ., being sworn, says: I am the broker, or attorney  
11 of the broker, above named. I have read or heard the foregoing claim,  
12 know the contents thereof, and believe the same to be true and correct  
13 and that the claim of lien is made pursuant to a valid commission  
14 agreement and is not frivolous, under penalty of perjury.

15 . . . . .  
16 Subscribed and sworn to before me this . . . day of . . . . .  
17 . . . . .

18 (6) Whenever a notice of claim of lien is recorded and a condition  
19 or event occurs, or fails to occur, that would preclude the broker from  
20 receiving compensation under the terms of the commission agreement,  
21 including the filing of a notice of claim of lien in a manner which  
22 does not comply with this chapter, the broker shall record, within  
23 seven days following demand by the owner, a written release of the  
24 notice of claim of lien.

25 (7) Whenever the amount claimed in a notice of claim of lien is  
26 paid, the broker shall record a satisfaction or release of the notice  
27 of claim of lien on written demand of the owner within five days after  
28 payment. In the case of a disposition of commercial real estate, the  
29 escrow closing agent is required to pay to the broker the owner's net  
30 proceeds up to the amount claimed in the notice of claim of lien. If  
31 the amount claimed in the notice of claim of lien is fully or partially  
32 satisfied upon such disposition by the escrow closing agent, the broker  
33 shall submit a release of the notice of claim of lien to the escrow  
34 closing agent to be held in escrow pending such disposition. In a suit  
35 brought by the owner to compel deliverance of the release in which the  
36 court determines that the delay was unjustified, the court shall, in

1 addition to ordering the release, award the costs of the action  
2 including reasonable attorneys' fees.

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

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

19 (3) If, following a hearing on the matter, the court determines  
20 that the owner is not then a party to a pending agreement for the  
21 disposition or lease of commercial real estate, which will result in  
22 the owner being obligated to pay to the broker a commission under the  
23 terms of a commission agreement, the court shall issue an order  
24 releasing the notice of claim of lien and awarding costs and reasonable  
25 attorneys' fees to the owner to be paid by the broker. If the court  
26 determines that the owner is then a party to a pending agreement for  
27 the disposition or lease of commercial real estate, which will result  
28 in the owner being obligated to pay to the broker a commission under  
29 the terms of a commission agreement, the court shall issue an order so  
30 stating and awarding costs and reasonable attorneys' fees to the broker  
31 to be paid by the owner.

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

34 NEW SECTION. **Sec. 4.** (1) If a broker has a lien on rental  
35 proceeds pursuant to section 2(1) of this act, and the broker has  
36 recorded a notice of claim of lien and otherwise complied with the  
37 requirements of this chapter, the broker may apply by motion to the

1 superior court for the county where the commercial real estate, or some  
2 part thereof, is located, for an order directing the owner to appear  
3 before the court at a time no earlier than seven nor later than fifteen  
4 days following the date of service of the application and order on the  
5 owner, and show cause as to why the relief requested should not be  
6 granted. The motion must state the grounds upon which relief is asked,  
7 and must be supported by the affidavit of the broker, or the broker's  
8 attorney, setting forth a concise statement of the facts upon which the  
9 motion is based.

10 (2) The order must clearly state that if the owner fails to appear  
11 at the time and place noted, the broker shall be entitled to the relief  
12 requested and that the owner shall be ordered to pay the costs  
13 requested by the broker including reasonable attorneys' fees.

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

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

31 NEW SECTION. **Sec. 5.** All statutory liens, liens, mortgages, deeds  
32 of trust, assignments of rents, and other encumbrances, including all  
33 advances or charges made or accruing thereunder, whether voluntary or  
34 obligatory, and all modifications, extensions, renewals, and  
35 replacements thereof recorded prior to a notice of claim of lien have  
36 priority over a lien created under this chapter. A prior recorded lien  
37 includes, without limitation, a valid materialmen's or mechanic's lien  
38 claim that is recorded after the recording of the broker's notice of

1 claim of lien but which relates back to a date prior to the recording  
2 date of the broker's notice of claim of lien.

3 NEW SECTION. **Sec. 6.** A notice of claim of lien recorded under  
4 this chapter must be released if the owner deposits with the superior  
5 court of the county in which the commercial real estate, or some part  
6 thereof, is located, an amount equal to one and one-quarter times the  
7 amount of the lien claimed, with the amount to be held pending a  
8 resolution of amounts due to the broker.

9 NEW SECTION. **Sec. 7.** The county auditor shall record the notice  
10 of claim of lien in the same manner as deeds and other instruments of  
11 title are recorded under chapter 65.08 RCW. Notices of claim of lien  
12 for registered land need not be recorded in the Torrens register. The  
13 county auditor may not charge a higher fee for recording a notice of  
14 claim of lien than what the county auditor charges for other documents.

15 NEW SECTION. **Sec. 8.** Notices to be delivered to a party under  
16 this chapter, other than service of process as required in civil  
17 actions, shall be by registered or certified mail, return receipt  
18 requested, or by personal delivery and obtaining evidence of delivery  
19 in the form of a receipt or other acknowledgment signed by the party to  
20 whom the notice is delivered or an affidavit of service. Delivery is  
21 effective at the time of personal delivery, or when deposited in the  
22 mail as required by this section. Notice to a broker may be given to  
23 the address of the broker that is contained in the commission agreement  
24 with the broker, or such other address as is contained in a written  
25 notice from the broker to the party giving the notice. If no address  
26 is provided in the commission agreement, the notice may be given to the  
27 broker's address of record with the department of licensing pursuant to  
28 chapter 18.85 RCW.

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

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



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

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