

State of Wisconsin



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1997 Senate Bill 369

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1997 WISCONSIN ACT 309

AN ACT to create 779.32 of the statutes; relating to: establishing a commercial real estate broker's commission lien.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 779.32 of the statutes is created to read:
779.32 Commission liens. (1) DEFINITIONS. In this section:

(a) "Broker" means a real estate broker licensed under ch. 452.

(b) "Commercial real estate" means any real property other than any of the following:

1. Real property containing 8 or fewer dwelling units.
2. Real property that is zoned for residential purposes and that does not contain any buildings or structures.
3. Real property that is zoned for agricultural purposes.

(c) "Financial institution" has the meaning given in s. 214.01 (1) (jn).

(2) LIEN. If a broker complies with the notice requirements under sub. (3) and perfects the lien under sub. (4), all of the following apply:

(a) If the broker has earned a commission under a written commercial real estate listing contract, the broker has a lien for the unpaid amount of the commission against the commercial real estate, or the interest in commercial real estate, that is listed with the broker under the contract.

(b) If the broker has earned a commission under a written commercial real estate buyer agency agreement, the broker has a lien for the unpaid amount of the com-

mission against the commercial real estate, or the interest in commercial real estate, that is acquired as a result of the agreement.

(c) If the broker has earned compensation under a written agreement for the lease or management of commercial real estate, the broker has a lien for the unpaid amount of the compensation against the commercial real estate for which the leasing or management services were provided under the agreement.

(3) NOTICE OF INTENT TO CLAIM LIEN. A broker has a lien under sub. (2) (a) or (b) only if the broker files or records a written notice of intent to claim a lien under this section at the office of the register of deeds for the county in which the commercial real estate is located and delivers a copy of the notice to the person owing the commission under sub. (2) (a) or (b). A broker has a lien under sub. (2) (c) only if the broker provides a written notice of intent to claim a lien under this section to the person owing the compensation under sub. (2) (c). All notices required under this subsection shall contain the name of each party to the agreement under which the lien is claimed, the date that the agreement was entered into and a brief description of the commercial real estate on which the lien is intended to be claimed. All notices required under this subsection shall be provided within the following time periods:

(a) In the case of a lien under sub. (2) (a), at least 30 days before the conveyance of the commercial real estate subject to the listing contract.

* Section 991.11, WISCONSIN STATUTES 1995-96: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

(b) In the case of a lien under sub. (2) (b), at least 30 days before the conveyance of the commercial real estate subject to the buyer agency agreement.

(c) In the case of a lien under sub. (2) (c), before the date that the written agreement for the lease or management of commercial real estate is entered into.

(4) PERFECTION OF LIEN. (a) A lien under this section is perfected when a broker files a notice of lien in the office of the register of deeds for the county in which the commercial real estate is located. The lien must be perfected no later than the following:

1. In the case of a lien under sub. (2) (a) or (b), 3 days prior to the date that the conveyance documents are recorded with the register of deeds in the county where the real property, that is the subject of the listing contract or buyer agency contract, is located.

2. In the case of a lien under sub. (2) (c), 90 days after the later of the following:

a. The date that the broker earns a commission or compensation that gives rise to a lien under this section. For purposes of this subd. 2. a., a commission or compensation is considered earned on the date that payment of it is due under the lease or management agreement.

b. The date that the broker receives notice that he or she has earned a commission or compensation that gives rise to a lien under this section. For purposes of this subd. 2. b., a commission or compensation is considered earned on the date that the payment of it is due under the lease or management agreement.

(b) The notice of lien shall be signed by the broker and shall include all of the following information:

1. The name and license number of the broker.

2. The name of the owner or acquirer of the commercial real estate that is subject to the lien.

3. The legal description of the commercial real estate that is subject to the lien.

4. The amount of the lien at the time the notice is filed.

(c) A broker shall mail a copy of the notice of lien to the owner or acquirer of the commercial real estate that is subject to the lien within 72 hours after the filing of the notice of lien under par. (a). A lien under this section is effective only from the date that it is perfected under this subsection.

(d) A lien that is perfected under this subsection by a broker secures all unpaid commissions or compensation that is due that broker with respect to the commercial real estate subject to that lien, regardless of whether the commission or compensation was earned at the time the lien was filed.

(4m) DUTY OF REGISTER OF DEEDS. If a notice of lien meets the requirements under sub. (4), the register of deeds shall accept the notice of lien for filing. The register of deeds shall index the notice of lien under the name of the owner or acquirer of the commercial real estate who is subject to the lien. If the register of deeds main-

tains a tract index, the register of deeds shall also index the notice of lien under the legal description of the real estate against which a lien is claimed.

(5) PRIORITY. A lien under this section shall have priority over all other liens on the commercial real estate, except tax and special assessment liens, liens created under subch. I of ch. 779, purchase money mortgages, liens that are filed or recorded before the lien under this section is perfected and any other lien given priority under the law.

(8) SATISFACTION OF THE LIEN. (a) Upon the request of any person interested in the real estate that is the subject of a lien under this section, the broker shall execute and deliver a satisfaction of lien to the interest party, if one of the following conditions is met:

1. The person owing the commission or compensation pays the broker in full the amount specified in the notice of lien.

2. The person owing the commission or compensation pays an amount equal to 125% of the commission or compensation owed into the trust account of the broker or the trust account of any attorney who does not represent any party to the dispute and who is in good standing with the state bar of Wisconsin. The moneys shall be held in escrow until disbursed pursuant to the written mutual agreement of the parties or pursuant to a court order.

3. If the parties to the contract or agreement giving rise to the lien agree to binding arbitration regarding the disputed commission or compensation and if the parties to the contract or agreement, other than the broker, agree to pay all of the costs of the arbitration.

(b) Upon the filing of a satisfaction of lien under par. (a) with the register of deeds, the register of deeds shall index the satisfaction under the name of the owner or acquirer of the commercial real estate who was subject to the satisfied lien. If the register of deeds maintains a tract index, the satisfaction shall also be indexed under the legal description of the real estate against which the lien was claimed.

(c) A broker is liable to a person requesting a lien satisfaction under this subsection for a sum equal to 50% of the sum claimed in the lien claim, if the broker does not provide the requested satisfaction within 30 days of the later of the following:

1. The date on which the request is received by the broker.

2. If the satisfaction is required under par. (a) 1., the date on which the broker receives payment in full of the amount specified in the notice of lien.

3. If the satisfaction is required under par. (a) 2., the date on which the broker receives evidence that the requirements under par. (a) 2. have been met.

4. If the satisfaction is required under par. (a) 3., the date on which the broker receives the agreement to binding arbitration.

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5. If the satisfaction is required under par. (a) 3., the date on which the broker receives evidence of payment of the arbitrator's fee.

(9) **EXTINGUISHMENT OF LIEN.** A lien under this section is extinguished if an action to enforce the lien is not commenced within 2 years after the lien is perfected under sub. (4) (a).

SECTION 2. Initial applicability.

(1) This act first applies to a commercial real estate listing contract, a commercial real estate buyer agency agreement or an agreement for the lease or management of commercial real estate entered into on the effective date of this subsection.

SECTION 3. Effective date.

(1) This act takes effect on the first day of the 4th month beginning after publication.