



2009 SENATE BILL 587

March 2, 2010 - Introduced by Senators SULLIVAN, TAYLOR, PLALE, JAUCH, COWLES and DARLING, cosponsored by Representatives RICHARDS, HUBLER, TURNER, MOLEPSKE JR., VAN ROY, TOWNSEND, SMITH, GUNDERSON, PETERSEN and SOLETSKI. Referred to Committee on Veterans and Military Affairs, Biotechnology, and Financial Institutions.

1 **AN ACT to repeal** 779.32 (3) (c); **to amend** 779.32 (2) (b), 779.32 (2) (c), 779.32
2 (3) (intro.), 779.32 (4) (a) (intro.), 779.32 (4) (a) 1., 779.32 (4) (a) 2. a. and b.,
3 779.32 (4) (b) (intro.), 779.32 (4) (b) 4., 779.32 (4) (c), 779.32 (4) (d), 779.32 (4m),
4 779.32 (8) (a) 1., 779.32 (8) (a) 2., 779.32 (8) (c) 2., 840.11 (1) and 840.11 (2); **to**
5 **repeal and recreate** 779.32 (8) (b) and 779.32 (9); and **to create** 706.085,
6 779.32 (1) (d), 779.32 (2m), 779.32 (8) (am), 779.32 (10) and 779.32 (11) of the
7 statutes; **relating to:** commercial real estate liens and recording a correction
8 instrument and a lis pendens.

Analysis by the Legislative Reference Bureau

Correction instruments

Current law provides a procedure whereby a court may, on satisfactory proof, make an order correcting the description of real property in a recorded instrument conveying the property. Current law also provides that correction instruments may be recorded to make certain specified corrections to recorded plats or certified survey maps. Although correcting an error in a previously recorded instrument conveying real property by recording an affidavit making the correction but without court action has been a common practice for many years, the Wisconsin Court of Appeals determined in *Smiljanic v. Niedermeyer*, 2007 WI App 182, 737 N.W.2d 436, that there is no statutory authority under current law for this method of correction.

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This bill provides that an instrument (correction instrument) correcting previously recorded instruments conveying real property may be executed, generally, by a person with personal knowledge of the facts stated in the instrument and recorded in the office of the register of deeds of the county in which the previously recorded instrument is recorded. A correction instrument may correct a legal description; add to, correct, or clarify other information, such as names, dates, and marital status; add an acknowledgment or authentication; or add the consent or subordination of a mortgagee. The bill specifies what information a correction instrument must include and provides that the record of the correction instrument is prima facie evidence of the facts stated in the correction instrument; is presumed to be true, subject to rebuttal; and constitutes record notice affecting the property's chain of title to any purchaser of the property. The bill also validates correction instruments that were recorded before the effective date of the bill.

Lis pendens

Current law provides that any person who applies to a court or municipal governing body for laying out, widening, vacating, or extending a street, alley, or other specified public place must file a notice of pendency of the application and that failure to comply renders all proceedings based on the application void. The bill instead requires the person making the application to submit a lis pendens to the register of deeds for filing or recording and removes the provision that failure to comply renders all proceedings based on the application void.

Current law provides that any final order or resolution based on the application has no effect and is not notice unless a certified copy of the order or resolution contains a full and accurate description of the property and is recorded in the office of the register of deeds. The bill provides that the final order must instead contain a legal description of the property and is not notice unless it is recorded in the office of the register of deeds. The bill also removes a provision in current law that a resolution or order that affects land but for which no application was made has no effect and is not notice unless it is recorded.

Commercial real estate liens

This bill makes numerous changes in the process of obtaining and terminating a commercial real estate lien, which is a lien on real property other than real property that contains eight or fewer dwelling units, that is zoned for residential use but that has no structures, or that is zoned for agriculture.

Currently, if a real estate broker (broker) earns a commission on the sale of commercial real estate, the broker has a lien against the commercial real estate for the unpaid amount of the commission. The bill expands the types of agreements that may give rise to a commercial real estate lien to include an agreement between a broker and a person that grants the broker the right to represent the person in the lease of commercial real estate.

Under current law, to claim a lien against commercial real estate for an unpaid commission, a broker must file or record a written notice of intent to claim the lien at the office of the register of deeds for the county in which the commercial real estate is located and deliver a copy of that notice to the person owing the commission. Under this bill, to obtain a lien, the broker must send written notice to the person who owes

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the commission of the right to claim the lien and record a written notice of interest in the commercial real estate at the office of the register of deeds for the county in which the commercial real estate is located.

Currently, the lien 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. Under the bill, the lien is perfected when a broker records the lien in the office of the register of deeds for the county in which the commercial real estate is located.

The bill changes the time period for perfecting a lien involving a written commercial real estate list contract or buyer agency agreement from three days before the conveyance documents are recorded with register of deeds to 30 days after the conveyance documents are recorded with register of deeds.

Under current law, the broker is required to satisfy a commercial real estate lien if the person owing a commission that is the subject of the lien pays an amount equal to 125 percent of the commission owed into the trust account of the broker or of an attorney who does not represent any party to the dispute, pending resolution of the dispute. This bill adds a mutually agreed third party to those who can receive and hold the money pending resolution of the dispute.

Current law provides that a commercial real estate lien is extinguished if an action to enforce the lien is not commenced within two years after the lien is perfected. Under this bill, a commercial real estate lien is extinguished if a new notice of interest in the commercial real estate is not recorded in the office of the register of deeds for the county in which the commercial real estate is located within two years after the original notice of interest was recorded. Under the bill, a broker may rescind a notice of interest by recording a notice in the office of the register of deeds for the county in which the commercial real estate is located indicating that he or she no longer claims an interest in the commercial real estate.

The bill requires a broker to record a notice rescinding a notice of interest in the commercial real estate if the agreement that created the interest in the commercial real estate is terminated or expires. In addition, under the bill, a broker may waive the lien by signing a written waiver, but no action between any other persons may invalidate the lien, other than the payment in full of the broker's commission.

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

- 1 **SECTION 1.** 706.085 of the statutes is created to read:
- 2 **706.085 Correction instruments. (1)** ENTITLED TO BE RECORDED; PURPOSES.
- 3 An instrument correcting a previously recorded conveyance shall be entitled to
- 4 record in accordance with s. 706.05 in the office of the register of deeds of the county
- 5 in which the conveyance is recorded and shall include one or more of the following:

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1 (a) The correction of a legal description, including a distance; angle; direction;
2 bearing; chord; lot, block, unit, or building number or letter; appurtenant easement;
3 section number; township name or number; municipality, county, or state name;
4 range number or meridian; certified survey map number; or subdivision or
5 condominium name.

6 (b) The addition, correction, or clarification of information other than a legal
7 description, including any of the following information:

8 1. A party's name, including the spelling of the name; a first or middle name
9 or initial; a name suffix, such as senior or junior; alternate names by which the party
10 is known; or a description of an entity as a corporation, company, or similar identifier.

11 2. A party's marital status.

12 3. The date on which the conveyance was executed.

13 4. Whether the property is a homestead.

14 5. The tax parcel number.

15 6. The identity of the drafter.

16 7. The recording data for an instrument referenced in the conveyance.

17 8. The nature and purpose of the conveyance.

18 9. The title of the conveyance.

19 10. Facts relating to the acknowledgment or authentication.

20 (c) The addition of an acknowledgment or authentication.

21 (d) The disclaimer by a grantee under a deed of that party's interest in the real
22 property that is the subject of the deed.

23 (e) The addition of a mortgagee's consent or subordination.

24 **(2) EXECUTION REQUIREMENTS.** (a) A correction instrument shall be
25 acknowledged or authenticated in accordance with s. 706.06 or 706.07. It shall recite

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1 the document number of the conveyance, the names of the grantor and grantee, and,
2 if given on the conveyance, the volume and page numbers.

3 (b) 1. Except as otherwise provided in this paragraph, a correction instrument
4 that is executed after the effective date of this subdivision [LRB inserts date], may
5 be executed by a person having personal knowledge of the circumstances of the
6 conveyance and of the facts recited in the correction instrument, including the
7 grantor, the grantee, the person who drafted the conveyance that is the subject of the
8 correction instrument, or the person who acted as the settlement agent in the
9 transaction that is the subject of the conveyance, and shall recite the basis for the
10 person's personal knowledge. A correction instrument that was executed before the
11 effective date of this subdivision [LRB inserts date], is not rendered ineffective by
12 reason of the instrument's failure to recite that the maker had the knowledge or
13 capacity required under this subdivision.

14 2. A correction instrument that makes the correction under sub. (1) (e) shall be
15 signed by the consenting party, or an heir, successor, or assignee of the party.

16 3. A correction instrument that adds, removes, or replaces a divisible parcel in
17 a conveyance shall be signed by the following persons:

18 a. If the correction instrument supplies a lot, block, unit, or building number
19 or letter that was omitted from a conveyance, by any party identified in subd. 1.

20 b. If a parcel is being added to a conveyance that also correctly conveys other
21 land, only by the grantor.

22 c. If a parcel is being removed from a conveyance that also correctly conveys
23 other land, only by the grantee.

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1 d. If a lot or unit number or letter is being corrected and the lot or unit
2 incorrectly recited in the conveyance is also owned by the grantor, only by the
3 grantee.

4 e. If a lot, block, unit, or building number or letter is being corrected and the
5 lot or unit incorrectly recited in the conveyance is not also owned by the grantor, by
6 any party identified in subd. 1.

7 (c) A person who executes and records a correction instrument shall send notice
8 of that fact by 1st class mail to all parties to the transaction that was the subject of
9 the conveyance at their last-known addresses.

10 **(3) EFFECT OF RECORD.** All of the following apply to the record of a correction
11 instrument that complies with this section, or a certified copy of the record:

12 (a) It is prima facie evidence of the facts stated in the instrument; is presumed
13 to be true, subject to rebuttal; and constitutes notice to a purchaser under s. 706.09
14 of the facts recited in the instrument.

15 (b) It may be asserted by a purchaser for a valuable consideration against any
16 person making an adverse or inconsistent claim under s. 706.09 (1) (i).

17 **(4) PREVIOUSLY RECORDED INSTRUMENTS ARE VALID.** Any instrument recorded
18 before the effective date of this subsection [LRB inserts date], that purports to
19 correct a previously recorded conveyance and that would have been a valid correction
20 instrument under this section had this section been in effect when the instrument
21 was recorded is hereby validated.

22 **SECTION 2.** 779.32 (1) (d) of the statutes is created to read:

23 779.32 **(1)** (d) “Tenant representation agreement” means an agency agreement
24 between a broker and a person that grants the broker the right to represent the
25 person in the lease of commercial real estate.

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1 **SECTION 3.** 779.32 (2) (b) of the statutes is amended to read:

2 779.32 **(2)** (b) If the broker has earned a commission under a written
3 commercial real estate buyer agency agreement or tenant representation
4 agreement, the broker has a lien for the unpaid amount of the commission against
5 the commercial real estate, or the interest in commercial real estate, that is acquired
6 as a result of the agreement.

7 **SECTION 4.** 779.32 (2) (c) of the statutes is amended to read:

8 779.32 **(2)** (c) If the broker has earned compensation from the owner or landlord
9 under a written agreement for the lease or management of commercial real estate
10 or under a tenant representation agreement, the broker has a lien for the unpaid
11 amount of the compensation against the commercial real estate for which the leasing
12 or management services were provided under the agreement.

13 **SECTION 5.** 779.32 (2m) of the statutes is created to read:

14 779.32 **(2m)** NOTICE OF LIEN RIGHTS. (a) To claim a lien under sub. (2), the broker
15 shall notify the person who owes the commission or compensation described in sub.
16 (2) (a), (b), or (c) in writing of the right to claim a lien under this section. A broker
17 shall include the notice required under this subsection in the commercial real estate
18 listing contract, commercial real estate buyer agreement, tenant representation
19 agreement, or written agreement for the lease or management of commercial real
20 estate.

21 (b) The notice required under this subsection shall be in substantially the
22 following form:

23 NOTICE: A broker has the authority under section 779.32 of the Wisconsin
24 Statutes to file a broker lien for commissions or compensation earned but not paid

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1 when due against the commercial real estate, or the interest in the commercial real
2 estate, that is the subject of this agreement.

3 **SECTION 6.** 779.32 (3) (intro.) of the statutes is amended to read:

4 779.32 (3) NOTICE OF INTENT TO CLAIM LIEN INTEREST. (intro.) ~~A broker has In~~
5 addition to the requirements of sub. (2m), to claim a lien under sub. (2) (a) or (b) ~~only~~
6 ~~if, the broker files or records~~ shall record a written notice of intent to claim a lien
7 interest under this section at the office of the register of deeds for the county in which
8 the commercial real estate is located ~~and delivers a copy of the notice to the person~~
9 ~~owing the commission under sub. (2) (a) or (b). A broker has a lien under sub. (2) (c)~~
10 ~~only if the broker provides a written notice of intent to claim a lien under this section~~
11 ~~to the person owing the compensation under sub. (2) (c). All notices.~~ A notice
12 required under this subsection shall contain the name of each party to the agreement
13 under which the lien interest is claimed, the date that the agreement was entered
14 into and a brief description of the commercial real estate ~~on which the lien is intended~~
15 ~~to be claimed. All notices~~ that is subject to the lien rights. A notice required under
16 this subsection shall be provided within the following time periods:

17 **SECTION 7.** 779.32 (3) (c) of the statutes is repealed.

18 **SECTION 8.** 779.32 (4) (a) (intro.) of the statutes is amended to read:

19 779.32 (4) (a) (intro.) A lien under this section is perfected when a broker ~~files~~
20 records a notice of lien in the office of the register of deeds for the county in which
21 the commercial real estate is located. The lien must be perfected no later than the
22 following:

23 **SECTION 9.** 779.32 (4) (a) 1. of the statutes is amended to read:

24 779.32 (4) (a) 1. In the case of a lien under sub. (2) (a) or (b), ~~3 days prior to~~ 30
25 days after the date that the conveyance documents are recorded with the register of

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1 deeds in the county where the real property, that is the subject of the listing contract
2 or buyer agency ~~contract~~ agreement, is located.

3 **SECTION 10.** 779.32 (4) (a) 2. a. and b. of the statutes are amended to read:

4 779.32 (4) (a) 2. a. The date that the broker earns a commission or
5 compensation that gives rise to a lien under this section. For purposes of this subd.
6 2. a., a commission or compensation is considered earned on the date that payment
7 of it is due under the lease, tenant representation agreement, or management
8 agreement.

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

14 **SECTION 11.** 779.32 (4) (b) (intro.) of the statutes is amended to read:

15 779.32 (4) (b) (intro.) The ~~notice of lien~~ shall be signed by the broker and shall
16 include all of the following information:

17 **SECTION 12.** 779.32 (4) (b) 4. of the statutes is amended to read:

18 779.32 (4) (b) 4. The amount of the lien at the time the notice lien is filed
19 recorded.

20 **SECTION 13.** 779.32 (4) (c) of the statutes is amended to read:

21 779.32 (4) (c) A broker shall mail a copy of the ~~notice of lien~~ to the owner or
22 acquirer of the commercial real estate that is subject to the lien within 72 hours after
23 the ~~filing of the notice recording of the~~ lien under par. (a). A lien under this section
24 is effective only from the date that it is perfected under this subsection.

25 **SECTION 14.** 779.32 (4) (d) of the statutes is amended to read:

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1 779.32 (4) (d) A lien that is perfected under this subsection by a broker secures
2 all unpaid commissions or compensation that is due that broker with respect to the
3 commercial real estate subject to that lien, regardless of whether the commission or
4 compensation was earned at the time the lien was ~~filed~~ recorded.

5 **SECTION 15.** 779.32 (4m) of the statutes is amended to read:

6 779.32 (4m) DUTY OF REGISTER OF DEEDS. If a ~~notice of~~ lien meets the
7 requirements under sub. (4), the register of deeds shall accept the ~~notice of~~ lien for
8 filing recording. The register of deeds shall index the ~~notice of~~ lien under the name
9 of the owner or acquirer of the commercial real estate who is subject to the lien. If
10 the register of deeds maintains a tract index, the register of deeds shall also index
11 the ~~notice of~~ lien under the legal description of the real estate against which a lien
12 is claimed.

13 **SECTION 16.** 779.32 (8) (a) 1. of the statutes is amended to read:

14 779.32 (8) (a) 1. The person owing the commission or compensation pays the
15 broker in full the amount specified in the ~~notice of~~ lien.

16 **SECTION 17.** 779.32 (8) (a) 2. of the statutes is amended to read:

17 779.32 (8) (a) 2. The person owing the commission or compensation pays an
18 amount equal to 125% of the commission or compensation owed into the trust
19 account of the broker ~~or~~, the trust account of any attorney who does not represent any
20 party to the dispute and who is in good standing with the State Bar of Wisconsin, or
21 to a mutually agreed-upon 3rd party. The moneys shall be held in escrow until
22 disbursed pursuant to the written mutual agreement of the parties or pursuant to
23 a court order.

24 **SECTION 18.** 779.32 (8) (am) of the statutes is created to read:

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1 779.32 (8) (am) The satisfaction of lien shall include the information listed in
2 sub. (4) (b) 1. to 3.

3 **SECTION 19.** 779.32 (8) (b) of the statutes is repealed and recreated to read:

4 779.32 (8) (b) The satisfaction of lien shall be recorded with the register of
5 deeds.

6 **SECTION 20.** 779.32 (8) (c) 2. of the statutes is amended to read:

7 779.32 (8) (c) 2. If the satisfaction is required under par. (a) 1., the date on which
8 the broker receives payment in full of the amount specified in the ~~notice of~~ lien.

9 **SECTION 21.** 779.32 (9) of the statutes is repealed and recreated to read:

10 779.32 (9) EXTINGUISHMENT OF NOTICE OF INTEREST. A notice of interest expires
11 and is extinguished if a new notice of interest is not recorded under sub. (3) within
12 2 years after the recording of the original notice of interest. A notice of interest may
13 be rescinded by the recording of a notice with the register of deeds in the county
14 where the real property is located, indicating that the broker is no longer claiming
15 an interest under this section. A broker shall record a notice rescinding the notice
16 of interest if the contract or agreement under which the interest was created expires
17 or is terminated.

18 **SECTION 22.** 779.32 (10) of the statutes is created to read:

19 779.32 (10) FORECLOSURE OF LIEN; PROCEDURE, PARTIES. In the foreclosure of a
20 lien under this section, ch. 846 shall control as far as applicable. All persons who
21 have recorded a lien under this section may join as plaintiffs, and if any do not join
22 they may be made defendants. All persons having liens subsequent to such lien may
23 be joined as defendants. If any person who is a proper party is not a party to the
24 action the person may, at any time before judgment, be made a defendant, and any

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1 person who after the commencement of the action obtains a lien or becomes a
2 purchaser may, at any time before judgment, be made a defendant.

3 **SECTION 23.** 779.32 (11) of the statutes is created to read:

4 779.32 (11) WAIVER OF LIEN. A broker may waive the lien under this section in
5 writing signed by the broker, but no action or agreement between any other persons
6 may invalidate the lien, other than the payment in full to the broker of the
7 commission or compensation to which the lien relates.

8 **SECTION 24.** 840.11 (1) of the statutes is amended to read:

9 840.11 (1) Every person who makes an application to any court, county board,
10 common council, or village or town board for laying out, widening, vacating, or
11 extending any street, alley, water channel, park, highway, or other public place shall,
12 at or prior to the time of filing the same with the proper officer, ~~file a notice of the~~
13 ~~pendency of such application~~ present for recording in the office of the register of deeds
14 of each county in which the affected land is situated a lis pendens, as provided in s.
15 840.10, containing the person's name and a brief statement of the object thereof and
16 a map and description of the land to be affected thereby ~~in the office of the register~~
17 ~~of deeds of each county in which any such land is situated.~~ Neglect to comply with
18 these provisions shall render all proceedings based upon such application void, but
19 ~~no order vacating, or proceedings for the vacation of, any street, alley, water channel,~~
20 ~~park, highway or other public place, made or had before May 25, 1905, shall be void~~
21 ~~solely by reason of the failure to file such notice of the pendency of such application,~~
22 ~~map and description.~~

23 **SECTION 25.** 840.11 (2) of the statutes is amended to read:

24 840.11 (2) No final order, judgment or decree or final resolution or order taking
25 or affecting such land, based upon any application therefor, shall ~~have any effect or~~

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1 be notice to any subsequent purchaser or encumbrancer unless a certified copy
2 thereof, ~~giving a full and accurate~~ containing a legal description, as defined in s.
3 706.01 (7r), of the land affected thereby, and accompanied with a map showing the
4 location thereof, is recorded in the office of the register of deeds of the county in which
5 the land is situated. ~~A resolution or order made by any such body, whereby any land~~
6 ~~shall be taken or affected without an application having been made therefor, shall~~
7 ~~have no effect and shall not be notice to any subsequent purchaser or encumbrancer~~
8 ~~unless such resolution or order is recorded.~~

SECTION 26. Initial applicability.

10 (1) LAYING OUT, VACATING, OR EXTENDING PUBLIC WAYS.

11 (a) *Lis pendens*. The treatment of section 840.11 (1) of the statutes first applies
12 to applications that are made on the effective date of this paragraph.

13 (b) *Final order or resolutions*. The treatment of section 840.11 (2) of the
14 statutes, with respect to legal descriptions, first applies to a final order, judgment or
15 decree or final resolution or order that is recorded on the effective date of this
16 paragraph.

17 (c) *Resolutions or orders without application*. The treatment of section 840.11
18 (2) of the statutes, with respect to the effect of and notice provided by resolutions or
19 orders without an application having been made, first applies to a resolution that is
20 adopted or an order that is made on the effective date of this paragraph.

21 (2) COMMERCIAL REAL ESTATE LIENS. The treatment of section 779.32 (1) (d), (2)
22 (b) and (c), (2m), (3) (intro.) and (c), (4) (a) (intro.), 1., and 2. a. and b., (b) (intro.) and
23 4., (c), and (d), (4m), (8) (a) 1. and 2., (am), (b), and (c) 2., (9), (10), and (11) of the

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1 statutes first applies to a real estate broker's commission or compensation earned on
2 the effective date of this subsection.

3 (END)