

State of Wisconsin



2009 Senate Bill 587

Date of enactment: **May 13, 2010**
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2009 WISCONSIN ACT 348

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

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

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

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

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

1. A party's name, including the spelling of the name; a first or middle name or initial; a name suffix, such as senior or junior; alternate names by which the party is

known; or a description of an entity as a corporation, company, or similar identifier.

2. A party's marital status.

3. The date on which the conveyance was executed.

4. Whether the property is a homestead.

5. The tax parcel number.

6. The identity of the drafter.

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

8. The nature and purpose of the conveyance.

9. The title of the conveyance.

10. Facts relating to the acknowledgment or authentication.

(c) The addition of an acknowledgment or authentication.

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

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

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

* Section 991.11, WISCONSIN STATUTES 2007-08 : 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].

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) PREVIOUSLY RECORDED INSTRUMENTS ARE VALID. Any instrument recorded before the effective date of this subsection [LRB inserts date], that purports to correct

a previously recorded conveyance and that would have been a valid correction instrument under this section had this section been in effect when the instrument was recorded is hereby validated.

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

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

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

779.32 (2) (b) If the broker has earned a commission under a written commercial real estate buyer agency agreement or tenant representation agreement, 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 acquired as a result of the agreement.

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

779.32 (2) (c) If the broker has earned compensation from the owner or landlord under a written agreement for the lease or management of commercial real estate or under a tenant representation agreement, 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.

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

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

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

NOTICE: A broker has the authority under section 779.32 of the Wisconsin Statutes to file a broker lien for commissions or compensation earned but not paid when due against the commercial real estate, or the interest in the commercial real estate, that is the subject of this agreement.

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

779.32 (3) NOTICE OF INTENT TO CLAIM LIEN INTEREST. (intro.) ~~A broker has~~ In addition to the requirements of sub. (2m), to claim a lien under sub. (2) (a) or (b) ~~only if,~~ the broker ~~files or records~~ shall record a written notice of ~~intent to claim a lien interest~~ 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. A notice required under this subsection shall contain the name of each party to the agreement under which the lien interest 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 that is subject to the lien rights. A notice required under this subsection shall be provided within the following time periods:

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

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

779.32 (4) (a) (intro.) A lien under this section is perfected when a broker files records 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:

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

779.32 (4) (a) 1. In the case of a lien under sub. (2) (a) or (b), 3 days prior to 30 days after 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 agreement, is located.

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

779.32 (4) (a) 2. 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, tenant representation agreement, 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, tenant representation agreement, or management agreement.

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

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

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

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

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

779.32 (4) (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 recording of the lien under par. (a). A lien under this section is effective only from the date that it is perfected under this subsection.

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

779.32 (4) (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 recorded.

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

779.32 (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 recording. 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 maintains 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.

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

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

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

779.32 (8) (a) 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, or to a mutually agreed-upon 3rd party. The moneys shall be held in escrow until disbursed pursuant to the written mutual agreement of the parties or pursuant to a court order.

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

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

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

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

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

779.32 (8) (c) 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.

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

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

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

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

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

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

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

840.11 (1) Every person who makes an application to any court, county board, common council, or village or town board for laying out, widening, vacating, or extending any street, alley, water channel, park, highway, or other public place shall, at or prior to the time of filing the same with the proper officer, file a notice of the pendency of such application present for recording in the office of the register of deeds of each county in which the affected land is situated a lis pendens, as provided in s. 840.10, containing the person's name and a brief statement of the object thereof and a map and description of the land to be affected thereby in the office of the register

of deeds of each county in which any such land is situated. Neglect to comply with these provisions shall render all proceedings based upon such application void, but no order vacating, or proceedings for the vacation of, any street, alley, water channel, park, highway or other public place, made or had before May 25, 1905, shall be void solely by reason of the failure to file such notice of the pendency of such application, map and description.

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

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

SECTION 26. Initial applicability.

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

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

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

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

(2) **COMMERCIAL REAL ESTATE LIENS.** The treatment of section 779.32 (1) (d), (2) (b) and (c), (2m), (3) (intro.) and (c), (4) (a) (intro.), 1., and 2. a. and b., (b) (intro.) and 4., (c), and (d), (4m), (8) (a) 1. and 2., (am), (b), and (c) 2., (9), (10), and (11) of the statutes first applies to a real estate broker's commission or compensation earned on the effective date of this subsection.