



**WISCONSIN
REALTORS®
ASSOCIATION**

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RICHARD KOLLMANSBERGER, CRS, GRI, President

WILLIAM MALKASIAN, CAE, Executive Vice President

January 30, 1996

Representative Carol Owens
Chair, Assembly Housing Committee
P.O. Box 8953
Madison, WI 53708

Dear Representative Owens:

On behalf of the Wisconsin REALTORS Association, I am writing to respectfully ask for an expeditious public hearing in the Assembly Housing Committee for Assembly Bill 785, regarding creation of a lien on property for unpaid broker commissions in commercial real estate transactions.

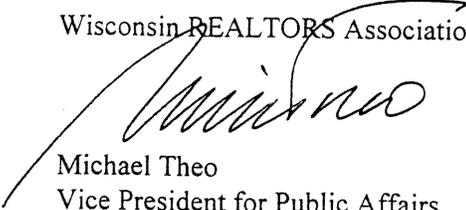
AB 785 is similar to laws passed in a dozen other states which protect brokers when a transaction has been completed and the client refuses to pay the agreed upon commission and/or suggests the broker take a lesser amount or receive nothing. Unfortunately, this problem is becoming more common in situations where the proceeds from a sale do not cover all obligations or in a lease situation when the property is sold yet a lease agreement remains in effect.

This bill is about economic development and fairness. It is strongly supported by REALTORS and commercial developers and managers across the state. I believe the bill will receive strong bipartisan support, as evidenced by the list of co-sponsors and the letters of support we have received from other legislators who plan to vote in favor of the bill.

Because the bill must pass the Assembly in the March floorperiod if it is to be considered by the Senate before the end of session, an expeditious public hearing and committee vote is crucial. To help facilitate this action, please feel free to contact me if you should have any questions or require any additional information. On behalf of the Wisconsin REALTORS Association, let me thank you in advance for your help.

Sincerely:

Wisconsin REALTORS Association


Michael Theo
Vice President for Public Affairs

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FUTURE
IS OUR
BUSINESS.**

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of the
Wisconsin
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WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536
Telephone (608) 266-1304
Fax (608) 266-3830

DATE: February 8, 1996
TO: MEMBERS OF THE ASSEMBLY COMMITTEE ON HOUSING
FROM: Don Salm, Senior Staff Attorney
SUBJECT: Analysis of 1995 Assembly Bill 785, Relating to Establishing a Commercial Real Estate Broker's Commission Lien

This memorandum analyzes 1995 Assembly Bill 785, relating to establishing a commercial real estate broker's commission lien. Assembly Bill 785 was introduced by Representative Foti and others; cosponsored by Senator Fitzgerald and others. The Assembly Committee on Housing will hold a public hearing on the Bill on *Thursday, February 22, 1996, at 10:00 a.m., in Room 328 Northwest, State Capitol.*

1995 Assembly Bill 785 establishes a *commercial real estate broker's commission lien*. [A lien is an interest in property that secures the payment of a debt and is enforceable in a civil action.]

1. Lien

Under the Bill:

a. A broker who has earned a commission under a commercial real estate *listing contract* (i.e., the contract listing the real estate for sale) shall have 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. A broker who has earned a commission under a commercial real estate *buyer agency agreement* (i.e., the broker is the agent for the buyer) shall have 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.

The Bill defines:

- a. "Broker" to mean a real estate broker licensed under ch. 452, Stats. (Real Estate Practices).
- b. "Commercial real estate" to mean any real property *other than any of the following*:
 - (1) Real property containing four 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.

2. Perfection and Notice

Under the Bill, a commission lien is perfected (i.e., becomes enforceable) 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. A notice of lien must be signed by the broker and must include *all of the following information*:

- a. The name and license number of the broker.
- b. The name of the owner or acquirer of the commercial real estate that is subject to the lien.
- c. The legal description of the commercial real estate that is subject to the lien.
- d. The amount of the lien.

The Bill requires a broker to 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.

3. Priority of Commission Lien

The Bill specifies that a commission lien shall have priority over all other liens, *except tax and special assessment liens*, that are filed or recorded after the commission lien is perfected.

4. Escrow Account

Under the Bill, if a perfected commission lien prevents the closing of the commercial real estate transaction from which the lien arose, the parties to the transaction must establish an escrow account from the proceeds of the transaction in an amount sufficient to release the commission lien. An escrow account is *not required* if all parties to the real estate transaction and the broker having the commission lien agree to waive the requirement.

5. Enforcement of Lien

The Bill provides that ss. 779.09 to 779.12, Stats. (copies of which are attached), as they apply to a construction lien, apply to a commission lien.

6. Initial Applicability

The Bill provides that, if it is enacted into law, the new law first applies to a commercial real estate listing contract or a commercial real estate buyer agency agreement entered into on the effective date of the new law.

7. Delayed Effective Date

The Bill, if enacted into law, takes effect on the first day of the *fourth month* beginning after publication.

DLS:jt:ksm;wu

Attachment

ATTACHMENT

Sections 779.09 to 779.12, Stats.

779.09 Foreclosure of lien; procedure; parties. In the foreclosure of liens mentioned in s. 779.01, ch. 846 shall control as far as applicable unless otherwise provided in this subchapter. All persons having filed claims for liens under s. 779.01 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.

779.10 Judgment. The judgment shall adjudge the amount due to each claimant who is a party to the action. It shall direct that the interest of the owner in the premises at the commencement of the work or furnishing the materials for which liens are given and which the owner has since acquired, or so much thereof as is necessary, be sold to satisfy the judgment, and that the proceeds be brought into court with the report of sale to abide the order of the court. If the premises can be sold in parcels without injury to the parties, the court may adjudge that the sale be so made. If the plaintiff fails to establish a lien upon the premises but does establish a right to recover for labor or materials, the plaintiff may have a judgment against the party liable.

779.11 Distribution of proceeds of sale. The several claimants whose liens were established in the action shall be paid without priority among themselves. If the sum realized at the sale under s. 779.10 is insufficient after paying the costs of the action and the costs of making the sale to pay the liens in full they shall be paid proportionally.

779.12 Sale; notice and report; deficiency judgment; writ of assistance. (1) All sales under judgments in accordance with s. 779.10 shall be noticed, conducted and reported in the manner provided for the sale of real estate upon execution and shall be absolute and without redemption. In case such sale is confirmed, the deed given thereon shall be effectual to pass to the purchaser all that interest in the premises which is directed to be sold.

(2) If any deficiency arises upon the sale in the payment of the sums adjudged to be due to any lien claimant, the court, upon confirming such sale, may render judgment therefor if demanded in the pleadings against the defendant legally liable to pay the same which judgment may be docketed and enforced in the same manner that ordinary judgments are. The purchasers at such sale shall be entitled to a writ of assistance under s. 815.63 to obtain possession of the premises sold.

TO: *Interested Parties*
FROM: *Michael Theo*
DATE: *February 15, 1996*
RE: *Changes to AB 785 / SB 548 - Commercial Broker Lien Legislation*

The WRA will seek the following amendments to AB 785 / SB 548:

1. Clarify the Lien Process

Adopt language similar to the existing mechanic's lien statute to clarify when a lien is filed and released. (s. 779.06 stats.) The language would require a broker:

- (a.) file the lien within 6 months after earning the commission (or closing of the sale, whichever is later) and
- (b) commence a lawsuit to foreclose the lien within 2 years after filing the lien.

2. Clarify Escrow Process

Adopt language similar to the existing mechanic's lien statute (s. 779.08 stats.) providing for an escrow / surety bond to release the lien.

3. Specify Applicability to Lease and Management Agreements

Amend the bill by providing a definition of commercial real estate listing contract to specify the bill applies not only to real estate listing contracts, but also to listings for lease and property management agreements.

4. Agricultural Land

Amend the bill, (at page 2, line 3), to specify the bill does not apply to real property that is zoned (add) "and intended to be used" for agricultural purposes.

5. Listing Contract

Amend the bill to specify the listing contract must be in writing.

6. Notification of Lien

Amend the bill to specify brokers must inform *both parties* of a potential lien prior to closing.

7. Priority of Lien

Amend the bill to specify a commission lien shall have priority over all other liens, *except* tax and special assessment liens, and purchase money mortgages, that are filed or recorded after the commission lien is recorded.

8. Satisfaction of Lien

Amend the bill to include language similar to s. 779.13 stats. which provides for the satisfaction of liens. This section specifies the claimant's responsibilities to execute and deliver the satisfaction or to otherwise satisfy the lien and provide notice.



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WILLIAM MALKASIAN, CAE, Executive Vice President

**YOUR
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TO: Members, Assembly Housing Committee

FROM: Michael Theo
Vice President for Public Affairs

DATE: 20 February 1996

RE: AB 785 - Liens for Commercial Broker Commissions

**"The purpose
of the
Wisconsin
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is to enhance
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The Wisconsin REALTORS Association (WRA) strongly supports AB 785, legislation creating a lien on property for the payment of a real estate commission in a commercial transaction.

Background

AB 785 is similar to laws passed in a dozen other states over the past several years which protects real estate brokers when a commercial transaction has been completed and the client refuses to pay the agreed upon commission and/or "suggests" the broker take a lesser amount. The only recourse provided a broker under current law is costly litigation. Faced with these choices, brokers are often forced to settle for a lesser commission or worse, aren't paid at all.

This process is plainly unfair. Current law gives brokers in these situations little leverage to enforce a valid contract. Having fully secured the services of the broker and with nothing at risk, the client has every incentive to disregard the existing contract and attempt to "reopen" the terms of the agreement, leaving the broker with little or no means of defense short of court. The problem is becoming more common in situations where the proceeds of a sale do not cover all obligations or in a lease situation, when the property is sold yet lease agreements remain in effect.

AB 785 is intended to "level the playing field" for brokers by allowing them to file a lien on the property until such time as their commission is paid. The bill is limited to commercial transactions and only in situations where a valid contract is in effect.

Reasons To Support AB 785

There are two major reasons to support AB 785 - economic development and fairness. Commercial real estate development and management represents the "front line" in local, regional, and state efforts to attract and maintain business enterprises

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and economic development. Their efforts help create and retain jobs as well as provide substantial tax revenues. AB 785 will enhance the important economic development function of commercial real estate activities.

Perhaps more importantly, AB 785 is about fairness. It is our hope that the threat of a lien will limit the instances where a broker must seek costly and time consuming litigation simply to get paid for services rendered pursuant to a contract. This has in fact been the experience in states that have adopted similar legislation. This bill provides brokers statutory recourse to enforce a contract and receive the agreed amount of compensation.

Amendments to the Bill

Since the introduction of AB 785, several technical drafting concerns have been raised by some lenders and title companies. We believe the issues they have raised are valid and that the bill can be significantly improved by amending the bill to address these concerns.

Generally, these changes include:

- * Specify that liens for taxes and special assessments, as well as liens for mortgages have priority over liens for real estate commissions.
- * Clarifying the lien process to specify deadlines for filing and releasing of liens and provide that brokers must notify all parties of a potential lien prior to closing.
- * Provide for an escrow or surety bond to release the lien similar to the existing statutes regarding mechanic's liens.
- * Clarify that commercial real estate listing contracts must be in writing and include lease and property management agreements.
- * Clarify the bill does not apply to land which is zoned and intended to be used agricultural purposes.

We believe such changes will address the legitimate concerns raised by lenders and title companies and will improve the bill.

Conclusion

We respectfully urge your support for AB 785.



Southeastern Wisconsin Commercial Association of REALTORS®, Inc.

TO: MEMBERS, ASSEMBLY HOUSING COMMITTEE

FROM: MAX RASANSKY, PRESIDENT

DATE: FEBRUARY 21, 1996

RE: AB 785 - LIENS FOR COMMERCIAL BROKER COMMISSIONS

Max Rasansky
President
The Polacheck Co.

Doug Brodzik
President-Elect
Security Bank,SSB

Pete Slezak
Secretary
James T. Barry Co., Inc.

Shel Lozoff
Treasurer
The Lozoff Co.

Bruce Westling
Past President
MLG-Mooney LeSage Group

Chris Ruditys
Executive Vice President

The approximately 325 members of the Southeastern Wisconsin Commercial Association of REALTORS® strongly supports AB 785, legislation creating a lien on property for the payment of a real estate commission in a commercial transaction.

I have personally specialized in commercial real estate for 20 years and this bill is vital for our members as well as other licensed real estate practitioners that sell or lease commercial real estate. Owners of commercial real estate that refuse to pay earned commissions are playing with brokers livelihoods. This is absolutely wrong and we believe that if this bill is not passed this vicious cycle will continue.

Our association believes that AB 785 has two major themes - economic development and fairness. Commercial real estate development and management represents the "front line" in local, regional, and state efforts to attract and maintain business enterprises and economic development. Our members efforts help create and retain jobs as well as provide substantial tax revenues. AB 785 will only enhance the important economic development function of commercial real estate activities.

Lastly, brokers are not salaried, but work enormous hours to receive a commission and cannot afford costly and time consuming litigation simply to get paid for services rendered pursuant to a contract. AB 785 will provide our members and others who practice commercial real estate in Wisconsin statutory recourse to enforce a contract and receive the agreed amount of compensation.

We respectfully urge you to support AB 785 for the betterment of economic development and fairness to commercial real estate practitioners that sell Wisconsin on a daily basis.

**STATEMENT BY THE WISCONSIN BANKERS ASSOCIATION
IN OPPOSITION TO AB 785/SB 584**

The Wisconsin Bankers Association wishes to go on record in strenuous opposition to AB 785/SB 584, both of which would authorize a real estate broker who asserts that he or she has earned a commission under a commercial real estate listing contract to file a lien for the unpaid amount of the commission against the commercial property involved. This lien would be perfected at the time the notice of lien is filed in the office of the Register of Deeds for the particular county and would take priority over all other liens, except tax and special assessment liens, that are filed after the broker's notice of lien is filed.

One initial concern is that this broad-based lien authority, applicable to every commercial property transaction, appears to provide a solution to a problem that is not known to exist. While there may be examples of circumstances in which real estate brokers were not treated fairly by the persons with whom they contracted, we are unaware that the existing law is not working to adequately deal with the vast bulk of transactions that would be subject to this bill. Under current law, for example, if a broker believes he or she has not been paid the appropriate commission, he or she may bring suit and, upon prevailing in that lawsuit, may enter the judgment in the case as a lien against the person with whom the contract was made. This is the time-honored, universal way in which commercial disputes are resolved—and the very threat of litigation often is enough to force an appropriate settlement to be reached.

This bill, however, sidesteps the need to make one's case in court and permits the broker to tie up the property by filing a lien. It then really is incumbent upon others to go through the time-consuming and costly process of resolving whether the lien was fairly filed or not.

Lenders have a particular interest in this bill, because of the way in which it threatens to affect the chain of title to and the potential value of all commercial real estate on which loans are made. In the case of mortgage lending, the real estate broker will be able to file the lien before the lending institution files its security interest. As a result, the lender's security interest will fall into second place behind the real estate broker's lien. As you may imagine, this likelihood has a dramatic impact on how lenders will consider the viability of certain transactions and on the interest rate determination for those transactions.

In instances involving lending secured by already owned property, these new liens would represent one more wild-card uncertainty for a lender to consider. How should a loan be priced if the potential exists, at the last moment, for a broker to file a lien based on an earlier transaction involving that property?

In short, we are of the opinion that the commercial market place has established both procedures and appropriate law to deal with the variables that seem to be the subject of this bill. We do not believe it necessary to create a whole new lien system in order to deal with these situations. We further believe that the proposed new lien system creates a myriad of problems infinitely more complicated than any problem now alleged to exist.

Lastly, we have just received suggestions from the Wisconsin Realtors Association for several proposed amendments to the bill. Some of these amendments, in fact, expand the scope of the bill beyond its present coverage. We will evaluate these proposed amendments as promptly as possible.