



1997 SENATE BILL 369

December 3, 1997 - Introduced by Senators WELCH, DARLING, GROBSCHMIDT, SCHULTZ and DRZEWIECKI, cosponsored by Representatives SCHAFER, HANSON, GREEN, RILEY, SYKORA, PORTER, F. LASEE, LA FAVE and GUNDERSON. Referred to Committee on Economic Development, Housing and Government Operations.

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

Analysis by the Legislative Reference Bureau

This bill 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.)

Under the bill, a licensed real estate broker may have a lien against commercial real estate for which the broker provided services. The broker has a lien for commissions earned under written listing contracts, commissions earned under written buyer agency agreements and compensation under written agreements for the lease or management of commercial real estate. In order to obtain a lien, the broker must provide notices of an intent to claim a lien to the person owing the commission or compensation. The lien must be perfected by recording it with the register of deeds in the county where the real estate is located within 6 months after the later of the following: 1) the date that the commission is earned; 2) the date that the broker receives notice that he or she has earned a commission or compensation; or 3) in the case of listing contracts and buyer agency agreements, the date that the real estate is conveyed. The perfected lien secures all unpaid commissions or compensation that are due the broker with respect to the lien property, regardless of whether the commission or compensation was earned at the time the lien was filed. If an action to enforce the lien is not commenced within 2 years after the date that the lien is perfected, the lien is extinguished. The bill provides that the commission lien has priority over other liens on the commercial real estate, except for tax and

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special assessment liens and purchase money mortgages, that are filed or recorded after the commission lien is perfected. The bill applies to all real property, except property that contains 8 or fewer dwelling units, property zoned for agricultural purposes and undeveloped property zoned for residential purposes.

Unless the parties agree to binding arbitration, liens created under the bill are generally enforced in the same manner as construction liens, except that liens are extinguished if an action to enforce the lien is not commenced within 2 years after the lien is perfected. As with construction liens, the person against whom a lien is claimed may receive a satisfaction of lien if the person posts a bond equal to 125% of the lien amount claimed. The bill also requires the broker to provide a satisfaction of lien if the parties to the contract or agreement giving rise to the lien agree to binding arbitration and if the parties to the contract or agreement, other than the broker, agree to pay all costs of the arbitration.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 779.32 of the statutes is created to read:

2 **779.32 Commission liens. (1) DEFINITIONS.** In this section:

3 (a) “Broker” means a real estate broker licensed under ch. 452.

4 (b) “Commercial real estate” means any real property other than any of the
5 following:

6 1. Real property containing 8 or fewer dwelling units.

7 2. Real property that is zoned for residential purposes and that does not contain
8 any buildings or structures.

9 3. Real property that is zoned for agricultural purposes.

10 (c) “Financial institution” has the meaning given in s. 214.01 (1) (jn).

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

13 (a) If the broker has earned a commission under a written commercial real
14 estate listing contract, the broker has a lien for the unpaid amount of the commission

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1 against the commercial real estate, or the interest in commercial real estate, that is
2 listed with the broker under the contract.

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

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

11 **(3) NOTICE OF INTENT TO CLAIM LIEN.** A broker has a lien under sub. (2) only if
12 the broker provides a written notice of intent to claim a lien under this section to the
13 person owing the commission or compensation under sub. (2) within the following
14 time periods:

15 (a) In the case of a lien under sub. (2) (a), at least 72 hours before the conveyance
16 of the commercial real estate subject to the listing contract.

17 (b) In the case of a lien under sub. (2) (b), at least 72 hours before the conveyance
18 of the commercial real estate subject to the buyer agency agreement.

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

21 **(4) PERFECTION OF LIEN.** (a) A lien under this section is perfected when a broker
22 files a notice of lien in the office of the register of deeds for the county in which the
23 commercial real estate is located. The lien must be perfected within 6 months after
24 the later of the following:

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1 1. In the case of a lien under sub. (2) (a) or (b), the date of the conveyance of the
2 real property subject to the listing contract or buyer agency agreement.

3 2. The date that the broker earns a commission or compensation that gives rise
4 to a lien under this section. For purposes of this subdivision, a commission or
5 compensation is considered earned on the date that payment of it is due under the
6 listing contract, the buyer agency agreement or the lease or management agreement.

7 3. The date that the broker receives notice that he or she has earned a
8 commission or compensation that gives rise to a lien under this section. For purposes
9 of this subdivision, a commission or compensation is considered earned on the date
10 that the payment of it is due under the listing contract, the buyer agency agreement
11 or the lease or management agreement.

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

14 1. The name and license number of the broker.

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

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

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

19 (c) A broker shall mail a copy of the notice of lien to the owner or acquirer of
20 the commercial real estate that is subject to the lien within 72 hours after the filing
21 of the notice of lien under par. (a).

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

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1 **(5) PRIORITY.** A lien under this section shall have priority over all other liens
2 on the commercial real estate, except tax and special assessment liens and purchase
3 money mortgages, that are filed or recorded after the lien under this section is
4 perfected.

5 **(7) ENFORCEMENT.** Unless the parties agree to binding arbitration, sections
6 779.08 to 779.12, as they apply to a construction lien, apply to a lien under this
7 section, except that for purposes of s. 779.08 (5), the action to foreclose the lien must
8 be brought within the time specified in sub. (9).

9 **(8) SATISFACTION OF LIEN.** Upon the request of any person interested in the real
10 estate that is the subject of a lien under this section, the broker shall execute and
11 deliver a satisfaction of lien to the interested party, if the parties to the contract or
12 agreement giving rise to the lien agree to binding arbitration regarding the disputed
13 commission or compensation and if the parties to the contract or agreement, other
14 than the broker, agree to pay the all costs of the arbitration. On filing the satisfaction
15 with the clerk of circuit court, the clerk of circuit court shall enter satisfaction of the
16 claim on the judgment and lien docket. A person who fails to execute and deliver the
17 satisfaction or to satisfy the lien on the judgment and lien docket is liable to the
18 person requiring the satisfaction for a sum equal to one-half of the sum claimed in
19 the lien claim.

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

SECTION 2. Initial applicability.

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

3 **SECTION 3. Effective date.**

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

6 (END)