

Vote Record

Assembly Committee on Housing

Date: May 5, 1998
 Moved by: Foti Seconded by: Morris-Tatum
 AB: _____ Clearinghouse Rule: _____
 AB: _____ SB: 369 Appointment: _____
 AJR: _____ SJR: _____ Other: _____
 A: _____ SR: _____

A/S Amdt: 1 (LRB 2567/idn)
 A/S Amdt: _____ to A/S Amdt: _____
 A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____ to A/S Sub Amdt: _____

Be recommended for:

- Passage
- Introduction
- Adoption
- Rejection

- Indefinite Postponement
- Tabling
- Concurrence
- Nonconcurrence
- Confirmation

Committee Member

Rep. Carol Owens, Chair
 Rep. Neal Kedzie
 Rep. Steven Foti
 Rep. Daniel Vrakas
 Rep. Steve Wieckert
 Rep. Johnnie Morris-Tatum
 Rep. John La Fave
 Rep. Leon Young
 Rep. Tammy Baldwin

<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Totals: 8 0 1 0

Motion Carried

Motion Failed

Vote Record

Assembly Committee on Housing

Date: May 5, 1998
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 AB: _____ Clearinghouse Rule: _____
 AB: _____ SB: 369 Appointment: _____
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- Passage
 - Introduction
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 - Rejection
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 - Tabling
 - Concurrence *(as amended)*
 - Nonconcurrency
 - Confirmation

Committee Member	Aye	No	Absent	Not Voting
Rep. Carol Owens, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Neal Kedzie	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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Rep. Tammy Baldwin	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Totals:	8	0	1	0

MAY 5 1998



**WISCONSIN
REALTORS®
ASSOCIATION**

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Madison, Wisconsin 53704-7337
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Fax 608-241-2901 • E-mail wra@wra.org
URL <http://www.wra.org>

DAVE STARK, GRI, President

WILLIAM MALKASIAN, CAE, Executive Vice President

TO: All Assembly Representatives
FROM: Michael Theo and Rick Staff
DATE: May 5, 1998
RE: Senate Bill 369 – Commercial Broker Liens

The Wisconsin REALTORS Association strongly supports SB 369, legislation creating a lien on property for unpaid broker commissions in commercial real estate transactions. The bill was adopted by the Senate Business, Economic Development and Urban Affairs Committee 5-0 and passed the full Senate 27-4.

Why is SB 369 Needed?

SB 369 is necessary because commercial real estate commissions are almost universally earned and payable upon the conclusion of the transaction, with no progress or retainer payments being received along the way. After months or years of expending time, energy and out-of-pocket expenses to secure a buyer or tenant, the commercial broker is increasingly faced with an all or nothing situation when a client refuses to pay the agreed upon commission and/or suggests the broker take a lesser amount. Unfortunately this problem is becoming more common in situations where the proceeds from the sale do not cover all obligations or in a lease situation, when the property is sold yet a lease agreement remains in effect.

This legislation is not only about fairness, but it's about economic survival. It is not unusual for a commercial REALTOR to have one transaction in a period of six months or a year. SB 369 addresses instances where a broker attempts to collect payment for services already provided, but is unable to withhold any form of service as a means of obtaining payment. The legal process, being the only available remedy, fails frequently because of excessive time and burdensome costs.

SB 369 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. Based on input received last session, a great deal of care has been taken in this bill to address concerns raised by lenders and title companies regarding the priority of the lien, filing deadlines and procedures, treatment of agricultural land, and inclusion of lease and property management agreements.

SB 369 is similar to legislation adopted in a dozen other states where experience shows the mere existence of this law on the books has acted as a deterrent to such problems.

SB 369 is about economic development and fairness. It promotes economic development because commercial real estate and management represents the "front line" in local, regional, and state efforts to attract and maintain business enterprises, helping to create and retain jobs as well as provide substantial tax revenues. The bill promotes fairness by giving commercial brokers some measure of leverage to collect commissions they've earned pursuant to a valid contract, without the burdensome time and costs associated with protracted litigation.

Amendments

To address concerns raised by the title insurance, the State Bar, building contractors, and banking industries, (including the Wisconsin Bankers, Community Bankers, and Mortgage Bankers Associations), Senator Welch offered an amendment, which strengthens the bill and has our full support (SA 2) As amended by SA 2, all concerns raised by these groups were satisfied.

- Over -

Senate Amendment 2

1. Requires brokers to record their intent to file a lien with the register of deeds 30 days before closing. This provision meets concerns raised by the title insurance industry regarding the ability to discover the potential lien during their title search.
2. Requires a broker to file an actual lien 3 days before closing. This provision meets concerns raised by the Bankers Association that a lien for a commission should be filed against the seller, not the buyer, since it is the seller who owes the broker commission.
3. Clarifies that this bill does not interfere with the existing construction lien law under Chapter 779. (This provision was recommended by the Associated Builders and Contractors and is consistent with the intent of the original legislation.)
4. Clarifies that a lien for a primary mortgage and liens that are filed or recorded before the broker commission lien, have priority over the broker's lien. (This provision was recommended by the Bankers Association and several individual banks.)
5. Requires that all notices of intent to file a lien, whether given to the party or filed at the register of deeds, include identification of the parties, the exact property, and the agreement under which the broker earned the commission. (State Bar request.)
6. Specify that liens are only effective after the notice of intent has been filed or delivered and after the lien itself is filed at the register of deeds office. (State Bar request.)
7. Requires that all liens and satisfactions be indexed at the register of deeds office under both the owner's name and the property description. (State Bar request.)
8. Specify that an owner can obtain a satisfaction of the lien by either: a) paying the commission owed; b) escrowing 125% of the commission owed until the dispute is resolved; c) agreeing to binding arbitration. Revise the prior procedure calling for escrows to be held by the Clerk of Courts and instead allow escrows to be held in the broker's or an attorney's trust account. (State Bar request.)
9. Require brokers to provide the satisfaction of a lien within 30 days of the owner completing any of the options to satisfy the lien. Brokers who fail to do so face a penalty of 50% of the amount of the lien. (State Bar request.)

Conclusion

SB 369 as amended by SA 2 represents a substantial amount of work to address the concerns raised by all interested parties while preserving the original legislative intent. The success of these efforts is evidenced by the overwhelming bipartisan support the bill received in the Senate. We believe the bill is better as a result of those efforts and strongly encourage your support. Please feel free to contact us with any questions or comments.

TO: Interested Parties
FROM: Michael Theo
DATE: May 5, 1998
RE: SB 369 – Regarding Commercial Broker Commission Liens

Technical Problem with Senate Amendments

Prior to passing SB 369 by a vote of 27-4, the Senate adopted two amendments. SA 1 was a committee amendment drafted to address concerns raised lenders and title insurers. SA 2 was a floor amendment intended to address concerns raised late in the process by the State Bar.

Problem

SA 2 not only addressed the new concerns raised by the State Bar, it also included the language from SA 1, making SA 1 unnecessary. SA 1 should have been returned to the author. It was not. As a result, the Senate inadvertently adopted both SA 1 and SA 2 quickly on voice votes. The two amendments contain sufficient overlap and conflicts to make them incompatible.

Solution

To address this problem, AA 1 has been drafted which effectively deletes the provisions of SA 1. This would leave the bill in its original form as amended by SA 2 only – consistent with intent of the Senate author and all interested parties. Adoption of AA 1 by the Assembly, along with a subsequent vote to concur in SB 369 as amended, would send the bill back to the Senate in the form they intended when they passed the bill last week. The Senate could then concur in AA 1 and the bill would be passed.

Summary of Actions Needed

1. Assembly Housing Committee reconsiders their executive action of May 4 and instead adopts AA 1 to SB 369, then recommends concurrence of SB 369 as amended.
2. The full Assembly adopts AA 1, then concurs in SB 369 as amended.
3. The Senate concurs in AA 1 to SB 369.

- Assembly Amendment is being drafted (Scott Hubli at 6-0135) to delete language in SA1.

- Either have the amendment
① included as a Housing
Committee amend. or have
② Carl introduce on the floor.

- if ②, committee will concur
the bill as is; ~~and~~

- if ①, committee will take
these votes:

- 1) Adoption of AA1 to SB 369
- 2) Concurrence as amended

Committee Meeting Attendance Sheet

Assembly Committee on Housing

Date: May 4, 1998 Meeting Type: Executive Session
Location: Assembly Parlor

<u>Committee Member</u>	<u>Present</u>	<u>Absent</u>	<u>Excused</u>
Rep. Carol Owens, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Neal Kedzie	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Steven Foti	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Daniel Vrakas	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Steve Wieckert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Johnnie Morris-Tatum	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. John La Fave	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Leon Young	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tammy Baldwin	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Totals: _____

According to Ken—
these are not valid
votes — Committee
must convene
— either with or without
the Assembly Amend.
attached

Joseph Zibrowski, Committee Clerk

Vote Record

Assembly Committee on Housing

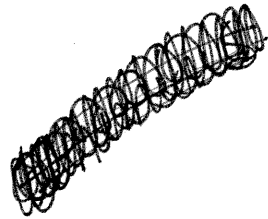
Date: May 4, 1998
 Moved by: Kedzie Seconded by: Morris-Tatum
 AB: _____ Clearinghouse Rule: _____
 AB: _____ SB: 369 Appointment: _____
 AJR: _____ SJR: _____ Other: _____
 A: _____ SR: _____

A/S Amdt: 1
 A/S Amdt: _____ to A/S Amdt: _____
 A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____ to A/S Sub Amdt: _____

- Be recommended for:
- | | |
|---|--|
| <input type="checkbox"/> Passage | <input type="checkbox"/> Indefinite Postponement |
| <input type="checkbox"/> Introduction | <input type="checkbox"/> Tabling |
| <input type="checkbox"/> Adoption | <input type="checkbox"/> Concurrence |
| <input checked="" type="checkbox"/> Rejection | <input type="checkbox"/> Nonconcurrence |
| | <input type="checkbox"/> Confirmation |

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Rep. Carol Owens, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Neal Kedzie	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Steven Foti	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Daniel Vrakas	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Steve Wieckert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Johnnie Morris-Tatum	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. John La Fave	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Leon Young	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tammy Baldwin	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Totals: _____



Vote Record

Assembly Committee on Housing

Date: May 4, 1998
 Moved by: Morris-Tatum Seconded by: Wieckert
 AB: _____ Clearinghouse Rule: _____
 AB: _____ SB: 369 Appointment: _____
 AJR: _____ SJR: _____ Other: _____
 A: _____ SR: _____

A/S Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____
 A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____ to A/S Sub Amdt: _____

Be recommended for:

- Passage as amended
- Introduction
- Adoption
- Rejection

- Indefinite Postponement
- Tabling
- Concurrence
- Nonconcurrence
- Confirmation

Committee Member

Rep. Carol Owens, Chair
 Rep. Neal Kedzie
 Rep. Steven Foti
 Rep. Daniel Vrakas
 Rep. Steve Wieckert
 Rep. Johnnie Morris-Tatum
 Rep. John La Fave
 Rep. Leon Young
 Rep. Tammy Baldwin

<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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Totals: _____

Motion Carried

Motion Failed

Mike Theo & Rick Stupp (WI Realtors Assoc.)

- Senate passed both amendments in error - should have only passed Senate Amendment 2

- 12.5% goes into trust acct → the % is what the Clerk of Courts presently uses for construction liens.

- Atty. appointed does not represent either party → has to be mutually agreed by both parties.

→ once settled, the other 25% goes back to the individual.

- These claims are beyond what is allowed for Small Claims Court. Therefore, these go through the regular court process where they can get tied up for a few years.

SENATE BILL 369

An Act to create 779.32 of the statutes; relating to: establishing a commercial real estate broker's commission lien.
(FE)

1997

12-03. S. Introduced by Senators Welch, Darling, Grobschmidt, Schultz and Drzewiecki; cosponsored by Representatives Schafer, Hanson, Green, Riley, Sykora, Porter, F. Lasee, La Fave and Gunderson.

12-03. S. Read first time and referred to committee on Economic Development, Housing and Government Operations 365

1998

01-02. S. Fiscal estimate received.

02-18. S. Public hearing held.

04-01. S. Failed to pass pursuant to Senate Joint Resolution 1 575

04-21. S. Revived pursuant to Senate Joint Resolution 47 599

04-21. S. Withdrawn from committee on Economic Development, Housing and Government Operations and referred to committee on Business, Economic Development and Urban Affairs pursuant to Senate Joint Resolution 47 600

04-23. S. Public hearing held.

04-23. S. Executive action taken.

04-28. S. Report introduction and adoption of Senate amendment 1 recommended by committee on Business, Economic Development and Urban Affairs, Ayes 5, Noes 0 by committee on Business, Economic Development and Urban Affairs.

04-28. S. Report passage as amended recommended by committee on Business, Economic Development and Urban Affairs, Ayes 5, Noes 0.

04-28. S. Available for scheduling.

04-30. S. Read a second time.

04-30. S. Senate amendment 1 adopted.

04-30. S. Senate amendment 2 offered by Senator Welch.

04-30. S. Senate amendment 2 adopted.

04-30. S. Ordered to a third reading.

04-30. S. Rules suspended.

04-30. S. Read a third time and passed, Ayes 27, Noes 5.

04-30. S. Ordered immediately messaged.

FISCAL ESTIMATE
DOA-2048 N(R10/94)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

Subject

Filing commercial real estate broker's commission lien with the register of deeds

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

This bill establishes a commercial real estate broker's commission lien and permits it to be filed with the register of deeds. The proposed legislation makes the filing of such a lien optional, and then only after certain conditions are met. Therefore, it cannot be estimated how many, if any, such liens will be filed.

Section 59.43(2) Wis. Stats., permits the registers of deeds to charge \$10.00 for recording the first page of any instrument, and \$2.00 for any additional page. Depending on the number of commercial real estate broker's commission liens that are filed, revenue for the register of deeds will increase by a negligible amount.

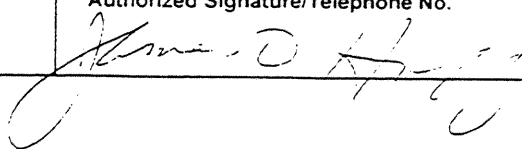
As the structure and personnel to file liens already exists within the offices of the registers of deeds, any costs in processing these liens would be negligible and absorbed by the registers of deeds.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)

Mark Schlei 267-1705 (DFI)

Authorized Signature/Telephone No.



Date

12/16/97



**WISCONSIN
REALTORS®
ASSOCIATION**

*put with bill
1-15-98*

JAN 14 1998

4801 Forest Run Road, Suite 201
Madison, Wisconsin 53704-7337
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URL <http://www.wra.org>

DAVE STARK, GRI, President

WILLIAM MALKASIAN, CAE, Executive Vice President

TO: All Legislators
FROM: Michael Theo
Vice President for Public Affairs
DATE: January 12, 1998
RE: Senate Bill 369 – Commercial Broker Liens

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SB 369 is necessary because commercial real estate commissions are almost universally earned and payable upon the conclusion of the transaction, with no progress or retainer payments being received along the way. After months or years of expending time, energy and out-of-pocket expenses to secure a buyer or tenant, the commercial broker is increasingly faced with an all or nothing situation when a client refuses to pay the agreed upon commission and/or suggests the broker take a lesser amount. Unfortunately this problem is becoming more common in situations where the proceeds from the sale do not cover all obligations or in a lease situation, when the property is sold yet a lease agreement remains in effect.

This legislation is not only about fairness, but it's about economic survival. It is not unusual for a commercial REALTOR to have one transaction in a period of six months or a year. SB 369 addresses instances where a broker attempts to collect payment for services already provided, but is unable to withhold any form of service as a means of obtaining payment. The legal process, being the only available remedy, fails frequently because of excessive time and burdensome costs.

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SB 369 is similar to legislation adopted in a dozen other states where experience shows the mere existence of this law on the books has acted as a deterrent to such problems.

SB 369 is about economic development and fairness. It promotes economic development because commercial real estate and management represents the "front line" in local, regional, and state efforts to attract and maintain business enterprises, helping to create and retain jobs as well as provide substantial tax revenues. The bill promotes fairness by giving commercial brokers some measure of leverage to collect commissions they've earned pursuant to a valid contract, without the burdensome time and costs associated with protracted litigation.

We urge you to support SB 369. Please feel free to contact us with any questions or comments.



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WILLIAM MALKASIAN, CAE, Executive Vice President

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- Over -

Senate Amendment 1

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