



2009 ASSEMBLY BILL 873

March 19, 2010 – Introduced by Representatives RICHARDS, HUBLER, TURNER, VAN ROY, TOWNSEND, SMITH, GUNDERSON, PETERSEN, SOLETSKI and MOLEPSKE JR., cosponsored by Senators SULLIVAN, TAYLOR, PLALE, JAUCH, COWLES and DARLING. Referred to Committee on Financial Institutions.

1 **AN ACT** *to repeal* 779.32 (3) (a), (b) and (c); *to amend* 779.32 (1) (b) 1., 779.32
2 (2) (b), 779.32 (3) (intro.), 779.32 (4) (a) (intro.), 779.32 (4) (a) 1., 779.32 (4) (b)
3 (intro.), 779.32 (4) (b) 4., 779.32 (4) (c), 779.32 (4) (d), 779.32 (4m), 779.32 (8) (a)
4 1., 779.32 (8) (a) 2. and 779.32 (8) (c) 2.; *to repeal and recreate* 779.32 (8) (b);
5 and *to create* 779.32 (1) (d), 779.32 (3) (form), 779.32 (8) (am), 779.32 (10) and
6 779.32 (11) of the statutes; **relating to:** liens by commercial real estate brokers.

Analysis by the Legislative Reference Bureau

Currently, a real estate broker may obtain a lien against commercial real estate for the unpaid amount of the commission earned under a written commercial real estate listing contract, tenant representation agreement, or buyer agency agreement or for unpaid compensation earned under an agreement to lease or manage commercial real estate if the real estate broker complies with certain notice requirements and perfects the lien by filing the notice of the lien in the office of the register of deeds. The current definition of commercial real estate excludes real property containing eight or fewer dwelling units. The bill changes that definition to exclude real property that consists only of dwelling units used solely for residential purposes and that contains eight or fewer dwelling units.

Under current law, the real estate broker is required to file a written notice of intent to claim the lien with the register of deeds at least 30 days before the conveyance of the commercial real estate that is the subject of the listing contract or

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the buyer agency agreement or before the date on which the written lease or management agreement is entered. The lien is then perfected when the broker files the notice of lien with the register of deeds, which must be done three days before the date of the recording of the conveyance documents for the commercial real estate that is the subject of the listing contract or the buyer agency agreement, or 90 days after the broker earns the commission or compensation under the agreement.

Under this bill, the requirement that the real estate broker file a notice of intent to claim the lien with the register of deeds is removed and replaced with a requirement that the real estate broker give written notification to the person owing the commission or compensation of the broker's authority to claim a lien if the commission or compensation is not paid. In addition, the bill requires that commercial real estate listing contracts, buyer agency agreements, tenant representation agreements, and agreements to lease or manage commercial real estate include a notice of the real estate broker's authority to claim a lien, and provides a form for the notice.

Currently, if there is a dispute regarding the amount of commission or compensation owed to a real estate broker, a recorded lien may be satisfied by the broker if the person owing the disputed amount pays 125 percent of the disputed amount into the trust account of the real estate broker or an attorney who does not represent any party to the dispute pending a written agreement by the parties or a court order. This bill also allows the payment to be made into the trust account of a mutually agreed-upon third party.

Under current law, the real estate broker's satisfaction of a lien must be filed with the register of deeds and the register of deeds is required to index the satisfaction under the name of the owner of the real estate and, if the register of deeds maintains a tract index, under the legal description of the real estate. The bill requires a satisfaction of a real estate broker's lien to be recorded with the register of deeds and to include information included in the lien document, but removes the indexing requirements.

The bill allows a person who has a claim under a real estate broker's lien to waive the lien in writing. The bill also requires a person who forecloses on a real estate broker's lien to follow the general real estate foreclosure procedures when applicable, and requires that all of the persons who have a recorded real estate broker's lien for the real estate that is the subject of the foreclosure be made parties to the foreclosure action.

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

- 1 **SECTION 1.** 779.32 (1) (b) 1. of the statutes is amended to read:
- 2 779.32 (1) (b) 1. Real property containing that consists only of dwelling units
- 3 used solely for residential purposes and contains 8 or fewer dwelling units.

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

2 779.32 **(1)** (d) “Tenant representation agreement” means an agreement
3 between a broker and a person that grants the broker exclusive rights to represent
4 the person in the lease of commercial real estate.

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

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

11 **SECTION 4.** 779.32 (3) (intro.) of the statutes is amended to read:

12 779.32 **(3)** NOTICE OF INTENT-TO-CLAIM LIEN. (intro.) A broker has a lien under
13 sub. (2) (a) ~~or (b), or (c)~~ only if the broker ~~files or records a written notice of intent~~
14 ~~to claim a lien under this section at the office of the register of deeds for the county~~
15 ~~in which the commercial real estate is located and delivers a copy of the notice to~~
16 notifies the person owing the commission or compensation under sub. (2) (a) ~~or (b).~~
17 ~~A broker has a lien under sub. (2) (c) only if the broker provides a written notice of~~
18 ~~intent to claim a lien under this section to the person owing the compensation under~~
19 ~~sub. (2) (c), or (c) in writing of the authority to claim a lien under this section.~~ All
20 notices required under this subsection shall contain the name of each party to the
21 agreement under which the lien is claimed, the date that the agreement was entered
22 into and a brief description of the commercial real estate on which the lien is intended
23 to be claimed be included in the commercial real estate listing contract, commercial
24 real estate buyer agency agreement, tenant representation agreement, or written
25 agreement for the lease or management of commercial real estate. All notices

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1 required under this subsection shall be ~~provided within the following time periods~~
2 in substantially the following form:

3 **SECTION 5.** 779.32 (3) (form) of the statutes is created to read:

4 779.32 (3) (form) NOTICE: Broker has the authority under section 779.32 of
5 the Wisconsin Statutes, to file a broker lien for commissions or compensation earned
6 but not paid when due against the commercial real estate, or the interest in the
7 commercial real estate, that is the subject of this agreement.

8 **SECTION 6.** 779.32 (3) (a), (b) and (c) of the statutes are repealed.

9 **SECTION 7.** 779.32 (4) (a) (intro.) of the statutes is amended to read:

10 779.32 (4) (a) (intro.) A lien under this section is perfected when a broker ~~files~~
11 records a notice of lien in the office of the register of deeds for the county in which
12 the commercial real estate is located. The lien must be perfected no later than the
13 following:

14 **SECTION 8.** 779.32 (4) (a) 1. of the statutes is amended to read:

15 779.32 (4) (a) 1. In the case of a lien under sub. (2) (a) or (b), 3 days prior to the
16 date that the conveyance documents are recorded with the register of deeds in the
17 county where the real property, that is the subject of the listing contract or, buyer
18 agency contract agreement, or tenant representation agreement, is located.

19 **SECTION 9.** 779.32 (4) (b) (intro.) of the statutes is amended to read:

20 779.32 (4) (b) (intro.) The ~~notice of lien~~ shall be signed by the broker and shall
21 include all of the following information:

22 **SECTION 10.** 779.32 (4) (b) 4. of the statutes is amended to read:

23 779.32 (4) (b) 4. The amount of the lien at the time the ~~notice~~ lien is filed
24 recorded.

25 **SECTION 11.** 779.32 (4) (c) of the statutes is amended to read:

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1 779.32 ~~(4)~~ (c) A broker shall mail a copy of the ~~notice of~~ lien to the owner or
2 acquirer of the commercial real estate that is subject to the lien within 72 hours after
3 the ~~filing of the notice~~ recording of the lien under par. (a). A lien under this section
4 is effective only from the date that it is perfected under this subsection.

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

6 779.32 ~~(4)~~ (d) A lien that is perfected under this subsection by a broker secures
7 all unpaid commissions or compensation that is due that broker with respect to the
8 commercial real estate subject to that lien, regardless of whether the commission or
9 compensation was earned at the time the lien was ~~filed~~ recorded.

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

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

18 **SECTION 14.** 779.32 (8) (a) 1. of the statutes is amended to read:

19 779.32 ~~(8)~~ **(8)** (a) 1. The person owing the commission or compensation pays the
20 broker in full the amount specified in the ~~notice of~~ lien.

21 **SECTION 15.** 779.32 (8) (a) 2. of the statutes is amended to read:

22 779.32 ~~(8)~~ **(8)** (a) 2. The person owing the commission or compensation pays an
23 amount equal to 125% of the commission or compensation owed into the trust
24 account of the broker ~~or~~, the trust account of any attorney who does not represent any
25 party to the dispute and who is in good standing with the State Bar of Wisconsin, or

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1 to a mutually agreed-upon third party. The moneys shall be held in escrow until
2 disbursed pursuant to the written mutual agreement of the parties or pursuant to
3 a court order.

4 **SECTION 16.** 779.32 (8) (am) of the statutes is created to read:

5 779.32 **(8)** (am) The satisfaction of lien shall include the information listed in
6 sub. (4) (b) 1. to 3.

7 **SECTION 17.** 779.32 (8) (b) of the statutes is repealed and recreated to read:

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

10 **SECTION 18.** 779.32 (8) (c) 2. of the statutes is amended to read:

11 779.32 **(8)** (c) 2. If the satisfaction is required under par. (a) 1., the date on which
12 the broker receives payment in full of the amount specified in the ~~notice of~~ lien.

13 **SECTION 19.** 779.32 (10) of the statutes is created to read:

14 779.32 **(10)** FORECLOSURE OF LIEN; PROCEDURE, PARTIES. In the foreclosure of a
15 lien under this section, ch. 846 shall control as far as applicable. All persons who
16 have recorded a lien under this section may join as plaintiffs, and if any do not join
17 they may be made defendants. All persons having liens subsequent to such lien may
18 be joined as defendants. If any person who is a proper party is not a party to the
19 action the person may, at any time before judgment, be made a defendant, and any
20 person who after the commencement of the action obtains a lien or becomes a
21 purchaser may, at any time before judgment, be made a defendant.

22 **SECTION 20.** 779.32 (11) of the statutes is created to read:

23 779.32 **(11)** WAIVER OF LIEN. A lien claimant may waive the lien under this
24 section in writing signed by the lien claimant, but no action or agreement between

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1 any other persons may invalidate the lien, other than the payment in full to the
2 claimant of the commission or compensation to which the lien relates.

3 **SECTION 21. Initial applicability.**

4 (1) This act first applies to a real estate broker's commission or compensation
5 earned on the effective date of this subsection.

6 (END)