

2009 DRAFTING REQUEST

Bill

Received: **02/25/2009**

Received By: **rnelson2**

Wanted: **As time permits**

Identical to LRB:

For: **Jim Sullivan (608) 266-2512**

By/Representing: **Nicole**

This file may be shown to any legislator: **NO**

Drafter: **rnelson2**

May Contact:

Addl. Drafters:

Subject: **Liens**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Sullivan@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Liens on commercial broker commissions

Instructions:

see attached

Drafting History:

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
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| /? | | | | | | | |
| /P1 | rnelson2 03/11/2009 | nmatzke 03/12/2009 | mduchek 03/13/2009 | _____ | sbasford 03/13/2009 | ↓ | |
| /P2 | rnelson2 05/12/2009 | nmatzke 05/13/2009 | phenry 05/13/2009 | _____ | sbasford 05/13/2009 | for Assembly | |
| /P3 | rnelson2 05/20/2009 | nmatzke 05/26/2009 | rschluet 05/26/2009 | _____ | sbasford 05/26/2009 | ↓ Sent to Rep. Richards per RPN | |

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
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| /1 | rnelson2 09/08/2009 | nnatzke 09/21/2009 | mduchek 09/22/2009 | _____ | sbasford 09/22/2009 | | |
| /2 | rnelson2 12/18/2009 | | | _____ _____ | | sbasford 03/05/2010 | |

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None

<END>

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| /P3 | rnelson2 05/20/2009 | nmatzke 05/26/2009 /1 nwm 9/14 | rschluet 05/26/2009 MP 9/21 | _____ | sbasford 05/26/2009 | | |

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FE Sent For:

1/p2 nwn
5/12

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/B
Ph

<END>

MD
JF

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Addl. Drafters:

Subject: Liens

Extra Copies:

Submit via email: YES

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| 1? | rnelson2 | 1/PI ^{nwn} 3/11 | MD 3/12 | MDPH 3/13 | | | |

FE Sent For:

<END>

Nelson, Robert P.

From: Hudzinski, Nicole
Sent: Wednesday, February 25, 2009 10:48 AM
To: Nelson, Robert P.
Subject: commercial lien legislation
Attachments: Background.pdf

Commercial Lien Trailer Bill

Issue

- Delete requirement that intention of possible lien be filed 30 days in advance of closing.

Reasons to Support

- Only lien law that requires intent to be recorded with Register of Deeds 30 days in advance.
- Only lien that requires registration of a potential filing.
- ⑥ Places an unnecessary cloud on title. In 99% of the time, lien not actually filed and thus a second step must be taken to remove.
- An actual lien must still be filed 3 days before closing so real disputes will be adequately noticed during pre-closing title search. Similar to all other liens, title companies will have ample time to identify commission lien issues prior to closings.
- Current law was the product of last minute agreements which created this unworkable "super-notice" provision. In practice, these additional steps of prematurely filing an intent only to remove it after closing, has had the effect of discouraging brokers from utilizing the law and thus denying most commercial brokers the protections intended under the original law.

4. COMMERCIAL BROKER COMMISSION LIENS

Wisconsin law currently allows for real estate brokers, in a commercial real estate transaction, to place a lien on the property to insure payment of the commission. However, when the law was originally passed, a provision was added requiring brokers to file an intent to file a lien prior to the close of a transaction. In operation, this provision requires the filing of a lien intent in all transactions, even those where the potential of an actual lien is small or non-existent. Because filing such an intent with no indication of problems can be seen as insulting to upstanding parties in a transaction, brokers are reluctant to do so and thus the lien law has not been employed as intended. To rectify this situation, the WRA is proposing the following trailer legislation to eliminate this pre-lien notice requirement:

779.32 Commission liens.

(1) DEFINITIONS. In this section:

(a) "Broker" means a real estate broker licensed under ch. 452.

(b) "Commercial real estate" means any real property other than any of the following:

1. Real property used exclusively for residential purposes containing 8 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.

(c) "Financial institution" has the meaning given in s. 214.01 (1) (jn).

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

(a) If the broker has earned a commission under a written commercial real estate listing contract, 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 listed with the broker under the contract.

(b) If the broker has earned a commission under a written commercial real estate buyer agency 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.

(c) If the broker has earned compensation under a written agreement for the lease or management of commercial real estate, 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.

(3) NOTICE OF INTENT TO CLAIM LIEN. A broker has a lien under sub. (2) (a) or (b) only if the broker ~~files or records a written notice of intent to claim a lien 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 of intent to claim a lien under this section~~ to the person owing the commission under sub. (2) (a), or (b) or (c). ~~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 required under this subsection shall contain the name of each party to the agreement under which the lien 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 required under this subsection shall be provided within the following time periods:

~~—(a) In the case of a lien under sub. (2) (a), at least 30 days before the conveyance of the commercial real estate subject to the listing contract.~~

~~—(b) In the case of a lien under sub. (2) (b), at least 30 days before the conveyance of the commercial real estate subject to the buyer agency agreement.~~

~~—(c) In the case of a lien under sub. (2) (a), (b) or (c), before the date time that the written commercial agency agreement for the lease or management of commercial real estate is entered into signed by or on behalf of the person agreeing to pay the commission.~~

(4) PERFECTION OF LIEN. (a) A lien under this section is perfected 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. The lien must be perfected no later than the following:

1. In the case of a lien under sub. (2) (a) or (b), 3 days prior to 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~~, is located. *

2. In the case of a lien under sub. (2) (c), 90 days after the later of the following:

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 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 or management agreement.

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

1. The name and license number of the broker.

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

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

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

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

(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. *

(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.

(5) PRIORITY. A lien under this section shall have priority over all other liens on the commercial real estate, except tax and special assessment liens, liens created under

subch. I of ch. 779, purchase money mortgages, liens that are filed or recorded before the lien under this section is perfected and any other lien given priority under the law.

(8) SATISFACTION OF THE LIEN. (a) Upon the request of any person interested in the real estate that is the subject of a lien under this section, the broker shall execute and deliver a satisfaction of lien to the interest party, if one of the following conditions is met:

1. The person owing the commission or compensation pays the broker in full the amount specified in the notice of lien.

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. The moneys shall be held in escrow until disbursed pursuant to the written mutual agreement of the parties or pursuant to a court order.

3. If the parties to the contract or agreement giving rise to the lien agree to binding arbitration regarding the disputed commission or compensation and if the parties to the contract or agreement, other than the broker, agree to pay all of the costs of the arbitration.

(b) The satisfaction shall include items 1, 2 and 3 under (4)(b).

(c) (b) Upon the filing of a satisfaction of lien under par. (a) with the register of deeds, the register of deeds shall index the satisfaction under the name of the owner or acquirer of the commercial real estate who was subject to the satisfied lien. If the register of deeds maintains a tract index, the satisfaction shall also be indexed under the legal description of the real estate against which the lien was claimed. The satisfaction of a lien under par. (a) shall be recorded with the register of deeds.

(d) (e) A broker is liable to a person requesting a lien satisfaction under this subsection for a sum equal to 50% of the sum claimed in the lien claim, if the broker does not provide the requested satisfaction within 30 days of the later of the following:

1. The date on which the request is received by the broker.

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.

3. If the satisfaction is required under par. (a) 2., the date on which the broker receives evidence that the requirements under par. (a) 2. have been met.

4. If the satisfaction is required under par. (a) 3., the date on which the broker receives the agreement to binding arbitration.

5. If the satisfaction is required under par. (a) 3., the date on which the broker receives evidence of payment of the arbitrator's fee.

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

3

TENANT REPRESENTATION AGREEMENT
(Between Tenant and Broker)

THIS AGREEMENT is entered into this _____ day of _____, 200_, by and between _____, (“Tenant”) and _____ Corporation (“Broker”).

EXCLUSIVE RIGHT TO REPRESENT

In consideration of the services to be rendered by Broker to Tenant, Tenant hereby grants to Broker an exclusive right to represent Tenant in the purchase or lease of real property (the “Project”). Broker sole fiduciary and loyalty shall be to Tenant, unless otherwise agreed to in writing by the parties. This exclusive right to represent and the terms and conditions contained herein shall be limited to the Project as defined herein.

1. THE PROJECT

The Term “the Project” shall mean and is limited to those matters relating to the purchaser or lease of real property for _____ (Tenant).

2. NO OBLIGATION TO PURCHASE OR LEASE

Tenant shall be under no obligation to purchase, lease, or otherwise develop any property submitted to Tenant by Broker.

3. COMMISSIONS OR FINDER’S FEES

Broker understands and acknowledges that under no circumstances shall Tenant be obligated to pay Broker any commission or finder’s fee in connection with the representation of Tenant hereunder. Broker acknowledges and understands that it just look solely to a potential Seller / Landlord for any and all remuneration for services performed pursuant to this Agreement and consents to Broker receipt of any such payment form Seller / Landlord.

In the event that a Seller / Landlord defaults on or refuses to pay any commission or finder’s fee that it has agreed to pay Broker, Broker shall have no recourse against Tenant for said commission or finder’s fee. Client agrees to cooperate with and support (Broker) in connection with its efforts to obtain commissions or finder’s fee from third party Sellers / Landlords who have property for sale or lease and wish to secure Tenant as a Buyer / Landlord. Broker agrees to act in good faith in determining that compensation is an amount considered to be the common practice for brokers to receive in the _____ area and to disclose to Tenant the consideration to be paid to Broker on all transactions being considered by Tenant (See Exhibit 1 attached hereto). It is Broker’s practice to pay and charge commissions for a Tenant’s future expansion and extensions or alterations of any lease.

4. TERM: TERMINATION

A. The term of this Agreement shall be for _____ from the effective date hereof and shall be renewed automatically on the same terms and conditions for successive _____ periods unless sooner terminated as provided herein below.

1. By Tenant, if Broker does not fulfill its obligation as set forth in representation Plan at any time during the term hereof, by giving ten (10) days' written notice, or
2. By Tenant, if Project is canceled or postponed for a period of one (1) year or longer.

B. In the event that this Agreement is terminated by Tenant as provided for in Paragraph A (1,2) above, for a period of six (6) months thereafter Tenant agrees that with respect to any lease or purchase opportunity brought to its attention by Broker, Tenant will cooperate with Broker and support its efforts to obtain commissions or finder's fees from a third party Seller/Lessor should Tenant purchase or lease such property; provided, however, Tenant shall not be responsible for the payment of said commissions or finder's fees.

5. BEST EFFORTS

Broker agrees to continue its representation of Tenant using its best efforts to serve Tenant's needs in connection with the Project as outlined in attached Representation Plan and Tenant detailing Broker's activities relative to this Agreement and listing all requests for assistance submitted by Tenant during the previous month.

6. TENANT / BROKER RESPONSIBILITIES

Tenant, concurrently with the execution of this Agreement, will deliver to Broker all material relative to current or previous Tenant's efforts for the Project. Broker will review said material and inform Tenant if Broker considers Tenant has any obligations or commitments to others in respect to the Project. If there is such an obligation or commitment, Client and (Broker) agree to exempt such properties from this agreement and Broker's roles and compensation shall be set forth in a separate mutually acceptable document.

Tenant agrees to inform all Tenant's employees, Sellers / Landlords, and other brokers previously involved in the Project, or those who make any inquiry about the Project of Broker appointment as Tenant's exclusive agent, and to refer all parties, correspondence, inquiries, etc., to Broker. Broker will provide Tenant with copies of all correspondence relative to the Project.

7. ATTORNEY'S FEES

If any litigation is commenced between Broker and Tenant, the prevailing party shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for its attorney's fees in connection with such litigation, which fees may be determined by the court in any such litigation or any separate action brought for that purpose. If litigation is commenced between Broker and any third party Seller / Landlord and as a direct result of which Tenant is required to retain legal counsel to protect its rights, Tenant shall be entitled to a reasonable sum for its attorney's fees from Broker.

8. ENTIRE AGREEMENT

This agreement contains the entire agreement between Broker and Broker concerning the purchase or lease of any real property in connection with the Projects and correctly sets forth each party's rights and duties to each other concerning the subject matter of this Agreement or the duties of Tenant or Broker in relation thereto not set forth in this instrument is null and void.

9. NOTICE

Any notice, request, instruction, or other document given hereunder by any party hereto to another shall be in writing and shall be delivered personally or sent by registered or certified mail, return receipt requested, U.S.A. postage prepaid addressed as follows:

If to Tenant: _____

Attn: _____

If to Broker Broker's Name _____

10. GOVERNING LAW

This Agreement shall be governed by the laws of the State of _____ as to interpretation, construction, and performance.

11. ASSIGNMENT

Tenant may, in its sole discretion, assign this Agreement, in whole or in part, to any parent, affiliate, successor, or subsidiary entity. Broker may not assign this Agreement without the prior written consent of client.

IN WITNESS WHEREOF, this Agreement is made and entered into as of the day and year first set forth above.

TENANT

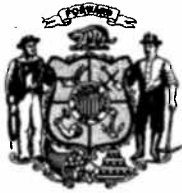
By: _____

Its: _____

BROKER

By: _____

Its: _____



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA ✓
X-ref ✓

D-N

Gen.

1 AN ACT ...; relating to: liens by commercial real estate brokers. ✓

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

2 SECTION 1. 779.32 (1) (b) of the statutes is repealed and recreated to read:

3 779.32 (1) (b) "Commercial real estate" means any real property other than
4 residential real property. ✓

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

6 779.32 (1) (d) "Residential real property" means a building or structure
7 designed for and used as a private dwelling accommodation or private living quarters
8 that contains 8 or fewer dwelling units, and the land on which the building or
9 structure is located. ✓

10 SECTION 3. 779.32 (1) (e) of the statutes is created to read:

1 779.32 (1) (e) "Tenant representation agreement" means an agreement
2 between a broker and a person that grants the broker exclusive rights to represent
3 the person in the lease of commercial real estate. ✓

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

5 779.32 (2) (b) If the broker has earned a commission under a written
6 commercial real estate buyer agency agreement or tenant representation
7 agreement, the broker has a lien for the unpaid amount of the commission against
8 the commercial real estate, or the interest in commercial real estate, that is acquired
9 as a result of the agreement. ✓

History: 1997 a. 309; 2001 a. 103.

10 SECTION 5. 779.32 (3) (intro.) of the statutes is renumbered 779.32 (3) and
11 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~~ delivers a written notice of
14 intent to claim a lien under this section ~~at the office of the register of deeds for the~~
15 ~~county in which the commercial real estate is located and delivers a copy of the notice~~
16 ~~to the person owing the commission under sub. (2) (a) or (b). A broker has a lien~~
17 ~~under sub. (2) (c) only if the broker provides a written notice of intent to claim a lien~~
18 ~~under this section to the person owing the compensation under sub. (2) or (c). All~~ delete space
19 notices required under this subsection shall contain the name of each party to the
20 agreement under which the lien is claimed, the date that the agreement was entered
21 into and a brief description of the commercial real estate on which the lien is intended
22 to be claimed. All notices required under this subsection shall be provided within the
23 following time periods: before the written commercial real estate buyer agency

X

1 agreement or tenant representation agreement is signed by or on behalf of the person
 2 agreeing to pay the commission. ✓

History: 1997 a. 309; 2001 a. 103.

***NOTE: The proposed revised language says that the notice must include the date the agreement was entered into and that the notice must be provided before the written agreement is signed. That seems to be a conflict. How can the notice be provided before the agreement and include the date that the agreement was signed? Perhaps have the notice provided when the written agreement is signed? ✓

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

Ins 3-3 →

4 **SECTION 7.** 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 8.** 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

(END)

D-note

**2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2228/P1ins
RPN:.....

1 Ins 3-3:

2

3 **SECTION 1.** [✓] 779.32 (4) (a) 1. of the statutes is amended to read:

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

8 History: 1997 a. 309; 2001 a. 103.

8 **SECTION 2.** [✓] 779.32 (4m) of the statutes is amended to read:

9 779.32 (4m) DUTY OF REGISTER OF DEEDS. If a notice of lien meets the
10 requirements under sub. (4), the register of deeds shall accept the notice of lien for
11 filing recording. The register of deeds shall index the notice of lien under the name
12 of the owner or acquirer of the commercial real estate who is subject to the lien. If
13 the register of deeds maintains a tract index, the register of deeds shall also index
14 the notice of lien under the legal description of the real estate against which a lien
15 is claimed. ✓

History: 1997 a. 309; 2001 a. 103.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2228/P1dn

RPN:f:...

nwn

Date

(regulating real estate practices)

I have added the language to allow a lien on a commission related to a tenant representation agreement in s. 779.32 (2) (b), but there is nothing in ch. 452 that regulates or mentions such agreements. Buyer agency agreements are extensively mentioned in that chapter, and their use is discussed in the Broker Disclosure to Clients form that is created in that statute.

> I added a ****Note to the draft because I was unable to reconcile a conflict in the suggested language. I revised the definition of "Commercial real property" to make it more clear.

Please review this draft carefully to ensure that it is consistent with your intent.

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
E-mail: robert.nelson@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2228/P1dn
RPN:nwn:md

March 12, 2009

I have added the language to allow a lien on a commission related to a tenant representation agreement in s. 779.32 (2) (b), but there is nothing in ch. 452 (regulating real estate practices) that regulates or mentions such agreements. Buyer agency agreements are extensively mentioned in that chapter, and their use is discussed in the Broker Disclosure to Clients form that is created in that statute.

I added a ****Note to the draft because I was unable to reconcile a conflict in the suggested language. I revised the definition of "Commercial real property" to make it more clear.

Please review this draft carefully to ensure that it is consistent with your intent.

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
E-mail: robert.nelson@legis.wisconsin.gov

Nelson, Robert P.

From: Hudzinski, Nicole
Sent: Monday, May 11, 2009 2:55 PM
To: Nelson, Robert P.
Subject: LRB 2228/P1

Bob, we have the following changes to LRB 2228/P1. Please let me know if you have questions or concerns.

Please remove sections 1 and 2.

Please change section 5 to the following, and note the question at the bottom. If you have questions, please feel free to contact me or Tom Larson with the Realtors. His number is (608) 241-2047.

Thanks,
Nicole

SECTION 5. Notice of authority to claim a lien. A broker has lien under sub. (2)(a), (b) or (c) only if the broker notifies the person owing a commission or fees under sub. (2)(a), (b) or (c) in writing of the authority to claim a lien under this section. All notices under this subsection shall be in writing and be included in the commercial listing contract, commercial real estate buyer agency agreement or tenant representation agreement, or written agreement for the lease or management of commercial real estate. All notices required under this subsection shall state the following: "NOTICE: Broker has the authority under Wis. Stat. sec. 779.32 to file a broker lien for commissions or fees 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."

Do we need something in the bill to require the DRL to include this phrase in the DRL-approved contracts, or are we leaving it to the broker to add this language in additional provisions or in an addendum?

see - 2817 for analysis

Nelson, Robert P.

From: Sundberg, Christopher
Sent: Tuesday, May 12, 2009 11:12 AM
To: Nelson, Robert P.
Subject: forms

Under s. 452.05 (1) (b), DRL has the general duty to approve forms for use in real estate practice. It doesn't seem like it should be necessary to direct DRL to adopt a revised form based on a change in the law.

Christopher Sundberg
Legislative Attorney
Legislative Reference Bureau
(608) 266-9739
christopher.sundberg@legis.state.wi.us



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-N

SA ✓

→ regen

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

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

6 **SECTION 1.** 779.32 (1) (b) of the statutes is repealed and recreated to read:
 7 779.32 (1) (b) "Commercial real estate" means any real property other than
 8 residential real property.
 9 **SECTION 2.** 779.32 (1) (d) of the statutes is created to read:
 10 779.32 (1) (d) "Residential real property" means a building or structure
 11 designed for and used as a private dwelling accommodation or private living quarters

1 that contains 8 or fewer dwelling units, and the land on which the building or
2 structure is located.

3 SECTION 3. [✓]779.32 (1) (e) of the statutes is created to read:

4 779.32 (1) (e) "Tenant representation agreement" means an agreement
5 between a broker and a person that grants the broker exclusive rights to represent
6 the person in the lease of commercial real estate. ✓

7 SECTION 4. [✓]779.32 (2) (b) of the statutes is amended to read:

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

13 SECTION 5. 779.32 (3) (intro.) of the statutes is renumbered 779.32 (3) and
14 amended to read:

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

1 following time periods: before the written agreement is signed by or on behalf of the
 2 person agreeing to pay the commission.

****NOTE: The proposed revised language says that the notice must include the date the agreement was entered into and that the notice must be provided before the written agreement is signed. That seems to be a conflict. How can the notice be provided before the agreement and include the date that the agreement was signed? Perhaps have the notice provided when the written agreement is signed?

insert
3-2 →

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

4 **SECTION 7.** 779.32 (4) (a) 1. of the statutes is amended to read:

5 779.32 (4) (a) 1. In the case of a lien under sub. (2) (a) or (b), 3 days prior to the
 6 date that the conveyance documents are recorded with the register of deeds in the
 7 county where the real property, that is the subject of the listing contract or, buyer
 8 agency contract agreement, or tenant representation agreement, is located.

9 **SECTION 8.** 779.32 (4m) of the statutes is amended to read:

10 779.32 (4m) DUTY OF REGISTER OF DEEDS. If a notice of lien meets the
 11 requirements under sub. (4), the register of deeds shall accept the notice of lien for
 12 filing recording. The register of deeds shall index the notice of lien under the name
 13 of the owner or acquirer of the commercial real estate who is subject to the lien. If
 14 the register of deeds maintains a tract index, the register of deeds shall also index
 15 the notice of lien under the legal description of the real estate against which a lien
 16 is claimed.

17 **SECTION 9.** 779.32 (8) (am) of the statutes is created to read:

18 779.32 (8) (am) The satisfaction of lien shall include the information listed in
 19 sub. (4) (b) 1. to 3.

20 **SECTION 10.** 779.32 (8) (b) of the statutes is repealed and recreated to read:

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2228/P2ins
RPN:nwn:md

1 insert 3-2:

2 **SECTION 1.** 779.32 (3) (intro.) of the statutes is amended to read:

3 779.32 (3) NOTICE OF INTENT TO CLAIM LIEN. (intro.) A broker has a lien under
4 sub. (2) (a) ~~or~~, (b), or (c) only if the broker ~~files or records a written notice of intent~~
5 ~~to claim a lien under this section at the office of the register of deeds for the county~~
6 ~~in which the commercial real estate is located and delivers a copy of the notice to~~
7 notifies the person owing the commission under sub. (2) (a) ~~or~~, (b). ~~A broker has a~~
8 ~~lien under sub. (2) (c) only if the broker provides a written notice of intent to claim~~
9 ~~a lien under this section to the person owing the compensation under sub. (2) (c), or~~
10 (c) in writing of the authority to claim a lien under this section. All notices required
11 under this subsection shall contain the name of each party to the agreement under
12 which the lien is claimed, the date that the agreement was entered into and a brief
13 description of the commercial real estate on which the lien is intended to be claimed
14 be included in the commercial listing contract, commercial real estate buyer agency
15 agreement, tenant representation agreement, or written agreement for the lease or
16 management of commercial real estate. All notices required under this subsection
17 shall be provided within the following time periods: in substantially the following
18 form:

18 form: ^{ⓑ+ⓔⓖ} [ⓓ] Section #. 779.32 (3) (form) of the statutes is created to read:

19 NOTICE: Broker has the authority under ^{of the} Wisconsin Statutes section 779.32,
20 to file a broker lien for commissions ^e or fees earned but not paid when due against the
21 commercial real estate, or the interest in the real estate, that is the subject of this
22 agreement.

all plain

History: 1997 a. 309; 2001 a. 103.

779.32 [ⓑ] (3) (form) no #

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2228/P2dn
RPN:nwn:md

Date

Please review this draft carefully to ensure that it is consistent with your intent.✓

We do not think language is needed to require DRL to include the notice in the DRL-approved contracts.✓ Under s. 452.05 (1) (b), they have the general duty to approve forms for real estate practice.✓

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
E-mail: robert.nelson@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2228/P2dn
RPN:nwn:ph

May 13, 2009

Please review this draft carefully to ensure that it is consistent with your intent.

We do not think language is needed to require DRL to include the notice in the DRL-approved contracts. Under s. 452.05 (1) (b), they have the general duty to approve forms for real estate practice.

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
E-mail: robert.nelson@legis.wisconsin.gov

Nelson, Robert P.

From: Hudzinski, Nicole
Sent: Monday, May 18, 2009 6:49 PM
To: Nelson, Robert P.
Subject: LRB 2228

Hi Bob, we have a few more changes on LRB 2228. Please see below and let me know if you have questions.

Thanks,
Nicole

Changes to the bill (LRB -- 2228/P2)

SECTION 1-- Change "779.32(1)(e)" to "779.32(1)(d)"

SECTION 3

- + Title -- change to "Notice of Lien"
- + line 9 -- add "or fees" after "commission"
- + line 16 -- add "real estate" between "commercial" and "listing contract"

SECTION 4

- + line 23 -- add "or fees" after "commission"
- + line 24 -- Change "interest in the real estate" to "interest in the commercial real estate?"

Other changes to Chapter 779.32

Change 779.32(1)(b)1 to state "Real property containing 8 or fewer dwelling units used solely for residential purposes." This would apply the law to mixed use properties.

779.32(4)(a) -- Delete "notice of" before "lien"

779.32(4m) -- Delete "notice of" before "lien"

Modify section 779.32(8)(a)2 "Satisfaction of Lien"

1) Wis. Stat. sec. 779.32(8)(a)2 -- Add "or mutually-agreed-upon third party" to list of entities that can handle escrow related to commission disputes

779.32(8)(a)2.

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, 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 a third party agreed to by both the person owing the commission or fees and the broker. The moneys shall be held in escrow until disbursed pursuant to the written mutual agreement of the parties or pursuant to a court order.

Add enforcement provision indicating that commercial lien can be enforced through the same process as construction liens (Wis. Stat. sec. 779.09)

779.32(10) Foreclosure of lien; procedure; parties. In the foreclosure of liens mentioned in s. 779.32, ch. 846 shall control as far as applicable unless otherwise provided in this subchapter. All persons having filed liens under s. 779.32 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.

no, "compensation" in (2)(c), but not "fee"

res. other places as well

Add provision indicating that if brokers sign affidavit they waive right to lien (see Wis. Stat. sec. 779.03(1)). (Note -- broker still has rights to seek payment of commission through breach of contract claim)

779.32(11)

(1) No agreement by other than claimant may invalidate lien. A lien claimant may waive the lien given by s. 779.32 by a writing signed by the lien claimant, but no action by nor agreement between any other persons shall invalidate the lien, other than payment in full to the claimant for the commission or fees to which the lien claim relates.