

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

D-N

SAJ

→ repeal

1 AN ACT *to repeal* 779.32 (3) (a), (b) and (c); *to amend* 779.32 (2) (b), 779.32 (3)  
2 (intro.), 779.32 (4) (a) 1. and 779.32 (4m); *to repeal and recreate* 779.32 (8)  
3 (b); and *to create* 779.32 (1) (e), 779.32 (3) (form) and 779.32 (8) (am) of the  
4 statutes; **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.

insert 1-5

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

5 SECTION 1. 779.32 (1) (e) of the statutes is created to read:  
6 779.32 (1) (e) "Tenant representation agreement" means an agreement  
7 between a broker and a person that grants the broker exclusive rights to represent  
8 the person in the lease of commercial real estate. ✓

9 SECTION 2. 779.32 (2) (b) of the statutes is amended to read:  
10 779.32 (2) (b) If the broker has earned a commission under a written  
11 commercial real estate buyer agency agreement or tenant representation

1 agreement, the broker has a lien for the unpaid amount of the commission against  
 2 the commercial real estate, or the interest in commercial real estate, that is acquired  
 3 as a result of the agreement.

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

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

21 **SECTION 4.** 779.32 (3) (form) of the statutes is created to read:

22 779.32 (3) (form) NOTICE: Broker has the authority under section 779.32 of  
 23 the Wisconsin Statutes, to file a broker lien for commissions <sup>or compensation</sup> earned but not paid  
 24 when due against the commercial real estate, or the interest in the <sup>commercial</sup> real estate, that  
 25 is the subject of this agreement.

insert f1  
3-1 2 →

SECTION 5. 779.32 (3) (a), (b) and (c) of the statutes are repealed.

SECTION 6. 779.32 (4) (a) 1. of the statutes is amended to read:

779.32 (4) (a) 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 agreement, or tenant representation agreement, is located.

insert  
3-6 7 →

SECTION 7. 779.32 (4m) of the statutes is amended to read:

779.32 (4m) DUTY OF REGISTER OF DEEDS. If a ~~notice of~~ notice of lien meets the requirements under sub. (4), the register of deeds shall accept the ~~notice of~~ notice of lien for filing recording. The register of deeds shall index the ~~notice of~~ 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~~ notice of lien under the legal description of the real estate against which a lien is claimed.

insert  
3-14 15 →

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

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

SECTION 9. 779.32 (8) (b) of the statutes is repealed and recreated to read:

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

insert  
3-20 21 →

(END)

D-note

2009-2010 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-2228/P3ins  
RPN:nwn:ph

1 insert 1-5:

2 SECTION 1. 779.32 (1) (b) 1. of the statutes is amended to read:

3 779.32 (1) (b) 1. Real property ~~containing~~ that consists only of dwelling units  
4 used solely for residential purposes and contains 8 or fewer dwelling units. ✓

5 History: 1997 a. 309; 2001 a. 103. *e*

insert 1-5:

6

7 insert 3-1:

8 SECTION 2. 779.32 (4) (a) (intro.) of the statutes is amended to read:

9 779.32 (4) (a) (intro.) A lien under this section is perfected when a broker <sup>records</sup> files  
10 a ~~notice of~~ lien in the office of the register of deeds for the county in which the  
11 commercial real estate is located. The lien must be perfected no later than the  
12 following. ✓

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

14 insert 3-6:

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

16 779.32 (4) (b) (intro.) The ~~notice of~~ lien shall be signed by the broker and shall  
17 include all of the following information. ✓

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

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

19 779.32 (4) (b) 4. The amount of the lien at the time the notice lien is filed  
20 recorded. ✓

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

SECTION 5. 779.32 (4) (c) of the statutes is amended to read:

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. ✓

History: 1997 a. 309; 2001 a. 103. ✓

5           **SECTION 6.** 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. ✓

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

11           insert 3-14:

12           **SECTION 7.** 779.32 (8) (a) 1. of the statutes is amended to read:

13           779.32 (8) (a) 1. The person owing the commission or compensation pays the  
14 broker in full the amount specified in the ~~notice of lien~~. ✓

History: 1997 a. 309; 2001 a. 103. ✓

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

16           779.32 (8) (a) 2. The person owing the commission or compensation pays an  
17 amount equal to 125% of the commission or compensation owed into the trust  
18 account of the broker ~~or~~, the trust account of any attorney who does not represent any  
19 party to the dispute and who is in good standing with the State Bar of Wisconsin, or  
20 to a mutually agreed-upon third party. ✓ The moneys shall be held in escrow until  
21 disbursed pursuant to the written mutual agreement of the parties or pursuant to  
22 a court order. ✓

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

1 insert 3-20: ✓

2 SECTION 9. 779.32 (8) (c) 2. of the statutes is amended to read:

3 779.32 (8) (c) 2. If the satisfaction is required under par. (a) 1., the date on which  
4 the broker receives payment in full of the amount specified in the notice of lien. ✓

5 History: 1997 a. 309; 2001 a. 103. ✓^

6 SECTION 10. 779.32 (10) of the statutes is created to read:

7 779.32 (10) FORECLOSURE OF LIEN; PROCEDURE, PARTIES. no #

who have recorded a

8 SECTION 11. 779.09 of the statutes is amended to read:

9 779.09 Foreclosure of lien; procedure; parties. In the foreclosure of liens

10 mentioned in s. 779.01, ch. 846 shall control as far as applicable unless otherwise

11 provided in this subchapter. All persons having filed claims for liens under s. 779.01

12 may join as plaintiffs, and if any do not join they may be made defendants. All

13 persons having liens subsequent to such lien may be joined as defendants. If any

14 person who is a proper party is not a party to the action the person may, at any time

15 before judgment, be made a defendant, and any person who after the commencement

16 of the action obtains a lien or becomes a purchaser may, at any time before judgment,

17 be made a defendant. ✓

18 History: 1973 c. 189 s. 20; Sup. Ct. Order, 67 Wis. 2d 585, 775 (1975); 1975 c. 218; 1979 c. 32 ss. 57, 92 (9); Stats. 1979 s. 779.09. ✓^

19 SECTION 12. 779.32 (11) of the statutes is created to read:

20 779.32 (11) WAIVER OF LIEN. A lien claimant may waive the lien under this

21 section in writing signed by the lien claimant, but no action or agreement between

any other persons may invalidate the lien, other than the payment in full to the

claimant of the commission or compensation to which the lien relates. ✓

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


LRB-2228/P3dn  
RPN:nwn:ph

Date

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

I made numerous changes that were not suggested, for example, to change all of the places where "notice of lien" is used in section 779.32, to "lien". ✓

You suggested adding the word "fee" in a couple of places, but that term is not used in the section. The term "compensation" is used in addition to "commission," so I used it instead of "fees". ✓



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

Should there be a delayed effective date to give time for people to understand the change? Should there be an initial applicability, to <sup>first</sup> apply to commissions or compensation earned on the effective date of the bill? ✓

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

LRB-2228/P3dn  
RPN:nwn:rs

May 26, 2009

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

I made numerous changes that were not suggested, for example, to change all of the places where "notice of lien" is used in section 779.32, to "lien".

You suggested adding the word "fee" in a couple of places, but that term is not used in the section. The term "compensation" is used in addition to "commission," so I used it instead of "fees".

Should there be a delayed effective date to give time for people to understand the change?

Should there be an initial applicability, to first apply to commissions or compensation earned on the effective date of the bill?

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



**Nelson, Robert P.**

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**From:** Hudzinski, Nicole  
**Sent:** Thursday, September 03, 2009 5:01 PM  
**To:** Nelson, Robert P.  
**Cc:** Kulig, Steven  
**Subject:** LRB 2228

Bob, please see below for answers to your latest questions regarding LRB 2228/P3.

I will be departing for maternity leave any day now, so please call Steven Kulig in our office if you have any questions.

Thanks,  
Nicole

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**From:** Larson, Tom [mailto:tlarson@wra.org]  
**Sent:** Friday, August 28, 2009 4:38 PM  
**To:** Hudzinski, Nicole  
**Subject:** RE: commercial liens

Nicole,

Yes. We are ready to roll.

As to the drafters two questions, we would prefer the effective date of the law to be the effective date of the bill. ✓ Because this law only applied to parties in a contract, the parties would be subject to the new requirements only if their contracts incorporated the new changes. As a result, there is no reason to delay the effective date of the law to educate the public.

As to the initial applicability, we would prefer the changes to apply to commission or compensation earned on the effective date of the bill, as the drafter suggested.

The other changes suggested by the drafter are fine. ✓

Thank you very much!!!!

Best of luck with the new bambino!

Tom

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**From:** Hudzinski, Nicole [mailto:Nicole.Hudzinski@legis.wisconsin.gov]  
**Sent:** Friday, August 28, 2009 2:47 PM  
**To:** Larson, Tom  
**Subject:** commercial liens

Hey Tom, just wanted to check in on this. Do you still want to get this back on track? If I remember correctly, you asked your guys for feedback by last Friday. Do you still want to proceed?

Nicole



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

2009 B.C.

SAV

Regen.

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*

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:*

7 SECTION 1. 779.32 (1) (b) 1. of the statutes is amended to read:

8 779.32 (1) (b) 1. Real property containing that consists only of dwelling units  
9 used solely for residential purposes and contains 8 or fewer dwelling units.

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

1           779.32 (1) (d) "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 3.** <sup>✓</sup>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.

10          **SECTION 4.** <sup>✓</sup>779.32 (3) (intro.) of the statutes is amended to read:

11          779.32 (3) ~~NOTICE OF INTENT TO CLAIM LIEN.~~ (intro.) A broker has a lien under  
12 sub. (2) (a) ~~or~~, (b), or (c) only if the broker ~~files or records a written notice of intent~~  
13 ~~to claim a lien under this section at the office of the register of deeds for the county~~  
14 ~~in which the commercial real estate is located and delivers a copy of the notice to~~  
15 notifies the person owing the commission or compensation under sub. (2) (a) ~~or~~, (b).  
16 ~~A broker has a lien under sub. (2) (c) only if the broker provides a written notice of~~  
17 ~~intent to claim a lien under this section to the person owing the compensation under~~  
18 ~~sub. (2) (c), or (c) in writing of the authority to claim a lien under this section. All~~  
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~~ be included in the commercial real estate listing contract, commercial  
23 real estate buyer agency agreement, tenant representation agreement, or written  
24 agreement for the lease or management of commercial real estate. All notices

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

3 **SECTION 5.** <sup>✓</sup> 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.** <sup>✓</sup> 779.32 (3) (a), (b) and (c) of the statutes are repealed.

9 **SECTION 7.** <sup>✓</sup> 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.** <sup>✓</sup> 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~~, agreement, or tenant representation agreement, is located.

19 **SECTION 9.** <sup>✓</sup> 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.** <sup>✓</sup> 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.** <sup>✓</sup> 779.32 (4) (c) of the statutes is amended to read:

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.** <sup>✓</sup>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.** <sup>✓</sup>779.32 (4m) of the statutes is amended to read:

11          779.32 (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.** <sup>✓</sup>779.32 (8) (a) 1. of the statutes is amended to read:

19          779.32 (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.** <sup>✓</sup>779.32 (8) (a) 2. of the statutes is amended to read:

22          779.32 (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

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.** <sup>✓</sup> 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.** <sup>✓</sup> 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.** <sup>✓</sup> 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.** <sup>✓</sup> 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.** <sup>✓</sup> 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

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

(END)

ins 6-2:

2009-2010 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-2228/lins  
RPN:nwn:rs

1

ins. anl:

tenant representation agreements

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 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 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 lease or management agreement.  
tenant representation agreements,

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, and agreement 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. agreement

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 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 include the information included in the lien document, but removes the indexing requirements. satisfaction of a



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.

1

2

ins. 6-2:

3

**SECTION 1. 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.

**Nelson, Robert P.**

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**From:** Kulig, Steven  
**Sent:** Thursday, December 10, 2009 11:13 AM  
**To:** Nelson, Robert P.  
**Subject:** Updated Commercial Lien Language  
**Attachments:** Commercial Lien Law 3.pdf

Hi Robert,

Attached are changes to LRB 2228/1. Can you please redraft according to the changes?

Thanks,

Steven Kulig  
Office of State Senator Jim Sullivan  
State Capitol Room 15 South  
PO Box 7882  
Madison, WI 53707-7882  
608-266-2512

**Nelson, Robert P.**

---

**From:** Kulig, Steven  
**Sent:** Friday, December 11, 2009 3:52 PM  
**To:** Nelson, Robert P.  
**Subject:** FW: Updated Commercial Lien Language

Thanks for the feedback. I will have Mr. Tom Larson of the Wisconsin Realtors Association get back to you regarding the draft. You have my permission to discuss the changes with him.

Steven

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**From:** Nelson, Robert P.  
**Sent:** Friday, December 11, 2009 3:14 PM  
**To:** Kulig, Steven  
**Subject:** RE: Updated Commercial Lien Language

222P

I have started to read the attachment that was sent but I am having a hard time determining from that draft what is changed from current law because they drafted it as clean text, with no striking of current law they want deleted and no underscoring of what they want added to current law. Whoever prepared this draft made it very difficult to follow. For example, there is a s. 779.32 (2) (m) that makes reference to sub. (2) (a), (b), or (c). Is that really suppose to be s. 779.32 (2m)? The same question for the new s. 779.32 (2) (q); is it suppose to be s. 779.32 (2q)? S. 779.32 (3) is totally different than current s. 779.32 (3) and is not what is in -2228/1.

It appears that you want me to scrap the current proposal in -2228/1 and start over with a new draft. If so, I will create a new drafting record and request sheet.

Could you ask the person that drafted the attached language to highlight what is changed in current law, i.e. strike through what they want deleted from current law, underscore what they want amended in current law, and create what they want added as new provisions.

Thanks,

Bob N

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**From:** Kulig, Steven  
**Sent:** Thursday, December 10, 2009 11:13 AM  
**To:** Nelson, Robert P.  
**Subject:** Updated Commercial Lien Language

Hi Robert,

Attached are changes to LRB 2228/1. Can you please redraft according to the changes?

Thanks,

Steven Kulig  
Office of State Senator Jim Sullivan  
State Capitol Room 15 South  
PO Box 7882  
Madison, WI 53707-7882  
608-266-2512

12/14/2009



## 2009 BILL

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.

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### *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.

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***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.

**BILL**

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

**BILL****SECTION 4**

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) 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) (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) (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)

$$\begin{array}{r} \text{\$} \\ 13 \\ \hline 40 \overline{) 500} \\ \underline{40} \\ 10 \end{array}$$

Rep. Richard

~~4028~~

02-2228

Please  
jacket

per RPN