

## 2009 DRAFTING REQUEST

### Bill

Received: **12/18/2009**

Received By: **rnelson2**

Wanted: **As time permits**

Identical to LRB:

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

By/Representing: **Steven**

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:

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#### Pre Topic:

No specific pre topic given

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#### Topic:

Commercial broker liens

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#### Instructions:

See attached

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#### 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 12/18/2009	jdyer 01/04/2010	phenry 01/05/2010	_____	mbarman 01/05/2010		
/P2	rnelson2 01/14/2010	jdyer 01/14/2010	jfrantze 01/14/2010	_____	lparisi 01/14/2010		
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/P4	rnelson2 01/28/2010	jdyer 01/28/2010	rschluet 01/28/2010	_____	cduerst 01/28/2010		
/1	rnelson2 02/03/2010	jdyer 02/04/2010	phenry 02/04/2010	_____	sbasford 02/04/2010		
/2	rnelson2 02/05/2010	bkraft 02/05/2010	phenry 02/05/2010	_____	cduerst 02/05/2010	lparisi 02/24/2010	

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FE Sent For:

*JP*  
1/17  
*RS/ph*  
1/14  
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/?	rnelson2	P1 1/4 JLD ***NOTES	11/4 Ph	11/4 Ph			
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FE Sent For: - KJL / MD  
<END>

**Nelson, Robert P.**

---

**From:** Kulig, Steven  
**Sent:** Thursday, December 17, 2009 3:23 PM  
**To:** Nelson, Robert P.  
**Subject:** FW: Updated Commercial Lien Language  
**Attachments:** Commercial Lien Law 3a.pdf

Hello Bob,

Attached is a document explaining the changes to current law for the commercial lien law draft LRB 2228. Let me know if you still have concerns.

Steven

---

**From:** Larson, Tom [mailto:tlarson@wra.org]  
**Sent:** Thursday, December 17, 2009 3:19 PM  
**To:** Kulig, Steven  
**Subject:** RE: Updated Commercial Lien Language

Steven,

Here is a draft showing changes to current law. Let me know if you need anything else. Thanks.

Tom

---

**From:** Kulig, Steven [mailto:Steven.Kulig@legis.wisconsin.gov]  
**Sent:** Friday, December 11, 2009 3:54 PM  
**To:** Larson, Tom  
**Subject:** FW: Updated Commercial Lien Language

Hello Tom,

Could you address the concerns that the drafter has below? I gave the drafter Robert Nelson to discuss the changes with you. His number is 608-267-7511.

Steven

---

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

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.

12/17/2009

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

---

**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

**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 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 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.

(2)(m) - A broker has a lien under sub. (2) (a), (b) or (c) only if the broker notifies the person owing the commission or compensation under sub (2) (a), (b) or (c) in

(2 m)

(1)



writing of the authority to claim a lien under this section. All notices under this subsection shall be included in the commercial real estate listing contract, commercial real estate buyer agency agreement, tenant representation agreement, or written agreement for the lease or management of commercial real estate. All notices required under this subsection shall be substantially in the following form:

(2)(q) (form) of the statutes is created to read:

779.32 (2)(q) (form) NOTICE: Broker has the authority under section 779.32 of the Wisconsin Statutes, to file a broker lien for commissions or compensation 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.

(3) Notice of interest. A broker has a lien under sub. (2) (a), (b) only if the broker files or records a written notice of interest under this section at the office of the register of deeds for the county in which the commercial real estate is located. All notices required under this subsection shall contain the name of each party to the agreement under which the interest is claimed, the date that the agreement was entered into and a brief description of the commercial real estate which is subject to the lien rights. 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.

(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), 30 days after 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), 30 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

- Deleted: intent to claim
- Deleted: lien
- Deleted: rights
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- Deleted: intent to claim a
- Deleted: lien rights
- Deleted: and delivers a copy of the notice to the person owing the commission under sub. (2) (a) or (b)
- Deleted: A broker has a lien under sub. (2) (c) only if the broker provides a written notice of
- Deleted: intent to claim a
- Deleted: lien rights under this section to the person owing the compensation under sub. (2) (c).
- Deleted: lien
- Deleted: right
- Deleted: on which
- Deleted: is intended to be claimed
- Deleted: (c) In the case of a lien under sub. (2) (c), before the date that the written agreement for the lease or management of commercial real estate is entered into.¶
- Deleted: lien
- Deleted: prior to
- Deleted: 9

(2)

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. 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

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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 interested 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) 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.

(c) 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.

(4)

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 and notice of lien rights. 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). A notice of lien rights expires and is extinguished if a lien under this section is not filed within 2 years after the recording of the notice of lien rights. A notice of lien rights may be terminated by the recording of a termination notice. The broker shall execute and deliver a termination notice if the contract under which its lien rights were created expires or is terminated.

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↑ jld

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

*[Handwritten signature]*

4

*Gen*

1

**AN ACT ...; relating to: commercial real estate liens.**

*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<sup>✓</sup> (2m) of the statutes is created to read:

3

779.32 (2m) NOTICE OF LIEN RIGHTS. (a) A broker has a lien under sub. (2) only

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if the broker notifies the person who owes the commission or compensation described

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in sub. (2) (a), (b), or (c) in writing of the right to claim a lien under this section. A

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broker shall include the notice required under this subsection in the commercial real

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estate listing contract, commercial real estate buyer agreement, tenant

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representation agreement, or written agreement for the lease or management of

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commercial real estate.

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(b) The notice required under this subsection shall be in substantially the

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following form:

1 NOTICE: A broker has the authority under section 779.32<sup>✓</sup> of the<sup>✓</sup> statutes to file  
 2 a broker lien for commissions or compensation earned but not paid when due against  
 3 the commercial real estate, or the interest in the commercial real estate, that is the  
 4 subject of this agreement.<sup>✓</sup>

\*\*\*\*NOTE: The term "tenant representation agreement" is used in this subsection, but is not mentioned in sub. (2) (a), (b), or (c).<sup>✓</sup>

3 } LRS - Please fix font size

5  
 6 SECTION 2. 779.32 (3) (title) and (intro.)<sup>✓</sup> of the statutes is amended to read:

7 779.32 (3) NOTICE OF INTENT TO CLAIM LIEN INTEREST<sup>✓</sup> ~~IN~~ <sup>(intro.)</sup> In addition to the  
 8 requirements of sub. (2m), to have a lien, a broker has a lien under sub. (2) (a) or (b)  
 9 ~~only~~ if the broker files or records a written notice of intent to claim a lien interest  
 10 under this section at the office of the register of deeds for the county in which the  
 11 commercial real estate is located<sup>plain</sup> and delivers a copy of the notice to the person owing  
 12 the commission under sub. (2) (a) or (b). A broker has a lien under sub. (2) (c) only  
 13 if the broker provides a written notice of intent to claim a lien under this section to  
 14 the person owing the compensation under sub. (2) (c). All notices<sup>✓</sup>. A notice required  
 15 under this subsection shall contain the name of each party to the agreement under  
 16 which the lien interest<sup>✓</sup> is claimed, the date that the agreement was entered into and  
 17 a brief description of the commercial real estate on which the lien is intended to be  
 18 ~~claimed that is subject to the lien rights~~ <sup>move</sup> All notices<sup>score</sup> A notice required under this  
 19 subsection shall be provided within the following time periods:

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

LRS - Fix font size →

**NOT** Subsection (2m) says that a broker only has a lien if the new notice created in sub. (2m) is sent, but sub. (3) says the broker only has a lien if the provisions in sub. (3) are complied with. Those statements are inconsistent as written. Instead, language, such as ~~saying~~, "In addition to the requirements of sub. (2m), to have a lien, a broker..." is needed in sub. (3).

\*\*\*\*NOTE: This language removes any reference to a lien under sub. (2) (c). OK?

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SECTION 3. 779.32 (3) (c) of the statutes is repealed.

SECTION 4. 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~~ 30 days after 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.

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

SECTION 5. 779.32 (4) (a) 2. (intro.) of the statutes is amended to read:

779.32 (4) (a) 2. (intro.) In the case of a lien under sub. (2) (c), ~~90~~ 30 days after the later of the following:

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

\*\*\*\*NOTE: The term "tenant representation agreement" is not mentioned in sub. (2) (a), (b), or (c), so is that a problem for perfection of a lien in this subsection under that type of agreement?

3 LRS - fix for size

SECTION 6. 779.32 (9) of the statutes is amended to read:

779.32 (9) EXTINGUISHMENT OF LIEN AND NOTICE OF LIEN RIGHTS. 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). A notice of lien rights expires and is extinguished if a notice of lien is not filed under sub. (4) within 2 years after the recording of the notice of lien rights. A notice of lien rights may be terminated by the recording of a termination notice. The broker shall execute and deliver a termination notice if the contract or agreement under which the lien right was created expires or is terminated.

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

21

(END)

INSERT A (move to next page)

\*\*\*\*NOTE: I don't know where the requirement is that the notice of lien rights be recorded. Where is it recorded? I do not know and can find no reference to a termination

notice in this section. ✓ What is a termination notice and where is it recorded? What happens if the broker fails to execute and deliver a termination notice as required in this new subsection language? ✓

INSERT  
A (from  
previous page) →

d-note  
↓



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

LRB-4029/B1dn

RPN  
jld

date



I created a new LRB number because this draft is much different than the earlier proposal in LRB-2228.✓



I added notes imbedded in the draft to ask questions and raise issues about the draft.✓

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-4029/P1dn  
RPN:jld:ph

January 4, 2010

I created a new LRB number because this draft is much different than the earlier proposal in LRB-2228.

I added notes imbedded in the draft to ask questions and raise issues about the draft.

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

**BILL**

**SECTION 1**

1 grantor, the grantee, the person who drafted the conveyance that is the subject of the  
 2 correction instrument, or the person who acted as the settlement agent in the  
 3 transaction that is the subject of the conveyance, and shall recite the basis for the  
 4 person's personal knowledge. A correction instrument that was executed before the  
 5 effective date of this subdivision .... [LRB inserts date], is not rendered ineffective by  
 6 reason of the instrument's failure to recite that the maker had the knowledge or  
 7 capacity required under this subdivision.

8 2. A correction instrument that makes the correction under sub. (1) <sup>g</sup>(d) or (e)  
 9 shall be signed by the ~~removed or~~ consenting party, or an heir, successor, or assignee  
 10 of the party.

11 3. A correction instrument that adds, removes, or replaces a divisible parcel in  
 12 a conveyance shall be signed by the following persons:

13 a. If the correction instrument supplies a lot, block, unit, or building number  
 14 or letter that was omitted from a conveyance, by any party identified in subd. 1.

15 b. If a parcel is being added to a conveyance that also correctly conveys other  
 16 land, only by the grantor.

17 c. If a parcel is being removed from a conveyance that also correctly conveys  
 18 other land, only by the grantee.

19 d. If a lot or unit number or letter is being corrected and the lot or unit  
 20 incorrectly recited in the conveyance is also owned by the grantor, only by the  
 21 grantee.

22 e. If a lot, block, unit, or building number or letter is being corrected and the  
 23 lot or unit incorrectly recited in the conveyance is not also owned by the grantor, by  
 24 any party identified in subd. 1.

↓ (c) The party who ~~executes~~ records the affidavit of correction shall send notice of that fact to all parties to a conveyance at their last known address

**BILL**

1 (b) The addition, correction, or clarification of information other than a legal  
2 description, including any of the following information:

3 1. A party's name, including the spelling of the name; a first or middle name  
4 or initial; a name suffix, such as senior or junior; alternate names by which the party  
5 is known; or a description of an entity as a corporation, company, or similar identifier.

6 2. A party's marital status.

7 3. The date on which the conveyance was executed.

8 4. Whether the property is a homestead.

9 5. The tax parcel number.

10 6. The identity of the drafter.

11 7. The recording data for an instrument referenced in the conveyance.

12 8. The nature and purpose of the conveyance.

13 9. The title of the conveyance.

14 10. Facts relating to the acknowledgment or authentication.

15 (c) The addition of an acknowledgment or authentication.

16 (d) The removal of an owner or other party with an interest in the real property.

17 (e) The addition of a mortgagee's consent or subordination.

18 (2) EXECUTION REQUIREMENTS. (a) A correction instrument shall be  
19 acknowledged or authenticated in accordance with s. 706.06 or 706.07. It shall recite  
20 the document number of the conveyance, the names of the grantor and grantee, and,  
21 if given on the conveyance, the volume and page numbers.

22 (b) 1. Except as otherwise provided in this paragraph, a correction instrument  
23 that is executed after the effective date of this subdivision .... [LRB inserts date], may  
24 be executed by a person having personal knowledge of the circumstances of the  
25 conveyance and of the facts recited in the correction instrument, including the

*that party's interest in real property;*

*under a deed of disclaimer by a grantee*

*that is the subject of the deed*

1/13

730 SW  
Capitol

Tom Larson

Pete Christiansen

Steve - Sullivan's office

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Telephone Bush Nielsen - Reinhardt/Bur  
nielsen 13

Looking @ - 0988/1 to be merged  
w/ - 8 4029

Gave instructions for charges  
in 0988 and 4029 - want  
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1104  
State of Wisconsin  
2009 - 2010 LEGISLATURE

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LRB-4029/P1

RPN:jld:ph

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LPTA

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

D-N

regen.

X

1 AN ACT *to repeal* 779.32 (3) (c); *to amend* 779.32 (3) (intro.), 779.32 (4) (a) 1.,  
2 779.32 (4) (a) 2. (intro.) and 779.32 (9); and *to create* 779.32 (2m) of the  
3 statutes; **relating to:** commercial real estate liens.

full  
**Analysis by the Legislative Reference Bureau**

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

ins and ✓ →

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

✓ INS 1-4a  
✓ ins 1-4b →

4 SECTION 1. 779.32 (2m) of the statutes is created to read:

5 779.32 (2m) NOTICE OF LIEN RIGHTS. (a) A broker has a lien under sub. (2) only  
6 if the broker notifies the person who owes the commission or compensation described  
7 in sub. (2) (a), (b), or (c) in writing of the right to claim a lien under this section. A  
8 broker shall include the notice required under this subsection in the commercial real  
9 estate listing contract, commercial real estate buyer agreement, tenant  
10 representation agreement, or written agreement for the lease or management of  
11 commercial real estate.

1 (b) The notice required under this subsection shall be in substantially the  
2 following form:

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

\*\*\*\*NOTE: The term "tenant representation agreement" is used in this subsection,  
but is not mentioned in sub. (2) (a), (b), or (c).

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

8 779.32 (3) NOTICE OF ~~INTENT TO CLAIM LIEN INTEREST~~ (intro.) ~~A~~ In addition to  
9 the requirements of sub. (2m), to have a lien, a broker has a lien under sub. (2) (a)  
10 or (b) only if the broker files or records a written notice of intent to claim a lien  
11 interest under this section at the office of the register of deeds for the county in which  
12 the commercial real estate is located and delivers a copy of the notice to the person  
13 owing the commission under sub. (2) (a) or (b). A broker has a lien under sub. (2) (c)  
14 only if the broker provides a written notice of intent to claim a lien under this section  
15 to the person owing the compensation under sub. (2) (c). All notices. A notice  
16 required under this subsection shall contain the name of each party to the agreement  
17 under which the lien interest is claimed, the date that the agreement was entered  
18 into and a brief description of the commercial real estate on which the lien is intended  
19 to be claimed. All notices that is subject to the lien rights. A notice required under  
20 this subsection shall be provided within the following time periods:

\*\*\*\*NOTE: This language removes any reference to a lien under sub. (2) (c). OK?  
Subsection (2m) says that a broker only has a lien if the new notice created in sub. (2m)  
is sent, but sub. (3) says the broker only has a lien if the provisions in sub. (3) are complied  
with. Those statements are inconsistent as written. Instead, language, such as, "In  
addition to the requirements of sub. (2m), to have a lien, a broker..." is needed in sub. (3).

21 SECTION 3. 779.32 (3) (c) of the statutes is repealed.

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

2 779.32 (4) (a) 1. In the case of a lien under sub. (2) (a) or (b), ~~3 days prior to 30~~  
3 days after the date that the conveyance documents are recorded with the register of  
4 deeds in the county where the real property, that is the subject of the listing contract  
5 or buyer agency contract, is located.

6 SECTION 5. 779.32 (4) (a) 2. (intro.) of the statutes is amended to read:

7 779.32 (4) (a) 2. (intro.) In the case of a lien under sub. (2) (c), ~~90~~ 30 days after  
8 the later of the following:

\*\*\*\*NOTE: The term "tenant representation agreement" is not mentioned in sub. (2)  
(a), (b), or (c), so is that a problem for perfection of a lien in this subsection under that type  
of agreement?

9 SECTION 6. 779.32 (9) of the statutes is amended to read:

10 779.32 (9) EXTINGUISHMENT OF LIEN AND NOTICE OF LIEN RIGHTS. A lien under this  
11 section is extinguished if an action to enforce the lien is not commenced within 2  
12 years after the lien is perfected under sub. (4) (a). A notice of lien rights expires and  
13 is extinguished if a notice of lien is not filed under sub. (4) within 2 years after the  
14 recording of the notice of lien rights. A notice of lien rights may be ~~terminated~~ <sup>rescinded</sup> by the  
15 recording of a ~~termination~~ notice. The broker shall execute and deliver a termination  
16 notice if the contract or agreement under which the lien right was created expires or  
17 is terminated.

\*\*\*\*NOTE: I don't know where the requirement is that the notice of lien rights be  
recorded. Where is it recorded? I do not know and can find no reference to a termination  
notice in this section. What is a termination notice and where is it recorded? What  
happens if the broker fails to execute and deliver a termination notice as required in this  
new subsection language?

(END)

with the register of deeds in the county  
where the ~~real property~~ is located,  
indicating that the broker is no  
longer claiming a lien under this section.

d-note

115-  
3-18a 18  
3-18b

SCORE →





2009 BILL

LPS-  
INSERTS  
OUT OF  
ORDER

4

1 AN ACT *to amend* 840.11 (1) and 840.11 (2); and *to create* 706.085 of the statutes;  
2 **relating to:** recording correction instruments and recording a lis pendens upon  
3 application to lay out, widen, vacate, or extend certain public ways.

*Analysis by the Legislative Reference Bureau*

**Correction instruments**

Current law provides a procedure whereby a court may, on satisfactory proof, make an order correcting the description of real property in a recorded instrument conveying the property. Current law also provides that correction instruments may be recorded to make certain specified corrections to recorded plats or certified survey maps. Although correcting an error in a previously recorded instrument conveying real property by recording an affidavit making the correction but without court action has been a common practice for many years, the Wisconsin Court of Appeals determined in *Smiljanic v. Niedermeyer*, 2007 WI App 182, 737 N.W.2d 436, that there is no statutory authority under current law for this method of correction.

This bill provides that an instrument (correction instrument) correcting previously recorded instruments conveying real property may be executed, generally, by a person with personal knowledge of the facts stated in the instrument and recorded in the office of the register of deeds of the county in which the previously recorded instrument is recorded. A correction instrument may correct a legal description; add to, correct, or clarify other information, such as names, dates, and marital status; add an acknowledgment or authentication; remove an owner or other party with an interest in the property; or add the consent or subordination of a

ins  
and

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g remove an owner or other party with an interest in the property;

INS ANL  
CONT

**BILL**

mortgagee. The bill specifies what information a correction instrument must include and provides that the record of the correction instrument is prima facie evidence of the facts stated in the correction instrument; is presumed to be true, subject to rebuttal; and constitutes record notice affecting the property's chain of title to any purchaser of the property. The bill also validates correction instruments that were recorded before the effective date of the bill.

***Lis pendens***

Current law provides that any person who applies to a court or municipal governing body for laying out, widening, vacating, or extending a street, alley, or other specified public place must file a notice of pendency of the application and that failure to comply renders all proceedings based on the application void. The bill instead requires the person making the application to submit a lis pendens to the register of deeds for filing or recording and removes the provision that failure to comply renders all proceedings based on the application void.

Current law provides that any final order or resolution based on the application has no effect and is not notice unless a certified copy of the order or resolution contains a full and accurate description of the property and is recorded in the office of the register of deeds. The bill provides that the final order must instead contain a legal description of the property and is not notice unless it is recorded in the office of the register of deeds. The bill also removes a provision in current law that a resolution or order that affects land but for which no application was made has no effect and is not notice unless it is recorded.

(end ins anl)

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

- 1           **SECTION 1.** 706.085<sup>x</sup> of the statutes is created to read:
- 2           **706.085 Correction instruments. (1)** ENTITLED TO BE RECORDED; PURPOSES.
- 3           An instrument correcting a previously recorded conveyance shall be entitled to
- 4           record in accordance with s. 706.05 in the office of the register of deeds of the county
- 5           in which the conveyance is recorded and shall include one or more of the following:
- 6           (a) The correction of a legal description, including a distance; angle; direction;
- 7           bearing; chord; lot, block, unit, or building number or letter; appurtenant easement;
- 8           section number; township name or number; municipality, county, or state name;
- 9           range number or meridian; certified survey map number; or subdivision or
- 10          condominium name.

ins  
anl

§§§§

ins  
1-4a



INS 1-4a  
cont

**BILL**

1 (b) The addition, correction, or clarification of information other than a legal  
2 description, including any of the following information:

3 1. A party's name, including the spelling of the name; a first or middle name  
4 or initial; a name suffix, such as senior or junior; alternate names by which the party  
5 is known; or a description of an entity as a corporation, company, or similar identifier.

6 2. A party's marital status.

7 3. The date on which the conveyance was executed.

8 4. Whether the property is a homestead.

9 5. The tax parcel number.

10 6. The identity of the drafter.

11 7. The recording data for an instrument referenced in the conveyance.

12 8. The nature and purpose of the conveyance.

13 9. The title of the conveyance.

14 10. Facts relating to the acknowledgment or authentication.

15 (c) The addition of an acknowledgment or authentication.

16 (d) The ~~removal of an owner or other party with an~~ interest in the real property.

17 (e) The addition of a mortgagee's consent or subordination.

18 (2) EXECUTION REQUIREMENTS. (a) A correction instrument shall be  
19 acknowledged or authenticated in accordance with s. 706.06 or 706.07. It shall recite  
20 the document number of the conveyance, the names of the grantor and grantee, and,  
21 if given on the conveyance, the volume and page numbers.

22 (b) 1. Except as otherwise provided in this paragraph, a correction instrument  
23 that is executed after the effective date of this subdivision .... [LRB inserts date], may  
24 be executed by a person having personal knowledge of the circumstances of the  
25 conveyance and of the facts recited in the correction instrument, including the

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INS  
1-4a

✓  
disclaimer by a  
grantee under a deed  
of that party's

↓

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✓  
that is the subject  
of the deed

INS 1-4a  
cont

**BILL**

1 grantor, the grantee, the person who drafted the conveyance that is the subject of the  
2 correction instrument, or the person who acted as the settlement agent in the  
3 transaction that is the subject of the conveyance, and shall recite the basis for the  
4 person's personal knowledge. A correction instrument that was executed before the  
5 effective date of this subdivision .... [LRB inserts date], is not rendered ineffective by  
6 reason of the instrument's failure to recite that the maker had the knowledge or  
7 capacity required under this subdivision.

8 2. A correction instrument that makes the correction under sub. (1) (d) or (e)  
9 shall be signed by the removed or consenting party, or an heir, successor, or assignee  
10 of the party.

11 3. A correction instrument that adds, removes, or replaces a divisible parcel in  
12 a conveyance shall be signed by the following persons:

13 a. If the correction instrument supplies a lot, block, unit, or building number  
14 or letter that was omitted from a conveyance, by any party identified in subd. 1.

15 b. If a parcel is being added to a conveyance that also correctly conveys other  
16 land, only by the grantor.

17 c. If a parcel is being removed from a conveyance that also correctly conveys  
18 other land, only by the grantee.

19 d. If a lot or unit number or letter is being corrected and the lot or unit  
20 incorrectly recited in the conveyance is also owned by the grantor, only by the  
21 grantee.

22 e. If a lot, block, unit, or building number or letter is being corrected and the  
23 lot or unit incorrectly recited in the conveyance is not also owned by the grantor, by  
24 any party identified in subd. 1.



INS  
1-4a

→ INS 4-24 (to ins. 1-4a) ←

INS 1-4a  
cont

**BILL**

1 (3) EFFECT OF RECORD. All of the following apply to the record of a correction  
2 instrument that complies with this section, or a certified copy of the record:

3 (a) It is prima facie evidence of the facts stated in the instrument; is presumed  
4 to be true, subject to rebuttal; and constitutes notice to a purchaser under s. 706.09  
5 of the facts recited in the instrument.

6 (b) It may be asserted by a purchaser for a valuable consideration against any  
7 person making an adverse or inconsistent claim under s. 706.09 (1) (i).

8 (4) PREVIOUSLY RECORDED INSTRUMENTS ARE VALID. Any instrument recorded  
9 before the effective date of this subsection .... [LRB inserts date], that purports to  
10 correct a previously recorded conveyance and that would have been a valid correction  
11 instrument under this section had this section been in effect when the instrument  
12 was recorded is hereby validated.

end of  
ins 1-4a  
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13 SECTION 2. 840.11 (1) of the statutes is amended to read:

14 840.11 (1) Every person who makes an application to any court, county board,  
15 common council, or village or town board for laying out, widening, vacating, or  
16 extending any street, alley, water channel, park, highway, or other public place shall,  
17 at or prior to the time of filing the same with the proper officer, ~~file a notice of the~~  
18 ~~pendency of such application present for recording in the office of the register of deeds~~  
19 ~~of each county in which the affected land is situated a lis pendens, as provided in s.~~  
20 ~~840.10, containing the person's name and a brief statement of the object thereof and~~  
21 ~~a map and description of the land to be affected thereby in the office of the register~~  
22 ~~of deeds of each county in which any such land is situated. Neglect to comply with~~  
23 ~~these provisions shall render all proceedings based upon such application void, but~~  
24 ~~no order vacating, or proceedings for the vacation of, any street, alley, water channel,~~  
25 ~~park, highway or other public place, made or had before May 25, 1905, shall be void~~

ins  
3-18a

↓

↓

INS 3-18a  
Cont

1 ~~solely by reason of the failure to file such notice of the pendency of such application,~~  
2 ~~map and description.~~

3 SECTION 3. 840.11 (2) of the statutes is amended to read:

4 840.11 (2) No final order, judgment or decree or final resolution or order taking  
5 or affecting such land, based upon any application therefor, shall ~~have any effect or~~  
6 be notice to any subsequent purchaser or encumbrancer unless a certified copy  
7 thereof, ~~giving a full and accurate~~ containing a legal description, as defined in s.  
8 706.01 (7r), of the land affected thereby, and accompanied with a map showing the  
9 location thereof, is recorded in the office of the register of deeds of the county in which  
10 the land is situated. ~~A resolution or order made by any such body, whereby any land~~  
11 ~~shall be taken or affected without an application having been made therefor, shall~~  
12 ~~have no effect and shall not be notice to any subsequent purchaser or encumbrancer~~  
13 ~~unless such resolution or order is recorded.~~

14 SECTION 4. Initial applicability.

15 (1) LAYING OUT, VACATING, OR EXTENDING PUBLIC WAYS. ✓

16 (a) *Lis pendens*. The treatment of section 840.11 (1) of the statutes first applies  
17 to applications that are made on the effective date of this paragraph. ✓

18 (b) *Final order or resolutions*. The treatment of section 840.11 (2) of the  
19 statutes, with respect to legal descriptions, first applies to a final order, judgment or  
20 decree or final resolution or order that is recorded on the effective date of this  
21 paragraph.

22 (c) *Resolutions or orders without application*. The treatment of section 840.11  
23 (2) of the statutes, with respect to the effect of and notice provided by resolutions or

ins  
3-18a  
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end of  
1-15

2009 - 2010 Legislature

- 7 -

INS 3-18a  
CONT

LRB-0988/1  
PJK:bjk:md  
SECTION 4

**BILL**

3-18a<sup>1</sup>

orders without an application having been made, first applies to a resolution that is

~~3-18a~~  
2 →

adopted or an order that is made on the effective date of this paragraph.

3

END

2009-2010 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-4029/P2ins  
RPN:jld:ph

1 insert 3-18b:

2 (2) COMMERCIAL REAL ESTATE LIENS. The treatment of sections 779.32 (1) (d),  
3 (2m), (3) (intro.) and (c), (4) (a) 1. and 2. (intro.) and (9) of the statutes first applies  
4 to contracts or agreements entered into on the effective date of this subsection.



2009-2010 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0988/lins  
PJK:.....

ins 4-24 to ins. 1-4a

- 1 (c) A person who executes and records a correction instrument shall send notice
- 2 of that fact by 1st class <sup>✓</sup> mail to all parties to the transaction that was the subject of
- 3 the conveyance at their last <sup>✓</sup> known addresses. ✓

(end ins)

**BILL**

Insert  
1-4b

1           **SECTION 2.** 779.32 (1) (d) <sup>X</sup> of the statutes is created to read:

2           779.32 (1) (d) "Tenant representation agreement" <sup>✓</sup> 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

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

LRB-4029/P2dn  
RPN:jld:ph

date

Do you want a delayed effective date on this bill? ✓

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-4029/P2dn  
RPN:bjk:jf

January 14, 2010

Do you want a delayed effective date on this 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.**

---

**From:** Kulig, Steven  
**Sent:** Friday, January 15, 2010 5:05 PM  
**To:** Nelson, Robert P.  
**Subject:** FW: Commercial lien bill

Hi Bob,

Below are hopefully the final changes to the commercial liens bill, LRB 4029

Thanks,

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

---

**From:** Larson, Tom [mailto:tlarson@wra.org]  
**Sent:** Friday, January 15, 2010 4:47 PM  
**To:** Kulig, Steven  
**Subject:** RE: Commercial lien bill

Steven,

As a follow up to our discuss yesterday about tenant representation agreements, we have a proposed fix. Based upon our conversations with members, the landlord generally agrees to pay the commission owed to the tenant representative as part of the negotiations between the landlord and prospective tenant. In those cases, the landlord has contractually agreed to pay the commission and therefore it makes sense to file the lien on the property upon failure to pay. Accordingly, we suggest adding the language "from the owner or landlord" to Wis. Stat. s. 779.32(2) to cover those situations where the landlord has agreed in writing to pay the broker's commission. (See below.) Let me know your thoughts.

Thanks.

Tom

779.32(2)

**(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:

**(c)** If the broker has earned compensation FROM THE OWNER OR LANDLORD under a written agreement for the lease or management of commercial real estate or a tenant representation agreement, 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.

*current law?*

*?*

*↓*

*↑*

---

**From:** Larson, Tom  
**Sent:** Thursday, January 14, 2010 12:21 PM  
**To:** 'Kulig, Steven'; Nelson, Robert P.  
**Subject:** RE: Commercial lien bill

Guys,

I don't mean to do this again, but as I was preparing the co-sponsorship memo and compared the bill to current law and the first

01/18/2010

FW: Commercial lien bill

draft, I have some other suggested changes:

Under 779.32(2)(b) – add the words "or tenant representation agreement" after "buyer agency agreement (See Section 3 of LRB 2228/1)

Under 779.32(4)(a) – change the word "files" to "records" and delete "notice of" (See Section 3 of LRB 2228/1)

Under 779.32(4)(a)2a – add "tenant representation agreement" after the word "lease"

Under 779.32(4)(a)2b – add "tenant representation agreement" after the word "lease"

Under 779.32(4)(b) – delete the word "notice" (See Section 9 of LRB 2228/1)

Under 779.32(4)(b)(4) – delete the word "notice" and change "filed" to "recorded" (See Section 10 of LRB 2228/1)

Under 779.32(4)(c) – delete the word "notice", change "filing of notice" to "recording of the" (See Section 11 of LRB 2228/1)

Under 779.32(4)(d) – change the word "filed" to "recorded" (See Section 12 of LRB 2228/1)

Under 779.32(4m) – delete the words "notice of" (in 3 places) and change "filing" to "recording" (See Section 13 of LRB 2228/1)

Under 779.32(4)(b) – delete the words "notice of" (See Section 14 of LRB 2228/1)

Add Sections 15-21 of LRB 2228/1

Sorry.

Tom

\*\*\*\*\*  
*Thomas D. Larson - Director of Regulatory and Legislative Affairs*  
 Wisconsin REALTORS Association  
 4801 Forest Run Road Suite 201  
 Madison, WI 53704-7337  
 Phone 608-240-8254  
 Cell 608-212-0066  
 Fax 608-241-2901  
 <<<<http://www.wra.org/>>>>

\*\*\*\*\*  
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**From:** Kulig, Steven [<mailto:Steven.Kulig@legis.wisconsin.gov>]

01/18/2010

FW: Commercial lien bill

**Sent:** Thursday, January 14, 2010 9:25 AM  
**To:** Nelson, Robert P.  
**Cc:** Larson, Tom  
**Subject:** FW: Commercial lien bill

Hi Bob,

Below is one more minor change to the commercial lien bill, LRB 4029. Let me know if you have any questions.

Thanks,

---

**From:** Larson, Tom [mailto:tlarson@wra.org]  
**Sent:** Thursday, January 14, 2010 9:21 AM  
**To:** Kulig, Steven  
**Subject:** FW: Commercial lien bill

Steven,

Sorry about doing this, but I was reviewing the bill AGAIN last night and noticed that we need one minor change. Under current law, a commercial broker has 90 days to file a lien on a property for violation of a property management agreement. For some reason, "90 days" was changed to "30 days" in the bill. I think it was to make the timeline consistent with the liens for sale/purchase contract we are proposing. However, lease transactions are a different animal (much more fluid, less formal), so we would prefer to keep "90 days" as the time to file a lien in such transactions.

LRB - 4029/P1, Section 5, line 7 – Change "30" back to "90"

Let me know if you have questions. Thanks.

Tom

**Nelson, Robert P.**

**To:** Kulig, Steven  
**Cc:** Larson, Tom  
**Subject:** RE: Commercial lien bill

Steve,

I will wait for you to go through these various suggestions for changes and then tell me what you want in a redraft of the bill.

Bob N.

**From:** Larson, Tom [mailto:tlarson@wra.org]  
**Sent:** Thursday, January 14, 2010 12:21 PM  
**To:** Kulig, Steven; Nelson, Robert P.  
**Subject:** RE: Commercial lien bill

Guys,

I don't mean to do this again, but as I was preparing the co-sponsorship memo and compared the bill to current law and the first draft, I have some other suggested changes:

- Under 779.32(2)(b) – add the words "or tenant representation agreement" after "buyer agency agreement" (See Section 3 of LRB 2228/1) ✓
- Under 779.32(4)(a) – <sup>(Intro)</sup> change the word "files" to "records" and delete "notice of" (See Section 3 of LRB 2228/1) ✓ D? Sec 7
- Under 779.32(4)(a)2a – add "tenant representation agreement" after the word "lease" ✓
- Under 779.32(4)(a)2b – add "tenant representation agreement" after the word "lease" ✓
- Under 779.32(4)(b) – delete the word "notice" (See Section 9 of LRB 2228/1) ✓
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- Under 779.32(4m) – delete the words "notice of" (in 3 places) and change "filing" to "recording" (See Section 13 of LRB 2228/1) ✓
- Under 779.32(4)(b) – delete the words "notice of" (See Section 14 of LRB 2228/1) ✓
- Add Sections 15-21 of LRB 2228/1 ✓

Sorry.

Tom

\*\*\*\*\*

*Thomas D. Larson - Director of Regulatory and Legislative Affairs*  
Wisconsin REALTORS Association  
4801 Forest Run Road Suite 201  
Madison, WI 53704-7337  
Phone 608-240-8254

01/14/2010



**Nelson, Robert P.**

---

**From:** Kulig, Steven  
**Sent:** Thursday, January 14, 2010 4:39 PM  
**To:** Nelson, Robert P.  
**Subject:** Newest Changes to LRB 4029

Hi Bob,

All the changes that Tom sent you should be implemented into the draft. There is likely one more change coming. So I don't know if you want to wait for the change or start working on the stuff Tom sent you. Let me know if you have any additional questions.

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

Cell 608-212-0066

Fax 608-241-2901

<<<<http://www.wra.org/>>>>

\*\*\*\*\*

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**Cc:** Larson, Tom  
**Subject:** FW: Commercial lien bill

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**Sent:** Thursday, January 14, 2010 9:21 AM  
**To:** Kulig, Steven  
**Subject:** FW: Commercial lien bill

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LRB - 4029/P1, Section 5, line 7 -- Change "30" back to "90"

Let me know if you have questions. Thanks.

Tom



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-2228/2  
RPN:nwn:md

## 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.

---

### *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

**BILL**

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.

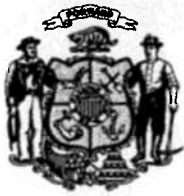
Under current law, the real estate broker's satisfaction of a lien must be filed with the register of deeds and the register of deeds is required to index the satisfaction under the name of the owner of the real estate and, if the register of deeds maintains a tract index, under the legal description 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.



1/16  
State of Wisconsin  
2009 - 2010 LEGISLATURE

3  
LRB-4029/P2

RPN&PJK:jld&bjk:jf

Wanted 4/18 e 1/19

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

J

repeal

1 AN ACT *to repeal* 779.32 (3) (c); *to amend* 779.32 (3) (intro.), 779.32 (4) (a) 1.,  
2 779.32 (4) (a) 2. (intro.), 779.32 (9), 840.11 (1) and 840.11 (2); and *to create*  
3 706.085, 779.32 (1) (d) and 779.32 (2m) of the statutes; **relating to:** commercial  
4 real estate liens. ✓

***Analysis by the Legislative Reference Bureau***

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

***Correction instruments***

Current law provides a procedure whereby a court may, on satisfactory proof, make an order correcting the description of real property in a recorded instrument conveying the property. Current law also provides that correction instruments may be recorded to make certain specified corrections to recorded plats or certified survey maps. Although correcting an error in a previously recorded instrument conveying real property by recording an affidavit making the correction but without court action has been a common practice for many years, the Wisconsin Court of Appeals determined in *Smiljanic v. Niedermeyer*, 2007 WI App 182, 737 N.W.2d 436, that there is no statutory authority under current law for this method of correction.

This bill provides that an instrument (correction instrument) correcting previously recorded instruments conveying real property may be executed, generally, by a person with personal knowledge of the facts stated in the instrument and recorded in the office of the register of deeds of the county in which the previously recorded instrument is recorded. A correction instrument may correct a legal

description; add to, correct, or clarify other information, such as names, dates, and marital status; add an acknowledgment or authentication; or add the consent or subordination of a mortgagee. The bill specifies what information a correction instrument must include and provides that the record of the correction instrument is prima facie evidence of the facts stated in the correction instrument; is presumed to be true, subject to rebuttal; and constitutes record notice affecting the property's chain of title to any purchaser of the property. The bill also validates correction instruments that were recorded before the effective date of the bill.

### ***Lis pendens***

Current law provides that any person who applies to a court or municipal governing body for laying out, widening, vacating, or extending a street, alley, or other specified public place must file a notice of pendency of the application and that failure to comply renders all proceedings based on the application void. The bill instead requires the person making the application to submit a lis pendens to the register of deeds for filing or recording and removes the provision that failure to comply renders all proceedings based on the application void.

Current law provides that any final order or resolution based on the application has no effect and is not notice unless a certified copy of the order or resolution contains a full and accurate description of the property and is recorded in the office of the register of deeds. The bill provides that the final order must instead contain a legal description of the property and is not notice unless it is recorded in the office of the register of deeds. The bill also removes a provision in current law that a resolution or order that affects land but for which no application was made has no effect and is not notice unless it is recorded.

---

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

- 1           **SECTION 1.** 706.085 of the statutes is created to read:
- 2           **706.085 Correction instruments.** (1) ENTITLED TO BE RECORDED; PURPOSES.
- 3           An instrument correcting a previously recorded conveyance shall be entitled to
- 4           record in accordance with s. 706.05 in the office of the register of deeds of the county
- 5           in which the conveyance is recorded and shall include one or more of the following:
- 6           (a) The correction of a legal description, including a distance; angle; direction;
- 7           bearing; chord; lot, block, unit, or building number or letter; appurtenant easement;
- 8           section number; township name or number; municipality, county, or state name;

1 range number or meridian; certified survey map number; or subdivision or  
2 condominium name.

3 (b) The addition, correction, or clarification of information other than a legal  
4 description, including any of the following information:

5 1. A party's name, including the spelling of the name; a first or middle name  
6 or initial; a name suffix, such as senior or junior; alternate names by which the party  
7 is known; or a description of an entity as a corporation, company, or similar identifier.

8 2. A party's marital status.

9 3. The date on which the conveyance was executed.

10 4. Whether the property is a homestead.

11 5. The tax parcel number.

12 6. The identity of the drafter.

13 7. The recording data for an instrument referenced in the conveyance.

14 8. The nature and purpose of the conveyance.

15 9. The title of the conveyance.

16 10. Facts relating to the acknowledgment or authentication.

17 (c) The addition of an acknowledgment or authentication.

18 (d) The disclaimer by a grantee under a deed of that party's interest in the real  
19 property that is the subject of the deed.

20 (e) The addition of a mortgagee's consent or subordination.

21 **(2) EXECUTION REQUIREMENTS.** (a) A correction instrument shall be  
22 acknowledged or authenticated in accordance with s. 706.06 or 706.07. It shall recite  
23 the document number of the conveyance, the names of the grantor and grantee, and,  
24 if given on the conveyance, the volume and page numbers.

1 (b) 1. Except as otherwise provided in this paragraph, a correction instrument  
2 that is executed after the effective date of this subdivision .... [LRB inserts date], may  
3 be executed by a person having personal knowledge of the circumstances of the  
4 conveyance and of the facts recited in the correction instrument, including the  
5 grantor, the grantee, the person who drafted the conveyance that is the subject of the  
6 correction instrument, or the person who acted as the settlement agent in the  
7 transaction that is the subject of the conveyance, and shall recite the basis for the  
8 person's personal knowledge. A correction instrument that was executed before the  
9 effective date of this subdivision .... [LRB inserts date], is not rendered ineffective by  
10 reason of the instrument's failure to recite that the maker had the knowledge or  
11 capacity required under this subdivision.

12 2. A correction instrument that makes the correction under sub. (1) (e) shall be  
13 signed by the consenting party, or an heir, successor, or assignee of the party.

14 3. A correction instrument that adds, removes, or replaces a divisible parcel in  
15 a conveyance shall be signed by the following persons:

16 a. If the correction instrument supplies a lot, block, unit, or building number  
17 or letter that was omitted from a conveyance, by any party identified in subd. 1.

18 b. If a parcel is being added to a conveyance that also correctly conveys other  
19 land, only by the grantor.

20 c. If a parcel is being removed from a conveyance that also correctly conveys  
21 other land, only by the grantee.

22 d. If a lot or unit number or letter is being corrected and the lot or unit  
23 incorrectly recited in the conveyance is also owned by the grantor, only by the  
24 grantee.



1 e. If a lot, block, unit, or building number or letter is being corrected and the  
2 lot or unit incorrectly recited in the conveyance is not also owned by the grantor, by  
3 any party identified in subd. 1.

4 (c) A person who executes and records a correction instrument shall send notice  
5 of that fact by 1st class mail to all parties to the transaction that was the subject of  
6 the conveyance at their last-known addresses.

7 (3) EFFECT OF RECORD. All of the following apply to the record of a correction  
8 instrument that complies with this section, or a certified copy of the record:

9 (a) It is prima facie evidence of the facts stated in the instrument; is presumed  
10 to be true, subject to rebuttal; and constitutes notice to a purchaser under s. 706.09  
11 of the facts recited in the instrument.

12 (b) It may be asserted by a purchaser for a valuable consideration against any  
13 person making an adverse or inconsistent claim under s. 706.09 (1) (i).

14 (4) PREVIOUSLY RECORDED INSTRUMENTS ARE VALID. Any instrument recorded  
15 before the effective date of this subsection ... [LRB inserts date], that purports to  
16 correct a previously recorded conveyance and that would have been a valid correction  
17 instrument under this section had this section been in effect when the instrument  
18 was recorded is hereby validated.

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

20 779.32 (1) (d) "Tenant representation agreement" means an agreement  
21 between a broker and a person that grants the broker exclusive rights to represent  
22 the person in the lease of commercial real estate.

23 SECTION 3. 779.32 (2m) of the statutes is created to read:

24 779.32 (2m) NOTICE OF LIEN RIGHTS. (a) ~~A broker has a lien under sub. (2) only~~  
25 ~~if the broker notifies the person who owes the commission or compensation described~~  
*To claim*  
*shall notify*

✓  
INSERTS  
5-22-09  
5-22-09  
24  
25  
↑

1 in sub. (2) (a), (b), or (c) in writing of the right to claim a lien under this section. A  
2 broker shall include the notice required under this subsection in the commercial real  
3 estate listing contract, commercial real estate buyer agreement, tenant  
4 representation agreement, or written agreement for the lease or management of  
5 commercial real estate.

6 (b) The notice required under this subsection shall be in substantially the  
7 following form:

8 NOTICE: A broker has the authority under section 779.32 of the Wisconsin  
9 Statutes to file a broker lien for commissions or compensation earned but not paid  
10 when due against the commercial real estate, or the interest in the commercial real  
11 estate, that is the subject of this agreement.

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

13 779.32 (3) NOTICE OF INTENT TO CLAIM LIEN INTEREST. (intro.) A In addition to  
14 the requirements of sub. (2m), to <sup>claim</sup> have a lien a broker has a lien under sub. (2) (a)  
15 or (b) ~~only if~~ <sup>strike</sup> the broker ~~files or records~~ <sup>shall record</sup> a written notice of intent to claim a lien  
16 interest under this section at the office of the register of deeds for the county in which  
17 the commercial real estate is located ~~and delivers a copy of the notice to the person~~  
18 ~~owing the commission under sub. (2) (a) or (b). A broker has a lien under sub. (2) (c)~~  
19 ~~only if the broker provides a written notice of intent to claim a lien under this section~~  
20 ~~to the person owing the compensation under sub. (2) (c). All notices. A notice~~  
21 required under this subsection shall contain the name of each party to the agreement  
22 under which the lien interest is claimed, the date that the agreement was entered  
23 into and a brief description of the commercial real estate ~~on which the lien is intended~~  
24 ~~to be claimed. All notices that is subject to the lien rights. A notice~~ required under  
25 this subsection shall be provided within the following time periods:

ins  
7-2

SECTION 5. 779.32 (3) (c) of the statutes is 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 30~~  
days after 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~~, <sup>agreement</sup> is located.

insert  
7-7

SECTION 7. 779.32 (4) (a) 2. (intro.) of the statutes is amended to read:

779.32 (4) (a) 2. (intro.) In the case of a lien under sub. (2) (c), ~~90~~ <sup>pl</sup> ~~30~~ days after  
the later of the following:

insert  
7-9

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

779.32 (9) EXTINGUISHMENT OF LIEN AND NOTICE OF LIEN RIGHTS. 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). A notice of lien rights expires and  
is extinguished if a notice of lien is not filed under sub. (4) within 2 years after the  
recording of the notice of lien rights. A notice of lien rights may be rescinded by the  
recording of a notice with the register of deeds in the county where the real property  
is located, indicating that the broker is no longer claiming a lien under this section.  
The broker shall execute and deliver a ~~termination~~ <sup>rescinding the notice of lien</sup> notice if the contract or <sup>rights</sup>  
agreement under which the lien right was created expires or is terminated.

insert  
7-19

SECTION 9. 840.11 (1) of the statutes is amended to read:

840.11 (1) Every person who makes an application to any court, county board,  
common council, or village or town board for laying out, widening, vacating, or  
extending any street, alley, water channel, park, highway, or other public place shall,  
at or prior to the time of filing the same with the proper officer, ~~file a notice of the~~  
pendency of such application present for recording in the office of the register of deeds

1 ~~of each county in which the affected land is situated a lis pendens, as provided in s.~~  
2 ~~840.10, containing the person's name and a brief statement of the object thereof and~~  
3 ~~a map and description of the land to be affected thereby in the office of the register~~  
4 ~~of deeds of each county in which any such land is situated. Neglect to comply with~~  
5 ~~these provisions shall render all proceedings based upon such application void, but~~  
6 ~~no order vacating, or proceedings for the vacation of, any street, alley, water channel,~~  
7 ~~park, highway or other public place, made or had before May 25, 1905, shall be void~~  
8 ~~solely by reason of the failure to file such notice of the pendency of such application,~~  
9 ~~map and description.~~

10 **SECTION 10.** 840.11 (2) of the statutes is amended to read:

11 840.11 (2) No final order, judgment or decree or final resolution or order taking  
12 or affecting such land, based upon any application therefor, shall have any effect or  
13 be notice to any subsequent purchaser or encumbrancer unless a certified copy  
14 thereof, giving a full and accurate containing a legal description, as defined in s.  
15 706.01 (7r), of the land affected thereby, and accompanied with a map showing the  
16 location thereof, is recorded in the office of the register of deeds of the county in which  
17 the land is situated. ~~A resolution or order made by any such body, whereby any land~~  
18 ~~shall be taken or affected without an application having been made therefor, shall~~  
19 ~~have no effect and shall not be notice to any subsequent purchaser or encumbrancer~~  
20 ~~unless such resolution or order is recorded.~~

21 **SECTION 11. Initial applicability.**

22 (1) LAYING OUT, VACATING, OR EXTENDING PUBLIC WAYS.

23 (a) *Lis pendens.* The treatment of section 840.11 (1) of the statutes first applies  
24 to applications that are made on the effective date of this paragraph.

1 (b) *Final order or resolutions.* The treatment of section 840.11 (2) of the  
2 statutes, with respect to legal descriptions, first applies to a final order, judgment or  
3 decree or final resolution or order that is recorded on the effective date of this  
4 paragraph.

5 (c) *Resolutions or orders without application.* The treatment of section 840.11  
6 (2) of the statutes, with respect to the effect of and notice provided by resolutions or  
7 orders without an application having been made, first applies to a resolution that is  
8 adopted or an order that is made on the effective date of this paragraph.

✓ (2), (b) and (c)

9 (2) COMMERCIAL REAL ESTATE LIENS. The treatment of section 779.32 (1) (d), (2m),  
10 (3) (intro.) and (c), (4) (a) 1, and 2, (intro.) and (9) of the statutes first applies to  
11 contracts or agreements entered into on the effective date of this subsection.

12

(END)

✓ (10), and (11) ✓

a real estate broker's commission or compensation earned

✓ a. and b., (b) (intro.) ✓ and 4. ✓, (c) ✓, and (d) ✓  
1. and 2. ✓, (am) ✓, (b) ✓, and (c) 2. ✓  
4m (4m), (P) (a) ✓