

HOUSE BILL REPORT

HB 2550

As Reported By House Committee On:
Law & Justice

Title: An act relating to commercial real estate brokers' liens.

Brief Description: Creating a lien for real estate brokers.

Sponsors: Representatives Hickel, Morris, Sheahan, Campbell, Sterk, Delvin, Cooke, Quall, Mulliken and Costa.

Brief History:

Committee Activity:

Law & Justice: 1/31/96, 2/1/96 [DPS].

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Sheahan, Chairman; Delvin, Vice Chairman; Campbell; Carrell; Lambert; McMahan; Morris; Robertson; Smith and Sterk.

Minority Report: Do not pass. Signed by 7 members: Representatives Hickel, Vice Chairman; Dellwo, Ranking Minority Member; Costa, Assistant Ranking Minority Member; Chappell; Cody; Murray and Veloria.

Staff: Bill Perry (786-7123).

Background: A real estate broker is a person who (1) sells, lists, or buys real estate for others; (2) negotiates the purchase, sale, exchange, lease, or rental of real estate; (3) advertises or holds himself or herself out to the public as engaged in the selling, listing, or buying of real estate, or negotiating the purchase, sale, lease, or rental of real estate; or (4) engages, directs, or assists in procuring prospects or in negotiating or closing any transaction which results in the selling, listing, or buying of real estate.

A real estate broker is required to obtain a state license from the Department of Licensing. To receive a broker's license, an individual must meet certain requirements, including passing the broker's license examination established by the Washington Real Estate Commission and having minimum amounts of experience and training.

The amount of a real estate broker's compensation in a commercial real estate transaction is generally agreed to by the parties and memorialized in a contract or other written instrument. If a party fails or refuses to pay the compensation due to the broker, the broker must seek enforcement of the contract in court.

A lien is a claim or encumbrance against property to secure payment of a debt. If the debtor fails to pay the debt, the creditor may force the sale of the debtor's property and be paid from the proceeds of the sale. There are currently a number of statutory liens, including mechanics' liens, crop liens, and landlords' liens for rent.

Summary of Substitute Bill: The Law and Justice Committee of the House of Representatives is directed to study the issue of commercial real estate brokers' liens and report its findings to the Legislature by December 31, 1996. The committee is directed to consider the appropriateness of creating commercial real estate brokers' liens and, if so, the procedures and requirements appropriate in establishing and enforcing the liens.

Substitute Bill Compared to Original Bill: The original bill created a commercial real estate broker's lien on commercial real estate under a written instrument for services provided with respect to the property. The original bill provided filing and notification requirements necessary to exercise the right to the commercial real estate lien, procedures for the termination of the lien, and judicial foreclosure procedures for the lien.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: Commercial real estate brokers need the ability to enforce their contracts with property owners and buyers. Brokers aren't paid until the end of the transaction, and many commercial real estate transactions take years to complete. Up to 30 percent of transactions are not honored, and the only recourse is years of expensive litigation that may cost more than the value of the commission. Real estate brokers add value to the land and therefore should be entitled to liens to enforce the contractual obligations, just as architects and engineers may seek liens to enforce their contracts. The states that have implemented lien laws for brokers have fewer disputes and more payments to brokers.

Testimony Against: Creating commercial real estate brokers' liens is bad policy. There is a whole array of service providers who bring real estate transactions to an end, including appraisers, property managers, and public relations providers. Brokers

should not be singled out for special treatment. Creating a real estate broker's lien is completely inconsistent with current law, which allows very few nonconsensual liens. Brokers do not add value to the property. They provide a valuable service that should be compensated, but they do not make improvements to or increase the intrinsic value of the property. Brokers currently have other remedies«the same remedies all other business people have for the enforcement of contracts. Liens provide an incredible potential for abuse because they prevent the sale of property, they are difficult to get rid of, and they are easily filed, even if the broker does not have a right to compensation.

Testified: Terry Hotvest, Gary Danklefsen, Howard Ness, and Dave Cantu, Washington Association of Realtors (pro); Jim Carroll, The JQ company and WSCAR (pro); Bill Stegeman, WSCAR (pro); Ken Donohue, Suzie Rao, and Dick Ducharme, Building Industry Association of Washington (con); and Ellen Dial, Washington State Bar Association (con).