
HOUSE BILL 2550

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By Representatives Hickel, Morris, Sheahan, Campbell, Sterk, Delvin, Cooke, Quall, Mulliken and Costa

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1 AN ACT Relating to commercial real estate brokers' liens; and
2 adding a new chapter to Title 60 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** Unless the context clearly requires
5 otherwise, the definitions in this section apply throughout this
6 chapter:

7 (1) "Affiliate" means each person who and entity that, directly or
8 indirectly, through one or more intermediaries, owns an interest in a
9 party or controls or is controlled by or is under common control with
10 a party, and each authorized representative of a party, whether that
11 representative is an officer, director, manager, partner, or otherwise.

12 (2) "Commercial real estate" means any interest in real property
13 located in this state except (a) an interest in real property which is
14 improved with one to four dwelling units, or (b) an interest in
15 unimproved real property on which, under the county or city zoning
16 ordinances applicable to that real property, the maximum permitted
17 development is one to four dwelling units or one residence per lot, or
18 (c) an interest in real property classified as farm and agricultural
19 land for assessment purposes pursuant to chapter 84.34 RCW. Commercial

1 real estate does not include single-family residential units such as
2 condominiums, townhouses, timeshares, or homes in a subdivision when
3 sold, leased, or otherwise conveyed on a unit by unit basis even though
4 these units may be part of a larger building or parcel of real estate
5 containing more than four residential units. Determination of the
6 applicability of the definition of commercial real estate, as defined
7 in this chapter to a transaction, shall be made at the time of
8 conveyance.

9 (3) "Real estate broker" or "broker" means the same as under
10 chapter 18.85 RCW.

11 (4) "Real estate" means an identified parcel or tract of land,
12 including improvements, if any.

13 NEW SECTION. **Sec. 2.** (1) A broker has a lien upon commercial real
14 estate in the amount due to the broker:

15 (a) Under a written instrument signed by the owner of an interest
16 in the commercial real estate or the owner's agent; or

17 (b) Under a written instrument signed by a prospective buyer or
18 prospective tenant or their respective agent as to the purchase, lease,
19 or other conveyance to the buyer or tenant of an interest in the
20 commercial real estate.

21 (2) The lien under this chapter is available only to the broker
22 named in an instrument signed by the owner, buyer, or tenant.

23 (3) The lien under this chapter may not attach to the commercial
24 real estate unless the broker is entitled to compensation under a
25 written instrument signed by the owner, buyer, tenant, or their
26 respective authorized agent, as applicable.

27 (4) If a broker has a written agreement with an owner of commercial
28 real estate as provided in subsection (1)(a) of this section, the lien
29 under this chapter attaches to that commercial real estate at the time
30 a claim for lien is recorded in the county in which the commercial real
31 estate is located, but only if the recording occurs at least three
32 business days prior to the actual conveyance or transfer of the
33 commercial real estate against which the broker is claiming a lien.
34 This subsection applies to sales or other conveyances of commercial
35 real estate other than leases. Lease transactions are subject to
36 subsection (6) of this section. The lien attaches as of the date of
37 the recording of the claim for lien and does not relate back to the
38 date of the written agreement.

1 (5) If a broker has a written agreement with an owner of commercial
2 real estate as provided in subsection (1)(a) of this section, and when
3 payment to the broker is due in installments, a portion of which is due
4 after the conveyance or transfer of the commercial real estate, any
5 claim for lien for those payments due after the transfer or conveyance
6 may be recorded at any time subsequent to the transfer or conveyance of
7 the commercial real estate and prior to the date on which the payment
8 is due but shall only be effective as a security interest in any lien
9 or encumbrance held by the transferor to the extent moneys are still
10 owed to the transferor by the transferee. This subsection applies to
11 sales or other conveyances of commercial real estate other than leases.
12 Lease transactions are subject to subsection (6) of this section. The
13 lien attaches as of the recording of the claim for lien and does not
14 relate back to the date of the written agreement.

15 (6) In the case of a lease of commercial real estate, if a broker
16 has a written agreement with the owner as provided in subsection (1)(a)
17 of this section, the claim for lien must be recorded within ninety days
18 after the tenant takes possession of the leased premises. The lien
19 attaches as of the recording of the claim for lien and does not relate
20 back to the date of the written agreement.

21 (7) If a broker has a written agreement with a prospective buyer as
22 provided for in subsection (1)(b) of this section, and the prospective
23 buyer or an affiliate thereof purchases or otherwise accepts a
24 conveyance or transfer of the commercial real estate, the claim for
25 lien must be recorded in the county in which the commercial real estate
26 is located not later than the earlier of ninety days after the buyer
27 delivers to the broker written notice that the deed for conveyance has
28 been recorded, or one year after the date the deed for conveyance has
29 been recorded. The lien attaches as of the date of the recording of
30 the claim for lien and does not relate back to the date of the written
31 agreement, but the lien will not attach prior to the date the
32 commercial real estate is conveyed or transferred to the buyer or an
33 affiliate thereof. The lien will not attach if the commercial real
34 estate is subsequently sold, and a deed for conveyance is recorded,
35 prior to the date that the lien is recorded and the sale is to a party
36 who is not an affiliate of the buyer who entered into the written
37 agreement with the broker as provided in subsection (1)(b) of this
38 section.

1 (8) If a broker has a written agreement with a prospective tenant
2 of commercial real estate as provided for in subsection (1)(b) of this
3 section, and compensation is due to that broker in connection with a
4 lease transaction, and the tenant or an affiliate thereof subsequently
5 purchases the commercial real estate within three years of the date
6 that payment of compensation is due to the broker pursuant to the
7 written agreement with the tenant/buyer, then the claim for lien must
8 be recorded in the county in which the commercial real estate is
9 located not later than the earlier of ninety days after the
10 tenant/buyer delivers to the broker written notice that the deed for
11 conveyance has been recorded, or one year after the date the deed for
12 conveyance has been recorded. The lien shall attach as of the date of
13 the recording of the claim for lien and does not relate back to the
14 date of the written agreement, but the lien will not attach prior to
15 the date the commercial real estate is conveyed or transferred to the
16 tenant/buyer or an affiliate thereof. The lien will not attach if the
17 commercial real estate is subsequently sold, and a deed for conveyance
18 is recorded, prior to the date that the lien is recorded and the sale
19 is to a party who is not an affiliate of the tenant who entered into
20 the written agreement with the broker as provided in subsection (1)(b)
21 of this section.

22 (9) The broker shall within ten days of recording its claim for
23 lien deliver a copy of the claim for lien to the party which entered
24 into the written agreement with the broker and to the owner of record
25 of the commercial real estate. If a claim of lien is recorded pursuant
26 to subsection (4), (5), or (6) of this section, and if the broker is
27 notified in writing of the name and address of a prospective buyer of
28 commercial real estate in a transaction that will result in
29 compensation being due to the broker as described in the claim for
30 lien, the broker shall also deliver a copy of the claim for lien to the
31 named prospective buyer within ten days of the later of the date of
32 recording the claim for lien, or the date the notice of the name and
33 address of the prospective buyer is delivered to the broker. If a
34 claim of lien is recorded pursuant to subsection (4), (5), or (6) of
35 this section, the broker shall, on or before the date the deed for
36 conveyance has been recorded, deliver a copy of the notice of lien to
37 any escrow closing agent in the process of closing the transaction for
38 which the commission is due, if the identity of the escrow closing
39 agent is actually known by the broker prior to the date the deed for

1 conveyance has been recorded. The broker's lien is unenforceable if
2 delivery of the copy of the claim for lien does not occur at the time
3 and in the manner required by this subsection.

4 (10)(a) A broker may bring suit to enforce a lien in the superior
5 court in the county where the commercial real estate is located by
6 filing a complaint and sworn affidavit that the lien has been recorded.

7 (b) The person claiming a lien in compliance with this chapter
8 shall, unless the claim is based upon an option to purchase the
9 commercial real estate, commence proceedings by filing a complaint on
10 or before the earlier of the date which is eight months after the
11 recording of the claim of lien, or three months after the date the
12 broker is notified in writing that the sale or lease transaction that
13 results in the compensation being due to the broker as described in the
14 claim for lien has closed. Failure to commence proceedings within the
15 time specified extinguishes the lien. No claim for lien may thereafter
16 be given for the same claim nor may that claim thereafter be asserted
17 in any proceedings under this chapter.

18 (c)(i) A complaint under this section shall contain a brief
19 statement of the contract or agreements on which the lien is founded,
20 the date when the contract or agreement was made, a description of the
21 services performed, the amount due and unpaid, a description of the
22 property that is subject to the lien, and other facts necessary for a
23 full understanding of the rights of the parties. The plaintiff shall
24 make all interested parties, of whose interest the plaintiff is
25 notified or has knowledge, defendants to the action, and shall issue
26 summons and provide service as in other civil actions. When any
27 defendant resides or has gone out of the state, or on inquiry cannot be
28 found, or is concealed within this state so that process cannot be
29 served on that defendant, the plaintiff shall cause a notice to be
30 given to that defendant, or cause a copy of the complaint to be served
31 upon that defendant, in the manner and upon the same conditions as in
32 other civil actions.

33 (ii) All liens claimed under this chapter shall be foreclosed in a
34 civil action in the court having jurisdiction in the manner prescribed
35 for the judicial foreclosure of a mortgage. The court has the power to
36 order the sale of the commercial real estate. In any action brought to
37 foreclose a lien, the owner shall be joined as a party. The interest
38 in the commercial real estate of any person who, prior to the
39 commencement of the action, has a recorded interest in the commercial

1 real estate, or any part thereof, shall not be foreclosed or affected
2 unless that person is joined as a party.

3 (11) The lien notice shall state the name, address, and phone
4 number of the claimant, the name of the party which entered into the
5 written agreement with the broker, the name of the owner of the
6 commercial real estate, a description of the commercial real estate
7 upon which the lien is being claimed, the amount for which the lien is
8 claimed, and the real estate license number of the broker. The claim
9 for lien shall recite that the information contained in the notice is
10 true and accurate to the knowledge of the signator. The claim for lien
11 shall be signed by the broker or by a person authorized to sign on
12 behalf of the broker and shall be verified.

13 (12) Whenever a claim for lien has been filed and a condition
14 occurs that would preclude the broker from receiving compensation under
15 the terms of the broker's written agreement, the broker shall record,
16 within ten days following demand by a party who owns an interest in the
17 commercial real estate, a written release or satisfaction of the lien.

18 (13) Whenever a claim for lien has been filed and is paid, or where
19 there is a failure to institute a suit to enforce the lien within the
20 time provided by this chapter, the broker shall record a satisfaction
21 or release of the lien, on written demand of a party who owns an
22 interest in the commercial real estate, within five days after payment
23 or expiration of the time in which to file the lien.

24 (14) Upon written demand of the owner of the commercial real estate
25 delivered to the person claiming the lien requiring suit to be
26 commenced to enforce the lien, a suit shall be commenced pursuant to
27 subsection (10)(b) of this section within thirty days thereafter, or
28 the lien is extinguished.

29 (15) The cost of proceedings asserting or defending a broker's
30 claim of lien, including reasonable attorneys' fees, costs, and
31 prejudgment interests due to the prevailing party shall be borne by the
32 nonprevailing party or parties. When more than one party is
33 responsible for costs, fees, and prejudgment interests, the costs,
34 fees, and prejudgment interests shall be equitably apportioned by the
35 court among those responsible parties.

36 NEW SECTION. **Sec. 3.** Prior recorded liens, mortgages, deeds of
37 trust, and other encumbrances, including all advances or charges made
38 or accruing thereunder whether optional or obligatory, and all

1 modifications, extensions, renewals, and replacements thereof have
2 priority over a broker's lien. A prior recorded lien includes, without
3 limitation, a valid mechanic's lien claim that is recorded subsequent
4 to recording of the broker's claim for lien but which relates back to
5 a date prior to the recording date of the broker's claim for lien.

6 NEW SECTION. **Sec. 4.** A lien recorded under this chapter shall be
7 extinguished at the time, if any, that the party who entered into a
8 written agreement with a broker as provided in section 2(1) of this
9 act, or any other interested party, deposits with the superior court of
10 the county in which the commercial real estate is located an amount
11 equal to one and one-quarter times the amount of the lien claimed, with
12 the amount to be held pending a resolution of amounts due to the
13 broker.

14 NEW SECTION. **Sec. 5.** The commercial real estate that is subject
15 to a lien under this chapter is the commercial real estate identified
16 in a written agreement entered into as provided in section 2(1) of this
17 act.

18 NEW SECTION. **Sec. 6.** The county auditor shall record the notice
19 of claim of lien in the same manner as deeds and other instruments of
20 title are recorded under chapter 65.08 RCW. Notices of claim of lien
21 for registered land need not be recorded in the Torrens register. The
22 county auditor shall charge no higher fee for recording notices of
23 claim of lien than other documents.

24 NEW SECTION. **Sec. 7.** The claim of lien, when filed as required by
25 this chapter, shall be notice to the husband or wife of the person who
26 appears of record to be the owner of the commercial real estate sought
27 to be charged with the lien, and shall subject all the community
28 interest of both husband and wife to the lien.

29 NEW SECTION. **Sec. 8.** Notices to be delivered to a party under
30 this chapter, other than service of process as required in civil
31 actions, may be by registered or certified mail, return receipt
32 requested, or by personal delivery and obtaining evidence of delivery
33 in the form of a receipt or other acknowledgement signed by the party
34 to whom the notice is delivered or an affidavit of service. Delivery

1 is effective at the time of personal delivery, or when deposited in the
2 mail as required by this section. Notice to a broker may be given to
3 the address of the broker that is contained in the written agreement
4 with the broker described in section 2(1)(b) of this act, or such other
5 address as is contained in a written notice from the broker to the
6 party giving the notice. If no address is provided in the written
7 agreement, the notice may be given to the broker at the address which
8 is the broker's address of record with the department of licensing
9 pursuant to chapter 18.85 RCW.

10 NEW SECTION. **Sec. 9.** This chapter applies to lien claims based on
11 a written agreement entered into on or after the effective date of this
12 act.

13 NEW SECTION. **Sec. 10.** This chapter may be known and cited as the
14 commercial real estate broker lien act.

15 NEW SECTION. **Sec. 11.** Sections 1 through 10 of this act shall
16 constitute a new chapter in Title 60 RCW.

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