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**SUBSTITUTE SENATE BILL 5404**

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**State of Washington**

**54th Legislature**

**1995 Regular Session**

**By** Senate Committee on Labor, Commerce & Trade (originally sponsored by Senators Heavey, Deccio, Fraser, Newhouse, Kohl, Hale, Franklin, McCaslin, Palmer and Wojahn)

Read first time 03/01/95.

1 AN ACT Relating to commercial real estate broker's 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) "Commercial real estate" means any interest in real property  
8 located in this state except (a) an interest in real property which is  
9 improved with one to four dwelling units, or (b) an interest in  
10 unimproved real property on which, under the county or city zoning  
11 ordinances applicable to that real property, the maximum permitted  
12 development is one to four dwelling units, or (c) an interest in real  
13 property classified as farm and agricultural land for assessment  
14 purposes pursuant to chapter 84.34 RCW. Commercial real estate does  
15 not include single-family residential units such as condominiums,  
16 townhouses, timeshares, or homes in a subdivision when sold, leased, or  
17 otherwise conveyed on a unit by unit basis even though these units may  
18 be part of a larger building or parcel of real estate containing more  
19 than four residential units.

1 (2) "Real estate broker" or "broker" means the same as under  
2 chapter 18.85 RCW.

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

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

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

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

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

15 (3) The lien under this chapter may not attach to the commercial  
16 real estate unless the broker is, or will be as a result of the closing  
17 of a sale or lease transaction, entitled to compensation under a  
18 written instrument signed by the owner, buyer, tenant, or their  
19 respective authorized agent, as applicable.

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

31 (5) If a broker has a written agreement with an owner of commercial  
32 real estate as provided in subsection (1)(a) of this section, and when  
33 payment to the broker is due in installments, a portion of which is due  
34 after the conveyance or transfer of the commercial real estate, any  
35 claim for lien for those payments due after the transfer or conveyance  
36 may be recorded at any time subsequent to the transfer or conveyance of  
37 the commercial real estate and prior to the date on which the payment  
38 is due but shall only be effective as a security interest in any lien

1 or encumbrance held by the transferor to the extent moneys are still  
2 owed to the transferor by the transferee. This subsection applies to  
3 sales or other conveyances of commercial real estate other than leases.  
4 Lease transactions are subject to subsection (6) of this section. The  
5 lien attaches as of the recording of the claim for lien and does not  
6 relate back to the date of the written agreement.

7 (6) In the case of a lease of commercial real estate, if a broker  
8 has a written agreement with the owner as provided in subsection (1)(a)  
9 of this section, the claim for lien must be recorded within ninety days  
10 after the tenant takes possession of the leased premises unless written  
11 notice of the intended signing of the lease is delivered by the owner  
12 to the broker entitled to claim a lien at least ten days prior to the  
13 date of the intended signing of the lease in which case the claim for  
14 lien must be recorded before the date indicated for the signing of the  
15 lease in the notice delivered to the broker. The lien attaches as of  
16 the recording of the claim for lien and does not relate back to the  
17 date of the written agreement.

18 (7) If a broker has a written agreement with a prospective buyer as  
19 provided for in subsection (1)(b) of this section, and the prospective  
20 buyer purchases or otherwise accepts a conveyance or transfer of the  
21 commercial real estate, the claim for lien must be recorded in the  
22 county in which the commercial real estate is located within ninety  
23 days after the buyer delivers to the broker written notice that the  
24 deed for conveyance has been recorded. The lien attaches as of the  
25 date of the recording of the claim for lien and does not relate back to  
26 the date of the written agreement, but the lien will not attach prior  
27 to the date the commercial real estate is conveyed or transferred to  
28 the buyer.

29 (8) If a broker has a written agreement with a prospective tenant  
30 of commercial real estate as provided for in subsection (1)(b) of this  
31 section, and compensation is due to that broker in connection with a  
32 lease transaction, and the tenant subsequently purchases the commercial  
33 real estate within three years of the date that payment of compensation  
34 is due to the broker pursuant to the written agreement with the  
35 tenant/buyer, then the claim for lien must be recorded in the county in  
36 which the commercial real estate is located within ninety days after  
37 the tenant/buyer delivers to the broker written notice that the deed  
38 for conveyance has been recorded. The lien shall attach as of the date  
39 of the recording of the claim for lien and does not relate back to the

1 date of the written agreement, but the lien will not attach prior to  
2 the date the commercial real estate is conveyed or transferred to the  
3 tenant/buyer.

4 (9) The broker shall within ten days of recording its claim for  
5 lien deliver a copy of the claim for lien to the party which entered  
6 into the written agreement with the broker and to the owner of record  
7 of the commercial real estate. If the broker is notified in writing of  
8 the name and address of a prospective buyer of commercial real estate  
9 in a transaction that will result in compensation being due to the  
10 broker as described in the claim for lien, the broker shall also  
11 deliver a copy of the claim for lien to the named prospective buyer  
12 within ten days of the later of the date of recording the claim for  
13 lien, or the date the notice of the name and address of the prospective  
14 buyer is delivered to the broker. The broker's lien is unenforceable  
15 if delivery of the copy of the claim for lien does not occur at the  
16 time and in the manner required by this subsection.

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

20 (b) The person claiming a lien in compliance with this chapter  
21 shall, unless the claim is based upon an option to purchase the  
22 commercial real estate, commence proceedings by filing a complaint on  
23 or before the later of the date which is eight months after the  
24 recording of the claim of lien, or three months after the date the  
25 broker is notified in writing that the sale or lease transaction that  
26 results in the compensation being due to the broker as described in the  
27 claim for lien has closed. Failure to commence proceedings within the  
28 time specified extinguishes the lien. No claim for lien may thereafter  
29 be given for the same claim nor may that claim thereafter be asserted  
30 in any proceedings under this chapter.

31 (c)(i) A complaint under this section shall contain a brief  
32 statement of the contract or agreements on which the lien is founded,  
33 the date when the contract or agreement was made, a description of the  
34 services performed, the amount due and unpaid, a description of the  
35 property that is subject to the lien, and other facts necessary for a  
36 full understanding of the rights of the parties. The plaintiff shall  
37 make all interested parties, of whose interest the plaintiff is  
38 notified or has knowledge, defendants to the action, and shall issue  
39 summons and provide service as in other civil actions. When any

1 defendant resides or has gone out of the state, or on inquiry cannot be  
2 found, or is concealed within this state so that process cannot be  
3 served on that defendant, the plaintiff shall cause a notice to be  
4 given to that defendant, or cause a copy of the complaint to be served  
5 upon that defendant, in the manner and upon the same conditions as in  
6 other civil actions.

7 (ii) All liens claimed under this chapter shall be foreclosed in a  
8 civil action in the court having jurisdiction in the manner prescribed  
9 for the judicial foreclosure of a mortgage. The court has the power to  
10 order the sale of the commercial real estate. In any action brought to  
11 foreclose a lien, the owner shall be joined as a party. The interest  
12 in the commercial real estate of any person who, prior to the  
13 commencement of the action, has a recorded interest in the commercial  
14 real estate, or any part thereof, shall not be foreclosed or affected  
15 unless that person is joined as a party.

16 (11) The lien notice shall state the name, address, and phone  
17 number of the claimant, the name of the party which entered into the  
18 written agreement with the broker, the name of the owner of the  
19 commercial real estate, a description of the commercial real estate  
20 upon which the lien is being claimed, the amount for which the lien is  
21 claimed, and the real estate license number of the broker. The claim  
22 for lien shall recite that the information contained in the notice is  
23 true and accurate to the knowledge of the signator. The claim for lien  
24 shall be signed by the broker or by a person authorized to sign on  
25 behalf of the broker and shall be verified.

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

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

37 (14) Upon written demand of the owner of the commercial real estate  
38 delivered to the person claiming the lien requiring suit to be  
39 commenced to enforce the lien, a suit shall be commenced pursuant to

1 subsection (10)(b) of this section within thirty days thereafter, or  
2 the lien is extinguished.

3 (15) The cost of proceedings asserting or defending a broker's  
4 claim of lien, including reasonable attorneys' fees, costs, and  
5 prejudgment interests due to the prevailing party shall be borne by the  
6 nonprevailing party or parties. When more than one party is  
7 responsible for costs, fees, and prejudgment interests, the costs,  
8 fees, and prejudgment interests shall be equitably apportioned by the  
9 court among those responsible parties.

10 NEW SECTION. **Sec. 3.** Prior recorded liens, mortgages, deeds of  
11 trust, and other encumbrances, including all advances or charges made  
12 or accruing thereunder whether optional or obligatory, and all  
13 modifications, extensions, renewals, and replacements thereof have  
14 priority over a broker's lien. A prior recorded lien includes, without  
15 limitation, a valid mechanic's lien claim that is recorded subsequent  
16 to recording of the broker's claim for lien but which relates back to  
17 a date prior to the recording date of the broker's claim for lien.

18 NEW SECTION. **Sec. 4.** A lien recorded under this chapter shall be  
19 extinguished at the time, if any, that the party who entered into a  
20 written agreement with a broker as provided in section 2(1) of this  
21 act, or that party's agent, deposits with the superior court of the  
22 county in which the commercial real estate is located an amount equal  
23 to one and one-quarter times the amount of the lien claimed, with the  
24 amount to be held pending a resolution of amounts due to the broker.

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

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

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

6        NEW SECTION.    **Sec. 8.**    Notices to be delivered to a party under  
7 this chapter, other than service of process as required in civil  
8 actions, may be by registered or certified mail, return receipt  
9 requested, or by personal delivery and obtaining evidence of delivery  
10 in the form of a receipt or other acknowledgement signed by the party  
11 to whom the notice is delivered or an affidavit of service. Delivery  
12 is effective at the time of personal delivery, or when deposited in the  
13 mail as required by this section.

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

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

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

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