

SENATE BILL REPORT

SHB 1936

As Reported By Senate Committee On:
Commerce & Labor, April 3, 1997

Title: An act relating to liens on owner's proceeds in favor of commercial real estate brokers.

Brief Description: Regulating notice of claim of lien against proceeds.

Sponsors: House Committee on Law & Justice (originally sponsored by Representatives Sterk, Sheahan, Costa, Carrell, Hickel, Radcliff and Quall).

Brief History:

Committee Activity: Commerce & Labor: 4/1/97, 4/3/97 [DPA].

SENATE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass as amended.

Signed by Senators Schow, Chair; Horn, Vice Chair; Anderson, Franklin, Fraser, Heavey and Newhouse.

Staff: Aurora Almeda (786-7488)

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.

Real estate brokers are required to obtain a state license from the Department of Licensing. To receive a broker's license, an individual must meet certain requirements, including pass the broker's license examination established by the Washington Real Estate Commission and have 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. There are currently a number of statutory liens, including mechanics' liens, crop liens, and landlords' liens for rent.

Summary of Amended Bill: A commercial real estate broker's lien is created. Filing and notice requirements and judicial enforcement procedures are established.

A broker has a lien on the property owner's net proceeds from the transfer or conveyance of commercial real estate, or on the net rental proceeds from the lease of commercial real estate, for the amount of commission the owner agreed to pay the broker under a written commission agreement. The lien is only available to the broker named in the commission agreement and is not assignable.

"Commercial real estate" is defined as a fee title or possessory interest in real property, except real property that is (1) improved with one single-family residential unit or one multifamily structure with four or fewer units; (2) unimproved and that may only be developed with a maximum of four residential units; (3) classified as farmland, agricultural land, or timberland; or (4) improved with single-family residential units, such as condominiums or stand-alone houses in a subdivision that may be conveyed on a unit-by-unit basis.

If there are interim commission agreements replaced by a final commission agreement, only the final commission agreement will constitute the official commission agreement.

The notice of claim of lien against proceeds must contain specified information, include a copy of the commission agreement, and be signed by the broker. The lien must be recorded at least 30 days before the owner records a deed of conveyance of the property or within 90 days after a tenant takes possession of leased property. The lien becomes effective on the date of the recording.

If, after a notice of claim of lien is recorded, a condition occurs that would preclude the broker from receiving compensation under the commission agreement, the broker must record a written release of the notice of claim of lien within seven days following a demand by the owner.

The broker must deliver a copy of the claim of lien to the owner within 10 days of recording the lien. In the case of a transfer or conveyance of commercial real estate, the broker must deliver a copy of the claim of lien to the escrow closing agent, if known, on or before the date of the recording of the deed of conveyance.

An escrow closing agent is required to pay to the broker the amount of the claim of lien from the owner's net proceeds from the conveyance or transfer of the commercial real estate. The broker must record a satisfaction or release of the claim of lien within five days after payment of the commission amount upon demand by the owner.

The owner of commercial real estate may contest a notice of claim of lien by filing a motion in superior court. If a broker has a claim of lien against rental proceeds from the lease of commercial real estate, the broker may file a motion with the superior court for the payment of the amount of the claim of lien. The prevailing party is entitled to an award of costs and reasonable attorneys' fees.

The owner of the commercial real estate may ask the broker to waive the right to a broker's lien. If the broker waives the right and then has to sue for payment of the commission, the court may impose court costs, reasonable attorneys' fees, and statutory interest on the owner.

All prior recorded statutory and consensual liens, mortgages, deeds of trust, and other encumbrances have priority over a real estate broker's lien.

Amended Bill Compared to Substitute Bill: If there are interim commission agreements replaced by a final commission agreement, only the final commission agreement constitutes the official commission agreement.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: Many commercial brokers have no choice but to file lawsuits to seek enforcement of commissions owed to them. The amount of the commissions will often be outweighed by the cost of the litigation, thereby making it more costly to enforce the originally agreed upon commission agreement. This process can be lengthy and costly to resolve. Even if a broker is successful in getting a judgment, it may not cover attorney fees, and the client may no longer exist as a corporate entity, or have the money to satisfy the judgment. From a law enforcement perspective, this bill will help stop clients from "stealing" commissions from brokers.

The amount of the deposit required to remove the lien should be reduced to 100 percent rather than 125 percent because once a lien is removed, it becomes a simple contract dispute. But reduction of the deposit will not cover the attorneys' fees and court costs should the broker prevail, so the 25 percent additional amount actually compensates the broker for costs beyond the commission owed to him or her by the owner.

Testimony Against: None.

Testified: PRO: Rep. Sterk; Glen Hudson, Teri Hotvedt, WA Assoc. of Realtors; Gary Dankleffsey, Steven S. O'Dell, Commercial Board of Realtors; William Henshaw, Associate Broker, Windermere Real Estate; David Cantu, Counsel, WA Assoc. of Realtors; Brian Minnich, Greg Overstreet, BIAW (w/concerns).