

SENATE BILL REPORT

SB 5832

As Reported By Senate Committee On:
Commerce & Labor, March 5, 1997

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

Brief Description: Regulating notice of claim liens.

Sponsors: Senators Roach, Heavey and Hargrove.

Brief History:

Committee Activity: Commerce & Labor: 3/4/97, 3/5/97 [DPS].

SENATE COMMITTEE ON COMMERCE & LABOR

Majority Report: That Substitute Senate Bill No. 5832 be substituted therefor, and the substitute bill do pass.

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

Staff: Aurora Almeda (786-7488)

Background: Under current law, the amount of a real estate broker's compensation in a commercial real estate transaction is generally agreed upon 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.

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

"Commercial real estate" is defined as a fee title or possessory interest in real estate, except real estate that is: (1) improved with one single-family home or one multifamily home with four or fewer units; (2) unimproved real property which 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 homes in a subdivision which may be conveyed on a unit-by-unit basis.

A broker has a lien on the property owner's net proceeds from the disposition of commercial real estate, or on the net rental proceeds from the lease of commercial real estate, in the amount which the owner agreed to pay the broker under a written commission agreement. The lien is available only to the broker named in the commission agreement, effective on the date of filing notice in the county or counties in which the commercial real estate is located.

A broker may waive his or her rights to a lien. If a broker files suit to recover amounts due under a commission agreement in which the broker has waived his or her lien rights, the court must award court costs, reasonable attorneys' fees, and statutory interest.

The notice of claim lien 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.

The broker must deliver a copy of the claim of lien to the owner within ten 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.

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.

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 on a 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.

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

Substitute Bill Compared to Original Bill: Technical changes are made to clarify the language of the bill. "Net rental proceeds" is further defined. A broker may waive his or her rights to a lien. If a broker files suit to recover amounts due under a commission agreement in which the broker has waived his or her lien rights, the court must award court costs, reasonable attorneys' fees, and statutory interest.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: Providing lien rights to real estate brokers would provide protection to those brokers whose clients default on the commission agreement. Currently, the only remedy brokers have is to go to court to enforce the commission agreement. Because a lawsuit can be time consuming and costly, oftentimes brokers are left without any recourse since the costs of pursuing a lawsuit would be far greater than the amount of the actual commission at stake. When a broker and his or her client come together after a transaction is completed, the client will often try to renegotiate the contract to set the commission at a

lower rate. The broker is then cornered into taking the reduction in his or her commission since it would be too costly to file suit for the originally agreed upon commission.

Testimony Against: None.

Testified: PRO: Denny Eliason (w/concerns), Sabey Companies; Glen Hudson, WA Association of Realtors/WA State Commercial Association of Realtors; Brian Minnich, BIAW; Greg Overstreet, BIAW.