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**SUBSTITUTE HOUSE BILL 1936**

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**State of Washington**

**55th Legislature**

**1997 Regular Session**

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

Read first time 03/05/97.

1 AN ACT Relating to liens on owner's proceeds in favor of commercial  
2 real estate brokers; and 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.** The definitions in this section apply  
5 throughout this chapter unless the context clearly requires otherwise.

6 (1) "Commercial real estate" means a fee title interest or  
7 possessory estate in real property located in this state except an  
8 interest in real property which is (a) improved with one single-family  
9 residential unit or one multifamily structure with four or less  
10 residential units, or (b) unimproved and the maximum permitted  
11 development is one to four residential units or structures under the  
12 county or city zoning ordinances or comprehensive plan applicable to  
13 that real estate, or (c) classified as farm and agricultural land or  
14 timber land for assessment purposes pursuant to chapter 84.34 RCW, or  
15 (d) improved with single-family residential units such as condominiums,  
16 townhouses, timeshares, or stand-alone houses in a subdivision that may  
17 be legally sold, leased, or otherwise disposed of on a unit-by-unit  
18 basis. Real estate will be considered commercial real estate if the

1 commission agreement so provides, or if it meets the definition  
2 contained in this section on the date of the disposition.

3 (2) "Commission agreement" means a written instrument which meets  
4 the requirements of RCW 19.36.010 signed by the owner, or by a party  
5 duly authorized to sign on behalf of the owner, of commercial real  
6 estate, pursuant to which the owner agrees to pay a broker a real  
7 estate commission upon either the disposition or lease of commercial  
8 real estate or upon entering into an agreement for disposition or lease  
9 of commercial real estate.

10 (3) "Days" means calendar days. However, if a period ends on a day  
11 other than a business day, then the last day shall be the next business  
12 day.

13 (4) "Disposition" means a voluntary transfer or conveyance of  
14 commercial real estate.

15 (5) "Escrow closing agent" means the person or entity who receives  
16 documents and funds for recording and disbursement in completing a  
17 transaction for the disposition of commercial real estate.

18 (6) "Lease" means a written agreement which gives rise to a  
19 relationship of landlord and tenant, affecting commercial real estate,  
20 such that the holder of a fee simple interest or possessory estate in  
21 commercial real estate permits another to possess the commercial real  
22 estate for a period, and which meets the requirements of RCW 19.36.010,  
23 if applicable.

24 (7) "Net rental proceeds" means the base rent paid by the tenant  
25 under a lease, less any amounts currently due under the terms of liens  
26 which have priority over the lien created under this chapter. Base  
27 rent is the rent so designated in a lease as base rent, or a similar  
28 term, for the possession and use of the commercial real estate, but  
29 does not include separate payments made by tenants for insurance,  
30 taxes, utilities, or other expenses.

31 (8) "Owner" means a person or entity which is vested in record fee  
32 title or a possessory estate in commercial real estate.

33 (9)(a) "Owner's net proceeds" means the gross sales proceeds from  
34 the disposition of the commercial real estate described in a notice of  
35 claim of lien against proceeds pursuant to this chapter, less the  
36 following: (i) Amounts necessary to pay all encumbrances and liens  
37 which have priority over the lien created by this chapter other than  
38 those permitted to remain by the buyer; (ii) owner's closing costs,  
39 such as real estate excise tax, title insurance premiums, real estate

1 tax and assessment prorations, and escrow fees payable by the owner  
2 pursuant to an agreement with the buyer; and (iii) amounts held by a  
3 third party for use by the owner to complete an exchange of real estate  
4 which is deferred from federal income tax under section 1031 of the  
5 internal revenue code of 1986, as amended.

6 (b) "Owner's net proceeds" shall include any gross sales proceeds  
7 which are held by a third party for purposes of completing an exchange  
8 of real estate which is deferred from federal income tax under section  
9 1031 of the internal revenue code of 1986, as amended, but are  
10 subsequently not used for that purpose. "Owner's net proceeds" are  
11 personal property, upon which the lien created by this chapter  
12 attaches.

13 (10) "Real estate broker" or "broker" means the same as defined in  
14 RCW 18.85.010.

15 (11) "Real property" means one or more parcels or tracts of land,  
16 including appurtenances or improvements.

17 NEW SECTION. **Sec. 2.** (1) The lien created under this chapter is  
18 a lien upon personal property, not upon real property.

19 (2) A broker has a lien upon the owner's net proceeds from the  
20 disposition of commercial real estate and a lien upon the net rental  
21 proceeds from the lease of commercial real estate in the amount which  
22 the owner has agreed to pay the broker under a commission agreement.  
23 The lien under this chapter is available only to the broker named in  
24 the commission agreement, and may not be assigned voluntarily or by  
25 operation of law.

26 (3) Subject to the requirements of subsection (4) of this section,  
27 the lien created by this chapter becomes effective on the date of the  
28 recording of a notice of claim of lien upon proceeds pursuant to  
29 subsection (6) of this section, and is perfected by such recording.  
30 Recording must be made with the county auditor or recorder in the  
31 county or counties in which the commercial real estate is located.

32 (4) In the case of a disposition of commercial real estate, the  
33 lien under this chapter is not effective unless it is recorded at least  
34 thirty days prior to the date a deed conveying the commercial real  
35 estate is recorded in the office of the county auditor or recorder in  
36 the county or counties in which the commercial real estate is located.  
37 In the case of a lease of commercial real estate, the lien under this

1 chapter is not effective unless it is recorded within ninety days after  
2 the tenant takes possession of the leased commercial real estate.

3 (5) The lien created by this chapter is null and void unless,  
4 within ten days of recording its notice of claim of lien against  
5 proceeds, the broker delivers a copy of the notice of claim of lien  
6 against proceeds to the owner of the commercial real estate in the  
7 manner provided in section 8 of this act. In the case of the  
8 disposition of commercial real estate, on or before the date the deed  
9 conveying the commercial real estate is recorded, the broker shall  
10 deliver a copy of the notice of claim of lien against proceeds to the  
11 escrow closing agent closing the disposition in the manner provided in  
12 section 8 of this act, if the identity of the escrow closing agent is  
13 actually known by the broker.

14 (6) To be effective, the notice of claim of lien against proceeds  
15 must state the following:

16 (a) The name, address, and telephone number of the broker;

17 (b) The date of the commission agreement;

18 (c) The name of the owner of the commercial real estate;

19 (d) The legal description of the commercial real estate as  
20 described in the commission agreement;

21 (e) The amount for which the lien is claimed, which may be stated  
22 in a dollar amount or may be stated in the form of a formula for how  
23 the amount is to be determined such as a percentage of the sales price;

24 (f) The real estate license number of the broker; and

25 (g) That the lien claimant has read the claim, knows the contents,  
26 and believes the same to be true and correct, and that the claim is  
27 made pursuant to a valid commission agreement, and is not frivolous,  
28 under penalties of perjury.

29 A copy of the commission agreement must be attached to the recorded  
30 notice of claim of lien against proceeds. The notice of claim of lien  
31 against proceeds must recite that the information contained in the  
32 notice of claim of lien against proceeds is true and accurate to the  
33 knowledge of the signatory. The notice of claim of lien against  
34 proceeds must be acknowledged pursuant to chapter 64.08 RCW. A notice  
35 of claim of lien against proceeds substantially in the following form  
36 is sufficient:

37 NOTICE OF CLAIM OF LIEN AGAINST PROCEEDS

38 PURSUANT TO CHAPTER 60.-- RCW

39 (sections 1 through 10 of this act)

1 Notice is hereby given that the person named below claims a lien as  
2 to owner's net proceeds or net rental proceeds, but not real property,  
3 pursuant to chapter 60.-- RCW (sections 1 through 10 of this act). In  
4 support of this lien, the following information is submitted:

5 1. Name, telephone number, and address of lien claimant: . . . .  
6 . . . . .

7 2. Washington state broker's license number of lien claimant: . .

8 3. Date of the written commission agreement on which this claim is  
9 based: . . . . . , a true and complete copy of which is  
10 attached to this notice of claim of lien.

11 4. Name of the owner: . . . . .

12 5. Legal description of the commercial real estate described in the  
13 commission agreement: . . . . .  
14 . . . . .

15 6. The amount for which the lien is claimed, which may be stated in  
16 a dollar amount or may be stated in the form of a formula for how the  
17 amount is to be determined such as a percentage of the sales price:  
18 . . . . .

19 7. The undersigned lien claimant, being sworn, states: I have read  
20 the foregoing claim, know the contents, and believe the same to be true  
21 and correct, and the claim is made pursuant to a valid commission  
22 agreement, and is not frivolous, under penalty of perjury.

23 . . . . .  
24 Signature of lien claimant  
25 . . . . .  
26 Name, Street Address, City, State  
27 of person signing  
28 . . . . .  
29 Telephone Number of person signing

30 State of Washington )  
31 ) ss  
32 County of . . . . . )

33 . . . . .  
34 Subscribed and sworn to, or affirmed, before me on . . . by . . .  
35 . . . . .  
36 Signature

1 (Seal or stamp) . . . . .

2 Title

3 My appointment expires . . . . .

4 (Add acknowledgment pursuant to chapter 64.08 RCW)

5 (7) Whenever a notice of claim of lien against proceeds is recorded  
6 and a condition or event occurs, or fails to occur, that would preclude  
7 the broker from receiving compensation under the terms of the  
8 commission agreement, including the filing of a notice of claim of lien  
9 against proceeds in a manner which does not comply with this chapter,  
10 the broker shall record, within seven days following demand by the  
11 owner, a written release of the notice of claim of lien against  
12 proceeds.

13 (8) Whenever the amount claimed in a notice of claim of lien  
14 against proceeds is paid to the lien claimant, the lien claimant shall  
15 promptly record a satisfaction or release of the notice of claim of  
16 lien against proceeds on written demand of the owner no later than five  
17 days after receipt of payment. In the case of a disposition of  
18 commercial real estate, the escrow closing agent is required to pay to  
19 the lien claimant the owner's net proceeds up to the amount claimed in  
20 the notice of claim of lien against proceeds. If the amount claimed in  
21 the notice of claim of lien against proceeds is to be fully or  
22 partially paid to the lien claimant by the escrow closing agent, upon  
23 such disposition, then the lien claimant shall submit a release of the  
24 notice of claim of lien against proceeds in the amount of the owner's  
25 net proceeds or the amount of the lien, whichever is smaller, to the  
26 escrow closing agent to be held in escrow pending such disposition and  
27 payment. In a suit brought by the owner to compel delivery of the  
28 release by the lien claimant, if the court determines that the delay  
29 was unjustified, the court shall, in addition to ordering the release  
30 of the notice of claim of lien, award the costs of the action including  
31 reasonable attorneys' fees to the prevailing party.

32 (9) An owner of commercial real estate may request that a broker  
33 waive the rights to a lien under this chapter, and such a waiver  
34 contained in the commission agreement signed by the broker is effective  
35 to waive the broker's rights to a lien under this chapter. In a suit  
36 filed by a broker to recover amounts due under a commission agreement  
37 in which the broker has waived lien rights under this chapter, if the  
38 court finds that payment is due to the broker under the commission  
39 agreement, the court, in addition to awarding normal damages, shall

1 award to the broker court costs, reasonable attorneys' fees, and  
2 statutory interest, as provided in RCW 19.52.010, from the date the  
3 deed is recorded in the event of a disposition, or from the date the  
4 tenant takes possession in the event of a lease.

5 NEW SECTION. **Sec. 3.** (1) An owner of commercial real estate  
6 subject to a recorded notice of claim of lien against proceeds under  
7 this chapter, who disputes the broker's claim in the notice of claim of  
8 lien against proceeds, may apply by motion to the superior court for  
9 the county where the commercial real estate, or some part thereof, is  
10 located for an order directing the broker to appear before the court at  
11 a time no earlier than seven nor later than fifteen days following the  
12 date of service of the motion and order on the broker, to show cause as  
13 to why the relief requested should not be granted. The motion must  
14 state the grounds upon which relief is asked and must be supported by  
15 the affidavit of the owner setting forth a concise statement of the  
16 facts upon which the motion is based.

17 (2) The order to show cause must clearly state that if the broker  
18 fails to appear at the time and place noted, the notice of claim of  
19 lien against proceeds must be released, with prejudice, and the broker  
20 must be ordered to pay the costs requested by the owner, including  
21 reasonable attorneys' fees.

22 (3) If, following a hearing on the matter, the court determines  
23 that the owner is not a party to an agreement which will result in the  
24 owner being obligated to pay to the broker a commission pursuant to the  
25 terms of a commission agreement, the court shall issue an order  
26 releasing the notice of claim of lien against proceeds and awarding  
27 costs and reasonable attorneys' fees to the owner to be paid by the  
28 broker. If the court determines that the owner is a party to an  
29 agreement which will result in the owner being obligated to pay to the  
30 broker a commission pursuant to the terms of a commission agreement,  
31 the court shall issue an order so stating and awarding costs and  
32 reasonable attorneys' fees to the broker, to be paid by the owner.  
33 Such orders are final judgments.

34 (4) Proceedings under this section shall not affect other rights  
35 and remedies available to the parties under this chapter or otherwise.

36 NEW SECTION. **Sec. 4.** (1) If a broker has a lien on net rental  
37 proceeds pursuant to section 2(2) of this act, and the broker has

1 recorded a notice of claim of lien against proceeds and otherwise  
2 complied with the requirements of this chapter, the broker may apply by  
3 motion to the superior court for the county where the commercial real  
4 estate, or some part thereof, is located, for an order directing the  
5 owner to appear before the court at a time no earlier than seven nor  
6 later than fifteen days following the date of service of the motion and  
7 order on the owner, and show cause as to why the relief requested  
8 should not be granted. The motion must state the grounds upon which  
9 relief is asked, and must be supported by the affidavit of the broker  
10 setting forth a concise statement of the facts upon which the motion is  
11 based.

12 (2) The order to show cause must clearly state that if the owner  
13 fails to appear at the time and place noted, the broker shall be  
14 entitled to an order enjoining the owner from paying the net rental  
15 proceeds from such lease to any party other than the broker, and that  
16 the owner shall be ordered to pay the costs requested by the broker,  
17 including reasonable attorneys' fees.

18 (3) If, following a hearing on the matter, the court determines  
19 that the owner is, or was, a party to an agreement for the lease of  
20 commercial real estate, which did or will result in the owner being  
21 obligated to pay to the broker a commission pursuant to the terms of a  
22 commission agreement, the court shall issue an order enjoining the  
23 owner from paying the net rental proceeds from such lease to any party  
24 other than the broker. The court shall also order the owner to pay  
25 such net rental proceeds to the broker and award costs and reasonable  
26 attorneys' fees to the broker, to be paid by the owner. If the court  
27 determines that the owner is not, or was not, a party to an agreement  
28 for the lease of commercial real estate, which did or will result in  
29 the owner being obligated to pay to the broker a commission pursuant to  
30 the terms of a commission agreement, the court shall issue an order so  
31 stating and awarding costs and reasonable attorneys' fees to the owner,  
32 to be paid by the broker. Such orders are final judgments.

33 (4) Proceedings under this section shall not affect other rights  
34 and remedies available to the parties under this chapter or otherwise.

35 NEW SECTION. **Sec. 5.** All statutory liens, consensual liens,  
36 mortgages, deeds of trust, assignments of rents, and other  
37 encumbrances, including all advances or charges made or accruing  
38 thereunder, whether voluntary or obligatory, and all modifications,



1 extensions, renewals, and replacements thereof, recorded prior to the  
2 recording of a notice of claim of lien against proceeds have priority  
3 over a lien created under this chapter. A prior recorded lien  
4 includes, without limitation, a valid materialmen's or mechanic's lien  
5 claim that is recorded after the recording of the broker's notice of  
6 claim of lien against proceeds but which relates back to a date prior  
7 to the recording date of the broker's notice of claim of lien against  
8 proceeds.

9 NEW SECTION. **Sec. 6.** A notice of claim of lien against proceeds  
10 recorded under this chapter must be released without further act, upon  
11 the recording of a receipt showing the deposit with the superior court  
12 of the county in which the commercial real estate, or some part  
13 thereof, is located, of an amount equal to one and one-quarter times  
14 the amount of the lien claimed. The receipt shall be recorded in the  
15 office in which the notice of claim was recorded. The amount of the  
16 deposit in the superior court shall be held pending a resolution of  
17 amounts due to the broker and the owner.

18 NEW SECTION. **Sec. 7.** The county auditor or recorder shall record  
19 the notice of claim of lien against proceeds, and any release thereof,  
20 in the same manner as deeds and other instruments of title are recorded  
21 under chapter 65.08 RCW. Notices of claim of lien against proceeds for  
22 registered land need not be recorded in the Torrens register. The  
23 county auditor or recorder may not charge a higher fee for recording a  
24 notice of claim of lien against proceeds, or for a release thereof,  
25 than what the county auditor or recorder charges for other documents.

26 NEW SECTION. **Sec. 8.** Notices to be delivered to a party under  
27 this chapter, other than service of process as required in civil  
28 actions, shall be by service of process, or by registered or certified  
29 mail, return receipt requested, or by personal or electronic delivery  
30 and obtaining evidence of delivery in the form of a receipt or other  
31 paper or electronic acknowledgment by the party to whom the notice is  
32 delivered or an affidavit of service. Delivery is effective at the  
33 time of personal service, or personal or electronic delivery, or three  
34 days following deposit in the mail as required by this section. Notice  
35 to a broker or owner may be given to the address of the broker or owner  
36 that is contained in the commission agreement, or such other address as

1 is contained in a written notice from the broker or owner to the party  
2 giving the notice. If no address is provided in the commission  
3 agreement, the notice to the broker may be given to the broker's  
4 address of record with the department of licensing pursuant to chapter  
5 18.85 RCW and notice to the owner may be given to the address of the  
6 commercial real estate.

7 NEW SECTION. **Sec. 9.** This chapter applies to lien claims based on  
8 a commission agreement entered into on, or after, the effective date of  
9 this act.

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

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

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