

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1936

Chapter 315, Laws of 1997

55th Legislature
1997 Regular Session

COMMERCIAL REAL ESTATE BROKER LIEN ACT

EFFECTIVE DATE: 7/27/97

Passed by the House April 21, 1997
Yeas 94 Nays 0

CLYDE BALLARD
**Speaker of the
House of Representatives**

Passed by the Senate April 14, 1997
Yeas 47 Nays 0

BRAD OWEN
President of the Senate

Approved May 12, 1997

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1936** as passed by the House of Representatives and the Senate on the dates hereon set forth.

TIMOTHY A. MARTIN
Chief Clerk

FILED

May 12, 1997 - 3:13 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1936

Passed Legislature - 1997 Regular Session

AS AMENDED BY THE SENATE

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. When a broker and owner execute multiple
10 versions of a commission agreement regarding the same disposition of
11 commercial real estate, the final written version of the commission
12 agreement, which incorporates the final agreement between the broker
13 and the owner, constitutes the "commission agreement" and shall be used
14 to determine the amount of the lien created by this chapter.

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

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

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

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

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

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

38 (9)(a) "Owner's net proceeds" means the gross sales proceeds from
39 the disposition of the commercial real estate described in a notice of

1 claim of lien against proceeds pursuant to this chapter, less the
2 following: (i) Amounts necessary to pay all encumbrances and liens
3 which have priority over the lien created by this chapter other than
4 those permitted to remain by the buyer; (ii) owner's closing costs,
5 such as real estate excise tax, title insurance premiums, real estate
6 tax and assessment prorations, and escrow fees payable by the owner
7 pursuant to an agreement with the buyer; and (iii) amounts held by a
8 third party for use by the owner to complete an exchange of real estate
9 which is deferred from federal income tax under section 1031 of the
10 internal revenue code of 1986, as amended.

11 (b) "Owner's net proceeds" shall include any gross sales proceeds
12 which are held by a third party for purposes of completing an exchange
13 of real estate which is deferred from federal income tax under section
14 1031 of the internal revenue code of 1986, as amended, but are
15 subsequently not used for that purpose. "Owner's net proceeds" are
16 personal property, upon which the lien created by this chapter
17 attaches.

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

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

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

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

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

37 (4) In the case of a disposition of commercial real estate, the
38 lien under this chapter is not effective unless it is recorded at least

1 thirty days prior to the date a deed conveying the commercial real
2 estate is recorded in the office of the county auditor or recorder in
3 the county or counties in which the commercial real estate is located.
4 In the case of a lease of commercial real estate, the lien under this
5 chapter is not effective unless it is recorded within ninety days after
6 the tenant takes possession of the leased commercial real estate.

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

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

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

21 (b) The date of the commission agreement;

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

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

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

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

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

33 A copy of the commission agreement must be attached to the recorded
34 notice of claim of lien against proceeds. The notice of claim of lien
35 against proceeds must recite that the information contained in the
36 notice of claim of lien against proceeds is true and accurate to the
37 knowledge of the signatory. The notice of claim of lien against
38 proceeds must be acknowledged pursuant to chapter 64.08 RCW. A notice

1 of claim of lien against proceeds substantially in the following form
2 is sufficient:

3 NOTICE OF CLAIM OF LIEN AGAINST PROCEEDS
4 PURSUANT TO CHAPTER 60.-- RCW
5 (sections 1 through 10 of this act)

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

10 1. Name, telephone number, and address of lien claimant:
11

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

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

16 4. Name of the owner:

17 5. Legal description of the commercial real estate described in the
18 commission agreement:
19

20 6. The amount for which the lien is claimed, which may be stated in
21 a dollar amount or may be stated in the form of a formula for how the
22 amount is to be determined such as a percentage of the sales price:
23

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

28

29 Signature of lien claimant

30

31 Name, Street Address, City, State
32 of person signing

33

34 Telephone Number of person signing

1 State of Washington)
2) ss
3 County of)

4
5 Subscribed and sworn to, or affirmed, before me on . . . by . . .

6
7 Signature

8 (Seal or stamp)
9 Title

10 My appointment expires

11 (Add acknowledgment pursuant to chapter 64.08 RCW)

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

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

1 (9) An owner of commercial real estate may request that a broker
2 waive the rights to a lien under this chapter, and such a waiver
3 contained in the commission agreement signed by the broker is effective
4 to waive the broker's rights to a lien under this chapter. In a suit
5 filed by a broker to recover amounts due under a commission agreement
6 in which the broker has waived lien rights under this chapter, if the
7 court finds that payment is due to the broker under the commission
8 agreement, the court, in addition to awarding normal damages, shall
9 award to the broker court costs, reasonable attorneys' fees, and
10 statutory interest, as provided in RCW 19.52.010, from the date the
11 deed is recorded in the event of a disposition, or from the date the
12 tenant takes possession in the event of a lease.

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

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

30 (3) If, following a hearing on the matter, the court determines
31 that the owner is not a party to an agreement which will result in the
32 owner being obligated to pay to the broker a commission pursuant to the
33 terms of a commission agreement, the court shall issue an order
34 releasing the notice of claim of lien against proceeds and awarding
35 costs and reasonable attorneys' fees to the owner to be paid by the
36 broker. If the court determines that the owner is a party to an
37 agreement which will result in the owner being obligated to pay to the
38 broker a commission pursuant to the terms of a commission agreement,

1 the court shall issue an order so stating and awarding costs and
2 reasonable attorneys' fees to the broker, to be paid by the owner.
3 Such orders are final judgments.

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

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

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

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

1 stating and awarding costs and reasonable attorneys' fees to the owner,
2 to be paid by the broker. Such orders are final judgments.

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

5 NEW SECTION. **Sec. 5.** All statutory liens, consensual liens,
6 mortgages, deeds of trust, assignments of rents, and other
7 encumbrances, including all advances or charges made or accruing
8 thereunder, whether voluntary or obligatory, and all modifications,
9 extensions, renewals, and replacements thereof, recorded prior to the
10 recording of a notice of claim of lien against proceeds have priority
11 over a lien created under this chapter. A prior recorded lien
12 includes, without limitation, a valid materialmen's or mechanic's lien
13 claim that is recorded after the recording of the broker's notice of
14 claim of lien against proceeds but which relates back to a date prior
15 to the recording date of the broker's notice of claim of lien against
16 proceeds.

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

26 NEW SECTION. **Sec. 7.** The county auditor or recorder shall record
27 the notice of claim of lien against proceeds, and any release thereof,
28 in the same manner as deeds and other instruments of title are recorded
29 under chapter 65.08 RCW. Notices of claim of lien against proceeds for
30 registered land need not be recorded in the Torrens register. The
31 county auditor or recorder may not charge a higher fee for recording a
32 notice of claim of lien against proceeds, or for a release thereof,
33 than what the county auditor or recorder charges for other documents.

34 NEW SECTION. **Sec. 8.** Notices to be delivered to a party under
35 this chapter, other than service of process as required in civil

1 actions, shall be by service of process, or by registered or certified
2 mail, return receipt requested, or by personal or electronic delivery
3 and obtaining evidence of delivery in the form of a receipt or other
4 paper or electronic acknowledgment by the party to whom the notice is
5 delivered or an affidavit of service. Delivery is effective at the
6 time of personal service, or personal or electronic delivery, or three
7 days following deposit in the mail as required by this section. Notice
8 to a broker or owner may be given to the address of the broker or owner
9 that is contained in the commission agreement, or such other address as
10 is contained in a written notice from the broker or owner to the party
11 giving the notice. If no address is provided in the commission
12 agreement, the notice to the broker may be given to the broker's
13 address of record with the department of licensing pursuant to chapter
14 18.85 RCW and notice to the owner may be given to the address of the
15 commercial real estate.

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

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

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

Passed the House April 21, 1997.

Passed the Senate April 14, 1997.

Approved by the Governor May 12, 1997.

Filed in Office of Secretary of State May 12, 1997.