



SENATE BILL No. 1151

September 17, 1996, Introduced by Senator BULLARD and referred to the Committee on Financial Services.

A bill to create a commercial real estate broker's lien.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "commercial real estate broker's lien act".

3 Sec. 2. As used in this act:

4 (a) "Buyer" means a purchaser, tenant, or lessee of any
5 legal or equitable interest in real estate.

6 (b) "Commercial real estate" means real estate or an inter-
7 est in real estate other than real estate containing 1 to 4 resi-
8 dential units, and real estate that is zoned for single family
9 use on which no building or structures are located. Commercial
10 real estate does not include single-family residential units,
11 including condominiums, townhouses, and homes, in a subdivision
12 or site condominium when sold, leased, or otherwise conveyed on a
13 unit-by-unit basis even though these units may be part of a

1 larger building or parcel of real estate containing more than 4
2 residential units.

3 (c) "Commercial real estate broker's lien" means a lien cre-
4 ated under this act that is available to a licensed real estate
5 broker.

6 (d) "Record" means to record with the register of deeds for
7 the county in which the commercial real estate is located.

8 (e) "Seller" means the equitable or legal owner or lessor of
9 an interest in real estate.

10 Sec. 3. The lien created under this act is only available
11 to a licensed real estate broker or commercial real estate
12 broker. The commercial real estate broker's lien is not avail-
13 able to an employee or an independent contractor of the licensed
14 real estate broker.

15 Sec. 4. (1) A potential lien is created upon commercial
16 real estate owned or to be acquired by the person obligated to
17 pay the real estate broker's commission in the amount due to that
18 real estate broker for licensed services if either of the follow-
19 ing circumstances exists:

20 (a) The real estate broker has a written agreement with the
21 seller or the agent of the seller of commercial real estate and
22 the real estate broker records a notice of potential lien in the
23 form provided in this section within 10 days after the date on
24 which the written agreement is signed.

25 (b) The real estate broker has a written agreement with a
26 prospective buyer or the agent of a prospective buyer as to the

1 purchase, lease, or other conveyance to the buyer of the
2 commercial real estate.

3 (2) A notice of potential lien recorded under this section
4 shall be in substantially the following form:

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7

"NOTICE OF POTENTIAL LIEN

8 [Name of Broker]

9 _____

) Notice of Potential Commercial
) Real Estate Broker's Lien

10 Broker-Claimant,

)

) In the Office of the Register of

) Deeds of _____ County, Michigan

14

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16 Notice is hereby given that the undersigned broker-claimant,

17 whose real estate license number is _____, and

18 whose business address is _____,

19 has entered into a written commission agreement with

20 _____, the (seller) (buyer) of

21 the following described real estate pursuant to which

22 broker-claimant may in the future be entitled to a commercial

23 real estate broker's lien:

24

25

26 (LEGAL DESCRIPTION)

27

28 In witness whereof, this instrument has been executed by the

29 undersigned this _____ day of _____, 19____.

30 Witnessed:

[Name of Broker]

31 _____

By: _____

Its Authorized Agent

1
2 _____

3 State of Michigan)
4)SS
5 County of _____)

6
7 Subscribed and sworn to before me this _____ day of _____,
8 19__.

9 _____
10 Notary Public

11 Prepared By: _____

12 Return To: _____"

13

14 Sec. 5. (1) A commercial real estate broker's lien shall
15 attach on commercial real estate if all of the following circum-
16 stances exist:

17 (a) The real estate broker has a written commission agree-
18 ment and has filed a notice of potential lien as provided in sec-
19 tion 4.

20 (b) The real estate broker is entitled to a commission under
21 the terms of the written commission agreement.

22 (c) Except as provided in subsection (2), (3), (4), or (5),
23 the real estate broker records a claim of lien within 90 days
24 after the actual conveyance of the commercial real estate against
25 which the real estate broker is claiming the lien.

26 (2) Except as provided in subsection (3), when payment of
27 the commission is due in installments, a portion of which is due
28 only after the conveyance of the commercial real estate, a claim
29 of lien for those payments due after the date of the conveyance

1 may be recorded after the conveyance and before the date on which
2 the payments are due. The claim of lien is only effective as a
3 lien against the commercial real estate to the extent payment is
4 still owed to the seller by the buyer. A single claim of lien
5 recorded before the conveyance of the commercial real estate
6 claiming a commission due under an installment agreement is not
7 enforceable as to a claim for a commission due after the
8 conveyance. The lien attaches on the date of the recording of
9 the notice of lien.

10 (3) If payment to the owner of commercial real estate is
11 based upon a lease, then the claim of lien shall be recorded by
12 the real estate broker within 90 days after the lessee or the
13 lessee's tenant takes possession of the leased premises or within
14 90 days after the modification of the existing lease is confirmed
15 in writing. However, if written notice of the intended signing
16 of the lease is personally served upon the real estate broker who
17 is entitled to claim the lien at least 10 days before the date of
18 the intended signing of the lease, the licensee shall file the
19 claim of lien before the date designated in the written notice as
20 the intended date of the signing of the lease. The lien attaches
21 on the date of the recording of the claim of lien. As used in
22 this subsection, "lease" includes a lease, sublease, assignment
23 of lease, or other modification of an existing lease for which a
24 commission or fee is due to a real estate broker.

25 (4) If a real estate broker has a written agreement with a
26 potential buyer to act as a buyer's agent, the lien attaches upon
27 the buyer purchasing or otherwise accepting the conveyance of

1 commercial real estate and recording a lien within 90 days after
2 the purchase or conveyance.

3 (5) If there is a potential claim for a commission payment
4 based upon an option to purchase commercial real estate, the real
5 estate broker shall record a notice of potential lien in the form
6 provided in section 4 within 10 days of the creation of the
7 option. A lien pursuant to this subsection shall attach upon the
8 transfer or conveyance of the commercial real estate or interest
9 in commercial real estate pursuant to the exercise of the option
10 to purchase.

11 (6) A claim of lien shall state the name of the claimant,
12 the name of the owner of the commercial real estate, the legal
13 description of the commercial real estate upon which the lien is
14 being claimed, the amount for which the lien is claimed, and the
15 license number of the real estate broker. The real estate broker
16 shall attach to the claim of lien a copy of the written instru-
17 ment on which the claim for commission or fee is based if such
18 instrument is in the possession of the real estate broker or a
19 statement that the instrument is not in the possession of the
20 real estate broker. The claim of lien shall recite that the
21 information contained in the claim of lien is true and accurate
22 to the knowledge of the signer. The claim of lien shall be
23 signed by the real estate broker or by a person authorized to
24 sign on behalf of the real estate broker and shall be notarized.

25 (7) A claim of lien recorded under this section shall be
26 substantially in the following form:

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"CLAIM OF LIEN

[Name of Claimant]

-) Claim of Commercial
-) Real Estate Broker's Lien
-)
-) In the Office of the Register of
-) Deeds of _____ County, Michigan

Notice is hereby given that the undersigned broker-claimant,
 whose real estate license number is _____, and
 whose business address is _____,

Michigan, claims a commercial real estate broker's lien under
 section 2519 of Act No. 299 of the Public Acts of 1980, being
 section 339.2519 of the Michigan Compiled Laws, and states:

1. That the following described real property ("property")
 located at _____, _____ county,
 Michigan; and which is legally described on exhibit A attached
 hereto and the record owner ("owner") of which is
 _____;

2. That on _____, the broker-claimant
 entered into a written agreement with the (owner) (buyer) obli-
 gating such party to pay a commission to broker-claimant, a copy
 of which is attached as exhibit B;

3. If no exhibit B is attached hereto, broker-claimant rep-
 resents that although such instrument has been executed,
 broker-claimant does not have a copy of such instrument in its
 possession;

4. That the broker-claimant by its agents provided services
 for said (owner) (buyer) and is in compliance with

1 broker-claimant's obligations under a written agreement to which
2 (owner) (buyer) is a party;

3 5. That the amount of the commission or fee to which
4 broker-claimant is entitled is _____; and

5 6. Broker-claimant now claims a lien on the property and
6 all improvements thereon and against all persons interested
7 therein in the sum of
8 _____
9 (\$_____).

10 7. The information contained in this claim of lien is true
11 and accurate to the knowledge of the signer.

12 Witnessed: [Name of Broker]

13 _____ By: _____
14 Its Authorized Agent

15 _____
16 State of Michigan)
17)SS
18 County of _____)
19

20 Subscribed and sworn to before me this _____ day of _____,
21 19__.

22 _____
23 Notary Public

24 Note: This lien notice is void and unenforceable unless recorded
25 with the register of deeds of the county in which the real estate
26 is located, as required by the commercial real estate broker's
27 lien act.

28 Prepared By: _____

1 Return To: _____"

2

3 (8) Within 10 days of recording the claim of lien, the real
4 estate broker shall provide notice of the claim of lien to the
5 owner of record of the commercial real estate and to the party
6 who has signed the written commission agreement by mailing a copy
7 of the claim of lien by registered or certified mail with return
8 receipt requested to the address of the commercial real estate
9 that is the subject of the claim of lien or by personal service.
10 Mailing a copy of the claim of lien is effective as notice under
11 this subsection when deposited in a United States mailbox with
12 postage prepaid. The commercial real estate broker's lien is
13 void and unenforceable if mailing of the copy of the claim of
14 lien does not occur at the time and in the manner required by
15 this subsection.

16 (9) A lien not recorded in compliance with this section is
17 void and unenforceable.

18 (10) A lien attaching pursuant to this section does not take
19 priority over any other valid prior recorded lien or mortgage on
20 commercial real estate. A valid prior recorded lien includes,
21 but is not limited to, a valid construction lien claim that is
22 recorded subsequent to the commercial real estate broker's lien
23 but which relates back to a date before the recording date of the
24 commercial real estate broker's lien, and prior recorded liens
25 securing revolving credit and future advances of construction
26 loans.

1 Sec. 6. (1) If a lien filed pursuant to section 5 prevents
2 the closing of a transaction involving commercial real estate,
3 the parties shall establish an escrow account from the proceeds
4 of the transaction in an amount sufficient to satisfy the lien.
5 The requirement of establishing an escrow account under this sub-
6 section is not cause for a party to refuse to close the
7 transaction. The money shall remain in the escrow account until
8 the rights of the escrowed money have been determined by a writ-
9 ten agreement of the parties, a judgment or order resulting from
10 an action commenced in a court of competent jurisdiction, or any
11 other method agreeable to the parties.

12 (2) Upon the escrow of funds under subsection (1) in an
13 amount sufficient to satisfy the lien, the lien shall be extin-
14 guished and the real estate broker shall provide a release of
15 lien in the form provided in subsection (3). The parties are not
16 required to establish an escrow account if alternative procedures
17 are available that would allow the transaction to close and these
18 procedures are acceptable to all the parties to the transaction.
19 If the proceeds from the transaction are insufficient to release
20 all liens for a licensee's commission that are claimed against
21 the commercial real estate, the parties are not required to
22 escrow the money.

23 (3) A release of lien recorded under this section shall be
24 substantially in the following form:

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"RELEASE OF LIEN

1

2 State of Michigan)

3)SS

4 County of _____)

5

6 The undersigned, being the claimant of a claim for a commercial

7 real estate broker's lien recorded on _____ (date) in the

8 office of the register of deeds of _____ county,

9 Michigan at liber _____, page _____

10 does hereby release the lien on the following described

11 property:

12

13 (LEGAL DESCRIPTION)

14

15 In witness whereof, this instrument has been executed by the

16 undersigned this _____ day of _____, 19__.

17 Witnessed: [Name of Claimant]

18 _____ By: _____

19 Its Authorized Agent

20 _____

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22 Subscribed and sworn to before me this _____ day of _____,

23 19__.

24 _____

25 Notary Public

26 Prepared By: _____

27 Return To: _____"

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29 Sec. 7. (1) A real estate broker claiming a lien may file

30 an action to enforce a lien created pursuant to this section in

1 the circuit court in the county where the commercial real estate
2 is located by filing a complaint and sworn affidavit that the
3 lien has been recorded.

4 (2) The plaintiff shall designate as defendants to any
5 action filed under this act all persons who, at the time of the
6 filing of the action, have an interest in the commercial real
7 estate involved in the action that would be divested or otherwise
8 impaired by the foreclosure of the lien.

9 (3) In connection with an action for foreclosure of a lien,
10 the lien claimant also may maintain an action on the contract
11 from which the lien arose.

12 Sec. 8. (1) Unless the claim is based upon an option to
13 purchase the commercial real estate, the party claiming the lien
14 shall commence an action within 2 years after the date of the
15 recording of the claim of lien.

16 (2) A real estate broker claiming a lien based upon an
17 option to purchase shall commence an action within 6 months after
18 the date of the transfer or conveyance of the commercial real
19 estate pursuant to the exercise of the option to purchase.

20 (3) Failure to commence an action within the time period
21 described in this section shall extinguish the lien. A subse-
22 quent claim of lien shall not be given for the same claim, and
23 that claim shall not be asserted in any action filed under this
24 section based upon such subsequent notice.

25 Sec. 9. (1) If the court finds that a lien claimant is
26 entitled to a lien upon the commercial real estate and that the
27 amount of judgment has not been paid, the court may enter a

1 judgment ordering the sale of any interest in the commercial real
2 estate, or part of the commercial real estate, to which the lien
3 attaches. In the order for the foreclosure sale, the court shall
4 fix a period of redemption that shall not exceed 4 months. The
5 sale shall be conducted in the same manner as a sale on
6 execution. The sale shall become final, subject to the period of
7 redemption, upon the entry of an order of confirmation by the
8 court. Upon expiration of the redemption period, the foreclosure
9 shall vest in the grantee named in the deed all right, title, and
10 interest in the commercial real estate subject to the lien.
11 Redemption from a foreclosure sale is complete upon payment of
12 all sums set forth in the judgment of foreclosure. If the pro-
13 ceeds of the sale are insufficient to satisfy the judgment, then
14 upon confirmation of the court a deficiency judgment may enter
15 against the party who has signed the written agreement to pay the
16 real estate broker.

17 (2) The court shall award costs to a prevailing party bring-
18 ing an action under this section, the costs including reasonable
19 attorney fees, court and litigation costs, and prejudgment
20 interest.

21 Sec. 10. If a written demand that requires an action to be
22 commenced to enforce the lien or an answer to be filed in a pend-
23 ing action on behalf of the owner of the commercial real estate
24 is served on the person claiming the lien, the action shall be
25 commenced or an answer filed within 30 days after service of the
26 written demand or the lien shall be extinguished without further

1 action. Service of the demand may be by registered or certified
2 mail, return receipt requested, or by personal service.

3 Sec. 11. When a claim of lien has been recorded pursuant to
4 this act and a condition occurs that prohibits the real estate
5 broker from receiving compensation under the terms of the written
6 agreement upon which the claim is based, the real estate broker
7 shall provide a release of lien as provided in section 6 to the
8 owner of record within 10 days following written demand of the
9 owner of record or the owner's agent. A condition that would
10 prohibit the real estate broker from receiving compensation under
11 the written agreement upon which the claim is based shall include
12 a failure to close a sales transaction as a result of a default
13 by the buyer.

14 Sec. 12. When a claim of lien recorded pursuant to this act
15 has been paid, or where there is failure to institute an action
16 to enforce the lien within the time provided by section 8, the
17 real estate broker shall provide a written release of lien in the
18 form provided in section 6, within 5 days after written demand on
19 behalf of the owner.

20 Sec. 13. (1) When a claim of lien recorded pursuant to this
21 act has been partially paid, the real estate broker shall provide
22 a partial satisfaction and release of lien in the form provided
23 in subsection (2) within 5 days after written demand on behalf of
24 the owner.

25 (2) The partial satisfaction and release of lien recorded
26 under this section shall be in substantially the following form:

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"PARTIAL SATISFACTION AND RELEASE OF LIEN

State of Michigan)
)SS
County of _____)

Whereas, the undersigned is the claimant of a claim for a commercial real estate broker's lien recorded on _____ (date) in the office of the register of deeds of _____ county, Michigan at liber _____, page _____ on the following described property:

(LEGAL DESCRIPTION)

Whereas, the undersigned has been paid a portion of the amount of the lien.

Now, therefore, the undersigned, for and in consideration of _____ dollars (\$ _____), does hereby satisfy and waive any and all claim of, or right to, a lien under the statutes of the State of Michigan relating to commercial real estate broker's liens with respect to and on the said above-described premises, the building or buildings thereon, and the tenant spaces therein, to the extent of the commission received as described above.

Witnessed: [Name of Claimant]
By: _____
Its Authorized Agent

Subscribed and sworn to before me this _____ day of _____, 19__.

1 _____
2 Notary Public

3 Prepared By: _____

4 Return To: _____"

5
6 Sec. 14. (1) When a notice of potential lien has been
7 recorded pursuant to this section and a condition occurs that
8 would prohibit the real estate broker from receiving compensation
9 under the terms of the written agreement upon which the notice is
10 based, the commercial real estate broker shall provide a termina-
11 tion of notice of potential lien in the form provided in subsec-
12 tion (2) within 5 days after written demand on behalf of the
13 owner.

14 (2) A termination of notice of potential lien recorded under
15 this section shall be in substantially the following form:

16
17 "TERMINATION OF NOTICE OF POTENTIAL LIEN

18 State of Michigan)
19)SS
20 County of _____)
21

22 The undersigned, having recorded a notice of potential lien
23 on _____ (date) in the office of the register of deeds of
24 _____ county, Michigan at liber _____, page _____,
25 does hereby terminate its notice on the following described
26 property:

27 (LEGAL DESCRIPTION)

28
29 In witness whereof, this instrument has been executed by the
30 undersigned this _____ day of _____, 19___.

1 Witnessed:

[Name of Claimant]

2 _____

By: _____

3 _____

Its Authorized Agent

4 _____

5

6 Subscribed and sworn to before me this _____ day of _____,

7 19__.

8

9

Notary Public

10 Prepared By: _____

11 Return To: _____"

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13 Sec. 15. Funds advanced pursuant to a subsequently recorded
14 mortgage have priority over a commercial real estate broker's
15 lien if the funds were advanced by the mortgagee without actual
16 or constructive knowledge of the commercial real estate broker's
17 lien or notice of potential lien.

18 Sec. 16. This act is applicable to written commission
19 agreements signed after the effective date of this act.