COMMERCIAL REAL ESTATE BROKER'S LIEN ACT

Act 201 of 2010

AN ACT to create a lien against real property for unpaid commercial real estate broker's commissions and services; and to provide remedies.

History: 2010, Act 201, Imd. Eff. Oct. 5, 2010

The People of the State of Michigan enact:

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570.581 Short title.

Sec. 1.

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

History: 2010, Act 201, Imd. Eff. Oct. 5, 2010

570.582 Definitions.

Sec. 2.

As used in this act:

(a) "Buyer" means a purchaser or lessee of a legal or equitable interest in real estate.

(b) "Claim of lien" means a claim of a commercial real estate broker's lien asserted under this act.

(c) "Commercial real estate" means real estate or an interest in real estate that is not any of the following:

(i) Real estate zoned for single-family use and on which no building or structure is located.

(ii) Real estate on which 4 or fewer residential units are located.

(iii) Real estate on which more than 4 residential units are located if the units are single-family residential units, including houses, condominiums, or townhouses in a subdivision or condominium project, that are sold, leased, or otherwise conveyed on a unit-by-unit basis.

(d) "Commercial real estate broker's lien" means a lien created under this act.

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

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

History: 2010, Act 201, Imd. Eff. Oct. 5, 2010

570.583 Commercial real estate broker's lien; availability.

Sec. 3.

A commercial real estate broker's lien is only available to an individual licensed as a real estate broker under article 25 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518. A commercial real estate broker's lien is not available to an employee, agent, subagent, or independent contractor of a licensed real estate broker.

History: 2010, Act 201, Imd. Eff. Oct. 5, 2010

570.584 Lien; attachment; conditions; recording; time of filing; contents of claim; form; mailing; claim of lien as void and unenforceable; priority of prior-recorded lien or mortgage; "lease" defined.

Sec. 4.

(1) A commercial real estate broker's lien attaches to commercial real estate in favor of a real estate broker if all of the following circumstances exist:

(a) The real estate broker has a written commission agreement.

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

(c) Except as provided in subsections (3) to (8), the real estate broker records a claim of lien before the actual conveyance of the commercial real estate.

(2) Unless this act specifically provides otherwise, a commercial real estate broker's lien attaches on the date the claim of lien is recorded.

(3) Except as provided in subsections (4) to (6), when payment of a real estate broker's commission is due in installments, 1 or more of which are due after the conveyance of the commercial real estate, a claim of lien for the payments due after the date of the conveyance may be recorded after the date of the conveyance and before the dates on which the payments are due. However, a claim of lien under this subsection shall be recorded within 60 days after the conveyance of the commercial real estate. A lien under this subsection is only effective against the commercial real estate to the extent payment is still owed to the seller by the buyer.

(4) If a real estate broker is owed a commission as a result of a lease, the real estate broker may record a claim of lien any time within 60 days after the lease is signed. Except as provided in subsections (5) and (6), a lien under this subsection attaches after both of the following occur:

(a) The claim of lien is recorded.

(b) The lessee takes possession of the leased premises.

(5) If a real estate broker may be owed a commission in the future as a result of an extension of the term or the expansion of the leased premises under an existing lease, a commercial real estate broker's lien attaches after both of the following occur:

(a) A claim of lien is recorded. A claim of lien under this subsection shall be recorded within 60 days after the signing of the existing lease.

(b) The extension or modification of the existing lease is confirmed in writing.

(6) If written notice of the intent to enter into a lease that includes a date on which the lease is intended to be signed is personally served on a real estate broker at least 10 days before the intended date of signing, the real estate broker shall file a claim of lien before the intended date of signing.

(7) If a real estate broker has a written agreement with a potential buyer to act as a buyer's agent, a commercial real estate broker's lien attaches after both of the following occur:

(a) The buyer purchases or accepts the conveyance of the commercial real estate.

(b) A claim of lien is recorded.

(8) If a real estate broker may be owed a commission in the future as a result of an option to purchase commercial real estate, the real estate broker may record a claim of lien at any time after the option to purchase is signed and before the transfer or conveyance pursuant to the exercise of the option. A lien attaches under this subsection after both of the following occur:

(a) The claim of lien is recorded.

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(b) The real estate is transferred or conveyed pursuant to the exercise of the option to purchase.

(9) A claim of lien shall contain all of the following:

(a) The name and the license number of the claimant.

(b) The name of the owner of the commercial real estate.

(c) The amount for which the lien is claimed.

(d) As an attachment, the legal description of the commercial real estate on which the lien is being claimed.

(e) As an attachment, a legible copy of the written instrument on which the claim for commission or fee is based.

(f) A statement that the information contained in the claim of lien is true and accurate to the knowledge of the signer.

(g) The notarized signature of the real estate broker or a person authorized to sign on behalf of the real estate broker.

(10) A claim of lien recorded under this section shall meet the requirements of 1937 PA 103, MCL 565.201 to 565.203, and be substantially in the following form:

CLAIM OF LIEN

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

The broker-claimant named above, whose real estate license number is _____, and whose business address is _____, Michigan, claims a commercial real estate broker's lien under section 4 of the commercial real estate broker's lien act and states:

1. The real property ("property") against which the lien is claimed is located at _____, _____ County, Michigan, and is legally described on Exhibit A attached to this claim. The record owner ("owner") of the property is _____.

2. On _____, the broker-claimant entered into a written agreement with the (owner) (buyer) obligating the (owner) (buyer) to pay a commission to the broker-claimant. A legible copy of the agreement is attached as Exhibit B.

3. The broker-claimant, by its agents, provided services for the (owner) (buyer) and is in compliance with the broker-claimant's obligations under the written agreement referred to in paragraph 2.

4. The amount of the commission or fee to which the broker-claimant is entitled is _____.

5. _____ (a) The broker-claimant now claims a lien on the property and all improvements to the property and against all persons interested in the property in the amount of $_____.

_____ (b) The broker-claimant claims a potential future lien on the property and all improvements to the property and against all persons interested in the property if there is a lease extension or expansion.

_____ (c) The broker-claimant claims a potential future lien on the property and all improvements to the property and against all persons interested in the property if an option to

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purchase the property is exercised. This lien is only effective if the property is conveyed pursuant to the option to purchase; it may otherwise be disregarded.

6. The information contained in this claim of lien is true and accurate to the best knowledge of the signer.

[Name of Broker]

By:_____

Its Authorized Agent

Signed and sworn to before me in _____ County, Michigan, on _____, _____[year].

_____

[Notary's name, county, acting in county, state, and date commission expires]

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

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

(12) A claim of lien not recorded in compliance with this section is void and unenforceable.

(13) A valid prior-recorded lien or mortgage on commercial real estate has priority over a commercial real estate broker's lien. A valid prior-recorded lien or mortgage includes, but is not limited to, both of the following:

(a) A valid construction lien that is recorded after the claim of lien is recorded and that relates back to a date before the claim of lien is recorded.

(b) A lien securing revolving credit and future advances of construction loans that is recorded before the claim of lien is recorded.

(14) As used in this section, "lease" includes a sublease, assignment of a lease, or modification of a lease.

History: 2010, Act 201, Imd. Eff. Oct. 5, 2010

570.585 Escrow account; establishment to satisfy lien; release.

Sec. 5.

(1) If a claim of lien recorded under section 4 would otherwise prevent the closing of a transaction involving commercial real estate, the parties to the transaction shall, subject to

subsection (2), establish an escrow account from the proceeds of the transaction in an amount sufficient to satisfy the lien. A buyer or seller shall not refuse to close the transaction because of the requirement of establishing an escrow account under this subsection. The money shall remain in the escrow account until the rights to the money have been determined by a written agreement of the parties, a judgment or order by a court of competent jurisdiction, or any other method agreeable to the parties.

(2) An escrow account is not required under subsection (1) if either of the following circumstances exists:

(a) Alternative procedures are available that will allow the transaction to close and that are acceptable to all the parties to the transaction.

(b) The proceeds from the transaction are insufficient to satisfy all liens against the commercial real estate under this act.

(3) If an amount sufficient to satisfy a commercial real estate broker's lien is escrowed under subsection (1), the lien is extinguished and the real estate broker shall provide a release of lien that meets the requirements of 1937 PA 103, MCL 565.201 to 565.203, and is substantially in the following form:

RELEASE OF LIEN

The undersigned is the claimant under a claim of commercial real estate broker's lien recorded on _____ [date] in the office of the register of deeds of _____ County, Michigan, at Liber _____, Page _____, or at _____ [enter other unique identifying numbers]. The undersigned releases the lien on the following described property:

[Legal description]

[Name of Claimant]

By:_____

Its Authorized Agent

Signed and sworn to before me in _____ County, Michigan,

on _____, _____[year].

_____

[Notary's name, county, acting in county, state, and date commission expires]

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History: 2010, Act 201, Imd. Eff. Oct. 5, 2010

570.586 Action to enforce lien; complaint.

Sec. 6.

(1) A person claiming a commercial real estate broker's lien may bring an action to enforce the lien in the circuit court for the county where the commercial real estate is located by filing a complaint and affidavit that the claim of lien has been recorded.

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(2) The plaintiff in an action under this section shall name as defendants all persons that, at the time the action is filed, have an interest in the commercial real estate that is the subject of the action that would be divested or impaired by the foreclosure of the lien.

(3) The complaint in an action under this section may include a claim on the contract from which the lien arises.

History: 2010, Act 201, Imd. Eff. Oct. 5, 2010

570.587 Commencement of action; time period.

Sec. 7.

(1) An action under section 6 shall be commenced within 1 year after the date the commercial real estate broker's lien attaches.

(2) Failure to commence an action within the applicable time period under this section extinguishes the lien. A later claim of lien for the same commission or services shall not be made and shall not be the basis of an action filed under section 6.

History: 2010, Act 201, Imd. Eff. Oct. 5, 2010

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570.588 Sale of interest in commercial real estate; court order; order of foreclosure; period of redemption; order of deficiency judgment; costs.

Sec. 8.

(1) If the court in an action under section 6 finds that the plaintiff is entitled to the commercial real estate lien and that the amount claimed has not been paid, the court may enter a judgment ordering the sale of any interest in the commercial real estate, or part of the commercial real estate, to which the lien attaches. In the order of foreclosure sale, the court shall set a period of redemption not exceeding 4 months. The order of foreclosure sale shall be recorded. The sale shall be conducted in the same manner as a sale on execution. The sale is final, subject to the period of redemption, on the entry of an order of confirmation by the court. On expiration of the period of redemption, the grantee named in the deed is vested with all right, title, and interest in the commercial real estate that was subject to the lien. Redemption from a foreclosure sale is complete on full payment of the amount in the judgment of foreclosure. If the court determines that the proceeds of the sale are insufficient to satisfy the judgment, the court may enter a deficiency judgment against the person who signed the written agreement to pay the real estate broker.

(2) The court in an action under section 6 may, in its discretion, award costs to a prevailing plaintiff, including reasonable attorney fees, court and litigation costs, and prejudgment interest.

(3) If the court determines that an action under section 6 was frivolous, the court may, in its discretion, award costs described in subsection (2) to the defendant.

History: 2010, Act 201, Imd. Eff. Oct. 5, 2010

570.589 Written demand on behalf of owner of commercial real estate; service.

Sec. 9.

A written demand on behalf of the owner of commercial real estate may be served on a person claiming a commercial real estate broker's lien, demanding that an action be

commenced to enforce the lien or that an answer be filed in an action pending between the owner and the lien claimant. If the action is not commenced or the answer is not filed within 30 days after service of the demand, the lien is extinguished without further action. Service of the demand may be by registered or certified mail, return receipt requested, or by personal service.

History: 2010, Act 201, Imd. Eff. Oct. 5, 2010

570.590 Condition prohibiting compensation; release of lien.

Sec. 10.

If a claim of lien has been recorded under this act and a condition occurs that prohibits the real estate broker from receiving compensation under the terms of the written agreement on which the claim is based, the real estate broker shall provide a release of lien under section 5 to the owner of record within 10 days after a written demand by the owner of record or the owner's agent.

History: 2010, Act 201, Imd. Eff. Oct. 5, 2010

570.591 Payment of claim or failure to commence action; release of lien.

Sec. 11.

If a claim of lien recorded under this act has been paid, or if an action to enforce the lien has not been commenced within the time limitations of section 7, the real estate broker shall record a release of lien under section 5 within 5 days after a written demand by the owner of record or the owner's agent and provide a copy of the recorded release.

History: 2010, Act 201, Imd. Eff. Oct. 5, 2010

570.592 Partial payment of lien claim; partial satisfaction and release of lien; form.

Sec. 12.

(1) If a claim of lien recorded under this act has been partially paid, the real estate broker shall provide a partial satisfaction and release of lien in the form provided in subsection (2) within 5 days after written demand by the owner of record or the owner's agent.

(2) A partial satisfaction and release of lien under this section shall meet the requirements of 1937 PA 103, MCL 565.201 to 565.203, and be in substantially the following form:

PARTIAL SATISFACTION AND RELEASE OF LIEN

The claimant named below is the claimant under a claim of 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]

The claimant has been paid $_____, a portion of the amount of the lien. The remaining amount of the lien is $_____.

Therefore, the claimant, for and in consideration of the payment, waives, to the extent of the payment, the claim of or right to a lien under the commercial real estate broker's lien act against the property described above, the building or buildings on the property, and the tenant spaces in the building or buildings.

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[Name of Claimant]
By:_____
Its Authorized Agent

Signed and sworn to before me in _____ County, Michigan, on _____, _____[year].

_____
[Notary's name, county, acting in county, state, and date commission expires]

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History: 2010, Act 201, Imd. Eff. Oct. 5, 2010

570.593 Priority of subsequently recorded mortgage; condition.

Sec. 13.

A subsequently recorded mortgage has priority over a commercial real estate broker's lien if the mortgagee did not have actual or constructive knowledge of the lien at the time the mortgagee advanced money under the mortgage.

History: 2010, Act 201, Imd. Eff. Oct. 5, 2010

570.594 Written commission agreement signed after effective date of act; applicability.

Sec. 14.

This act applies to a written commission agreement signed after the effective date of this act.

History: 2010, Act 201, Imd. Eff. Oct. 5, 2010

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