

SENATE BILL No. 1313

May 14, 2008, Introduced by Senators RICHARDVILLE and KAHN and referred to the Committee on Economic Development and Regulatory Reform.

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

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 or lessee of a legal or
5 equitable interest in real estate.

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

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

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

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

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

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

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

14 Sec. 3. A commercial real estate broker's lien is only
15 available to an individual licensed as a real estate broker under
16 article 25 of the occupational code, 1980 PA 299, MCL 339.2501 to
17 339.2518. A commercial real estate broker's lien is not available
18 to an employee, agent, subagent, or independent contractor of a
19 licensed real estate broker.

20 Sec. 4. (1) A commercial real estate broker's lien attaches
21 to commercial real estate in favor of a real estate broker if all
22 of the following circumstances exist:

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

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

27 (c) Except as provided in subsections (3) to (6), the real

1 estate broker records a claim of lien before the actual
2 conveyance of the commercial real estate.

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

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

15 (4) If a real estate broker is owed a commission as a result
16 of a lease, a claim of a real estate broker's lien shall be
17 recorded within 90 days after the lessee takes possession of the
18 leased premises. If a real estate broker is owed a commission as
19 a result of an extension of the term or the expansion of the
20 leased premises under an existing lease, a claim of real estate
21 broker's lien shall be recorded within 90 days after the
22 modification of the existing lease is confirmed in writing. If
23 written notice of the intent to enter into a lease that includes
24 the date on which the lease is intended to be signed is
25 personally served on the real estate broker at least 10 days
26 before the intended date of signing, the real estate broker shall
27 file the claim of lien before the intended date of signing. A

1 lien under this subsection attaches on the date of the lease or
2 written modification of the lease, unless the claim of lien is
3 filed before the intended date of signing the lease, in which
4 case the lien attaches on the date the claim of lien is recorded.
5 As used in this subsection, "lease" includes a lease, sublease,
6 assignment of lease, or other modification of an existing lease.

7 (5) If a real estate broker has a written agreement with a
8 potential buyer to act as a buyer's agent, a commercial real
9 estate broker's lien attaches when the buyer purchases or
10 otherwise accepts the conveyance of commercial real estate if a
11 claim of lien is recorded within 90 days after the purchase or
12 conveyance.

13 (6) If a real estate broker is owed a commission because of
14 an option to purchase commercial real estate, a commercial real
15 estate broker's lien attaches when the commercial real estate or
16 interest in commercial real estate is transferred or conveyed
17 pursuant to the exercise of the option to purchase if a claim of
18 lien is recorded within 90 days after the transfer or conveyance.

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

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

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

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

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

25 (e) As an attachment, a copy of the written instrument on
26 which the claim for commission or fee is based if the instrument
27 is in the possession of the real estate broker.

(f) If the instrument on which the claim for commission or fee is based is not in the possession of the real estate broker, a statement of that fact.

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

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

(8) A claim of lien recorded under this section shall 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 copy of the agreement is attached as Exhibit B.

3. If Exhibit B is not attached, the broker-claimant represents that the written agreement referred to in paragraph 2 has been executed, but the broker-claimant does not have a copy of the agreement in its possession.

4. 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.

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

6. The broker-claimant now claims a lien on the property and all improvements on the property and against all persons interested in the property in the amount of \$_____.

7. 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

1 in county, and date commission
2 expires]

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

7 Prepared By:
8 Return To:

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

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

24 (11) A valid prior-recorded lien or mortgage on commercial
25 real estate has priority over the lien under this section. A

1 valid prior-recorded lien or mortgage includes, but is not
2 limited to, both of the following:

3 (a) A valid construction lien recorded after a claim of lien
4 under this section is recorded that relates back to a date before
5 the lien under this section is recorded.

6 (b) A lien securing revolving credit and future advances of
7 construction loans that is recorded before the claim of lien
8 under this section is recorded.

9 Sec. 5. (1) If a lien recorded under section 4 would
10 otherwise prevent the closing of a transaction involving
11 commercial real estate, the parties to the transaction shall,
12 subject to subsection (2), establish an escrow account from the
13 proceeds of the transaction in an amount sufficient to satisfy
14 the lien. A party shall not refuse to close the transaction
15 because of the requirement of establishing an escrow account
16 under this subsection. The money shall remain in the escrow
17 account until the rights to the money have been determined by a
18 written agreement of the parties, a judgment or order by a court
19 of competent jurisdiction, or any other method agreeable to the
20 parties.

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

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

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

1 act.

2 (3) If an amount sufficient to satisfy a commercial real
 3 estate broker's lien is escrowed under subsection (1), the lien
 4 is extinguished and the real estate broker shall provide a
 5 release of lien substantially in the following form:

6 RELEASE OF LIEN

7 The undersigned is the claimant under a claim of commercial
 8 real estate broker's lien recorded on _____ [date] in
 9 the office of the register of deeds of _____ County,
 10 Michigan, at Liber _____, Page _____. The undersigned
 11 releases the lien on the following described property:

12 [Legal description]

13 [Name of Claimant]

14 By: _____

15 Its Authorized Agent

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

18 _____
 19 [Notary's name, county, acting
 20 in county, and date commission
 21 expires]

22 Prepared By:

23 Return To:

24 Sec. 6. (1) A person claiming a commercial real estate

1 broker's lien may bring an action to enforce the lien in the
2 circuit court for the county where the commercial real estate is
3 located by filing a complaint and affidavit that the lien has
4 been recorded.

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

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

12 Sec. 7. (1) Subject to subsection (2), an action under
13 section 6 shall be commenced within 1 year after the date the
14 claim of lien is recorded.

15 (2) If the commercial real estate broker's lien is based on
16 an extension of the term or the expansion of the leased premises
17 under an existing lease, an action under section 6 shall be
18 commenced within 6 months of the commencement of the new lease
19 term.

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

24 Sec. 8. (1) If the court in an action under section 6 finds
25 that the plaintiff is entitled to the commercial real estate lien
26 and that the amount claimed has not been paid, the court may
27 enter a judgment ordering the sale of any interest in the

1 commercial real estate, or part of the commercial real estate, to
2 which the lien attaches. In the order of foreclosure sale, the
3 court shall set a period of redemption not exceeding 4 months.
4 The order of foreclosure sale shall be recorded. The sale shall
5 be conducted in the same manner as a sale on execution. The sale
6 is final, subject to the period of redemption, on the entry of an
7 order of confirmation by the court. On expiration of the period
8 of redemption, the grantee named in the deed is vested with all
9 right, title, and interest in the commercial real estate that was
10 subject to the lien. Redemption from a foreclosure sale is
11 complete on full payment of the amount in the judgment of
12 foreclosure. If the court determines that the proceeds of the
13 sale are insufficient to satisfy the judgment, the court may
14 enter a deficiency judgment against the person who signed the
15 written agreement to pay the real estate broker.

16 (2) The court in an action under section 6 shall award costs
17 to a prevailing plaintiff, including reasonable attorney fees,
18 court and litigation costs, and prejudgment interest.

19 Sec. 9. A written demand on behalf of the owner of
20 commercial real estate may be served on a person claiming a
21 commercial real estate broker's lien, demanding that an action be
22 commenced to enforce the lien or that an answer be filed in an
23 action pending between the owner and the lien claimant. If the
24 action is not commenced or the answer is not filed within 30 days
25 after service of the demand, the lien is extinguished without
26 further action. Service of the demand may be by registered or
27 certified mail, return receipt requested, or by personal service.

1 Sec. 10. If a claim of lien has been recorded under this act
 2 and a condition occurs that prohibits the real estate broker from
 3 receiving compensation under the terms of the written agreement
 4 on which the claim is based, the real estate broker shall provide
 5 a release of lien under section 5 to the owner of record within
 6 10 days after a written demand by the owner of record or the
 7 owner's agent.

8 Sec. 11. If a claim of lien recorded under this act has been
 9 paid, or if an action to enforce the lien has not been commenced
 10 within the time limitations of section 7, the real estate broker
 11 shall provide a release of lien under section 5 within 5 days
 12 after a written demand by the owner of record or the owner's
 13 agent.

14 Sec. 12. (1) If a claim of lien recorded under this act has
 15 been partially paid, the real estate broker shall provide a
 16 partial satisfaction and release of lien in the form provided in
 17 subsection (2) within 5 days after written demand by the owner of
 18 record or the owner's agent.

19 (2) A partial satisfaction and release of lien under this
 20 section shall be in substantially the following form:

21 PARTIAL SATISFACTION AND RELEASE OF LIEN

22 The claimant named below is the claimant under a claim of
 23 commercial real estate broker's lien recorded on _____
 24 [date] in the office of the register of deeds of _____
 25 County, Michigan, at Liber _____, Page _____ on the
 26 following described property:

1 [Legal description]

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

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

10 [Name of Claimant]

11 By: _____

12 Its Authorized Agent

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

15 _____
16 [Notary's name, county, acting
17 in county, and date commission
18 expires]

19 Prepared By:

20 Return To:

21 Sec. 13. A subsequently recorded mortgage has priority over
22 a commercial real estate broker's lien if the mortgagee did not
23 have actual or constructive knowledge of the lien at the time the
24 mortgagee advanced money under the mortgage.

1 Sec. 14. This act applies to a written commission agreement
2 signed after the effective date of this act.