

## COMMERCIAL REAL ESTATE BROKER'S LIEN ACT

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### Senate Bill 610

**Sponsor: Sen. Jason E. Allen**

**House Committee: Regulatory Reform**

**Senate Committee: Economic Development and Regulatory Reform**

**Complete to 5-18-10**

### A SUMMARY OF SENATE BILL 610 AS PASSED BY THE SENATE 12-8-09

The bill would create the Commercial Real Estate Broker's Lien Act to create a process by which a commercial real estate broker who was owed a commission could file a lien, bring an action to enforce the lien, and collect a commission. The bill would apply to a written commission agreement signed after the bill's effective date. In brief, the bill would do the following:

- Define terms such as "commercial real estate," "claim of lien," "buyer," and "seller."
- Specify that a commercial real estate broker's lien (hereinafter "broker's lien") is only available to an individual licensed as a real estate broker under Article 25 of the Occupational Code and not to an employee, agent, subagent, or independent contractor.
- Specify conditions under which a broker's lien attaches to commercial real estate in favor of the real estate broker as well as the elements required to be in a claim of lien.
- Establish, for conveyances and leases, when a claim of lien is to be filed and provide that the lien attaches on the date the claim of lien is recorded with the register of deeds for the county in which the commercial real estate is located. In general, however, the claim of lien would be filed before the actual conveyance of the commercial real estate.
- Provide for the recording and attachment of a lien when the broker acts as a buyer's agent or a commission is owed on a purchase option.
- Provide that a claim of lien would be void and unenforceable if a copy were not served within the time and in the manner required by the bill or if the claim of lien was not recorded as required by the bill.
- Specify that a valid prior-recorded lien or mortgage on commercial real estate would have priority over a commercial lien filed under the bill. A subsequently

recorded mortgage would have priority only if the mortgagee did not have knowledge of the lien at the time money was advanced under the mortgage.

- Require the establishment of an escrow account if the claim of lien would prevent the closing of a transaction, under certain conditions. A buyer or seller could not refuse to close the transaction because of the escrow requirement.
- Allow a person claiming a broker's lien to bring an action in circuit court to enforce the lien, and require the action to be begun within one year after the broker's lien attached (was recorded). A prevailing plaintiff could be awarded costs, including reasonable attorney fees, court and litigation costs, and prejudgment interest. Failure to commence the action within the one-year statute of limitations would extinguish the lien and prohibit a later claim of lien for the same commission or services.
- Allow an owner of commercial real estate to serve on the lien holder a written demand to enforce the lien or answer a claim. The lien would be extinguished if the action was not begun or the answer filed within 30 days after service of the demand.
- Require the lien holder to record a release of lien within five days of the lien being paid or expiration of the one-year statute of limitations.
- Require that the claim of lien, release of lien, and partial satisfaction and release of lien forms meet the recording requirements prescribed by Public Act 103 of 1937 (MCL 565.201-565.203) and be in substantially the form illustrated for each in the bill.

#### **FISCAL IMPACT:**

The bill would have no fiscal implications for state or local governmental units.

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