

# SENATE BILL No. 610

May 27, 2009, Introduced by Senators ALLEN, RICHARDVILLE and PAPPAGEORGE 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) "Claim of lien" means a claim of a commercial real  
7 estate broker's lien asserted under this act.

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

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

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

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

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

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

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

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

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

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

27 (b) The real estate broker is entitled to a commission under

1 the written commission agreement.

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

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

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

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

22 (a) The claim of lien is recorded.

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

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

1 (a) A claim of lien is recorded.

2 (b) The modification of the existing lease is confirmed in  
3 writing.

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

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

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

14 (b) A claim of lien is recorded.

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

22 (a) The claim of lien is recorded.

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

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

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

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

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

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

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

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

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

10 (10) A claim of lien recorded under this section shall be  
11 substantially in the following form:

12 CLAIM OF LIEN

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

19 The broker-claimant named above, whose real estate license  
20 number is \_\_\_\_\_, and whose business address  
21 is \_\_\_\_\_, Michigan,  
22 claims a commercial real estate broker's lien under section 4 of  
23 the commercial real estate broker's lien act and states:

24 1. The real property ("property") against which the lien is  
25 claimed is located at \_\_\_\_\_,  
26 \_\_\_\_\_ County, Michigan, and is legally described on

1 Exhibit A attached to this claim. The record owner ("owner") of  
2 the property is \_\_\_\_\_.

3 2. On \_\_\_\_\_, the broker-claimant entered into  
4 a written agreement with the (owner) (buyer) obligating the  
5 (owner) (buyer) to pay a commission to the broker-claimant. A  
6 copy of the agreement is attached as Exhibit B.

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

11 4. The amount of the commission or fee to which the broker-  
12 claimant is entitled is \_\_\_\_\_.

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

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

20 \_\_\_\_\_ (c) The broker-claimant claims a potential future lien  
21 on the property and all improvements to the property and against  
22 all persons interested in the property if an option to purchase  
23 the property is exercised. This lien is only effective if the  
24 property is conveyed pursuant to the option to purchase; it may  
25 otherwise be disregarded.

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

1 [Name of Broker]  
2 By: \_\_\_\_\_  
3 Its Authorized Agent

4 Signed and sworn to before me in \_\_\_\_\_ County, Michigan,  
5 on \_\_\_\_\_, \_\_\_\_\_ [year].

6 \_\_\_\_\_  
7 [Notary's name, county, acting  
8 in county, and date commission  
9 expires]

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

14 Prepared By:  
15 Return To:

16 (11) Within 10 days of recording a claim of lien under this  
17 section, the real estate broker shall provide a copy of the claim  
18 of lien to the owner of record of the commercial real estate and  
19 to the party who signed the written commission agreement by  
20 mailing a copy of the claim of lien by registered or certified  
21 mail with return receipt requested to the address of the  
22 commercial real estate that is the subject of the claim of lien  
23 or by personal service. Mailing a copy of the claim of lien is  
24 effective as notice under this subsection when deposited in a

1 United States mailbox with postage prepaid. The commercial real  
2 estate broker's lien is void and unenforceable if a copy of the  
3 claim of lien is not served within the time and in the manner  
4 required by this subsection.

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

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

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

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

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

19 Sec. 5. (1) If a claim of lien recorded under section 4  
20 would otherwise prevent the closing of a transaction involving  
21 commercial real estate, the parties to the transaction shall,  
22 subject to subsection (2), establish an escrow account from the  
23 proceeds of the transaction in an amount sufficient to satisfy  
24 the lien. A party shall not refuse to close the transaction  
25 because of the requirement of establishing an escrow account  
26 under this subsection. The money shall remain in the escrow  
27 account until the rights to the money have been determined by a



1 written agreement of the parties, a judgment or order by a court  
2 of competent jurisdiction, or any other method agreeable to the  
3 parties.

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

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

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

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

16 RELEASE OF LIEN

17 The undersigned is the claimant under a claim of commercial  
18 real estate broker's lien recorded on \_\_\_\_\_ [date] in  
19 the office of the register of deeds of \_\_\_\_\_ County,  
20 Michigan, at Liber \_\_\_\_\_, Page \_\_\_\_\_. The undersigned  
21 releases the lien on the following described property:

22 [Legal description]

23 [Name of Claimant]

24 By: \_\_\_\_\_

25 Its Authorized Agent

1 Signed and sworn to before me in \_\_\_\_\_ County, Michigan,  
2 on \_\_\_\_\_, \_\_\_\_\_ [year].

3 \_\_\_\_\_  
4 [Notary's name, county, acting  
5 in county, and date commission  
6 expires]

7 Prepared By:

8 Return To:

9       Sec. 6. (1) A person claiming a commercial real estate  
10 broker's lien may bring an action to enforce the lien in the  
11 circuit court for the county where the commercial real estate is  
12 located by filing a complaint and affidavit that the claim of  
13 lien has been recorded.

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

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

21       Sec. 7. (1) An action under section 6 shall be commenced  
22 within 1 year after the date the commercial real estate broker's  
23 lien attaches.

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

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

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

23           Sec. 9. A written demand on behalf of the owner of  
24 commercial real estate may be served on a person claiming a  
25 commercial real estate broker's lien, demanding that an action be  
26 commenced to enforce the lien or that an answer be filed in an  
27 action pending between the owner and the lien claimant. If the

1 action is not commenced or the answer is not filed within 30 days  
2 after service of the demand, the lien is extinguished without  
3 further action. Service of the demand may be by registered or  
4 certified mail, return receipt requested, or by personal service.

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

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

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

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

25                                   PARTIAL SATISFACTION AND RELEASE OF LIEN

1 The claimant named below is the claimant under a claim of  
2 commercial real estate broker's lien recorded on \_\_\_\_\_  
3 [date] in the office of the register of deeds of \_\_\_\_\_  
4 County, Michigan, at Liber \_\_\_\_\_, Page \_\_\_\_\_ on the  
5 following described property:

6 [Legal description]

7 The claimant has been paid \$\_\_\_\_\_, a portion of the  
8 amount of the lien. The remaining amount of the lien is \$\_\_\_\_\_.

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

15 [Name of Claimant]  
16 By: \_\_\_\_\_  
17 Its Authorized Agent

18 Signed and sworn to before me in \_\_\_\_\_ County, Michigan,  
19 on \_\_\_\_\_, \_\_\_\_\_ [year].

20 \_\_\_\_\_  
21 [Notary's name, county, acting  
22 in county, and date commission  
23 expires]

24 Prepared By:

25 Return To:

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

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