
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 492 Session of
1997

INTRODUCED BY CORMAN, BELL, AFFLERBACH, BRIGHTBILL, STOUT, HART,
MOWERY, O'PAKE, THOMPSON, KASUNIC, GREENLEAF, KUKOVICH AND
TOMLINSON, FEBRUARY 12, 1997

REFERRED TO CONSUMER PROTECTION AND PROFESSIONAL LICENSURE,
FEBRUARY 12, 1997

AN ACT

1 Providing for real estate broker liens in the amount of
2 compensation due for services rendered by the broker in
3 connection with certain real estate transactions.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Commercial
8 Real Estate Broker Lien Act.

9 Section 2. Definitions.

10 The following words and phrases when used in this act shall
11 have the meanings given to them in this section unless the
12 context clearly indicates otherwise:

13 "Broker." A person who is licensed under the laws of this
14 Commonwealth to act as a real estate broker.

15 "Commercial real estate." Any real estate other than:

16 (1) Real estate containing one to four residential
17 units.

1 (2) Real estate that is used for agricultural purposes.
2 The term does not include single family residential units such
3 as condominiums, townhouses or homes in a subdivision when sold,
4 leased or otherwise conveyed on a unit-by-unit basis even though
5 these units may be part of a larger building or parcel of real
6 estate containing more than four residential units.

7 Section 3. Right to lien.

8 Each broker, unless employed by another broker, shall have a
9 lien in the amount of the compensation agreed upon by and
10 between the broker and the broker's client upon commercial real
11 estate or any interest in that commercial real estate:

12 (1) listed with the broker under the terms of a written
13 agreement for the purposes of selling, leasing or otherwise
14 conveying any interest in the commercial real estate that is
15 signed by the owner or the owner's agent; and as to which the
16 broker or broker's employees or independent contractors have
17 provided licensed services that result during the term of the
18 written agreement in the procurement of a person or entity
19 that is ready, willing and able to purchase, lease or
20 otherwise accept a conveyance of the commercial real estate
21 or any interest in the commercial real estate upon terms that
22 are provided in a written agreement that is signed by the
23 owner or the owner's agent or which are otherwise acceptable
24 to the owner or the owner's agent as evidenced by a written
25 agreement that is signed by the owner or the owner's agent;
26 or

27 (2) when a broker, pursuant to a written agreement with
28 a prospective buyer to represent the buyer as to the purchase
29 or other conveyance to the buyer of commercial real estate,
30 becomes entitled to compensation. In the case of a tenant

1 represented by a broker or other representative where the fee
2 or commission is to be paid by the current owner, the right
3 to file a lien shall be conditioned upon the owner agreeing
4 in writing to pay the fee or commission of the broker or
5 other representative of the tenant.

6 Section 4. Attachment of lien.

7 (a) Time and manner of attachment.--A lien under section 3
8 shall attach to the commercial real estate or any interest in
9 the commercial real estate upon:

10 (1) the broker procuring a person or entity that is
11 ready, willing and able to purchase, lease or otherwise
12 accept a conveyance of the commercial real estate upon the
13 terms set forth in the written agreement with the owner or
14 that is otherwise acceptable to the owner or the owner's
15 agent, or the broker being otherwise entitled to a fee or
16 commission under a written agreement that is signed by the
17 owner or the owner's agent; and

18 (2) except as provided in subsection (b), (c) or (d),
19 the broker recording a notice of lien in the office of the
20 prothonotary in the county in which the real property or any
21 interest in the real property is located prior to the actual
22 conveyance or transfer of the commercial real estate against
23 which the broker is claiming a lien.

24 (b) Leases.--In the case of a lease, the notice of lien
25 shall be recorded within 30 days of a default by the owner or
26 successors in interest under the terms of the compensation
27 agreement.

28 (c) Written agreements.--If a broker has a written agreement
29 with a prospective buyer as provided in section 3(2), the lien
30 shall attach upon the recording of a notice of lien by the

1 broker in the office of the prothonotary of the county in which
2 the real property or any interest in the real property is
3 located within 90 days after the purchase or other conveyance or
4 transfer to the buyer.

5 (d) Owner notification.--The broker shall mail a copy of the
6 notice of lien to the owner of the commercial real estate by
7 certified mail.

8 (e) Recording.--A broker shall not be entitled to record a
9 notice of or claim for lien unless, not later than three days
10 prior to the date of conveyance, he gives written notice of the
11 claim for lien to the owner and the prospective buyer that he is
12 entitled to compensation under the terms set forth in the
13 written contract and intends to claim a lien on the commercial
14 real property. The notice shall be served upon the owner and
15 prospective buyer by registered or certified mail. When there
16 are two or more owners or two or more prospective buyers, the
17 notice shall be served upon each owner and each prospective
18 buyer. The notice shall include a statement of the buyer's right
19 to deposit funds in escrow under section 8.

20 (f) Lien unenforceable.--The broker's lien shall be void and
21 unenforceable if recording does not occur at the time and in the
22 manner required by this section.

23 (g) Satisfaction of the lien.--In the event a lien is
24 recorded upon the procurement of a person or entity that is
25 ready, willing and able to purchase, lease or otherwise accept a
26 conveyance of commercial property and the conveyance fails to
27 occur through no fault or condition of the owner, the lien
28 recorded by the broker pursuant to this section shall be
29 satisfied of record by the broker whereupon the property shall
30 be freed and discharged from such lien. If the broker does not

1 voluntarily satisfy the lien, the owner may demand the filing of
2 a complaint pursuant to section 6(e) or commence an action
3 against the broker seeking as relief the satisfaction or
4 striking of the lien. Upon finding that the lien was recorded in
5 bad faith, or the refusal to satisfy the lien was in bad faith,
6 a court shall award the owner the amount of the reasonable
7 expenses, including attorney fees and court costs, incurred by
8 the owner as a result of the recording of the lien or refusal to
9 satisfy the lien.

10 Section 5. Notice of lien.

11 The notice of lien shall state the name of the claimant, the
12 name of the owner, a description of the property upon which the
13 lien is being claimed, the amount for which the lien is claimed
14 and the real estate license number of the broker and shall be
15 signed and verified by the broker or by a person who is
16 authorized to sign on behalf of the broker and shall be
17 verified.

18 Section 6. Enforcement of lien.

19 (a) Commencement of proceedings.--A broker may bring suit to
20 enforce the lien in the court of common pleas in the county
21 where the lien is filed by filing a complaint as set forth under
22 subsection (d).

23 (b) Time limitations.--The broker claiming a lien shall,
24 except as set forth under subsection (c), within two years after
25 recording the lien, commence proceedings to enforce the lien.
26 Failure to commence proceedings within two years after recording
27 the lien shall extinguish the lien.

28 (c) Lien based on option to purchase.--A broker claiming a
29 lien based upon an option to purchase shall, within six months
30 after the transfer or conveyance of the commercial real estate

1 pursuant to the exercise of the option to purchase, commence
2 proceedings to enforce the lien. Failure to commence proceedings
3 within this time shall extinguish the lien.

4 (d) Complaint and defendants to the action.--A complaint
5 under this section shall contain a brief statement of the
6 contract or agreement on which the lien is founded, the date
7 when the contract or agreement was made, a description of the
8 services performed, the amount due and unpaid, a description of
9 the property that is subject to the lien. The plaintiff shall
10 make all interested parties, of whose interest he is notified or
11 has knowledge, defendants to the action. The practice and
12 procedure shall be governed by the Pennsylvania Rules of Civil
13 Procedure and all other rules and procedures relating to civil
14 actions, except to the extent inconsistent with the provisions
15 of this section.

16 (e) Praecipe of the owner.--The prothonotary, upon praecipe
17 of the owner, shall enter a rule upon the person claiming the
18 lien to file a complaint. If a complaint is not filed within 20
19 days after service of the rule, upon praecipe of the owner of
20 the property, the lien shall be extinguished.

21 (f) Satisfaction or release.--Whenever a claim for lien
22 which has been filed with the prothonotary is paid, the claimant
23 shall mark the docket satisfied within 30 days of receipt of
24 payment.

25 (g) Costs.--The cost of proceedings, including reasonable
26 attorney fees and prejudgment interest due to the prevailing
27 party, shall be borne by the nonprevailing party or parties. If
28 more than one party is responsible for the costs, fees and
29 prejudgment interest, the costs, fees and prejudgment interest
30 shall be equitably apportioned by the court among the

1 responsible parties.

2 Section 7. Priority.

3 The priority of a broker's lien shall be set forth under 42
4 Pa.C.S. § 8141 (relating to time from which liens have
5 priority), except that mortgages and defeasible deeds in the
6 nature of a mortgage shall have priority over a broker's lien,
7 regardless of the date recorded.

8 Section 8. Escrow of disputed amounts.

9 Except as otherwise provided in this section, whenever a
10 claim for lien has been filed with the prothonotary that would
11 prevent the closing of a transaction or conveyance, an escrow
12 account shall be established from the proceeds from the
13 transaction or conveyance in an amount that is sufficient to
14 release the claim for lien. The requirement to establish an
15 escrow account shall not be cause for any party to refuse to
16 close the transaction. These moneys shall be held in escrow
17 until the parties' rights to the escrowed moneys have been
18 determined by written agreement of the parties, a court of law
19 or other process as may be agreed to by the parties. Upon funds
20 in the amount of the claimed lien being escrowed, a release of
21 the claim for lien shall be provided by the broker who is
22 claiming the lien. The parties are not required to follow this
23 escrow procedure if alternative procedures which would allow the
24 transaction to close are available procedures which would allow
25 the transaction to close are available and are acceptable to the
26 transferee in the transaction.

27 Section 9. Waiver prohibited.

28 An agreement to waive the right to a lien under this act made
29 contemporaneously with the signing of the listing agreement,
30 whether dated on the date of the listing agreement or

1 thereafter, shall be void and unenforceable.

2 Section 10. Revival of judgment.

3 Judgment upon a claim shall be revived within each recurring
4 five-year period. The practice and procedures to revive judgment
5 shall be governed by 42 Pa.C.S. § 5526 (relating to five year
6 limitation) and the Pennsylvania Rules of Civil Procedure. The
7 lien of the revived judgment shall, as in the case of the
8 original judgment, be limited to the lien property.

9 Section 11. Effective date.

10 This act shall take effect in 60 days.