

**SUBSTITUTE FOR
SENATE BILL NO. 610**

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

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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. [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
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 [within 60 days] 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:

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1 (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.]

2 (b) The [extension or] 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 legible copy of the written
5 instrument on 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 meet
11 the requirements of 1937 PA 103, MCL 565.201 to 565.203, and be
12 substantially in the following form:

13 CLAIM OF LIEN

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

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

25 1. The real property ("property") against which the lien is
26 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 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

1 and accurate to the best knowledge of the signer.

2 [Name of Broker]

3 By: _____

4 Its Authorized Agent

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

6 on _____, _____[year].

7 _____

8 [Notary's name, county, acting

9 in county, state, and date

10 commission expires]

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

15 Prepared By:

16 Return To:

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

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

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

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

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

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

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

20 Sec. 5. (1) If a claim of lien recorded under section 4
21 would otherwise prevent the closing of a transaction involving
22 commercial real estate, the parties to the transaction shall,
23 subject to subsection (2), establish an escrow account from the
24 proceeds of the transaction in an amount sufficient to satisfy
25 the lien. A buyer or seller shall not refuse to close the
26 transaction because of the requirement of establishing an escrow
27 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:

1 [Legal description]

2 [Name of Claimant]

3 By: _____

4 Its Authorized Agent

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

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

11 Prepared By:

12 Return To:

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

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

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

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

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

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

24 (2) The court in an action under section 6 [may, in its
25 discretion,] award costs
26 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.]

27 Sec. 9. A written demand on behalf of the owner of

1 commercial real estate may be served on a person claiming a
2 commercial real estate broker's lien, demanding that an action be
3 commenced to enforce the lien or that an answer be filed in an
4 action pending between the owner and the lien claimant. If the
5 action is not commenced or the answer is not filed within 30 days
6 after service of the demand, the lien is extinguished without
7 further action. Service of the demand may be by registered or
8 certified mail, return receipt requested, or by personal service.

9 Sec. 10. If a claim of lien has been recorded under this act
10 and a condition occurs that prohibits the real estate broker from
11 receiving compensation under the terms of the written agreement
12 on which the claim is based, the real estate broker shall provide
13 a release of lien under section 5 to the owner of record within
14 10 days after a written demand by the owner of record or the
15 owner's agent.

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

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

27 (2) A partial satisfaction and release of lien under this

1 section shall meet the requirements of 1937 PA 103, MCL 565.201
 2 to 565.203, and be in substantially the following form:

3 PARTIAL SATISFACTION AND RELEASE OF LIEN

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

9 [Legal description]

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

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

18 [Name of Claimant]

19 By: _____

20 Its Authorized Agent

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

23 _____

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

4 Prepared By:

5 Return To:

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

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