

SENATE BILL No. 1099

February 28, 2006, Introduced by Senator BISHOP and referred to the Committee on Economic Development, Small Business 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, tenant, or lessee of a legal
5 or 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 site, that are sold, leased, or otherwise conveyed on
7 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 potential lien is created on commercial real
21 estate owned or to be acquired by a person obligated to pay a
22 real estate broker's commission in the amount due to the real
23 estate broker for licensed services if either of the following
24 circumstances exists:

25 (a) The real estate broker has a written agreement with the
26 seller or the agent of the seller of the commercial real estate
27 for the payment of the commission and the real estate broker

1 records a notice of potential lien within 10 days after the
2 written agreement is signed or, if subsection (2) applies, within
3 the time required by subsection (2).

4 (b) The real estate broker has a written agreement with a
5 prospective buyer or the agent of a prospective buyer for the
6 payment of the commission.

7 (2) If a potential commercial and real estate broker's lien
8 arises because of the exercise of an option to extend a lease or
9 expand the leased premises, a notice of potential lien shall be
10 recorded within 90 days after the lessee or the lessee's tenant
11 takes possession under the extended lease or of the expanded
12 premises.

13 (3) A notice of potential lien under this section shall be
14 in substantially the following form:

15 NOTICE OF POTENTIAL LIEN

16 [Name of Broker],) Notice of Potential Commercial
17) Real Estate Broker's Lien
18 Broker-Claimant)
19) In the Office of the Register
20) of Deeds of _____
21) County, Michigan

22 The broker-claimant named above, whose real estate license
23 number is _____, and whose business address
24 is _____,
25 has entered into a written commission agreement with _____
26 _____, the (seller) (buyer) of the

1 real estate described below. Under the agreement, the broker-
2 claimant may in the future be entitled to a commercial real
3 estate broker's lien.

4 [Legal description]

5 Witnesses: [Name of Broker]
6 _____ By: _____
7 _____ Its Authorized Agent

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

10 _____
11 [Notary's name, county, acting
12 in county, and date commission
13 expires]

14 Prepared By:

15 Return To:

16 Sec. 5. (1) A commercial real estate broker's lien attaches
17 to commercial real estate in favor of a real estate broker if all
18 of the following circumstances exist:

19 (a) The real estate broker has a written commission
20 agreement and has filed a notice of potential lien under section
21 4.

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

24 (c) Except as provided in subsections (2) to (5), the real
25 estate broker records a claim of lien within 90 days after the
26 actual conveyance of the commercial real estate, in which case

1 the lien attaches on the date the claim of lien is recorded.

2 (2) Except as provided in subsection (3), when payment of a
3 real estate broker's commission is due in installments, 1 or more
4 of which are due after the conveyance of the commercial real
5 estate, a claim of a commercial real estate broker's lien for the
6 payments due after the date of the conveyance may be recorded
7 after the date of the conveyance and before the dates on which
8 the payments are due. A lien under this subsection is only
9 effective against the commercial real estate to the extent
10 payment is still owed to the seller by the buyer. A single claim
11 of lien claiming a commission due under an installment agreement
12 recorded before the conveyance of the commercial real estate is
13 not enforceable as to a claim for a commission due after the
14 conveyance. A lien under this subsection attaches on the date the
15 claim of lien is recorded.

16 (3) If a real estate broker is owed a commission because of
17 a lease, a claim of a real estate broker's lien shall be recorded
18 by the real estate broker within 90 days after the lessee or the
19 lessee's tenant takes possession of the leased premises or after
20 a modification of an existing lease is confirmed in writing. If a
21 real estate broker is owed a commission because of an option to
22 extend a lease or expand the leased premises and the real estate
23 broker recorded a notice of potential lien as required by section
24 4(2), the lien attaches when the option to extend the lease or
25 expand the leased premises is exercised. If written notice of the
26 intent to enter into a lease that includes the date on which the
27 lease is intended to be signed is personally served on the real

1 estate broker at least 10 days before the intended date of
2 signing, the real estate broker shall file the claim of lien
3 before the intended date of signing and the lien attaches on the
4 date the claim of lien is recorded. As used in this subsection,
5 "lease" includes a lease, sublease, assignment of lease, or other
6 modification of an existing lease.

7 (4) 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 on the buyer purchasing or
10 otherwise accepting the conveyance of commercial real estate if a
11 claim of lien is recorded within 90 days after the purchase or
12 conveyance.

13 (5) If a real estate broker is owed a commission because of
14 an option to purchase commercial real estate and the real estate
15 broker has recorded a notice of potential lien as required by
16 section 4(2)(c), a commercial real estate broker's lien attaches
17 on the transfer or conveyance of the commercial real estate or
18 interest in commercial real estate pursuant to the exercise of
19 the option to purchase.

20 (6) A claim of lien shall contain all of the following:

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

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

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

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

26 (e) As an attachment, a copy of the written instrument on
27 which the claim for commission or fee is based if the instrument

1 is in the possession of the real estate broker.

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

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

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

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

11 CLAIM OF LIEN

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

18 The broker-claimant named above, whose real estate license
19 number is _____, and whose business address
20 is _____, Michigan,
21 claims a commercial real estate broker's lien under section 5 of
22 the commercial real estate broker's lien act and states:

23 1. The real property ("property") against which the lien is
24 claimed is located at _____,
25 _____ County, Michigan, and is legally described on
26 Exhibit A attached to this claim. The record owner ("owner") of

1 the property is _____.

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

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

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

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

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

19 7. The information contained in this claim of lien is true
20 and accurate to the best knowledge of the signer.

21 Witnesses: [Name of Broker]
22 _____ By: _____
23 _____ Its Authorized Agent

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

26 _____

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

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

8 Prepared By:

9 Return To:

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

23 (9) A lien not recorded in compliance with this section is
24 void and unenforceable.

25 (10) A valid prior-recorded lien or mortgage on commercial

1 real estate has priority over the lien under this section. A
2 valid prior-recorded lien or mortgage includes, but is not
3 limited to, both of the following:

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

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

10 Sec. 6. (1) If a lien recorded under section 5 would
11 otherwise prevent the closing of a transaction involving
12 commercial real estate, the parties to the transaction shall,
13 subject to subsection (2), establish an escrow account from the
14 proceeds of the transaction in an amount sufficient to satisfy
15 the lien. A party shall not refuse to close the transaction
16 because of the requirement of establishing an escrow account
17 under this subsection. The money shall remain in the escrow
18 account until the rights to the money have been determined by a
19 written agreement of the parties, a judgment or order by a court
20 of competent jurisdiction, or any other method agreeable to the
21 parties.

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

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

27 (b) The proceeds from the transaction are insufficient to

1 satisfy all liens against the commercial real estate under this
2 act.

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

7 RELEASE OF LIEN

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

13 [Legal description]

14 Witnesses: [Name of Claimant]
15 _____ By: _____
16 _____ Its Authorized Agent

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

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

23 Prepared By:

24 Return To:

1 Sec. 7. (1) A person claiming a commercial real estate
2 broker's lien may bring an action to enforce the lien in the
3 circuit court for the county where the commercial real estate is
4 located by filing a complaint and affidavit that the lien has
5 been recorded.

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

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

13 Sec. 8. (1) Subject to subsection (2), an action under
14 section 7 shall be commenced within 2 years after the date the
15 claim of lien is recorded.

16 (2) If the commercial real estate broker's lien is based on
17 an option to purchase the commercial real estate, an action under
18 section 7 shall be commenced within 6 months after the date the
19 commercial real estate is transferred or conveyed pursuant to the
20 exercise of the option to purchase. If the commercial real estate
21 broker's lien is based on an option to extend a lease or expand
22 leased premises, an action under section 7 shall be commenced
23 within 6 months of the commencement of the new lease term.

24 (3) 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 7.

1 Sec. 9. (1) If the court in an action under section 7 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 sale shall be conducted in the same manner as a sale on
9 execution. The sale is final, subject to the period of
10 redemption, on the entry of an order of confirmation by the
11 court. On expiration of the period of redemption, the grantee
12 named in the deed is vested with all right, title, and interest
13 in the commercial real estate that was subject to the lien.
14 Redemption from a foreclosure sale is complete on full payment of
15 the amount in the judgment of foreclosure. If the court
16 determines that the proceeds of the sale are insufficient to
17 satisfy the judgment, the court may enter a deficiency judgment
18 against the person who signed the written agreement to pay the
19 real estate broker.

20 (2) The court in an action under section 7 shall award costs
21 to a prevailing plaintiff, including reasonable attorney fees,
22 court and litigation costs, and prejudgment interest.

23 Sec. 10. 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. 11. 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 6 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. 12. If a claim of lien recorded under this act has been
13 paid, or an action to enforce the lien has not been commenced
14 within the time provided by section 8, the real estate broker
15 shall provide a release of lien under section 6 within 5 days
16 after a written demand by the owner of record or the owner's
17 agent.

18 Sec. 13. (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

26 The claimant named below is the claimant under a claim of

1 commercial real estate broker's lien recorded on _____
2 [date] in the office of the register of deeds of _____
3 County, Michigan, at Liber _____, Page _____ on the
4 following described property:

5 [Legal description]

6 The claimant has been paid \$_____, a portion of the
7 amount of the lien.

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

14 Witnesses: [Name of Claimant]
15 _____ By: _____
16 _____ Its Authorized Agent

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

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

23 Prepared By:

24 Return To:

1 Prepared By:

2 Return To:

3 Sec. 15. A subsequently recorded mortgage has priority over
4 a commercial real estate broker's lien if the mortgagee did not
5 have actual or constructive knowledge of the lien or of a notice
6 of potential lien at the time the mortgagee advanced money under
7 the mortgage.

8 Sec. 16. This act applies to a written commission agreement
9 signed after the effective date of this act.