

Broker Lien Laws - By Jurisdiction

Executive Summary

BROKER LIEN LAWS

ANNUAL REPORT EXECUTIVE SUMMARY

June 2020

[Broker Lien Laws – 2020 Short Answer Table](#)

Overview

Thirty-four jurisdictions provide that a real estate broker may claim a lien under specified circumstances. Eighty-eight percent of those jurisdictions have adopted broker's lien acts or statutory schemes that authorize a broker or licensee to claim a lien arising out of his or her brokerage services. The other 12 percent include brokers' services as a property improvement within their mechanics' lien laws. A few jurisdictions provide other methods of creating security for a broker. For example, Oregon permits a broker to place a demand into a closing escrow if the seller disputes the broker's payment.

Lien creation

States vary in the type of property that may be the subject of the contract that forms the basis of a broker's lien claim. Thirty-one jurisdictions require the underlying contract to be for the conveyance of commercial real estate or a commercial real estate interest. These statutes typically define "commercial real estate" in the negative. For example, in Alabama, "commercial real estate" is generally real estate *other than* that containing one to four residential units. Only three states permit brokers' liens that arise out of contracts relating to either commercial or residential real estate interests.

A vast majority of the states with broker's lien laws (94 percent) require the underlying brokerage agreement to be in writing. Only Arkansas and Maine do not explicitly require a written contract. New York requires a written contract for a broker to claim a lien pursuant to the state's mechanics'

lien laws, but permits an oral contract for a broker to assert an affidavit of entitlement (which requires certain residential sellers to deposit funds with a recording officer).

In general, a broker's lien must be related to the services provided by the brokerage agreement. The services subject to a lien include only those related to leases in eight states. In the remaining 26 states, the lien may arise out of a broker's services related to either a lease or a sale. In some jurisdictions, such as Georgia, a broker may assert a lien arising out of other contracted services, including property management.

In recent years, few significant changes were made to broker lien laws. In 2017, Mississippi removed the provision that would have repealed its broker lien law on July 1, 2017, and Connecticut increased the time within which a notice of commercial leasing transaction commission rights must be filed from 30 to 60 days, effective January 1, 2018. No significant changes were made in the past two years.

Notice requirements

All jurisdictions with laws that provide for broker's liens require some form of notice, and all provide that the broker must or should record that notice. Ninety-four percent also require the broker to serve the notice on the property's owner. All five states that enacted broker's lien acts during the past four years included notice provisions.

Property encumbered

The type of property encumbered by a broker's lien also varies by jurisdiction. Twenty-eight states provide that a broker's lien is a lien on the real property that is the subject of the broker's underlying contract. Four states provide that it is a lien on the transaction's proceeds. (Note that Virginia's lien is on the rent paid by the tenant during only the first 20 years of the lease term.) Florida, which has separate statutory schemes for sales and leases, provides that a broker has a lien on the owner's net proceeds for a commission related to a sale, but a lien on the owner's real estate interest for any commission earned with respect to a commercial real estate lease. Although Tennessee's statutory scheme does not create a lien on real estate, it gives a broker the right to enforce his or her contract against a subsequent owner to the extent the fee or commission accrues during the time the subsequent owner holds title to the real estate.

Thirty-one of the surveyed jurisdictions, provide a procedure, such as an escrow account, bond, or deposit, by which the broker's lien can be removed from the property and shifted to a lien on those other funds or that other security.

Alabama

Alabama, Lien creation

FORMAL REQUIREMENTS

Overview

A real estate broker may claim a lien on commercial real estate that is subject to and described in his or her listing, brokerage, or agency agreement.

Brokerage agreement requirements

The listing, brokerage, or agency agreement must be in writing.

Other requirements

A broker's lien "arises" out of a commercial real estate sale or lease transaction when all of the following are satisfied:

- the real estate subject to the listing, brokerage, or agency agreement is conveyed;
- the broker has given "written notice, by certified mail, return receipt requested to the party whose commercial real estate may be liened, if different from the parties to the agreement"; and
- all of the conditions for payment of compensation are satisfied.

A lien also arises out of the conveyance of commercial real estate subject to a broker's agreement when:

- a broker with a written agreement with a prospective *buyer* or *tenant* becomes entitled to compensation; and
- the broker has given "written notice, by certified mail, return receipt requested, to the party whose property may be liened, if different from the parties to the agreement."

PROPERTY COVERED

A broker's lien is a lien on the commercial real estate (or an interest in commercial real estate) that is:

- subject to and described in the brokerage agreement; and
- owned by a client or a party "whose commercial real estate may be liened if different from the client who has received written notice from the broker . . . prior to obtaining an interest in the commercial real estate through a purchase, lease, or conveyance."

Commercial real estate acquired by a person other than a client before he or she receives the required notice from the broker is not subject to the lien.

The lien amount equals the compensation agreed upon by the broker and his or her client.

"Commercial real estate" is real estate other than that containing one to four residential units. It includes real estate classified as agricultural for tax assessment purposes. "Commercial real estate" does *not* include:

- single-family residential units, such as condominiums, townhomes, mobile homes, residential lots, or homes in a subdivision, that are sold, leased, or conveyed on a unit-by-unit basis, even if the units are part of a larger building or parcel containing more than four residential units; or
- property (or a property interest) that is sold, leased, or otherwise conveyed to a governmental entity or utility.

SERVICES THAT CREATE THE LIEN

No specific services are identified. The broker's lien amount equals the compensation amount that the broker and his or her client agreed upon in the agreement.

WAIVER

A broker's lien is "terminated and dissolved" if the owner, landlord, tenant, purchaser, lender, or other interest holder shows that the lien claimant or his or her agent has waived the lien in writing.

PRIORITY

Attachment

A broker's lien attaches when the broker records a lien notice in the office of the probate judge located in the county in which the commercial real estate or interest is located. If the broker has a written agreement with a buyer or tenant, the lien attaches to the client's interest upon:

- the client's purchasing, leasing, or otherwise accepting a conveyance of the commercial real estate; and

- the broker's timely recording of a lien notice in the office of the probate judge located in the county in which the real estate or real estate interest is located.

Other liens

The following have priority over a broker's lien:

- all mortgages;
- other liens recorded before the broker's lien is recorded;
- all purchase money mortgages; and
- all liens for ad valorem taxes.

A mortgagee's or other lien holder's knowledge of the existence or possible existence of an unrecorded broker's lien does not affect a mortgage's or other lien's priority.

OTHER RELEVANT PROVISIONS

No other relevant provisions were located.

Statutory sections enacted 1998.

[Ala. Code §§ 35-11-450, -451, -452, -454 \(2019\)](#)

Alabama, Notice requirements

TIMING OF NOTICE

If a broker's payment is due in a lump sum and not paid, the broker must record the lien notice within 90 days after:

- the tenant takes possession of the leased premises; or
- the property or interest is conveyed.

If the broker has a written agreement with a buyer or tenant, the broker must record the lien notice within 90 days after the later of:

- the purchase, lease, or other conveyance to the buyer or tenant; or
- the buyer's or tenant's failure to compensate the broker pursuant to the broker's agreement.

The broker's lien is void and unenforceable if the broker does not give the notice or if the recording does not occur in the required time and manner.

REQUIRED CONTENTS OF NOTICE

A lien notice must:

- state the lien claimant's name and address, the owner's name, a real estate's legal description, and the lien amount;

- contain a sworn statement that the information contained in the notice is true and accurate "to the knowledge of the signatory";
- recite that the broker has disclosed to all parties that he or she might claim a lien;
- be signed by the broker or an authorized person; and
- be verified before a notary public or other authorized officer.

RECORDING REQUIREMENTS FOR NOTICE

A broker's lien attaches when the broker records a lien notice in the office of the probate judge located in the county in which the commercial real estate or interest is located. The broker's lien is void and unenforceable if the broker does not give the notice or if the recording does not occur in the required time and manner.

SERVICE OF NOTICE

The broker must mail a copy of the lien notice to the commercial real estate's owner by certified mail, return receipt requested. The broker's lien is void and unenforceable if the broker does not give the notice or if the recording does not occur in the required time and manner.

OTHER RELEVANT PROVISIONS

Installment payments

If a broker's payment is due in installments, all or part of which is due only after the commercial real estate is conveyed, a broker may record the lien notice for the payments due after the conveyance

at any time after the conveyance, as long as the lien claim is recorded within 90 days of the date the payment was due and not paid.

Statutory section enacted 1998.

[Ala. Code § 35-11-451 \(2019\)](#)

Alabama, Property encumbered

TYPES OF PROPERTY ENCUMBERED

A broker's lien attaches to commercial real estate or a commercial real estate interest that is subject to and described in his or her brokerage agreement.

OTHER OPTIONS

The parties to a transaction may establish an escrow account in an amount sufficient to release the broker's lien claim. The closing agent or an independent escrow agent must hold the funds in escrow until the parties' rights have been determined by:

- the parties' written agreement;
- a final court order; or
- any other process to which the parties may agree to resolve their dispute.

Upon escrow of funds in an amount equal to the lien claim amount:

- the lien is automatically dissolved; and

- the broker is deemed to have an equitable lien on the escrow funds, pending resolution of the broker's claim.

The parties may agree to an alternate acceptable procedure that allows the transaction to close.

Statutory sections enacted 1998.

[Ala. Code §§ 35-11-451, -453 \(2019\)](#)

Alaska

Alaska, Lien creation

No relevant provisions were located.

Alaska, Notice requirements

No relevant provisions were located.

Alaska, Property encumbered

No relevant provisions were located.

Arizona

Arizona, Lien creation

FORMAL REQUIREMENTS

Overview

Generally, an employing real estate broker has a lien against commercial real property for compensation that the real property's owner has agreed to pay to the broker for the broker's services in leasing or renting the real property.

Brokerage agreement requirements

A broker's lien is created only if there is a written agreement between the broker and the real property owner that:

- provides for the payment of a commission or other compensation to that broker for his or her services; and
- discloses "in the same size type as the majority of the remainder of the agreement above the portion of the agreement" requiring the owner's signature, that failure to pay the broker's commission or compensation may give rise to broker lien rights.

Other requirements

A broker's lien is created only if all of the following requirements are met:

- the agreement is in writing, as described above;
- the broker produces "a person or entity that is ready, willing and able to lease or rent the real property on the terms provided in the written agreement" or on terms that are "otherwise acceptable to the owner," as evidenced by a written instrument signed by the owner;
- the broker fully complies with statutory attachment and notice requirements; and
- all conditions for payment of the commission or other compensation, as set forth in the written agreement, have been satisfied.

PROPERTY COVERED

A real estate broker has a lien against real property for compensation that the property's owner agreed to pay the broker for the broker's services in leasing or renting that real property. Except as otherwise provided, a broker's lien rights apply to all commercial real property. They do *not* apply to a transaction involving:

- residential real property with fewer than five residential units;
- real property on which "single family mobile home lots, manufactured housing lots, residences, or condominiums are sold unit by unit."

Real property is also not subject to a commercial real estate broker lien if it:

- is conveyed before the broker records a preliminary notice of intent to lien; or
- is encumbered by a lender for value before the broker records a preliminary notice of intent to lien.

In this context, "real property" is the real property interest owned by the "person who is the party to the agreement with the broker."

SERVICES THAT CREATE THE LIEN

The broker has a lien against real property for the compensation a real property owner agrees to pay the broker for the broker's services in leasing or renting the owner's real property.

WAIVER

A broker must record a waiver and release of lien claim that extinguishes the broker's lien rights:

- within 30 days after satisfaction of a broker's lien claim, if the satisfaction occurs before the broker records a notice of commercial real estate broker lien; or
- within 10 days after receipt of a written request from the owner, if the broker fails to record a notice of commercial real estate broker lien within the required time period.

A waiver and release of claim of lien is sufficient if it:

- complies with other applicable laws; and
- is in substantially the form set forth in Ariz. Rev. Stat. § 33-1075(D).

PRIORITY

Attachment

A broker's lien attaches to property when all of the following occur:

- the broker produces a person or entity that is ready, willing, and able to lease or rent the property on the terms provided in the written agreement or on other terms that are acceptable to the owner;
- the broker complies with Ariz. Rev. Stat. § 33-1072(B), which provides that the lien is perfected by recording a "notice of commercial real estate broker lien"; and
- the broker records a "notice of commercial real estate broker lien" in the office of the county recorder in the county in which the property is located. (Note that the latter two provisions, which appear to be the same requirement worded differently, are listed as separate requirements in § 33-1072.)

Other liens

The following liens have priority over a broker's lien:

- mechanics' and materialmen's liens; and
- consensual liens, mortgages, and deeds of trust that are recorded before the broker's preliminary notice of intent to lien.

OTHER RELEVANT PROVISIONS

No other relevant provisions were located.

Statutory sections enacted 2001.

[Ariz. Rev. Stat. §§ 33-1071, -1072, -1075 \(2019\)](#)

Arizona, Notice requirements

TIMING OF NOTICE

Notice of commercial real estate broker lien

A "notice of commercial real estate broker lien" ("lien notice") must be recorded as follows:

- except as otherwise provided below, if the lien notice is based on a lease or rental of the real property, the lien notice must be recorded within 90 days after the tenant takes possession of the leased premises; or

- if the lien notice is based on compensation that is to be paid in installments and any of those installments are due after the property's lease or rental, the lien notice must be recorded within 90 days after the tenant takes possession, and it is valid only to the extent of the amount that the real property owner owes the broker.

Upon recording of the notice, the broker's lien is perfected.

Broker's preliminary notice of intent to lien

No later than 15 days before the date the tenant possesses the leased premises, the broker must record a "broker's preliminary notice of intent to lien" ("notice of intent") in the office of the county recorder in the county in which the real property is located. The broker must also deliver this notice to the real property owner. A broker's failure to record the notice of intent in a timely manner extinguishes the broker's lien rights.

REQUIRED CONTENTS OF NOTICE

Lien notice contents

A lien notice must include all of the following:

- the broker's name and address;
- the broker's real estate license number;
- the owner's name and mailing address;
- the owner's real property interest;

- the lien amount;
- the property's legal description;
- the property's street address, if any;
- a statement that the broker who claims the lien is entitled to compensation from the property's owner; and
- the broker's notarized signature that "avows that based on information and belief the contents of the notice of commercial real estate broker lien are true and accurate."

The words "unknown," "not available," or similar terms may not be used in place of the required information. Use of any of those terms in a lien notice invalidates the broker's lien.

Notice of intent contents

The broker's notice of intent must:

- state that the broker is entitled to compensation under the terms set forth in the written agreement between the broker and the owner;
- state that the broker intends to claim a lien on the real property;
- include all of the information required in a lien notice, as listed above; and

- be entitled "broker's preliminary notice of intent to lien."

The words "unknown," "not available," or similar terms may not be used in place of the required information. Use of any of those terms in a notice of intent invalidates the broker lien.

RECORDING REQUIREMENTS FOR NOTICE

Both the lien notice and the notice of intent must be recorded in the office of the county recorder in the county in which the real property is located.

SERVICE OF NOTICE

The broker must deliver the notice of intent personally or by first class mail to the real property owner.

OTHER RELEVANT PROVISIONS

No other relevant provisions were located.

Statutory sections enacted 2001.

[Ariz. Rev. Stat. §§ 33-1072, -1073 \(2019\)](#)

Arizona, Property encumbered

TYPES OF PROPERTY ENCUMBERED

A broker's lien is a lien against commercial real property for the amount of compensation that a real property owner has agreed to pay to the broker for the broker's services in the lease or rental of the property.

OTHER OPTIONS

After perfection of a broker's lien, an owner, a mortgagee, or other lien creditor may record in the office of the county recorder in the county in which the land is located:

- a surety bond; and
- a power of attorney disclosing the authority of the person executing the bond on behalf of the surety.

Once the bond is recorded, the lien must be discharged from the property, whether or not:

- a copy of the bond is served on the claimant; or
- the claimant perfects his or her rights against the bond.

The surety bond must:

- be executed by the person seeking to discharge the lien, as principal, and by an authorized surety company, not an individual surety;
- equal 1.5 times the claim secured by the lien;
- "be conditioned for the payment of the judgment that would have been rendered against the property for the enforcement of the lien";

- contain the property's legal description; and
- contain the lien's docket and page.

Within a reasonable time, the principal must serve the bond on the lien claimant (and the claimant, if a foreclosure suit is pending) within 90 days after receipt of the bond.

Statutory sections enacted 2001.

[Ariz. Rev. Stat. §§ 33-1071, -1076 \(2019\)](#)

Arkansas

Arkansas, Lien creation

FORMAL REQUIREMENTS

Overview

Arkansas' Principal Broker Real Estate Lien Act provides that a principal broker may claim a lien in the amount that the owner has agreed to pay the principal broker or real estate firm under a representation agreement. The lien is on:

- the owner's net proceeds from the disposition of commercial real estate; and
- the net rental proceeds from the lease of commercial real estate.

The lien does not encumber real property.

Brokerage agreement requirements

A "representation agreement" is "a commercial real estate agreement between a licensee and an owner under which the owner agrees to pay a licensee a fee, commission, or other consideration" on either:

- the disposition or lease of commercial real estate; or
- entering into an agreement for the disposition or lease of commercial real estate.

Other requirements

A lien created as the result of a commercial real estate disposition is not effective unless it is recorded before the deed conveying the commercial real estate is recorded in the office of the circuit clerk in the county or counties in which the commercial real estate is located. A lien created as the result of a commercial real estate *lease* is not effective unless it is recorded within 90 days after the tenant takes possession of the leased commercial real estate or, if applicable, within 90 days after the commencement date of a renewal lease term.

PROPERTY COVERED

A principal broker may claim a lien on:

- the owner's net proceeds from the disposition of commercial real estate; and
- the net rental proceeds from the lease of commercial real estate.

"Commercial real estate" is:

- a "fee simple, freehold, leasehold, or other title, interest, or possessory estate in real property" located in Arkansas; and
- real property identified as commercial real estate in the representation agreement.

"Commercial real estate" does *not* include a real property interest that is:

- improved with one single-family residential unit or a multifamily structure with four or fewer residential units; or
- improved with "single-family residential units such as condominiums, townhouses, timeshares, or houses in a subdivision that may be sold, leased, or otherwise disposed of on a unit-by-unit basis."

SERVICES THAT CREATE THE LIEN

A principal broker may claim a lien in the amount that the owner has agreed to pay the principal broker or real estate firm under a representation agreement related to the disposition or lease of commercial real estate. "Disposition" is a voluntary transfer or conveyance of commercial real estate.

WAIVER

A principal broker may waive his or her right to a lien in the representation agreement. The court will award actual damages, reasonable attorney's fees, and expenses if it finds that payment is due to the principal broker in an action to recover amounts due under a representation agreement in which the principal broker has waived his or her lien rights.

PRIORITY

Attachment

A principal broker's lien is:

- effective on the recording date of a notice of claim of lien; and
- perfected by recording a notice of claim of lien with the circuit clerk in the county or counties in which the commercial real estate is located.

Other liens

The following liens, if perfected before the licensee records a notice of claim of lien, have priority over the licensee's lien:

- statutory liens;
- mortgages;
- deeds of trust;
- assignments of rent; and
- other encumbrances.

The above lien priorities include:

- all advances or charges made or accruing under the lien, whether voluntary or obligatory; and
- modifications, extensions, renewals, and replacements to any of the liens.

OTHER RELEVANT PROVISIONS

Lien ownership

A lien is available only to the principal broker identified in the representation agreement.

Lien transfers

A lien may not be assigned voluntarily or by operation of law.

Statutory sections 18-48-802, 18-48-803, and 18-48-804 amended 2011; § 18-48-809 enacted 2005.

Ark. Code §§ 18-48-802, -803, -804, -809 (LexisNexis 2020)

[Arkansas, Notice requirements](#)

TIMING OF NOTICE

On or before the date the deed conveying the commercial real estate is recorded, the principal broker must also deliver a copy of the "notice of claim of lien against proceeds" ("lien claim notice") to the escrow agent closing the commercial real estate *disposition*, if the principal broker knows the escrow closing agent's identity.

A lien created as the result of a commercial real estate *lease* is:

- not effective unless it is recorded within 90 days after the tenant takes possession of the leased commercial real estate or, if applicable, the commencement date of a renewal lease term; and
- null and void unless the principal broker delivers a copy of the lien claim notice to the property owner within 10 days of recording the principal broker's lien claim notice.

The lien is perfected by recording a lien claim notice with the circuit clerk in the county or counties in which the commercial real estate is located.

REQUIRED CONTENTS OF NOTICE

A lien claim notice against proceeds must state:

- the principal broker's name, address, and telephone number;
- the representation agreement's date;
- the commercial real estate owner's name;
- the commercial real estate's legal description;
- the claimed lien amount, expressed as either a specified sum, a percentage of the sales price, or a formula;
- the principal broker's real estate license number;

- that the lien claimant has read the lien claim notice, knows its contents, and believes its statements are true and correct;
- that the claim is made pursuant to a valid representation agreement and is not frivolous; and
- that the information contained in the lien claim notice is true and accurate to the signatory's knowledge.

The lien claim notice must be notarized, and a copy of the representation agreement must be attached.

RECORDING REQUIREMENTS FOR NOTICE

A lien is:

- effective on the recording date of the lien claim notice; and
- perfected by recording a lien claim notice with the circuit clerk in the county or counties in which the commercial real estate is located.

SERVICE OF NOTICE

Generally, the notice required to be delivered to a party must be delivered by:

- any form of service of process permitted by the Arkansas Rules of Civil Procedure;
- registered or certified mail, return receipt requested;

- personal or electronic delivery, with evidence of delivery.

Notice to a principal broker or commercial real estate owner may be sent to:

- the principal broker's or owner's address that is provided in the representation agreement;
or
- any other address contained in a written notice from the principal broker or owner to the party giving the notice.

If neither address is available, the notice may be given to:

- the principal broker at his or her most recent address of record with the Arkansas Real Estate Commission; and
- the owner at the owner's commercial real estate's address.

OTHER RELEVANT PROVISIONS

Partial payments

In a disposition of commercial real estate, the escrow closing agent must pay to the lien claimant the owner's net proceeds up to the amount claimed in the lien claim notice. If the escrow closing agent will fully or partially pay the amount claimed by the lien claimant, the lien claimant must submit a release of his or her lien claim notice to the escrow closing agent. The closing agent must hold the release in escrow pending disposition and payment.

Statutory sections amended 2011.

Ark. Code §§ 18-48-803, -805, -806 (LexisNexis 2020)

Arkansas, Property encumbered

TYPES OF PROPERTY ENCUMBERED

A principal broker may claim a lien in the amount that the owner has agreed to pay the principal broker or real estate firm under a representation agreement on:

- the owner's net proceeds from the *disposition* of commercial real estate; and
- the net rental proceeds from the *lease* of commercial real estate.

The lien is on personal property, not real property.

"Net rental proceeds" are "the base rent paid by the tenant under a lease less any amounts currently due under the terms of a lien that has priority" over the lien. "Base rent" is the rent "designated in a lease as base rent, or a similar term, for the possession and use of commercial real estate"; it does not include separate payments for insurance, taxes, utilities, or other expenses.

"Owner's net proceeds" are the gross sales proceeds from the disposition of commercial real estate described in a lien claim notice, minus the following:

- amounts necessary to pay all encumbrances and liens that have priority over the lien, other than those the buyer permits to remain; and
- the owner's closing costs, such as real estate excise tax, title insurance premiums, real estate tax, assessment prorations, and escrow fees that the buyer requires the owner to pay.

"Owner's net proceeds" include any gross sales proceeds that are:

- held by a third party for purposes of completing a real estate exchange that is deferred from federal income tax, but are not used later for that purpose; and
- personal property to which the lien attaches.

OTHER OPTIONS

A lien claim notice must be released upon the recording of a receipt by the office in which the notice of claim of lien was recorded that shows a deposit of an amount equal to the lien claimed. The deposit must be held pending a resolution of amounts due to the licensee and the owner.

Statutory sections amended 2011.

Ark. Code §§ 18-48-802, -803, -807 (LexisNexis 2020)

California

California, Lien creation

No generally relevant provisions were located.

However, California law appears to permit a broker's lien in narrowly defined circumstances related to negotiating a loan, as follows:

If the loan is not consummated and the broker is entitled to any charges, costs or expenses authorized by this article, he or she may not record a lien or encumbrance against the borrower's property except subsequent to the filing of a legal action pursuant to the Code of Civil Procedure to recover said charges, costs or expenses. However, nothing contained herein shall prohibit a broker from recording a lien pursuant to a voluntary lien agreement in conjunction with a stipulation to dismiss an actual or proposed complaint for damages entitling the broker to such charges, costs or expenses after written notice to the borrower that the broker proposes or has initiated a complaint for damages pursuant to the Code of Civil Procedure.

Statutory section amended 2018.

[Cal. Bus. & Prof. Code § 10243 \(2019\)](#)

California, Notice requirements

No generally relevant provisions were located.

However, California law appears to permit a broker's lien in narrowly defined circumstances related to negotiating a loan, in which case notice is required as follows:

If the loan is not consummated and the broker is entitled to any charges, costs or expenses authorized by this article, he or she may not record a lien or encumbrance against the borrower's property except subsequent to the filing of a legal action pursuant to the Code of Civil Procedure to recover said charges, costs or expenses. However, nothing contained herein shall prohibit a broker from recording a lien pursuant to a voluntary lien agreement in conjunction with a stipulation to dismiss an actual or proposed complaint for damages entitling the broker to such charges, costs or expenses after written notice to the borrower that the broker proposes or has initiated a complaint for damages pursuant to the Code of Civil Procedure.

Statutory section amended 2018.

[Cal. Bus. & Prof. Code § 10243 \(2019\)](#)

California, Property encumbered

No relevant provisions were located.

Colorado

Colorado, Lien creation

Colorado enacted a Commercial Real Estate Brokers Commission Security Act, effective August 11, 2010.

Also, because Colorado law generally allows consensual liens, it appears that a property owner may *permit* a broker to place a lien on the owner's property. *See, e.g.*, Colo. Rev. Stat. Ann. § 38-35-201(3) (LexisNexis 2018) ("spurious lien" does not include a lien "created, suffered, assumed or agreed to by the owner of the property it purports to encumber").

Colorado regulations clarify that a licensee may not file a lien, a lis pendens, or a listing contract to secure the payment of "a commission or other fee associated with real estate brokerage duties in a residential transaction."

FORMAL REQUIREMENTS

Overview

A real estate broker may create a lien on commercial real estate in an amount equal to the compensation for services set forth in a written listing agreement in connection with leasing commercial real estate, provided certain conditions are met.

Brokerage agreement requirements

The definition of "agreement," as used in the Commercial Real Estate Brokers Commission Security Act, means "a written listing agreement, written compensation agreement, or other written agreement between a real estate broker and an owner that grants the real estate broker a right to compensation for professional services in connection with leasing or attempting to lease commercial real estate."

Other requirements

A real estate broker may claim a lien on commercial real estate in the amount of the compensation as set forth in the agreement, if:

- the real estate is listed with the broker "under terms of an agreement or is the subject of an agreement"; and
- the broker has "provided licensed services that resulted in the procuring of a person or entity who has leased any interest in the commercial real estate in accordance with the agreement."

PROPERTY COVERED

Generally, a real estate broker has a lien against commercial real estate for compensation that the property's owner agreed to pay the broker for the broker's services in leasing that real estate. In this context, "commercial real estate" means any real property other than that containing one to four residential units. "Commercial real estate" does *not* include "single-family or multi-family residential units including condominiums, townhouses, or homes in a subdivision when such real estate is sold, leased, or otherwise conveyed on a unit-by-unit basis even though the units may be part of a larger building or parcel of real property containing more than four residential units."

SERVICES THAT CREATE THE LIEN

The broker has a lien against real property for the compensation a real property owner agrees to pay the broker for the broker's services in leasing the owner's real property.

WAIVER

Nothing in § 38-22.5-103 is "subject to a prospective waiver by either party without consideration acceptable to the parties to the waiver."

PRIORITY

Attachment

The lien attaches to a commercial real estate interest when all of the following conditions are met:

- the broker either procures a person or entity who leases the property in accordance with the parties' agreement or has otherwise earned a fee or commission in accordance with the agreement;

- the broker properly serves a notice of intent to record a lien notice on the owner or his or her agent;
- the broker makes a good faith attempt to obtain settlement through mediation; and
- at least 30 days after serving the owner with notice of intent to record a lien notice, but not more than 90 days after the later of the date the tenant takes possession of the leased property or the date compensation is due under the agreement, the broker records a lien notice in the county in which the commercial real estate is located.

Other liens

A broker's lien attaches when the lien claim is recorded. It does not relate back to the date of the agreement.

The priority of a brokers' lien in relation to other interests in the subject property is determined in accordance with Colo. Rev. Stat. § 38-35-109.

OTHER RELEVANT PROVISIONS

Mediation

A broker must "make a good faith effort to attempt to resolve the nonpayment of the commission through mediation." The mediator's recommended resolution is not binding unless the parties so agree in writing. The parties must jointly appoint an acceptable mediator and share equally in the mediation's costs. The mediation:

- begins when a written notice requesting mediation is delivered by one party to the other at the party's last-known address; and

- terminates if the entire dispute is not resolved within 30 days, unless the parties agree otherwise.

Installment payments

If payment is due in installments and a portion of the payment is due after the leasing of any commercial real estate interest, a lien claim for only that portion may be recorded within 90 days of the later of the date the tenant takes possession of the leased property or the date the compensation is due under the agreement. The lien is effective as a lien against the commercial real estate only to the extent the owner still owes amounts to the broker. Any claims for a lien for future installment payments may be recorded only within 90 days after those installment payments become due.

Statutory section 38-35-201 amended 1998; §§ 38-22.5-101, 38-22.5-102, 38-22.5-103, 38-22.5-105, 38-22.5-106, 38-22.5-108, and 38-22.5-110 enacted 2010. Regulation amended 2012.

Colo. Rev. Stat. §§ 38-22.5-101, -102, -103, -105 -106, -108, -110; -35-201(3) (LexisNexis 2019); [4 Colo. Code Regs. § 725-1 E-48 \(2020\)](#)

Colorado, Notice requirements

TIMING OF NOTICE

A broker must serve a notice of intent to record a lien notice on the owner at least 30 days before recording the notice.

REQUIRED CONTENTS OF NOTICE

Lien notice contents

A lien notice must state:

- the broker's and the owner's names;
- the property's legal description;
- the amount for which the lien is claimed; and
- the broker's real estate license number.

The broker must sign the lien notice and attest that the information contained in the notice is true and accurate as to his or her knowledge and belief.

RECORDING REQUIREMENTS FOR NOTICE

A brokers' lien attaches only if, at least 30 days after serving the owner with notice of intent to record a lien notice, but not more than 90 days after the later of the date the tenant takes possession of the leased property or the date compensation is due under the agreement, the broker records a lien notice in the county in which the commercial real estate is located.

Commercial real estate is not subject to a real estate brokers' lien to enforce the payment of a renewal commission if the property is conveyed to a bona fide purchaser before the recording of a lien notice.

SERVICE OF NOTICE

The broker must serve the notice of intent by personal service or by registered or certified mail, return receipt requested, addressed to the last-known address of the owner or his or her agent, at least 30 days before recording the lien notice with the county clerk and recorder.

If a notice of intent is served on the owner's agent, the broker must also serve a copy of the notice by personal service or by registered or certified mail, return receipt requested, addressed to the owner's last-known address, at least 30 days before recording the lien notice.

No lien "hold[s] the property longer than ten days after the recording of the notice of lien under section 38-22.5-104" unless the broker provides a copy of the lien notice to the owner or his or her agent by personal service or by registered or certified mail, return receipt requested, addressed to the last-known address of such person, within 10 days after recording the lien notice.

OTHER RELEVANT PROVISIONS

Installment payments

If payment is due in installments and a portion of the payment is due after the leasing of any commercial real estate interest, a broker may claim a lien for only that portion within 90 days after the later of the date the tenant takes possession of the leased property or the date the compensation is due. The lien is effective only to the extent the owner owes amounts to the broker.

A broker may record a claim for a lien for future installment payments only within 90 days after those installment payments become due.

Statutory sections 38-22.5-103, 38-22.5-104, 38-22.5-106, and 38-22.5-107 enacted 2010.

Colo. Rev. Stat. Ann. §§ 38-22.5-103, -104, -106, -107 (LexisNexis 2019)

Colorado, Property encumbered

TYPES OF PROPERTY ENCUMBERED

A brokers' lien is a lien against real property for the amount of compensation that a real property owner has agreed to pay a broker for the broker's services in the lease of that commercial real estate.

"Commercial real estate" means any real property other than real property containing one to four residential units. "Commercial real estate" does *not* include "single-family or multi-family residential units including condominiums, townhouses, or homes in a subdivision when such real estate is sold, leased, or otherwise conveyed on a unit-by-unit basis even though the units may be part of a larger building or parcel of real property containing more than four residential units."

OTHER OPTIONS

Bond substitution

A property owner may file, at any time, with the clerk of the district court of the county in which the property is located, a corporate surety bond or similar financial assurance. The bond or assurance:

- must be in an amount equal to one and one-half times the lien amount plus costs allowed to date; and
- is subject to approval by a judge of the district court with which the bond or assurance is filed.

The bond or assurance must contain the condition that, if the lien claimant is finally adjudged to be entitled to recover on the claim, the principal or surety must pay the claimant an amount equal to the judgment amount, including any interest, costs, or other sums to which the claimant would be entitled upon foreclosure of the lien.

Upon the filing of a bond or similar undertaking:

- the lien and any related notice of lis pendens or notice of the commencement of any action are immediately discharged and released in full;
- the property is forever released from the lien, any notice of lis pendens, any notice of the commencement of any related action, and any action brought to foreclose the lien;

- the bond or undertaking "shall be substituted"; and
- no notice of lis pendens or notice of the commencement of an action related to the lien, or any action to enforce or foreclose the lien, may thereafter be recorded against the property.

Action to foreclose

A brokers' lien may not "hold the property longer than six months after the recording of the notice of lien" unless:

- the broker has brought an action to foreclose the lien within that time; and
- a notice stating that an action has been commenced is filed for record within that time in the office of the county clerk and recorder of the county in which the property is located.

Statutory sections 38-22.5-102, 38-22.5-106, and 38-22.5-107 enacted 2010; § 38-22.5-111 amended 2011.

Colo. Rev. Stat. Ann. §§ 38-22.5-102, -106, -107, -111 (LexisNexis 2019)

Connecticut

Connecticut, Lien creation

FORMAL REQUIREMENTS

Overview

A real estate licensee may claim a lien for acts or services rendered pursuant to a contract or authorization from the person for whom the acts were done or the services were rendered.

Brokerage agreement requirements

Except as otherwise provided for commercial transactions, a licensee may not bring an action with respect to any acts done or services rendered, unless they were performed pursuant to a contract or authorization from the person for whom they were performed. The contract or authorization must:

- be in writing;
- contain the broker's name and address;
- contain the name and address of the person for whom the acts were performed or the services were rendered;
- be dated;
- contain the contract's or authorization's conditions;
- be signed by the broker or his or her agent;
- if the contract or authorization pertains to real property, include the following statement: "THE REAL ESTATE BROKER MAY BE ENTITLED TO CERTAIN LIEN RIGHTS PURSUANT TO SECTION 20-325a OF THE CONNECTICUT GENERAL STATUTES"; and
- be signed by the person for whom the acts were done or services were rendered, or by his or her agent.

If the licensee's acts or services involve a listing contract for the sale of land containing a building occupied by no more than four families, the listing contract must be signed by the owner or his or her agent.

Other requirements for commercial transactions

A licensee may not bring an action with respect to any acts done or services rendered after October 1, 2000, in a commercial real estate transaction, unless the licensee rendered the acts or services pursuant to:

- a contract or authorization that meets the requirements set forth above; or
- a memorandum, letter, or other writing.

That memorandum, letter, or other writing must:

- state for whom the licensee is acting;
- be signed by the party for whom the licensee is acting;
- state the authorization's duration; and
- include the compensation amount payable to the licensee.

The licensee in a commercial transaction must provide written notice substantially similar to the following: "THE REAL ESTATE BROKER MAY BE ENTITLED TO CERTAIN LIEN RIGHTS PURSUANT TO SECTION 20-325a OF THE CONNECTICUT GENERAL STATUTES." That notice:

- must be provided at or before the execution of the contract, authorization, memorandum, letter, or other writing; and

- may be part of the contract, authorization, memorandum, letter, or other writing.

PROPERTY COVERED

A licensed broker who has performed acts or rendered services relating to real property on terms provided in writing has a lien on that real property.

Note that for commercial real estate transactions involving compensation in consideration for brokerage services rendered in connection with the signing of a written lease, nothing in § 20-325k (regarding whether an agreement constitutes a binding contractual obligation of the landlord or tenant) may be "construed to create a lien on the real property that is the subject of the lease."

SERVICES THAT CREATE THE LIEN

A broker may place a lien to recover any commission, compensation, or other payment with respect to an act or service "the doing or rendering of which is prohibited under the provisions of . . . chapter [392] except by persons duly licensed under this chapter." The lien amount equals the compensation amount agreed upon by the broker and the owner or buyer for whom the acts were performed or the services were rendered.

The lien provisions do not apply to:

- persons exempt from the state's licensing requirements for acts included in the exception;
or
- a licensee who has provided services to the federal government, a political subdivision of the federal government, or a federally chartered corporation, institution or quasi-governmental agency.

WAIVER

No generally relevant provisions were located, but provisions related to commercial real estate transactions reference a broker waiving his or her agreement.

Failure to commence foreclosure within one year after recording a lien (six months in the case of a lien on an option to purchase real property) extinguishes the lien.

PRIORITY

Attachment

Generally, a broker's lien attaches when:

- the broker is entitled to compensation, without any contingencies, other than closing or transfer of title, pursuant to the written listing agreement's or buyer representation contract's terms; and
- the broker has recorded the lien claim before the actual conveyance or lease of the property with the town clerk of the town in which the property is located.

For a broker's written contract with a prospective buyer, the lien attaches only after:

- the prospective buyer accepts the conveyance or lease of the real property; and
- the broker records the lien claim with the town clerk of the town in which the property is located no later than 30 days after the property's conveyance or the tenant's possession of the property.

Other liens

No relevant provisions were located.

OTHER RELEVANT PROVISIONS

No other relevant provisions were located.

Statutory section 20-325k amended 2017; § 20-325a amended 2004.

[Conn. Gen. Stat. §§ 20-325a, -325k \(2019\)](#)

Connecticut, Notice requirements

TIMING OF NOTICE

Lien claim

A broker must serve a copy of the claim for lien ("lien claim") on the real property's owner. A broker may serve the lien claim at the same time as the notice required by § 20-325a(r) (which requires notice to the owner, prospective buyer, or prospective tenant).

Section 20-325a(r) notice

Pursuant to § 20-325a(r), a broker may not claim a lien unless:

- the broker gives written notice of the lien claim to the property owner and the prospective buyer or tenant that the broker is entitled to compensation and intends to claim a lien on the property, after the broker is entitled to compensation, without contingencies other than closing or transfer of title, and no later than three days before the later of (a) the

conveyance or lease date as set forth in the real estate sales contract or lease or (b) the actual conveyance date or date the tenant takes possession; or

- the broker is unable to give this written notice because he or she cannot ascertain the prospective buyer's or tenant's identity after due diligence and reasonable effort.

A broker's lien is void and unenforceable if the required recording does not occur within the specified time and manner.

Commercial transactions pursuant to § 20-325k

In commercial leasing transactions pursuant to § 20-325k, the broker must record a notice of commission rights in the land records in the town clerk's office in the town in which the real property or leasehold interest is located no later than the latter of 60 days after:

- the lease's execution;
- the tenant's occupancy of the leased premises; or
- the rent commencement date specified in the lease.

This notice of commission rights must be:

- filed before conveyance of the real property;
- signed by the real estate broker or an authorized person; and
- in substantially the form set forth in § 20-325k(b).

REQUIRED CONTENTS OF NOTICE

A lien claim must contain:

- the claimant's name;
- the owner's name;
- the real property's description;
- the lien claim amount;
- the broker's real estate license number;
- a sworn statement that the information contained in the notice is true and accurate to the signatory's knowledge; and
- the broker's or his or her authorized agent's signature.

In commercial leasing transactions pursuant to § 20-325k, the notice must be in substantially the form set forth in § 20-325k(b).

RECORDING REQUIREMENTS FOR NOTICE

A broker must record a lien claim as follows:

- in *general*, the broker must record the lien claim before the actual conveyance or lease of the property;
- for *compensation in installments*, a portion of which is due only after the property's conveyance or lease, the broker must file a lien claim for those payments due after the conveyance or lease at any time after the conveyance or lease but before the payment's due date;
- for a *lease pursuant to which the broker's compensation will not be paid in installments*, the broker must record the lien claim no later than 30 days after the tenant possesses the leased premises, unless written notice of the intended lease signing is delivered to the broker by registered or certified mail, return receipt requested, or by personal service, at least 10 days before the date of the intended lease signing, in which case the broker must record the lien claim before the date indicated for the signing of the lease; and
- for a broker's *written contract with a prospective buyer*, the broker must record a lien claim no later than 30 days after the conveyance date or the date the tenant possesses the property.

In *commercial leasing transactions* pursuant to § 20-325k, the broker must record a notice of commission rights in the land records in the town clerk's office in the town in which the real property or leasehold interest is located no later than the latter of:

- 30 days after the execution of the lease; or
- the tenant's occupancy of the leased premises.

SERVICE OF NOTICE

A broker must serve a copy of the claim for lien ("lien claim") on the real property's owner as follows:

- by registered or certified mail, return receipt requested; or
- by personal service by an indifferent person, state marshal, or other "proper officer" leaving it with the owner or at the owner's "usual place of abode."

The broker must serve the notice required by § 20-325a(r) on the owner and the prospective buyer or tenant by an indifferent person, state marshal, or other proper officer leaving it with the owner and prospective buyer or at their "usual places of abode." If there are two or more owners, or two or more prospective buyers, the broker must serve notice on each owner and each prospective buyer unless the broker cannot ascertain the prospective buyer's identity after due diligence and reasonable effort.

OTHER RELEVANT PROVISIONS

Notice to broker regarding lease signing

For an agreement regarding a lease, pursuant to which the broker's compensation will *not* be paid in installments, the broker must record the lien claim no later than 30 days after the tenant possesses the leased premises, unless written notice of the intended lease signing is delivered to the broker by registered or certified mail, return receipt requested, or by personal service, at least 10 days before the intended lease signing date, in which case the broker must record the lien claim before the date indicated for the lease signing. The lien attaches as of the recording of the lien claim.

Installment payments

If a broker is entitled to compensation in installments, a portion of which is due only after the conveyance or lease of the property, a lien claim for those payments due after the conveyance or lease may be recorded at any time after the conveyance or lease of the real property and before the date on which the payment is due. The lien claim is effective to the extent the transferee or lessee still owes amounts to the transferor or lessor. A single lien claim recorded before the property's conveyance or lease, claiming all amounts due under an installment payment agreement, is not valid or enforceable as it pertains to payments due after the conveyance or lease.

The lien on installment payments attaches as of the recording of the lien claim, but it is effective as a lien claim only to the extent the transferee or lessee still owes amounts to the transferor or lessor.

Statutory section 20-325k amended 2017; § 20-325a amended 2004.

[Conn. Gen. Stat. §§ 20-325a, -325k \(2019\)](#)

Connecticut, Property encumbered

TYPES OF PROPERTY ENCUMBERED

A licensed real estate broker has a lien on the real property for which the broker has performed acts or rendered services. The lien is in the amount of the compensation agreed upon by the broker and the owner or buyer.

In commercial leasing transactions pursuant to § 20-325k, if a landlord or tenant enters into an agreement pursuant to § 20-325a(b) or (c) for the payment of compensation in consideration for brokerage services rendered in connection with the consummation of a written lease, then the agreement constitutes a binding contractual obligation of the landlord or tenant and the landlord's or tenant's grantees, successors, and assigns. Upon any sale, transfer, assignment, or other disposition of a landlord's interest in real property or upon any sale, assignment, transfer, or other disposition of a tenant's leasehold interest, the succeeding party is bound for the obligations under the agreement accruing after the transaction as if the succeeding party had expressly assumed the landlord's or tenant's obligations relating to the written agreement if:

- the real estate broker has complied with § 20-325a(b) through (d);
- the succeeding party "assumes the benefits of the tenancy"; and
- the broker has not waived the agreement.

OTHER OPTIONS

If a recorded lien claim would prevent the closing of a conveyance or a lease, the parties must establish an escrow account from the transaction's proceeds in an amount equal to the agreed compensation. Once this escrow account is established, the broker must immediately release the lien claim. The funds must be held in escrow by:

- the lessor's attorney, in the case of a lease; or
- the owner's attorney, in the case of the "actual conveyance or lease" of the real property.

The funds must be held in escrow until the parties' rights to the escrowed moneys have been determined by:

- the parties' written contract or agreement;
- a Superior Court determination; or
- another process to which the parties agree.

If there are sufficient funds, the broker must release the lien claim "which would allow completion of the conveyance or lease on such terms as are acceptable to the parties involved." If the proceeds from the conveyance or lease are not sufficient to release all liens claimed against the real property, including the broker's lien claim, then the parties are not required to establish this escrow account.

Statutory section 20-325k amended 2017; § 20-325a amended 2004.

[Conn. Gen. Stat. §§ 20-325a, -325k \(2019\)](#)

Delaware

Delaware, Lien creation

FORMAL REQUIREMENTS

Overview

Upon a broker's performance all broker's duties stated in a brokerage agreement except completing settlement, a broker may place a lien on the commercial real estate that is the subject of the brokerage agreement for the unpaid compensation due the broker.

Delaware's Commercial Real Estate Broker's Lien Act was approved on May 3, 2013, and applies to written brokerage agreements that became effective at least 90 days after the act became law (August 1, 2013). It does not apply to a brokerage agreement that became effective before that date, unless the parties so agree in writing.

Brokerage agreement requirements

A brokerage agreement must be in writing. It may be stated in any document signed by the party obligated to pay for the broker's services, such as a listing agreement, representation agreement, property management agreement, sale agreement, lease, option, or exchange agreement.

The brokerage agreement must expressly:

- state the amount or method of calculating the broker's compensation;
- state that the brokerage agreement is a binding contract under state law; and
- identify the subject real estate by description and/or tax parcel number.

If a brokerage agreement does not contain the above provisions, the broker is not eligible for a broker's lien.

Other requirements

The broker must perform all duties stated in the brokerage agreement except completing settlement before the broker may place a lien on the subject commercial real estate.

PROPERTY COVERED

A broker may place a lien on the commercial real estate that is the subject of the brokerage agreement. The lien amount equals the amount of any unpaid compensation due the broker.

"Commercial real estate" is an estate or interest owned in:

- real estate with improvements other than one to four residential units;
- real estate with improvements, including residential units, if any part of the property is used for non-residential purposes;
- land with no buildings or structures that is zoned or available for commercial, manufacturing, industrial, retail, or multifamily use;
- land of any zoning classification that is being purchased for development or subdivision, except for land with four or fewer single-family residential lots; or
- real estate used for agricultural purposes "unless the purchaser is buying the property for the purpose of continuing the agricultural use."

"Commercial real estate" does *not* include single-family residential units sold, leased, or otherwise conveyed or acquired on a unit-by-unit basis, even if the units are part of a larger building or property containing more than four residential units, "unless used for nonresidential purposes."

SERVICES THAT CREATE THE LIEN

No specific services are identified. Generally, a broker may place a lien upon performance of all of the broker's duties, as stated in the brokerage agreement, except completing settlement.

WAIVER

A broker's agreement to waive its right to a broker's lien without having first received full payment is "against public policy, void, and unenforceable."

PRIORITY

Attachment

A broker's lien attaches when the broker files an affidavit and broker's lien notice in the recorder of deeds office in the county in which the commercial real estate is located. The documents must be in the form required by law.

If a broker has a brokerage agreement with a buyer or tenant for compensation from the buyer or tenant, the lien claim attaches to the buyer's or tenant's estate or interest in the real estate only upon either:

- the recording of the document conveying commercial real estate to the buyer; or
- the landlord and tenant signing the lease.

In that case, the broker's lien attaches only to the buyer's or tenant's property interest. It is not a lien on the seller's or landlord's property interest, even if the document was filed before the conveyance to the buyer or the tenant was completed.

Other liens

The following have priority over a broker's lien:

- all mortgages, whenever recorded or filed;
- mechanic's liens;
- other liens imposed or created by statute; and
- liens of a governmental entity.

OTHER RELEVANT PROVISIONS

No other relevant provisions were located.

Statutory sections enacted 2013.

[Del. Code tit. 25, §§ 2602, 2603, 2604, 2612, 2614 \(2020\)](#)

Delaware, Notice requirements

TIMING OF NOTICE

A broker must record a lien notice within 90 days of the failure to pay upon broker's completion of duties or pursuant to an agreed upon payment schedule. The broker's lien affidavit and notice are effective for one year following the filing date and while litigation is pending. However, for a lien notice to be effective while a complaint is pending, the broker must file a lien continuation before the current lien notice expires.

The broker's lien is void and unenforceable if the filing does not occur within the time and in the manner required by statute. A broker's lien properly asserted against a seller because the seller was obligated to pay the broker, but not filed until after the buyer's deed is recorded, is not a lien against the property.

REQUIRED CONTENTS OF NOTICE

The affidavit and lien notice must contain:

- the broker's name;
- the record owner's name;
- the tenant's name, if the lien is on a tenant's leasehold estate;
- a description of the commercial real estate;
- the amount or method of computing the compensation for which the broker is claiming the lien;
- the broker's real estate license number;

- the names of the parties to the brokerage agreement;
- the brokerage agreement's date; and
- a sworn statement of the person signing before a notary public that the information contained in the lien notice is "true and correct."

RECORDING REQUIREMENTS FOR NOTICE

A broker's lien attaches when an affidavit and lien notice are filed in the statutory form in the office of the recorder of deeds in the county in which the commercial real estate is located.

"Notwithstanding any other provision in this chapter [26], the affidavit and notice of broker's lien may only be filed by an attorney-at-law admitted to the bar of the Supreme Court of the State of Delaware and in good standing."

The broker's lien is void and unenforceable if the broker does not file the notice in the required time and manner. A broker's lien properly asserted against a seller because the seller was obligated to pay the broker, but not filed until after the buyer's deed is recorded, is not a lien on the property.

SERVICE OF NOTICE

Within 10 days, a broker must serve by certified mail, return receipt requested, or by process server a copy of the lien on the person or entity charged. The broker must mail a copy of the broker's lien affidavit and notice to the property's record owner by:

- certified mail, return receipt requested; or
- process server, to the owner's last known address, or, if that is unknown, then to the owner's address as shown on the county real estate tax records.

OTHER RELEVANT PROVISIONS

Buyer or tenant brokerage agreements

If the lien is claimed on a tenant's leasehold, the broker must mail a copy of the affidavit and notice to the tenant at the address shown on the lease agreement. Also, within 10 days, the broker must serve a copy of the affidavit and broker's lien notice on the tenant's landlord by certified mail, return receipt requested, or by process server. However, the lien against the tenant's leasehold estate is not a lien against the landlord's property interest.

If a broker has a brokerage agreement with a buyer or tenant for the buyer or tenant to compensate the broker, then the filed lien claim attaches to the buyer's or tenant's estate or interest only upon either:

- the recording of the document conveying the commercial real estate to the buyer; or
- the signing of the lease by both parties.

The broker's lien attaches only to the buyer's or tenant's property interest, and it is not a lien on the seller's or landlord's property interest, even if it was filed before the conveyance to the buyer or tenant was completed.

A renewal of a lease that was the subject of a brokerage agreement restarts the 90-day period in which to file the affidavit and notice upon failure to pay the stated compensation.

Statutory sections enacted 2013.

[Del. Code tit. 25, §§ 2604, 2605, 2606, 2607, 2608 \(2020\)](#)

Delaware, Property encumbered

TYPES OF PROPERTY ENCUMBERED

A broker's lien attaches to the commercial real estate that is the subject of the lien notice.

OTHER OPTIONS

Whenever an affidavit and lien notice have been recorded, the property's record owner (or the tenant, if the lien is on a leasehold estate) may have the lien released by depositing funds equal to the full amount stated in the lien notice plus 10 percent. The funds must be held in escrow by the person and using the process agreed to by the parties for payment to the broker or for another resolution to their dispute. In the absence of a mutually agreed person or process, the funds may be deposited with the Superior Court by filing an interpleader. Upon deposit of funds by interpleader, the commercial real estate is considered released from the lien or lien claim. A broker receiving written notice that funds have been escrowed or that an interpleader has been filed must record, within 10 business days, a document stating that the lien and property are released by escrow or interpleader. Upon the filing of that document, the broker is deemed to have an equitable lien on the escrow funds pending resolution of the broker's claim.

Statutory sections enacted 2013.

[Del. Code tit. 25, §§ 2604, 2609, 2612 \(2019\)](#)

District of Columbia

District Of Columbia, Lien creation

No relevant provisions were located.

District Of Columbia, Notice requirements

No relevant provisions were located.

District Of Columbia, Property encumbered

No relevant provisions were located.

Florida

Florida, Lien creation

FORMAL REQUIREMENTS

Overview

Florida's commercial real estate lien laws are contained in the following two acts:

- the Commercial Real Estate *Sales* Commission Lien Act at Fla. Stat. §§ 475.700—.719; and
- the Commercial Real Estate *Leasing* Commission Lien Act at Fla. Stat. §§ 475.800—.819.

Sales

A broker has a lien on "the owner's net proceeds from the disposition of commercial real estate" for a commission the broker earned pursuant to a brokerage agreement. A "disposition" is a "voluntary conveyance or transfer of the title to or other ownership interest in any commercial real estate specified in a brokerage agreement." A disposition does *not* include a transfer pursuant to a foreclosure sale or a lease.

Leasing

A broker has a lien on an owner's commercial real estate interest for a commission the broker earned pursuant to a brokerage agreement with respect to a lease of that commercial real estate.

Brokerage agreement requirements

Sales

A "brokerage agreement" is a written contract between a commercial real estate owner and a broker that obligates the owner to pay the broker a commission for licensed services relating to the sale or disposition of the commercial real estate specified in the contract.

The broker must disclose to the owner at or before the time the owner executes the brokerage agreement that Florida statutes create lien rights for the broker's commission that the broker may not waive before he or she earns the commission. A disclosure in substantially the following form is sufficient:

The Florida Commercial Real Estate Sales Commission Lien Act provides that when a broker has earned a commission by performing licensed services under a brokerage agreement with you, the broker may claim a lien against your net sales proceeds for the broker's commission. The broker's lien rights under the act cannot be waived before the commission is earned.

Leasing

A broker must disclose to a property's owner, at or before the time the owner executes the brokerage agreement, that Florida statutes create lien rights for the broker's commission that the broker may not waive before he or she earns the commission. A disclosure in substantially the following form is sufficient:

The Florida Commercial Real Estate Leasing Commission Lien Act provides that when a broker has earned a commission by performing licensed services under a brokerage agreement with you, the broker may claim a lien against your interest in the property for the broker's commission. The broker's lien rights under the act cannot be waived before the commission is earned.

Other requirements

No other requirements were located.

PROPERTY COVERED

Florida's broker liens are available for transactions related to commercial real estate. In this context, "commercial real estate" is a "fee simple interest or other possessory estates in real property," except an interest in real property that is:

- improved with one single-family residential unit or one multifamily structure containing one to four residential units;
- unimproved, with the maximum permitted development of one to four residential units under any restrictive covenants, zoning regulations, or comprehensive plan; or
- improved with single-family residential units, such as condominiums, townhouses, timeshares, mobile homes, or houses in a subdivision that may be legally sold, leased, or otherwise conveyed on a unit-by-unit basis, even if the units may be part of a larger building or parcel containing more than four residential units.

SERVICES THAT CREATE THE LIEN

Sales services

A broker has a lien on the owner's net proceeds from the disposition of commercial real estate for any commission the broker earned with respect to that disposition pursuant to a brokerage agreement. In this context, "commission" means any fee or other compensation that an owner agrees to pay a broker for licensed services, as set forth in a brokerage agreement. A commission is earned on the earlier of the date that:

- an event occurs that is specified in the brokerage agreement as defining when the commission is earned; or
- the owner enters into a contract for the disposition of the commercial real estate specified in the brokerage agreement, if a commission would be payable to the broker pursuant to the brokerage agreement if the disposition occurred under the brokerage agreement.

Buyer's broker services

A broker does *not* have lien rights arising out of services rendered to a commercial real estate buyer. A written contract between a buyer and a buyer's broker for the buyer's payment of compensation to the buyer's broker for licensed services relating to a commercial real estate sale or disposition to the buyer is *not* deemed to be a brokerage agreement with the owner for purposes of determining broker's lien rights. A buyer's broker may *not*:

- record a commission notice;
- claim a lien against commercial real estate; or
- claim a lien against the owner's net proceeds from a commercial real estate sale or disposition.

However, if an owner enters into a written contract with a buyer for the sale or disposition of commercial real estate that will entitle the buyer's broker to receive a fee or other compensation from the buyer pursuant to the buyer's written brokerage agreement, the buyer's broker may give notice of the buyer's broker's right to receive such payment to the closing agent, the owner, the buyer, or any other party, if the broker may give that notice without violating any confidentiality provisions.

Leasing services

A broker has a lien on the owner's interest in commercial real estate for any commission earned by the broker pursuant to a brokerage agreement with respect to a lease of the commercial real estate. A commission (other than a renewal commission) is earned on the earlier of the date that:

- an event occurs that is specified in the brokerage agreement as defining when the commission is earned; or
- the owner enters into a lease of all or part of the commercial real estate specified in the brokerage agreement, and a commission would be payable to the broker for that lease pursuant to the brokerage agreement.

A renewal commission is deemed earned when the broker "performs all additional services relating to the lease renewal or lease modification that are expressly required by the brokerage agreement." If the brokerage agreement does not expressly require the broker to perform any additional services in order to receive the renewal commission, the renewal commission is an automatic renewal commission that is deemed earned when the broker first earned a commission for that lease.

WAIVER

In both sales and leasing situations,

- a broker may *not* waive a broker's lien for commissions before he or she earns the commission; and
- a person other than the broker may not waive the lien, even if that person may execute and bind the broker to a brokerage agreement.

PRIORITY

Attachment

Sales

After a broker delivers copies of a commission notice, the broker may record the commission notice in the public records of the county or counties in which the commercial real estate is located. The broker's lien is perfected by the recording of the commission notice, and it takes priority as of that recording date. The lien's priority does not relate back to the date of the brokerage agreement.

Recording a commission notice does not constitute constructive notice to a closing agent, unless the commission notice has been of record for at least 60 days.

Leasing

The broker's lien for leasing commissions against commercial real estate is perfected by recording the lien notice. The lien takes priority as of the date the lien notice is recorded. The lien notice's priority does not relate back to the brokerage agreement's date.

Other liens

Sales

The following, if recorded before a commission notice, have priority over the commission notice:

- all statutory liens, consensual liens, mortgages, deeds of trust, assignments of rents, and other encumbrances, including all voluntary or obligatory advances or charges;
- all modifications, extensions, renewals, and replacements of the above.

A closing agent computing the owner's net proceeds must subtract from the gross sales proceeds:

- the amount required to discharge any prior recorded lien; and
- the amount secured by a prior recorded lien that the buyer permits to remain a lien against the real estate title.

A prior recorded lien includes any valid construction lien claim that is recorded after the broker's commission notice, but that relates back to a notice of commencement recorded before the date the broker's commission notice was recorded.

Leasing

A broker's lien notice for leasing commissions recorded against commercial real estate is subordinate to any purchase-money mortgage, provided that the property owner made the mortgage in favor of an unrelated person. (This subordination provision affects only the relative priority of the broker's lien notice and the mortgage with respect to each other. It does not affect their relative priority with any other mortgage, lien, encumbrance, or other matters affecting the real estate's title.)

OTHER RELEVANT PROVISIONS

Lien ownership

In both sales and leasing situations, a broker's lien belongs to the broker named in the brokerage agreement, not to the broker's employee or independent contractor.

Lien transfers

In both sales and leasing situations, a broker's lien:

- cannot be assigned voluntarily or by operation of law; and
- may not be enforced by a person other than the broker.

Statutory sections 475.703, 475.803, and 475.813 enacted 2005; §§ 475.701, 475.707, 475.715, 475.719, and 475.807 amended 2006.

[Fla. Stat. §§ 475.701, .703, .707, .715, .719, .803, .807, .813 \(2019\)](#)

Florida, Notice requirements

TIMING OF NOTICE

Sales

If a broker wishes to enforce a lien for a sales commission, the broker must deliver a copy of the commission notice to the owner and closing agent (if known) within 30 days after the broker earns the commission and at least one day before the closing. If the broker does not then know the closing agent's identity, the broker must deliver a copy of the commission notice to the closing agent within three days after the broker learns the closing agent's identity and at least one day before the closing.

A broker who fails to deliver a copy of a commission notice in a timely manner may not enforce the lien, unless the broker's failure is solely because the owner entered into a contract for the disposition of the commercial real estate without the broker's knowledge, in which case the broker must:

- deliver a copy of the commission notice to the owner and the closing agent before the closing agent disburses the owner's net proceeds to the owner; and
- execute and deliver to the closing agent a sworn affidavit stating that a copy of the commission notice was not delivered within the required time period solely because the owner entered into a contract for the disposition of the real estate without the broker's knowledge.

A broker who fails to deliver a copy of a commission notice to the owner and the closing agent before owner's net proceeds are disbursed may not enforce a lien for the commission. Delivering a copy of a commission notice after disbursement is ineffective.

Leasing

Within seven days after recording the lien notice, the broker must deliver a copy of the lien notice to the owner obligated to pay the broker's commission.

REQUIRED CONTENTS OF NOTICE

Sales

A commission notice for a sales commission must:

- be in writing; and
- be signed and sworn to or affirmed by the broker under penalty of perjury before a notary public.

The notice must include the following:

- the obligated owner's name;
- the real estate's legal description;
- the broker's name, mailing address, telephone number, and license number;
- the brokerage agreement's effective date;

- the commission amount, stated in a dollar amount or as a formula;
- a statement that the broker has read the commission notice, knows its contents, believes it to be true and correct, and makes the commission claim pursuant to the brokerage agreement;
- a statement that the commission notice has been delivered to the owner and that the notice may be recorded in the public records of the county or counties where the commercial real estate is located; and
- a statement that Florida statutes provide that if the owner disputes the claimed commission, the owner must notify the closing agent of the dispute no later than five days after the closing, or the owner will be deemed to have confirmed the commission, and the closing agent must pay the commission to the broker from the owner's net proceeds.

A commission notice in substantially the form set forth in Fla. Stat. § 475.705(2) is sufficient to meet the above requirements.

Leasing

A lien notice for a leasing commission must:

- be in writing; and
- be signed and sworn to or affirmed by the broker under penalty of perjury before a notary public.

The notice must include the following:

- the obligated owner's name;
- a statement whether the owner obligated to pay the commission is the landlord or the tenant;
- the name of the person who owns the fee simple interest in the commercial real estate, if other than the owner obligated to pay the commission;
- the real estate's legal description;
- the broker's name, mailing address, telephone number, and license number;
- the brokerage agreement's effective date;
- the commission amount, stated as a dollar amount or as a formula;
- a description of the lease sufficient to identify the lease, including, if known, the landlord's and tenant's names, the lease date, and identification of the leased premises;
- a statement of whether the broker is claiming an automatic renewal commission, and the amount of or formula to determine any automatic renewal commission; and
- a statement that the broker has read the lien notice, knows its contents, believes it to be true and correct, and makes the commission claim pursuant to the brokerage agreement described in the lien notice.

A lien notice substantially in the form set forth in Fla. Stat. § 475.805(2) is sufficient to meet the above requirements.

RECORDING REQUIREMENTS FOR NOTICE

Sales

After a broker delivers the copies of a commission notice to the owner and the closing agent, the broker may record the commission notice in the public records of the county or counties in which the commercial real estate is located. A broker's lien against the owner's net proceeds is perfected by the recording.

Leasing

After a broker earns a leasing commission, the broker may record a lien notice in the public records of the county in which the real estate is located. The lien notice must be recorded no later than the earlier of:

- 90 days after the tenant takes possession of the leased premises (or, in the case of a renewal commission that requires the broker to perform additional services, 90 days after the broker performs those additional services); or
- the date on which the owner records a deed or assignment transferring the owner's interest in the real estate to a bona fide purchaser for value.

A broker who fails to record a lien notice in a timely manner may not enforce a lien for the claimed commission. A lien notice that is recorded outside of the specified time period is void.

The broker's lien for leasing commissions against commercial real estate is perfected by the recording of the lien notice. The lien takes priority as of the date the lien notice is recorded.

SERVICE OF NOTICE

Within seven days after recording a lien notice, a broker must deliver a copy of the lien notice to the owner obligated to pay the commission. The delivery of lien notices for sales commissions must be by:

- service of process;
- registered or certified mail with return receipt requested; or
- by personal or electronic delivery with evidence of delivery in the form of a receipt or other paper or electronic acknowledgment by the party to whom the notice is delivered.

Delivery is effective at:

- the time of personal service or personal or electronic delivery; or
- three days following deposit in the mail.

Notice to a broker or owner may be given to the party's address contained in the brokerage agreement or in a written notice from the broker or owner to the party giving the notice. If no address is provided in the brokerage agreement, the notice to the broker may be at the broker's address contained in the commission notice. Notice to a closing agent must be addressed to the individual responsible for the closing, if known.

OTHER RELEVANT PROVISIONS

Installment payments

If a leasing commission is to be paid in installments and any of those installments are due after the lease is executed, the lien notice is valid only to the extent that funds remain unpaid.

Effectiveness of recorded commission notice

Sales

A recorded sales commission notice is effective only with respect to dispositions made by the owner named in the commission notice. After the recording of a deed conveying the specified real estate to a bona fide purchaser for value, the commission notice is ineffective with respect to any subsequent dispositions of that commercial real estate.

A commission notice generally expires one year after its recording date.

Leasing

A recorded leasing commission lien notice is effective only with respect to leases made by the owner named in the lien notice. The lien notice is not effective with respect to any leases that are made by:

- a bona fide purchaser for value of the real estate;
- a purchaser at any mortgage foreclosure sale of the real estate; or
- a successor owner acquiring the real estate from one of the purchasers listed above.

Statutory section 475.705 enacted 2005; §§ 475.707, 475.805, and 475.807 amended 2006.

[Fla. Stat. §§ 475.705, .707, .805, .807 \(2019\)](#)

Florida, Property encumbered

TYPES OF PROPERTY ENCUMBERED

Sales

A broker has a sales commission lien on the owner's net proceeds from the disposition of commercial real estate for a commission the broker earned pursuant to a brokerage agreement related to a sale. The lien is a lien on personal property, not a real property interest.

"Owner's net proceeds" are "the gross sales proceeds that the owner is entitled to receive from the disposition of any commercial real estate specified in a brokerage agreement," minus all of the following:

- the amount secured by any encumbrance, claim, or lien that has priority over the recorded commission notice; and
- any costs the owner incurred to close the disposition, including, but not limited to, real estate transfer taxes, title insurance premiums, ad valorem taxes and assessments, and escrow fees.

A closing agent must reserve from the owner's net proceeds an amount equal to the broker's claimed commission if, before the closing agent disburses the owner's net proceeds from the closing of a disposition of commercial real estate,

- a commission notice pertaining to the commercial real estate is delivered to the closing agent;
- a commission notice has been recorded for at least 60 days and has not expired or been released or canceled; or

- the closing agent has actual knowledge of a commission notice that has been recorded and has not expired or been released or canceled.

If the owner's net proceeds are insufficient to pay the full amount of the claimed commission, the closing agent must reserve the entire amount of the owner's net proceeds, and release them as provided by statute. See Fla. Stat. § 475.709 for additional provisions related to a closing agent's duties related to reserving the owner's net proceeds.

Leasing

A broker's lien is on the owner's interest in commercial real estate for any commission earned by the broker pursuant to a brokerage agreement with respect to a lease of the commercial real estate. If the landlord is obligated to pay the commission, the broker's lien attaches to the landlord's interest in the commercial real estate, but not to the tenant's leasehold estate. If the tenant is obligated to pay the commission, the broker's lien attaches to the tenant's leasehold estate, but not to the landlord's interest in the commercial real estate.

OTHER OPTIONS

Leasing

A broker may agree to subordinate his or her broker's lien on leasing commissions in favor of the holder of any mortgage or other lien against the commercial real estate interest that is subject to the broker's lien.

An owner, with or without the broker's consent, may subordinate a broker's lien claimed for an automatic renewal commission in favor of the holder of a subsequent mortgage encumbering the owner's commercial real estate interest. The subordination instrument must:

- be in writing; and

- be recorded by the owner in the public records of the same county in which the broker's lien notice was recorded.

Any person with an interest in the commercial real estate upon which a broker has imposed a lien for leasing commissions may transfer the lien from that commercial real estate to other security by either:

- depositing a specified sum of money in the clerk's office; or
- filing in the clerk's office a bond executed as surety by a licensed surety insurer.

In both cases, the amount must equal "the amount claimed in the lien notice, plus interest thereon at the legal rate for 3 years, plus \$1,000 or 25 percent of the amount demanded in the lien notice, whichever is greater, to apply on any attorney's fees and court costs that may be taxed in any proceeding to enforce said lien."

See Fla. Stat. § 475.811 for additional provisions that apply to transferring a broker's lien to other security.

Statutory sections 475.703, 475.803, 475.811, and 475.813 enacted 2005; §§ 475.701, 475.707, and 475.709 amended 2006.

[Fla. Stat. §§ 475.701, .703, .707, .709, .803, .811, .813 \(2019\)](#)

Georgia

Georgia, Lien creation

FORMAL REQUIREMENTS

Overview

A real estate broker may claim a lien, in the amount of the compensation agreed upon by the broker and the landlord or seller, on commercial real estate or on a commercial real estate interest.

Brokerage agreement requirements

The broker's lien may arise out of a listing agreement or another agreement for the management, sale, lease, or other conveyance of a commercial real estate interest that is evidenced by a writing signed by the owner or its expressly authorized agent.

Other requirements

The broker must give written notice to the party whose property may be liened, if it is not one of the parties to the agreement.

PROPERTY COVERED

A broker may place a lien on commercial real estate or on a commercial real estate interest. "Commercial real estate" is:

- real estate other than that containing one to four residential units;
- real estate on which no buildings or structures are located and which is not zoned or available for commercial, multifamily, or retail use; or
- real estate classified as agricultural for tax assessment purposes.

"Commercial real estate" does *not* include single-family residential units, such as condominiums, townhomes, mobile homes, or homes in a subdivision that are sold, leased, or otherwise conveyed

on a unit-by-unit basis, even if those units are part of a larger building or parcel containing more than four residential units.

SERVICES THAT CREATE THE LIEN

A real estate broker may place a lien equal to the amount of the compensation that arises out of:

- a written listing agreement or other agreement for the management, sale, lease, or other conveyance of a commercial real estate interest;
- a transaction for which the broker or his or her employees or independent contractors have provided licensed services that result in the "procuring of a person or entity ready, willing, and able to enter and who actually enters" into a purchase, lease, or other conveyance of the commercial real estate on terms acceptable to the owner; or
- a written agreement with a prospective buyer or tenant regarding the purchase, lease, or other conveyance of commercial real estate.

WAIVER

A broker's right to file and record a lien is dissolved if the owner, a purchaser from the owner, a lender providing a loan secured by the real estate, or another holder of a lienable interest in the commercial real estate shows that the lien claimant or his or her agent waived the lien in writing, among other things.

PRIORITY

Attachment

A lien generally attaches to commercial real estate, or to a commercial real estate interest, upon the broker's recording a notice of lien ("lien notice") in the county land records of the county in which the real property is located.

If a broker has a written agreement with a prospective buyer or tenant, then the lien attaches to the client's interest upon:

- the client's commercial real estate purchase, lease, or other conveyance acceptance; and
- the broker's recording of a lien notice in the county land records of the county in which the real property is located, within 90 days after the later of (a) the purchase, lease, or other conveyance to the buyer or tenant, or (b) the buyer's or tenant's failure to compensate the broker pursuant to the agreement.

Other liens

The following liens have priority over a broker's lien:

- prior recorded liens; and
- liens for ad valorem taxes.

OTHER RELEVANT PROVISIONS

Lien ownership

Only a real estate broker who is not an employee or independent contractor of another real estate broker may claim a broker's lien.

Statutory sections 44-14-603 and 44-14-605 enacted 1993; § 44-14-601 amended 1995; § 44-14-602 amended 2000.

Ga. Code §§ 44-14-601, -602, -603, -605 (LexisNexis 2019)

Georgia, Notice requirements

TIMING OF NOTICE

The broker must record the claim for lien ("lien claim") as follows:

- if an unpaid payment is due in *one lump sum*, the broker must record the lien claim within 90 days after the tenant takes possession of the leased premises or the transaction procured by the broker is closed;
- if a payment is due in *installments*, all or a part of which is due after the conveyance, the broker may record the lien claim for those payments due after the conveyance at any time after the conveyance, as long as the broker records the lien claim within 90 days of the date the payment was due and not paid;
- if a broker has a written agreement with a *prospective buyer or tenant*, the broker must record the lien claim within 90 days after the later of (a) the date of the purchase, lease, or other conveyance to the buyer or tenant; or (b) the date the buyer or tenant failed to compensate the broker;
- if a broker has a written *management agreement* for an improved property, the broker must record the lien claim within 90 days of the agreement's termination; and
- if a broker claims a lien based on an *option* to purchase or lease, the broker must file the lien claim within 90 days of the later of (a) the date the transaction for which a commission or other fee is due; or (b) the date the transaction for sale, lease, or other conveyance is closed.

REQUIRED CONTENTS OF NOTICE

A lien notice must:

- state the claimant's name;
- state the owner's name;
- describe the property upon which the lien is being claimed;
- include the lien amount;
- state the broker's real estate license number;
- recite that the information contained in the notice is true and accurate to the signatory's knowledge;
- recite that the broker has disclosed to all parties that he or she might claim a broker's lien;
- be signed by the broker or an expressly authorized person; and
- be verified.

RECORDING REQUIREMENTS FOR NOTICE

A lien attaches to the real estate upon the broker's recording a lien notice in the county land records of the county in which the real property is located.

If a broker has a written agreement with a prospective buyer or tenant, then the lien attaches to the client's interest upon:

- the client's purchase, lease, or other acceptance of a conveyance of the commercial real estate; and
- the broker's timely recording of a lien notice in the county land records of the county in which the real property is located.

SERVICE OF NOTICE

The broker must mail a copy of the lien notice to the commercial real estate owner by certified mail or statutory overnight delivery. The broker's lien is void and unenforceable if the recording does not occur in the required time and manner.

OTHER RELEVANT PROVISIONS

No other relevant provisions were located.

Statutory section amended 2000.

Ga. Code § 44-14-602 (LexisNexis 2019)

[Georgia, Property encumbered](#)

TYPES OF PROPERTY ENCUMBERED

A real estate broker may place a lien on commercial real estate or on a commercial real estate interest.

OTHER OPTIONS

If a recorded lien claim would prevent a closing, the parties must establish an escrow account from the transaction's proceeds in an amount sufficient to release the lien claim. The requirement to establish this escrow account is not cause for any party to refuse to close the transaction. The funds must be held in escrow until the parties' rights have been determined by:

- the parties' written agreement;
- a court of law; or
- any other process to which the parties agree for resolution of their dispute.

Once an amount equal to the claimed lien has been escrowed, the lien or lien claim is automatically dissolved. Upon the broker's release of the lien, the broker is deemed to have an equitable lien on the escrow funds pending resolution of the broker's claim. The escrow may not be released until a resolution is reached and agreed to by all necessary parties or ordered by a court.

The parties to a transaction are not required to follow the escrow procedure described above if:

- alternative procedures that allow the transaction to close are available and acceptable to the transferee; or
- the transaction's proceeds are insufficient to release all liens claimed against the real estate, including the broker's lien.

Statutory section 44-14-604 enacted 1993; § 44-14-602 amended 2000.

Guam

Guam, Lien creation

No relevant provisions were located.

Guam, Notice requirements

No relevant provisions were located.

Guam, Property encumbered

No relevant provisions were located.

Hawaii

Hawaii, Lien creation

No relevant provisions were located.

Hawaii, Notice requirements

No relevant provisions were located.

Hawaii, Property encumbered

No relevant provisions were located.

Idaho

Idaho, Lien creation

No relevant provisions were located.

Idaho, Notice requirements

No relevant provisions were located.

Idaho, Property encumbered

No relevant provisions were located.

Illinois

Illinois, Lien creation

FORMAL REQUIREMENTS

Overview

A broker may have a lien on commercial real estate in the amount the broker is due pursuant to a written instrument signed by the real estate's owner or prospective buyer or tenant related to a commercial real estate sale, purchase, lease, or other conveyance.

Brokerage agreement requirements

A broker's lien may arise out of:

- a written instrument signed by a commercial real estate interest's owner or its authorized agent; or
- a written instrument signed by a prospective buyer or tenant, or its authorized agent, regarding a commercial real estate purchase, lease, or other conveyance to the buyer or tenant.

Other requirements

No other formal requirements were located.

PROPERTY COVERED

A broker's lien is on the commercial real estate or an interest in the commercial real estate that is the subject of the agreement. The lien is in the amount that the broker is due pursuant to the broker's agreement.

"Commercial real estate" means any Illinois real estate, *except* real estate:

- that contains one to six residential units;
- on which no buildings or structures are located; or
- classified as farmland for assessment purposes.

"Commercial real estate" does *not* include single-family residential units, such as condominiums, townhouses, or homes in a subdivision, that are sold, leased, or otherwise conveyed on a unit-by-unit basis, even if the units are part of a larger building or parcel containing more than six residential units.

An "interest in commercial real estate" includes, without limitation, an interest in a land trust.

SERVICES THAT CREATE THE LIEN

A broker may claim a lien in the amount that the broker is due pursuant to:

- a written instrument signed by the commercial real estate's owner or authorized agent; or
- a written instrument signed by a prospective buyer or tenant or its authorized agent "as to the purchase, lease, or other conveyance to the buyer or tenant of an interest in the commercial real estate."

WAIVER

No relevant provisions were located.

PRIORITY

Attachment

A broker's lien generally attaches to commercial real estate or a commercial real estate interest once:

- the broker is entitled to his or her fee or commission pursuant to the signed written agreement; and
- the broker records in a timely manner a notice of lien ("lien notice") in the recorder's or registrar of title's office of the county in which the commercial real estate is located.

If the broker has a written agreement with a prospective *buyer or tenant*, then the lien attaches when:

- the prospective buyer or tenant purchases, leases, or otherwise accepts a conveyance or transfer of the commercial real estate; and
- the broker records the lien notice in a timely manner in the recorder's or the registrar of titles' office of the county in which the real property (or real property interest) is located.

The lien attaches as of the date the lien notice is recorded; it does not relate back to the written agreement's date.

Other liens

Prior recorded liens and mortgages, including the following, have priority over a broker's lien:

- a valid mechanic's lien claim that is recorded after the broker's lien notice, but that relates back to a date before the broker's lien notice was recorded; and
- prior recorded liens that secure revolving credit and future advances of construction loans.

OTHER RELEVANT PROVISIONS

Lien ownership

A broker's lien is available to the broker named in the signed instrument, not to the broker's employee or independent contractor.

Statutory section 15 amended 1994; § 5 enacted 1999; § 10 amended 1999.

[770 Ill. Comp. Stat. 15/5, /10, /15 \(2018\)](#)

Illinois, Notice requirements

TIMING OF NOTICE

A broker must record his or her claim for lien ("lien claim") as follows:

- *generally*, a broker must record a lien claim before the real estate's actual conveyance or transfer;
- if the payment is due in *installments*, a portion of which is due only after the real estate's conveyance, a broker may record a lien claim for those payments due after the conveyance at any time after that conveyance, but before payment's due date;

- for a *lease* transaction, a broker must record the lien claim within 90 days after the tenant takes possession of the leased premises, unless written notice of the intended lease signing is personally served on the broker at least 10 days before the intended lease signing date, in which case the broker must record the lien claim before the indicated signing date; and
- if a broker has a written agreement with a prospective *buyer or tenant*, the broker must record the lien notice within 90 days after the purchase, lease, or other conveyance or transfer to the buyer or tenant.

REQUIRED CONTENTS OF NOTICE

A lien notice must:

- state the claimant's name;
- state the owner's name;
- describe the property upon which the lien is being claimed;
- include the lien amount;
- state the broker's real estate license number;
- recite that the information contained in the notice is true and accurate to the signatory's knowledge;
- be signed by the broker or an authorized party; and

- be verified.

RECORDING REQUIREMENTS FOR NOTICE

A broker's lien does not attach to commercial real estate or a commercial real estate interest until it has been recorded in a timely manner in the recorder's or the registrar of titles' office of the county in which the commercial real estate is located.

SERVICE OF NOTICE

The broker, within 10 days of recording a lien notice, must:

- mail a copy of the lien notice to the real estate's owner by registered or certified mail, return receipt requested; or
- personally serve the notice on the owner or the owner's agent.

If the lien is recorded within 10 days before the closing, the broker is not required to mail or personally serve a copy of the lien notice.

Mailing the lien notice is effective if mailed to the address of the commercial real estate that is the subject of the lien notice. A broker's lien is not enforceable if mailing the lien notice copy does not occur in the required time and manner.

OTHER RELEVANT PROVISIONS

Installment payments

If a broker's payment is due in installments, some of which are due only after the real estate's conveyance, the broker may record the lien claim for those payments due after the conveyance at any time after that conveyance and before the payment's due date. The lien claim is effective as a lien against the commercial real estate only to the extent the transferee still owes amounts to the transferor.

A single lien claim recorded before the real estate transfer, claiming all amounts due under an installment payment agreement, is *not* valid or enforceable as it pertains to payments due after the transfer or conveyance.

Notice requirements for liens arising out of leases

For a lien related to a lease, the broker must record the lien claim within 90 days after the tenant takes possession of the leased premises, unless written notice of the intended lease signing is personally served on the broker at least 10 days before the intended lease signing date. In that case, the broker must record the lien claim before the indicated signing date.

Statutory section amended 1999.

[770 Ill. Comp. Stat. 15/10 \(2019\)](#)

Illinois, Property encumbered

TYPES OF PROPERTY ENCUMBERED

A broker's lien attaches to commercial real estate or an interest in commercial real estate.

OTHER OPTIONS

If a recorded lien claim would prevent a closing, the parties must establish from the proceeds an escrow account in an amount sufficient to release the lien claim. This requirement is not cause for a party to refuse to close a transaction.

The escrowed funds must be held in escrow until the parties' rights have been determined by:

- the parties' written agreement;
- a court of law; or
- another process that is agreeable to both parties.

Once funds in the amount of the lien claim are escrowed, the broker must release the lien claim.

The parties need not follow this escrow procedure if alternative procedures that would allow the transaction to close are available and acceptable to the transferee.

If the transaction's proceeds are insufficient to release all liens claimed against the commercial real estate, including the broker's lien, the parties are not required to follow the escrow procedure described above.

Statutory section 20 enacted 1992; § 5 enacted 1999.

[770 Ill. Comp. Stat. 15/5, /20 \(2019\)](#)

Indiana

Indiana, Lien creation

FORMAL REQUIREMENTS

Overview

A broker company may place a lien in the amount the broker is due for licensed services on commercial real estate that is subject to a purchase, lease, or other conveyance to a buyer or tenant.

Brokerage agreement requirements

Brokerage, consulting, and management fees due to a broker company must be set forth in a written agreement, contract, or other instrument that is signed by:

- the owner of a commercial real estate interest (or the owner's authorized agent); or
- a prospective buyer or tenant (or its authorized agent).

Other requirements

The parties must have entered into the underlying contract after June 30, 2006.

PROPERTY COVERED

A broker may lien commercial real estate, or a commercial real estate interest, that is the subject of a purchase, lease, or other conveyance to a buyer or tenant.

In this context, "commercial real estate" is any real estate *other than*:

- real estate containing one to four residential units;
- real estate that contains no buildings or structures and that is zoned for single-family residential use; or

- single-family residential units such as condominiums, townhouses, or homes in a subdivision, if they are sold, leased, or conveyed on a unit-by-unit basis (even if the units are part of a larger building or parcel containing more than four residential units).

SERVICES THAT CREATE THE LIEN

The lien amount equals the amount the broker company is due for licensed services, including brokerage, consulting, and management fees, pursuant to a written agreement, contract, or other written instrument that is signed by:

- the owner of an interest in the commercial real estate or the owner's authorized agent; or
- a prospective buyer or tenant or an authorized agent.

The parties must have entered into the agreement after June 30, 2006.

WAIVER

A waiver of a broker company's right to a lien on commercial property is void, unless:

- the waiver or release is provided in consideration of payment of the claimed fees or commissions; or
- a condition occurs that precludes the broker company from receiving the fees or commissions under the original agreement's terms.

PRIORITY

Attachment

A broker's lien attaches on the date the lien notice is recorded. It does not relate back to the date of the written agreement, contract, or other instrument that created the lien rights.

Other liens

Valid, recorded liens, mortgages, and other encumbrances that are recorded before a broker's lien notice have priority over a broker's lien. Documents with this priority include:

- a valid mechanic's lien that is recorded after a broker's lien notice, but that relates back to a date before the recording date of the broker's lien notice; and
- prior recorded liens securing revolving credit and future advances of construction loans.

OTHER RELEVANT PROVISIONS

Lien ownership

A broker's lien is available to the broker company named in the written brokerage agreement, not to its employee or independent contractor.

Statutory sections 32-28-12.5-1 and 32-28-12.5-17 enacted 2006; §§ 32-28-12.5-5, 32-28-12.5-6, 32-28-12.5-9, and 32-28-12.5-16 amended 2015.

[Ind. Code §§ 32-28-12.5-1, -5, -6, -9, -16, -17 \(2019\)](#)

[Indiana, Notice requirements](#)

TIMING OF NOTICE

A broker must record a lien notice in the office of the county recorder either:

- before the deed for the actual conveyance or transfer of the real estate against which the broker is claiming a lien is recorded, if the broker claims fees or commissions from the party *conveying* commercial real estate; or
- no more than 90 days after the recording of the deed, if the broker claims fees or commissions from the party *receiving* a conveyance of commercial real estate.

A broker company must, no later than 10 days after recording a lien notice, personally serve or mail, by registered or certified mail, a copy of the notice to the record owner of the real estate.

REQUIRED CONTENTS OF NOTICE

A lien notice must:

- state the claimant's and the owner's names, the real estate's legal description, the lien amount, and the broker company's license number;
- state that the information contained in the notice is "true and accurate to the knowledge of the signatory";
- be signed by the managing broker responsible for the broker company's actions or by a person authorized to sign on the managing broker's behalf; and
- be verified.

RECORDING REQUIREMENTS FOR NOTICE

A lien attaches when the broker company is entitled to fees or commissions under a signed written agreement, contract, or other instrument and, except as otherwise provided, the broker company records a lien notice either:

- before the deed for the actual conveyance or transfer of the real estate against which the broker is claiming a lien is recorded, if the broker claims fees or commissions from the party *conveying* the real estate; or
- no more than 90 days after the recording of the deed, if the broker claims fees or commissions from the party *receiving* a conveyance of the commercial real estate.

The broker must file the notice in the office of the "recorder of the county in which the commercial real estate or an interest in the commercial real estate is located."

SERVICE OF NOTICE

A broker company must, no later than 10 days after recording a lien notice, personally serve or mail, by registered or certified mail, a copy of the notice to the record owner of the real estate (or to the owner's agent) at the owner's address stated in the writing on which the broker is basing its lien claim. If the address is not stated, the broker may use the address at which the property's real estate taxes are sent. Mailing the lien notice is effective when it is deposited in the United States mail. Personal service is effective upon receipt by the owner or the owner's agent.

OTHER RELEVANT PROVISIONS

Notice to broker regarding closing

No later than ten days before the planned closing for a commercial real estate transaction, the owner must notify the following persons of specified details regarding the closing:

- the broker companies to whom the owner owes fees or commissions; and
- the closing agent, title company, or title insurance agent involved in the transaction.

To exercise its rights to file a lien after receipt of this notice, the broker must notify the closing agent, title company, or title insurance agent before closing of the amount of the fees or commissions the broker is owed.

Installment payments

If the broker's payment is due in installments and part of the payment is due only after the real estate is conveyed or transferred, the broker may record a lien notice for those payments to be paid after the conveyance. This notice must be recorded at any time after the transfer or conveyance, but no later than 90 days after the payment's due date. In this case, the lien notice is effective as a lien against the *transferor's* interest only to the extent the transferee still owes consideration to the transferor. However, the lien is effective against the *transferee's* interest without this limitation.

As the broker receives payments or partial payments, it must provide a partial release that reduces the amount due under the lien notice.

Notice requirements for liens arising out of leases

In the case of a commercial real estate lease, the lien notice generally must be recorded no later than 90 days after the tenant takes possession of the leased premises. However, the lien notice must be recorded before this date if:

- the transferor personally serves on the broker written notice of the intended execution of the lease; and

- the notice is served at least 10 days before the intended lease execution date.

A broker may record a memorandum of lien at any time after the parties execute a lease or other written agreement, contract, or written instrument that contains rights to future fees or commissions. In that case, the broker must record a lien notice no later than 90 days after the condition for which future fees or commissions are claimed occurs. The broker may not file a lien notice against an owner's property if the tenant is the only party liable for paying the future fees or commissions.

Statutory sections amended 2015.

[Ind. Code §§ 32-28-12.5-6, -7, -8, -9, -10, -12 \(2019\)](#)

Indiana, Property encumbered

TYPES OF PROPERTY ENCUMBERED

A broker's lien attaches to the commercial real estate or commercial real estate interest transferred or conveyed.

OTHER OPTIONS

The real estate lien may be extinguished and become a lien on the funds contained in an escrow account, if:

- the parties responsible for paying the amount on which the lien is based, the broker that filed the lien, and an independent third party escrow agent establish the escrow account; and
- the escrow account contains at least 110 percent of the lien amount.

Statutory sections amended 2015.

[Ind. Code §§ 32-28-12.5-6, -18 \(2019\)](#)

Iowa

Iowa, Lien creation

No relevant provisions were located.

Iowa, Notice requirements

No relevant provisions were located.

Iowa, Property encumbered

No relevant provisions were located.

Kansas

Kansas, Lien creation

FORMAL REQUIREMENTS

Overview

A broker may place a lien on commercial real estate equal to the amount of agreed compensation if the real estate is listed with the broker under the terms of a signed written agreement and other conditions are met.

Brokerage agreement requirements

The broker's agreement must be:

- in writing; and

- signed by the owner or the owner's agent.

PROPERTY COVERED

A broker's lien may arise out of a commercial real estate transaction. "Commercial real estate" means any real estate interest, *except* in the following:

- real estate containing one to four residential units;
- real estate containing single-family residential units, such as condominiums, townhouses, or homes in a subdivision that are sold, leased, or otherwise conveyed on a unit-by-unit basis, even if the units are part of a larger building or parcel containing more than four residential units;
- real estate that contains no buildings or structures and is zoned for single-family residential use; or
- real estate used for agricultural purposes.

SERVICES THAT CREATE THE LIEN

A broker may place a lien on commercial real estate in an amount equal to the compensation agreed upon by the broker and the owner if:

- the broker (or his or her salesperson) has provided services that produced an acceptable "person or entity ready, willing and able to purchase, lease or otherwise accept a conveyance of the commercial real estate"; and

- the broker has a written agreement with a person to represent that person in the purchase, lease, or other conveyance to a buyer, lessee, or grantee of the real estate, provided the broker becomes entitled to compensation pursuant to the written agreement's terms.

In this context, "compensation" means "all amounts to be paid to a broker for services provided under a written agreement including, but not limited to, the broker's commission and any brokerage, management, consulting or other fees." "Services" means any act or service:

- for which compensation is paid; and
- the performance of which requires a license under the real estate brokers' and salespersons' license act.

WAIVER

No relevant provisions were located.

PRIORITY

Attachment

A broker's lien generally attaches to commercial real estate when:

- the broker either (a) procures a person or entity ready, willing and able to purchase, lease, or otherwise accept a real estate conveyance on the terms set forth in the written agreement with the owner or that are otherwise acceptable to the owner, or (b) is entitled to a fee or commission pursuant to a written agreement signed by the owner; and

- the broker timely records a lien notice in the office of the register of deeds of the county in which the commercial real estate is located.

If the broker has a written agreement with a prospective *buyer*, the lien attaches when the broker records a lien notice within 90 days after the purchase, conveyance, or transfer.

If compensation is due to the broker in *installments* and a portion of the compensation is due after the real estate conveyance or transfer, the lien attaches when the lien claim is recorded.

In the case of a *lease*, the lien attaches when the lien claim is recorded. The lien must be recorded within 180 days after the lessee takes possession of the property. If written notice of the intention to sign the lease is personally served on the broker entitled to claim a lien at least 10 days before the lease's intended signing date, the lien claim must be recorded before the date indicated for the signing of the lease. If the lease also includes provisions for a sublease or lease assignment, the broker must generally record a lien notice no later than 180 days after the lessee takes possession of the leased premises, and the lien attaches as of the recording of the lien notice. The lien does not relate back to the date of the written instrument.

Other liens

Any valid prior-recorded liens or mortgages have priority over a real estate broker's lien.

OTHER RELEVANT PROVISIONS

No other relevant provisions were located.

Statutory sections 58-30a02, 58-30a05, 58-30a06, 58-30a08, and 58-30a14 enacted 2005; §§ 58-30a03, 58-30a07, and 58-30a09 amended 2016.

[Kan. Stat. §§ 58-30a02, -30a03, -30a05, -30a06, -30a07, -30a08, -30a09, -30a14 \(2019\)](#)

Kansas, Notice requirements

TIMING OF NOTICE

General requirements

For a broker's lien to attach to real estate, the broker must record a lien notice in the office of the register of deeds of the county in which the real estate is located before real estate is actually conveyed or transferred.

Compensation due in installments

If a broker's compensation is due in installments and a portion is due after the real estate's conveyance or transfer, a broker may record at any time after the transfer or conveyance a lien claim for installment payments due after the transfer or conveyance. However, the broker must record the lien claim before the date on which the payment is due. The lien is effective as a lien against the real estate only to the extent amounts are still owed to the broker. A single lien claim recorded before the real estate's transfer or conveyance that claims all amounts due under an installment payment agreement is not valid or enforceable for payments due after the transfer or conveyance.

Leases

In the case of a lease, the broker must record the lien within 180 days after the lessee takes possession of the property. If a written notice of intent to sign the lease is personally served on the broker at least 10 days before the intended signing date, the broker must record the lien claim before that signing date.

If a lease also includes sublease or assignment provisions, the broker must record his or her lien notice no later than 180 days after the lessee takes possession of the premises. If the transferor personally serves the broker with written notice of the intended lease signing at least 10 days before the intended signing date, the broker must record the lien notice before the execution date indicated in that notice.

Contracts with buyers

If a broker has a written agreement with a prospective buyer, the lien attaches when the broker records a lien notice within 90 days after the purchase, conveyance, or transfer in the office of the register of deeds in the county in which the commercial real estate is located.

Options

If additional compensation is owed to a broker because an option is exercised, the broker may record a lien notice:

- at any time after executing the lease or other written agreement containing the option; but
- no later than 90 days after the transaction for which the additional commission is claimed.

REQUIRED CONTENTS OF NOTICE

A lien notice must:

- state the broker's name;
- state the owner's name;
- state the real estate's description;
- include the lien claim amount;

- provide the broker's real estate license number;
- be signed by the broker; and
- state that the information contained in the notice is true and accurate as to the broker's knowledge and belief.

RECORDING REQUIREMENTS FOR NOTICE

A broker's lien generally attaches to real estate only if the broker records, in a timely manner, a lien notice in the office of the register of deeds of the county in which the real estate is located.

If broker's compensation is due in installments and a portion of the compensation is due after the real estate transfer or if the compensation arises out of a lease transaction, the lien attaches when the lien claim is recorded.

The Kansas Office of the Attorney General has issued an opinion providing that a notice of a commercial real estate broker's lien is a "mortgage of real property." Therefore, a commercial real estate broker must pay the state's mortgage registration fee before filing the notice.

SERVICE OF NOTICE

Within 10 days of recording a lien notice, the broker must mail a copy of the notice to the real estate's owner or its agent at the address stated in the written agreement on which the lien claim is based. If the agreement does not include an address, the broker must mail the notice to the address of the real estate on which the lien claim is based. If the lien notice is recorded within 10 days before closing, the broker need not mail or personally serve a copy of the lien notice.

The broker's lien is not enforceable if the mailing or service of a copy of the lien notice does not occur in a timely and proper matter. The broker's lien is void if the broker does not record the lien as required by statute.

OTHER RELEVANT PROVISIONS

Installment payments

If compensation is due to a broker in installments and a portion of the compensation is due after the real estate transfer, a broker may record a lien claim for installment payments due after the real estate transfer at any time after the actual transfer, but it must be recorded before the payment's due date. The lien is effective as a lien against the real estate only to the extent amounts are still owed to the broker.

A single claim for a lien recorded before a transfer, claiming all amounts due under an installment payment agreement, is not valid or enforceable as to the payments due after the transfer.

A lien for installment payments attaches when the broker records the lien claim.

Notice requirements for liens arising out of leases

If written notice of the intention to sign a lease is personally served on a broker at least 10 days before the intended signing date, the broker must file his or her lien claim before the signing date. The lien attaches when the lien claim is recorded.

Additional compensation

If property is sold before the date on which additional compensation is due, and if the broker has filed a valid lien notice before the property's sale, the purchaser or transferee is deemed to have notice of the lien and takes title to the property subject to the lien notice.

If a broker claiming additional compensation fails to record a lien notice for additional compensation before a deed conveying legal title to the property to the purchaser is recorded, the broker may not claim a lien on the property.

Statutory sections 58-30a04, 58-30a05, 58-30a06, 58-30a08, 58-30a10, and 58-30a11 enacted 2005; §§ 58-30a07 and 58-30a09 amended 2016. Opinion issued 2012.

[Kan. Stat. §§ 58-30a04, -30a05, -30a06, -30a07, -30a08, -30a09, -30a10, -30a11 \(2019\); 2012 Op. Kan. Att'y Gen. 34 \(Dec. 28, 2012\)](#)

Kansas, Property encumbered

TYPES OF PROPERTY ENCUMBERED

A broker's lien attaches to the commercial real estate or commercial real estate interest transferred or conveyed.

OTHER OPTIONS

No relevant provisions were located.

Statutory section amended 2016.

[Kan. Stat. § 58-30a03 \(2019\)](#)

Kentucky

Kentucky, Lien creation

FORMAL REQUIREMENTS

Overview

A real estate broker who performs professional or real estate brokerage services may have a lien on the building, structure, land, or project related to the services performed in order to secure the charges for those services plus interest at the judgment rate.

Brokerage agreement requirements

To acquire a lien, a broker must have contracted directly with the property's owner or the owner's agent. The agreement must be in writing, and the owner or his or her agent must:

- list the subject property with the broker to sell, lease, or otherwise convey an interest in the subject property; or
- agree to pay the broker a fee for his or her services as a buyer's representative.

Other requirements

In order to acquire a lien, a real estate broker or the broker's affiliated sales associate must also provide licensed services that result, during the written agreement's term, in a "person or entity ready, willing, and able to purchase, lease, or otherwise accept a conveyance of the property or any interest in the property" on terms that are either:

- contained in the written agreement; or
- otherwise acceptable to the owner, as shown by a written agreement to convey a property interest signed by the owner or the owner's authorized agent.

PROPERTY COVERED

A real estate broker may have a lien on the "building, structure, land, or project relative to which the services were performed." All types of property, except public improvements, are included. (See "OTHER RELEVANT PROVISIONS: *Public improvements*" below for provisions that apply to public improvements.)

SERVICES THAT CREATE THE LIEN

A broker may place a lien for "professional" or "real estate brokerage" services related to the building, structure, land, or project on which the broker is placing the lien. "Real estate brokerage" includes the following acts performed relative to real estate or real estate improvements for others for a fee, compensation, or other consideration:

- dealing in time shares or options;
- "selling or offering for sale, buying or offering to buy, [or] negotiating the purchase, sale, or exchange of real estate";
- engaging in property management;
- leasing or offering to lease;
- renting or offering for rent; or
- referring or offering to refer to secure prospects.

WAIVER

No relevant provisions were located.

PRIORITY

Attachment

If a broker complies with all filing requirements in a timely manner, his or her lien is valid and effective against any creditor of, or bona fide or other purchaser from, the property's owner.

The broker's lien is not prior to a duly recorded mortgage or other contract lien or bona fide conveyance for value without notice, unless the broker, before the mortgage or other contract lien or conveyance is recorded, files in the county clerk office of the county in which he or she has furnished or expects to furnish services, a statement showing:

- that he has furnished or expects to furnish labor or materials; and
- the full amount of the lien.

Other liens

A broker's lien's priority is determined in the same manner as a mechanics' lien's priority. Thus, Ky. Rev. Stat. Ann. § 376.010(1) and (2) determines when a brokers' lien takes precedence over a mortgage or other contract lien or bona fide conveyance for value without notice. Pursuant to § 376.010, a mechanics' lien on land or improvements is superior to a mortgage or encumbrance created after the beginning of the labor or the furnishing of the materials. Therefore, the lien relates back and takes effect from the beginning of the labor or the furnishing of the materials. However, the lien does not take precedence over a duly recorded mortgage or other contract lien or bona fide conveyance for value without notice, *unless* before the mortgage or other contract lien or conveyance is recorded, the person claiming the prior lien files a lien statement in the county clerk's office of the county in which he or she has furnished or expects to furnish labor or materials.

OTHER RELEVANT PROVISIONS

Public improvements

Ky. Rev. Stat. Ann. § 376.210 governs a real estate broker's lien on public improvements. Generally, a person may acquire a lien for labor, material, or supplies furnished on a public improvement by filing in the clerk's office of each county in which he has undertaken to furnish labor, materials, or supplies a written statement that provides:

- that the claimant has undertaken and expects to furnish labor, materials, or supplies; and
- the price at which they are to be furnished.

A lien for labor, material, or supplies furnished after the broker files the above statement relates back to its filing date.

See Ky. Rev. Stat. Ann. § 376.210 for additional details regarding the assertion, filing, and enforcement of liens related to public improvements.

Liens related to newly constructed residential real estate

A real estate broker may not acquire a broker's lien related to newly constructed residential real estate unless the purchaser has agreed in writing to compensate the broker directly for performing brokerage services related to the transaction.

Statutory section 376.210 amended 1998; § 376.075 amended 2002; § 324.010 amended 2015.

[Ky. Rev. Stat. §§ 324.010\(1\); 376.075, .210 \(2020\)](#)

Kentucky, Notice requirements

TIMING OF NOTICE

A broker must record a lien statement within six months after he or she stops providing services.

REQUIRED CONTENTS OF NOTICE

A lien statement must contain the following:

- the amount due to the claimant, including all known "just credits and setoffs";
- a sufficiently accurate property description;
- the owner's name; and
- a statement regarding whether the services were furnished by contract with the owner or with a contractor or architect.

The statement must be subscribed and sworn to by the person claiming the lien (or by someone on his behalf). In other respects, the statement must be in the form set forth in § 376.080, which also requires the claimant's name and address.

RECORDING REQUIREMENTS FOR NOTICE

A broker's lien is dissolved unless the claimant files, within six months after he or she stops providing services, a lien statement in the county clerk's office of the county in which the property is located.

SERVICE OF NOTICE

A lien claimant must send by regular mail a copy of the lien statement to the property owner at the owner's last known address within seven days of the date the claimant files the statement with the county clerk.

OTHER RELEVANT PROVISIONS

No other relevant provisions were located.

Statutory section 376.080 amended 1990; § 376.075 amended 2002.

[Ky. Rev. Stat. §§ 376.075, .080 \(2020\)](#)

Kentucky, Property encumbered

TYPES OF PROPERTY ENCUMBERED

A real estate broker may acquire a lien on the building, structure, land, or project related to the professional or real estate brokerage services he or she performed.

OTHER OPTIONS

The owner or claimant of property against which a lien has been asserted may, at any time before a judgment is rendered enforcing the lien, execute before the county clerk in which the lien was filed a bond for double the lien amount claimed with sureties approved by the clerk, conditioned upon the obligors satisfying any judgment that may be rendered in favor of the person asserting the lien. Upon execution of the bond, the lien is discharged. "The person asserting the lien may make the obligors in the bond parties to any action to enforce his claim, and any judgment recovered may be against all or any of the obligors on the bond."

Section 376.075 amended 2002; § 376.100 amended 2011.

Louisiana

Louisiana, Lien creation

FORMAL REQUIREMENTS

Overview

Louisiana law grants a special privilege to a licensed real estate broker for his or her commission amount on all commercial real estate for which the broker negotiates the sale, exchange, purchase, lease, transfer, or other conveyance pursuant to a written agreement.

Brokerage agreement requirements

The brokerage agreement upon which the broker's special privilege arises must:

- be in writing; and
- be between the broker asserting the privilege and a person with the legal capacity to transfer or acquire the real estate interest.

Other requirements

No relevant provisions were located.

PROPERTY COVERED

A broker's privilege is granted on the interest of the person with whom the broker has contracted for the amount of his or her commission on all commercial real estate for which he provides brokerage services.

"Commercial real estate" generally includes "condominiums and leaseholds, as well as any other interest in land, with the exceptions of oil, gas and other minerals," whether the real estate is located in Louisiana or elsewhere. However, in this context, "commercial real estate" does not include:

- single family residential units, such as condominiums, townhouses, or houses in a subdivision, if they are sold, leased, or conveyed on a unit-by-unit basis or in units of six or fewer;
- real estate on which no building or other structure is permanently attached;
- real estate classified as farmland for assessment purposes; or
- residential real estate, as defined in the federal Real Estate Settlement Procedures Act.

SERVICES THAT CREATE THE LIEN

A broker may claim a special privilege affecting the interest of the person with whom the broker has contracted to negotiate a commercial real estate:

- sale;
- exchange;
- purchase;

- lease;
- transfer; or
- conveyance.

WAIVER

No relevant provisions were located.

PRIORITY

Validly recorded privileges and all mortgages, whether recorded before or after a broker's privilege, have priority over a broker's privilege, including, but not limited to:

- valid materialman's or laborer's liens that are recorded after the broker's privilege, but that relate back to a date before the lien was recorded;
- all mortgages, including those securing revolving credit, future advances, or construction loans, and all renewals, even if they are evidenced by an entirely new mortgage and the old mortgage is cancelled; and
- all vendor's liens.

OTHER RELEVANT PROVISIONS

No other relevant provisions were located.

Statutory section 9:2781.1 enacted 1995; § 37:1431 amended 2015.

[La. Rev. Stat. §§ 9:2781.1; 37:1431 \(2019\)](#)

Louisiana, Notice requirements

TIMING OF NOTICE

A broker must file a broker privilege notice at least five days before the sale.

REQUIRED CONTENTS OF NOTICE

No specifically relevant provisions were located.

RECORDING REQUIREMENTS FOR NOTICE

The broker must file a broker privilege notice:

- at least five days before the sale; and
- in the parish in which the commercial real estate is located.

SERVICE OF NOTICE

The broker must serve the purchaser with a broker privilege notice by certified mail at least five days before the sale.

OTHER RELEVANT PROVISIONS

No other relevant provisions were located.

Statutory section enacted 1995.

[La. Rev. Stat. § 9:2781.1 \(2019\)](#)

Louisiana, Property encumbered

TYPES OF PROPERTY ENCUMBERED

A broker's special privilege affects the commercial real estate interest of the person with whom the broker has a contract for services.

OTHER OPTIONS

The privilege may be released by posting a bond or other assets with the court in an amount sufficient to cover the broker's claim's full value. The court may disburse the escrowed amount in a manner consistent with a final judicial decision.

Statutory section enacted 1995.

[La. Rev. Stat. § 9:2781.1 \(2019\)](#)

Maine

Maine, Lien creation

FORMAL REQUIREMENTS

Overview

A person who performs services as a real estate licensee or "in selling any interest in land, improvements or structures," pursuant to a contract with the property's owner or by the owner's consent, has a lien on the following to secure payment of his or her compensation, with costs:

- the house, building, or appurtenances;
- the land; and
- the owner's interest in the above.

Brokerage agreement requirements

No provisions were located that require a brokerage agreement to be in writing or to contain specific terms. However, if the services were not furnished by a contract with the property's owner, the owner may prevent a lien for services not yet furnished, by giving written notice to the person performing the services. The notice must state that the owner will not be responsible for the services.

Other requirements

In certain circumstances, a licensee's lien is dissolved unless the claimant, within 90 days after ceasing to perform services:

- files a lien statement in the register of deeds' office in the county or registry district in which the property is located; and

- provides a copy of the statement to the property owner or owners by ordinary mail.

These requirements do *not* apply when the services "are furnished by a contract with the owner of the property affected."

For additional details regarding the lien statement, see "**Notice Requirements: REQUIRED CONTENTS OF NOTICE.**"

PROPERTY COVERED

No provisions were located limiting the type of property that may be subject to a lien. Therefore, it appears that the state's lien laws apply to all real estate transactions, including commercial and residential sales and leases.

SERVICES THAT CREATE THE LIEN

A licensee may claim a lien arising out of services:

- "as a real estate licensee"; or
- "in selling any interest in land, improvements or structures."

WAIVER

No relevant provisions were located.

PRIORITY

No specifically relevant provisions were located.

Note that a bona fide purchaser without notice takes title to the property free of the licensee's lien unless, before the bona fide purchaser takes title, he or she is duly notified of the lien. See "**Notice Requirements: SERVICE OF NOTICE: Notice to bona fide purchasers**" for details regarding this notice.

OTHER RELEVANT PROVISIONS

No other relevant provisions were located.

Statutory section 3252 enacted 1954; § 3251 amended 2015.

[Me. Rev. Stat. tit. 10, §§ 3251, 3252 \(2019\)](#)

[Maine, Notice requirements](#)

TIMING OF NOTICE

Generally, a lien is dissolved unless the claimant, within 90 days after ceasing to perform services:

- files a lien statement in the register of deeds' office in the county or registry district in which the property is located; and
- provides a copy of the statement to the property owner or owners by ordinary mail.

These requirements do *not* apply when the services "are furnished by a contract with the owner of the property affected."

REQUIRED CONTENTS OF NOTICE

The lien statement must:

- contain a true statement of the amount due the claimant, with all just credits;
- describe the property "sufficiently accurate to identify it";
- state the owners' names, if known; and
- be subscribed and sworn to by the person claiming the lien (or by someone on the claimant's behalf).

RECORDING REQUIREMENTS FOR NOTICE

A licensee must record the lien statement in a book the register of deeds for the county or registry district in which the property is located keeps for that purpose. This requirement does *not* apply when the services "are furnished by a contract with the owner of the property affected."

Note that a claimant must also file a notice of lien complaint upon enforcement of the lien. Failure to do so does not invalidate a lien, but a bona fide purchaser for value takes title free of the lien if the notice is not recorded.

SERVICE OF NOTICE

General requirements

A licensee, within 90 days after ceasing to perform services, must provide a copy of the lien statement to the property's owner or owners by ordinary mail. A post office certificate of mailing the notice to the owner is conclusive proof of receipt by the owner. This requirement does *not* apply when the services "are furnished by a contract with the owner of the property affected."

Notice to bona fide purchasers

A bona fide purchaser for value takes title free of the lien unless, before the bona fide purchaser takes title to the premises:

- the licensee has either filed the lien notice described above or has filed a similar notice in the office of the register of deeds in the county or registry district in which the premises are located, stating that the claimant is going to furnish, is furnishing or has furnished services, and that the claimant may claim a lien for those services; and
- if an enforcement action has been commenced, the licensee has provided certain other notices as required by § 3261.

Before the purchaser takes title to the premises, a real estate licensee must either:

- send the purchaser notice by certified mail, return receipt requested; or
- provide the purchaser with actual written notice.

If the licensee does not provide notice to a bona fide purchaser for value, the purchaser takes title free of the lien.

The notice is effective relative to a bona fide purchaser for only 120 days from its recording date. However, the licensee may record the notice any number of times, but each additional notice is also effective for only 120 days.

Notice to owners

For additional notice requirements to owners in subcontracting situations, see § 3255(3). These requirements do *not* apply if services are furnished for a business, commercial, or industrial purpose, unless the owner resides on the affected premises.

OTHER RELEVANT PROVISIONS

No other relevant provisions were located.

Statutory sections amended 2005.

[Me. Rev. Stat. tit. 10, §§ 3253, 3255, 3261 \(2019\)](#)

Maine, Property encumbered

TYPES OF PROPERTY ENCUMBERED

A licensee who performs services pursuant to a contract with the property's owner or by the owner's consent, has a lien on the following to secure payment of compensation, with costs:

- the house, building, or appurtenances;
- the land; and

- the owner's interest in the above.

If the licensee did not furnish services pursuant to a contract with the property's owner, the licensee may enforce the lien only to the extent of the balance due to the person with whom the owner directly contracted.

OTHER OPTIONS

An owner of property upon which a lien is claimed may petition a judge to have the property released from the lien. The judge may order the owner to give the lienor a bond in an approved amount and with approved sureties. The bond must be conditioned to pay the amount the lienor is entitled to lien, with costs in the action, within 30 days after final decree or judgment. Recording an attested copy of the complaint and proceedings, with an attached certificate that the bond has been duly filed, vacates the lien.

Statutory section 3263 enacted 1981; § 3255 amended 2005; § 3251 amended 2015.

[Me. Rev. Stat. tit. 10, §§ 3251, 3255, 3263 \(2019\)](#)

Maryland

Maryland, Lien creation

FORMAL REQUIREMENTS

Overview

A broker who is not paid a commission according to the terms of a commercial leasing brokerage agreement is entitled to a lien for the unpaid portion of the commission.

In this context, "broker" includes:

- an individual licensed or otherwise authorized to act as a real estate broker; and
- a corporation or partnership authorized to provide real estate brokerage services.

Brokerage agreement requirements

A "commercial leasing brokerage agreement" is a written agreement between a broker and a commercial property owner that requires the owner to pay a commercial leasing commission to the broker for services in obtaining a commercial tenant, whether or not the broker acted as the owner's or the commercial tenant's agent. It also includes a written unilateral offer from a commercial property owner to one or more brokers, including the broker claiming a lien.

Other requirements

To establish a broker's lien, a broker must, within 180 days after the commercial leasing commission became due and payable, commence proceedings in the circuit court where the commercial property is located by filing with the clerk of the court:

- a petition to establish a broker's lien;
- an affidavit stating the facts on which the broker is claiming the broker's lien in the amount specified; and
- either the original or a sworn, certified or photostatic copy of any material papers that constitute the basis of the broker's lien claim, unless the absence of any material papers is explained in the affidavit.

PROPERTY COVERED

A broker's lien arises out of a commercial leasing brokerage agreement related to commercial property. In this context, "commercial property" means "land, and any improvements on the land, used or intended to be used for a nonresidential purpose." A "commercial lease" is a "lease of building floor space intended to be used by the tenant for a nonresidential use whether or not the lease expressly sets forth a use."

SERVICES THAT CREATE THE LIEN

A broker who is not paid a commission according to the terms of a commercial leasing brokerage agreement is entitled to a lien for the unpaid portion of the commission for services rendered to obtain a commercial tenant, whether or not the broker acted as the owner's or the commercial tenant's agent.

WAIVER

A commercial leasing brokerage agreement between a broker and an owner may not waive or require the broker to waive the broker's right to claim or establish a broker's lien. Any waiver provision in a commercial leasing brokerage agreement or other express or implied contract is void.

PRIORITY

Attachment

When a broker files a broker's lien petition, the court will review the pleadings and documents on file to determine whether the lien should attach to the property. If the court determines that the lien should attach, the court must order the owner to show why a broker's lien should not attach to the lien property for the amount described in the petition. If the owner fails to appear and present evidence or file a counter-affidavit,

- the facts in the affidavit supporting the petitioner's claim are deemed admitted; and

- the broker's lien may attach to the lien property as described in the petition.

Other liens

A broker's lien:

- generally has priority over liens perfected after the court issues an interlocutory or final order attaching the lien;
- is subordinate to a mechanics' lien perfected after the broker's lien if (a) the mechanics' lien relates back to a date when work was performed or materials were furnished, and (b) that date is before the court ordered an interlocutory or final order attaching the lien;
- is subordinate to all liens perfected before the court issues an interlocutory or final order attaching the lien, even if the holder of a prior perfected lien had knowledge of the broker's unfiled commission claim at the time of perfection; and
- is subordinate to all other liens that are "otherwise paramount to the broker's lien by operation of law."

OTHER RELEVANT PROVISIONS

Bona fide purchasers

A commercial property is *not* subject to a broker's lien if, before the broker's lien is established, legal title has been granted to a bona fide purchaser for value.

Statutory sections 14-302, 14-304, 14-305, and 14-311 enacted 1994; § 14-301 amended 2002.

[Md. Code, Real Prop. §§ 14-301, -302, -304, -305, -311 \(2019\)](#)

Maryland, Notice requirements

TIMING OF NOTICE

Maryland law does not require a typical lien notice. However, in order to establish a broker's lien, the broker must commence proceedings in the circuit court where the commercial property is located within 180 days after the commercial leasing commission became due and payable, by filing specified documents, including a petition to establish a broker's lien, with the clerk of the court.

REQUIRED CONTENTS OF NOTICE

Although Maryland law does not require a typical lien notice, the petition to establish a broker's lien must contain the following information, which is similar to that contained in a lien notice:

- the petitioner's name and address;
- the owner's name and address;
- a copy of the brokerage agreement;
- a description of the lien property, including a statement of whether part of the lien property is located in another county;
- the commission amount; and
- the unpaid portion of the commission.

RECORDING REQUIREMENTS FOR NOTICE

To establish a broker's lien, a broker must file a petition to establish a broker's lien with the clerk of the circuit court where the commercial property is located within 180 days after the commercial leasing commission became due and payable.

SERVICE OF NOTICE

No relevant provisions were located.

OTHER RELEVANT PROVISIONS

Bona fide purchasers

Filing a petition to establish a broker's lien constitutes notice to a purchaser of the possibility of a perfected broker's lien.

Statutory sections enacted 1994.

[Md. Code, Real Prop. §§ 14-302, -304 \(2019\)](#)

Maryland, Property encumbered

TYPES OF PROPERTY ENCUMBERED

A broker's lien attaches to the lien property and extends to:

- "land covered by the building"; and

- "as much other land, immediately adjacent and belonging in like manner to the owner of the building, as may be necessary for the ordinary and useful purposes of the building."

OTHER OPTIONS

If the court determines that the broker's lien should not attach, or should not attach in the amount claimed, but that there is probable cause to believe that the petitioner is entitled to a broker's lien, the court must enter an interlocutory order which, among other things, specifies the amount of a bond that the owner may file to have the lien property released from the broker's lien.

Statutory sections enacted 1994.

[Md. Code, Real Prop. §§ 14-303, -305 \(2019\)](#)

Massachusetts

Massachusetts, Lien creation

No relevant provisions were located.

Massachusetts, Notice requirements

No relevant provisions were located.

Massachusetts, Property encumbered

No relevant provisions were located.

Michigan

Michigan, Lien creation

FORMAL REQUIREMENTS

Overview

A commercial real estate broker's lien is available only to an individual licensed as a real estate broker. A commercial real estate broker's lien is not available to a licensed real estate broker's employees, agents, subagents, or independent contractors.

Brokerage agreement requirements

Michigan's commercial real estate broker's lien act applies to written commission agreements signed after October 5, 2010.

Other requirements

A commercial real estate broker's lien attaches to commercial real estate if all of the following circumstances exist:

- the broker has a written commission agreement;
- the broker is entitled to a commission under the written commission agreement; and
- except as otherwise provided (for commissions due in installments, related to leases, due as a buyer's agent, or related to an option), the real estate broker records a lien claim before the commercial real estate is conveyed.

Unless otherwise specifically provided by statute, a commercial real estate broker's lien attaches on the date the lien claim is recorded.

PROPERTY COVERED

The commercial real estate broker's lien act applies to "commercial real estate," which means real estate or a real estate interest that is *not* any of the following:

- real estate zoned for single-family use and on which no building or structure is located;
- real estate on which four or fewer residential units are located; or
- real estate on which more than four residential units are located "if the units are single-family residential units, including houses, condominiums, or townhouses in a subdivision or condominium project, that are sold, leased, or otherwise conveyed on a unit-by-unit basis."

SERVICES THAT CREATE THE LIEN

No specific services are identified. A commercial real estate broker's lien generally attaches to commercial real estate in favor of a real estate broker for services due in a written commission agreement, including leasing and sale transactions.

WAIVER

No relevant provisions were located.

PRIORITY

Attachment

Unless otherwise specifically provided by statute, a commercial real estate broker's lien attaches on the date the lien claim is recorded.

Other liens

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

A valid prior-recorded lien or mortgage has priority over a commercial real estate broker's lien. A "valid prior-recorded lien or mortgage" includes, but is not limited to:

- a valid construction lien that is recorded after the lien claim is recorded and that relates back to a date before the lien claim is recorded; and
- a lien securing revolving credit and future construction loan advances that is recorded before the lien claim is recorded.

OTHER RELEVANT PROVISIONS

Option to purchase

If a real estate broker may be owed a commission in the future as a result of an option to purchase commercial real estate, the broker may record a lien claim at any time after the purchase option is signed and before the transfer or conveyance pursuant to the exercise of the option. The lien attaches after both:

- the lien claim is recorded; and
- the real estate is transferred or conveyed pursuant to the exercise of the purchase option.

Statutory sections enacted 2010.

[Mich. Comp. Laws §§ 570.581, .582, .583, .584, .593 \(2020\)](#)

Michigan, Notice requirements

TIMING OF NOTICE

Generally, a broker must provide notice of a lien claim within 10 days of the claim's recording date.

REQUIRED CONTENTS OF NOTICE

A lien claim must contain:

- the claimant's name and license number;
- the property owner's name;
- the claim amount;
- the legal description;
- a legible copy of the written instrument on which the claim is based;
- a statement that the information contained in the claim is "true and accurate" to the signer's knowledge; and
- the notarized signature of the broker or a person authorized to sign on his or her behalf.

The lien claim must be substantially in the form set forth in Mich. Comp. Laws § 570.584.

RECORDING REQUIREMENTS FOR NOTICE

A commercial real estate broker's lien attaches to commercial real estate generally only if the broker records a claim of lien before the commercial real estate is conveyed. Unless otherwise specifically provided, a commercial real estate broker's lien attaches on the date the lien claim is recorded.

If a real estate broker is owed a commission as a result of a lease, the broker may record a lien claim any time within 60 days after the lease is signed.

A lien claim that is not properly recorded is void and unenforceable.

SERVICE OF NOTICE

Within 10 days of recording a lien claim, the broker must provide a copy of the lien claim by mailing it by registered or certified mail with return receipt requested to the commercial real estate's address or by personal service to:

- the commercial real estate's record owner; and
- the party who signed the written commission agreement.

Mailing a copy of the lien claim is effective as notice when it is deposited in a United States mailbox with postage prepaid.

The commercial real estate broker's lien is void and unenforceable if a copy of the lien claim is not served within the required time and in the proper manner.

OTHER RELEVANT PROVISIONS

Installment payments

Except as provided with regard to leasing, when payment of a broker's commission is due in installments, one or more of which are due after the real estate is conveyed, a lien claim for the payments due after the conveyance date may be recorded after the conveyance date, but before the dates on which the payments are due. The lien claim must be recorded within 60 days after the commercial real estate is conveyed, and the lien is effective only against the commercial real estate to the extent the buyers still owes payment to the seller.

Statutory section enacted 2010.

[Mich. Comp. Laws § 570.584 \(2020\)](#)

Michigan, Property encumbered

TYPES OF PROPERTY ENCUMBERED

A commercial real estate broker's lien attaches to commercial real estate.

OTHER OPTIONS

Escrow account requirement

If a lien claim would otherwise prevent the closing of a transaction involving commercial real estate, the parties must establish an escrow account from the transaction's proceeds in an amount sufficient to satisfy the lien. Neither the buyer nor the seller may refuse to close the transaction because of this escrow requirement. The money must remain in the escrow account until the rights to the money have been determined by:

- the parties' written agreement;

- a judgment or court order; or
- any other method agreeable to the parties.

If an amount sufficient to satisfy a commercial real estate broker's lien is escrowed, the lien is extinguished and the broker must provide a lien release.

Exceptions to escrow requirement

The escrow account described above is *not* required if either:

- alternative procedures are available that will allow the transaction to close and that are acceptable to all parties; or
- the transaction's proceeds are not sufficient to satisfy all liens against the real estate under the commercial real estate broker's lien act.

Written demand on behalf of owner

A "written demand on behalf of the owner of commercial real estate" may be served on a person claiming a commercial real estate broker's lien. The document may demand that an action be commenced to enforce the lien or that an answer be filed in an action pending between the owner and the lien claimant. If the action is not brought or the answer is not filed within 30 days after service, the lien is extinguished without further action. Service of the demand may be by registered or certified mail, return receipt requested, or personal service.

Statutory sections enacted 2010.

[Mich. Comp. Laws §§ 570.584, .585, .589 \(2020\)](#)

Minnesota

Minnesota, Lien creation

No relevant provisions were located.

The Minnesota legislature has considered, but not passed into law, legislation that would have created a commercial real estate broker lien act. *See, e.g.,* [H.F. 1668, 81st Legis., 1999 Reg. Sess. \(Minn. 1999\)](#). Research located no similar legislation proposed during more recent legislative sessions.

Minnesota, Notice requirements

No relevant provisions were located.

Minnesota, Property encumbered

No relevant provisions were located.

Mississippi

Mississippi, Lien creation

FORMAL REQUIREMENTS

Overview

Effective July 1, 2014, a real estate broker may claim a commercial real estate lien in an amount equal to the amount the broker is due pursuant to a written agreement for broker services, provided certain conditions are met. The act establishing commercial real estate liens in Mississippi applies to written agreements signed on or after July 1, 2014.

Brokerage agreement requirements

The written agreement for broker services must be signed by the owner or by the owner's duly authorized agent.

Other requirements

A broker has a lien on commercial real estate in an amount equal to the amount the broker is due pursuant to a written agreement for broker services, if:

- the broker has performed under the agreement's provisions;
- the written agreement clearly sets forth the broker's duties to the owner; and
- the written agreement sets forth the conditions upon which the broker earns compensation and the compensation's amount.

PROPERTY COVERED

A broker has a lien on commercial real estate. "Commercial real estate" is any real property or "any and every interest or estate in land, including leaseholds, timeshares and condominiums, whether corporeal or incorporeal, freehold or nonfreehold," that:

- is "lawfully used primarily for sales, office, research, institutional, warehouse, manufacturing, industrial or mining purposes or for multifamily residential purposes involving five (5) or more dwelling units";
- may lawfully be used for any of the above purposes; or
- is "in good faith intended to be immediately used" for any of the above purposes.

"Commercial real estate" does *not* include "oil, gas or mineral leases and any other mineral leasehold, mineral estate or mineral interest of any nature whatsoever. . ."

SERVICES THAT CREATE THE LIEN

A real estate broker may claim a commercial real estate lien in an amount equal to the amount the broker is due pursuant to a written agreement for broker services. "Broker services" means "services for which a license issued by the Mississippi Real Estate Commission is required. . ."

WAIVER

No relevant provisions were located.

PRIORITY

Attachment

An authorized broker's lien attaches to commercial real estate only when the lien claimant files a timely lien notice in the chancery clerk's office in the county in which the property is located.

Other liens

The following have priority over a broker's lien:

- all deeds of trust, mortgages, purchase money mortgages, and liens for ad valorem taxes, regardless of when recorded;
- all other liens afforded priority by law; and
- all liens recorded before the broker's lien.

OTHER RELEVANT PROVISIONS

A broker's lien is available only to the broker named in the signed instrument.

A broker's lien is not valid or enforceable against a grantee or purchaser of the commercial real estate conveyed by the person owing the compensation if "the grantee or purchaser is taking the property without existing tenants or leases covered by a written agreement for broker services if the deed or instrument transferring the interest is recorded before the broker's notice of lien is recorded."

Statutory sections 85-7-505, -507, -525 enacted 2014 and reenacted 2017; § 85-7-503 amended 2015 and reenacted 2017.

Miss. Code Ann. §§ 85-7-503, -505, -507, -525 (LexisNexis 2019)

[Mississippi, Notice requirements](#)

TIMING OF NOTICE

A lien notice is timely if it is filed after the claimant's performance and before the conveyance or transfer of the commercial real estate that is the subject of the lien, unless the compensation payments are due in installments or upon renewal.

The broker's lien is void if the lien claimant does not file and serve a lien notice as required by law.

REQUIRED CONTENTS OF NOTICE

A lien notice must:

- be signed by the lien claimant;

- contain an claimant's attestation that the information contained in the notice is true and accurate to the claimant's best knowledge and belief; and
- must include the lien claimant's and the owner's name, the commercial real estate's property description, the lien amount, whether the amount is due in installments, and the claimant's grounds for the lien.

The written agreement for broker services need not be attached to the notice.

RECORDING REQUIREMENTS FOR NOTICE

A broker's lien attaches to the commercial real estate only when the lien claimant files a timely lien notice in the chancery clerk's office in the county in which the property is located.

SERVICE OF NOTICE

A lien claimant who files a broker's lien on commercial real estate must:

- mail a copy of the lien notice to the commercial real estate's owners by certified mail, return receipt requested; or
- serve a copy of the lien notice according to the service of process provisions set forth in the Mississippi Rules of Civil Procedure.

The lien claimant must file proof of service with the chancery clerk.

The lien is void if the lien claimant does not file and serve the lien as required.

OTHER RELEVANT PROVISIONS

Installment payments

When compensation is due in installments or upon renewal, a portion of which is or may become due after the property's conveyance or transfer, a single claim for a lien filed before the property's transfer or conveyance claiming all compensation due in installments or upon renewal is valid and enforceable for one year from the date of filing (as it pertains to payments due after the transfer or conveyance). However, as compensation payments are received, the broker must provide partial releases for those payments. Any lien notice for the payments due or becoming due after the transfer or conveyance may be recorded after the property's transfer or conveyance and within 90 days of the date on which the payment is due. In that case, the lien is effective against the transferee's interest in the commercial real estate as of the date filed. In the case of a lease or transfer of a nonfreehold interest, the lien is effective as a lien against the owner's interest in the property as of the filing date.

Statutory sections enacted 2014; reenacted 2017.

Miss. Code Ann. §§ 85-7-507, -509, -511 (LexisNexis 2019)

[Mississippi, Property encumbered](#)

TYPES OF PROPERTY ENCUMBERED

A broker's lien attaches to commercial real estate when the lien claimant files a timely lien notice.

OTHER OPTIONS

Mississippi statutes provide that a lien claim may be discharged under certain, specified conditions "[u]nless an alternative procedure is available and is acceptable to the transferee in a real estate transaction. . ."

Also, whenever funds or a corporate surety bond equal to 125 percent of the lien claim amount are deposited with the chancery clerk to be applied to any payment finally determined to be due, the chancery clerk must cancel the lien claim on the commercial real estate. Thereafter, the claimant's lien is fully enforceable as to the deposited funds or bond, but the lien on the commercial real property is released.

Statutory sections enacted 2014; reenacted 2017.

Miss. Code Ann. §§ 85-7-507, -521 (LexisNexis 2019)

Missouri

Missouri, Lien creation

FORMAL REQUIREMENTS

Overview

A broker who is not acting as a salesperson for another broker may claim a lien on commercial real estate in an amount equal to the compensation agreed upon by the broker and his or her client, if specified conditions are met.

Brokerage agreement requirements

A broker's agreement must be:

- in writing;
- for the purpose of selling, leasing, or otherwise conveying a commercial real estate interest; and
- signed by the owner or the owner's agent.

A buyer's agent's agreement must also be in writing.

Other requirements

A broker may claim a lien on commercial real estate, or on a commercial real estate interest, in an amount equal to the agreed compensation if:

- the real estate is listed pursuant to a signed written agreement for the purpose of selling, leasing, or otherwise conveying the real estate interest; and
- the broker and his or her salespersons have provided licensed services that resulted in "a person or entity ready, willing and able to purchase, lease or otherwise accept a conveyance of the commercial real estate" as provided by the agreement or on other terms acceptable to the owner, as indicated by a signed written agreement.

A broker may also claim a lien on commercial real estate if he or she has a written agreement with a prospective buyer to represent the buyer in the purchase or other conveyance of the real estate to the buyer, provided the broker is entitled to compensation pursuant to that written agreement.

PROPERTY COVERED

A broker's lien is a lien on the commercial real estate or the commercial real estate interest referenced in the broker's agreement with the property owner or buyer. In this context, "commercial real estate" means any real estate *except*:

- real estate containing one to four residential units; or
- real estate classified for assessment purposes as agricultural and horticultural property.

"Commercial real estate" includes unimproved real estate of any zoning classification, except agricultural or horticultural real estate, purchased for development or subdivision. It does *not* include single-family residential units, such as condominiums, townhouses, or homes in a subdivision, if that real estate is sold, leased, or otherwise conveyed on a unit-by-unit basis, even if the units are part of a larger building or real estate parcel containing more than four residential units.

SERVICES THAT CREATE THE LIEN

A broker who is not acting as a salesperson for another broker may claim a lien on commercial real estate in an amount equal to the agreed compensation for his or her services to sell, lease, or otherwise convey a commercial real estate interest. The broker and his or her salespersons must have provided licensed services that resulted in a person or entity ready, willing, and able to purchase, lease, or otherwise accept a conveyance of the commercial real estate interest.

A broker may also claim a lien on a commercial real estate interest if he or she has a written agreement with a prospective buyer to represent the buyer in the purchase or other conveyance of the real estate to the buyer.

WAIVER

No relevant provisions were located.

PRIORITY

Attachment

A broker's lien *generally* attaches to a commercial real estate interest when:

- the broker procures a person or entity ready, willing, and able to purchase, lease, or otherwise accept a conveyance of the property on the terms set forth in the written agreement with the owner or on otherwise acceptable terms, or the broker is entitled to a fee or commission pursuant to a written agreement signed by the owner or his or her agent; and
- the broker records a lien notice in the recorder of deeds' office of the county in which the real property is located, provided the lien is filed before the real estate's actual conveyance.

If payment to a broker is due in *installments* and a portion is due after the conveyance of the property, the broker may record a lien claim for installment payments due after the conveyance at any time after that conveyance, but before the date on which the installment's payment is due. The lien for installment payments attaches when the broker records the corresponding lien claim.

In the case of a *lease*, the lien attaches when the broker records the lien claim, which generally must be within 90 days after the later of the occupancy date or the date rent commences (as stipulated in the lease).

If the broker has a written agreement with a prospective *buyer*, the lien attaches when:

- the prospective buyer purchases or otherwise accepts a transfer of the commercial real estate; and
- the broker records a lien notice within 90 days after the purchase or other transfer to the buyer.

Other liens

Valid, prior recorded liens or mortgages have priority over a real estate broker's lien.

OTHER RELEVANT PROVISIONS

Lien ownership

Only a broker who is not acting as a salesperson for another broker has the right to claim a lien on commercial real estate.

Statutory sections 429.605 and 429.618 enacted 1993; § 429.603 amended 2007; § 429.609 amended 2009.

[Mo. Rev. Stat. §§ 429.603, .605, .609, .618 \(2020\)](#)

Missouri, Notice requirements

TIMING OF NOTICE

General provisions

Generally, a broker must record a lien notice before the actual conveyance or transfer of the commercial real estate subject to the broker's lien.

Payments due in installments

If a broker's payment is due in installments and a portion is due after the real estate's transfer, the broker may record the lien claim for those installment payments due after the transfer at any time after that transfer, but before the date on which the payment is due.

Leases

In the case of a lease, the broker must record the lien claim within 90 days after the later of the occupancy date or the date rent commences (as stipulated in the lease), unless written notice of the

intent to sign the lease is personally served on the broker at least 10 days before the intended signing date. In that case, the broker must record the lien claim before the indicated lease signing date.

Buyer's agent

If a real estate broker has a written agreement with a prospective buyer, the broker must record a lien notice within 90 days after the purchase or other transfer to the buyer.

REQUIRED CONTENTS OF NOTICE

A lien notice must:

- state the claimant's and the owner's name;
- include a property description;
- indicate the lien amount;
- state the broker's real estate license number;
- be signed by the broker; and
- be attested to by the broker that the information contained in the notice is true and accurate as to his or her knowledge and belief.

RECORDING REQUIREMENTS FOR NOTICE

For a broker's lien to attach to a commercial real estate interest, the broker must record a lien notice in the recorder of deeds' office of the county in which the real property (or real property interest) is located. Generally, the broker must record the lien notice before the actual transfer of the commercial real estate. (See "TIMING OF NOTICE" above for exceptions to this timing requirement.)

A broker's lien is void if the broker does not record the lien as required.

SERVICE OF NOTICE

A broker who attaches a lien on commercial property must send by certified mail a copy of the lien notice to the real estate's owner.

Also, a broker who proposes to assert a lien may not do so unless, at the time of closing, the broker has given written notice to the real estate's purchaser, alerting the purchaser that:

- payment of the broker's fee is due; and
- the broker is entitled to a lien on the premises.

OTHER RELEVANT PROVISIONS

Installment payments

If a broker's payment is due in installments and a portion of the payment is due after the property's transfer, the broker may record a lien claim for installment payments due after the property's transfer at any time after that property's transfer, but he or she must record the lien claim before the date on which the payment is due.

The lien is effective to the extent the transferee still owes amounts to the transferor. A single lien claim recorded before the property's transfer, claiming all amounts due under an installment payment agreement, is not valid or enforceable for payments due after the transfer.

A lien for installment payments attaches when the broker records the lien claim.

Liens arising out of leases

In the case of a lease, the broker must record the lien claim within 90 days after the tenant takes possession of the leased property, unless written notice of the intention to sign the lease is personally served on the broker at least 10 days before the intended lease signing date. In that case, the broker must record the lien claim before the lease signing date.

The lien attaches when the broker records the lien claim.

Statutory sections 429.607, 429.614, and 429.630 enacted 1993; § 429.609 amended 2009.

[Mo. Rev. Stat. §§ 429.607, .609, .614, .630 \(2020\)](#)

Missouri, Property encumbered

TYPES OF PROPERTY ENCUMBERED

A broker may claim a lien on commercial real estate, or on a commercial real estate interest, in an amount equal to the compensation agreed upon by the broker and the broker's client or customer.

OTHER OPTIONS

Unless an alternative procedure acceptable to the transferee is available, if the existence of a recorded broker's lien claim would prevent the closing of a transaction, an escrow account must be established with the circuit court clerk of the county in which the property is located. The escrow account must be funded by the transaction's proceeds and contain an amount sufficient to release the lien claim.

No party may refuse to close a transaction because of this requirement to establish an escrow account.

The circuit clerk must hold the proceeds in escrow until the parties' rights to the escrowed funds have been determined by:

- the parties' written agreement;
- the circuit court's final judgment; or
- another process agreeable to the parties.

If sufficient funds have been deposited in the escrow account, the broker must release the lien claim.

Statutory sections enacted 1993.

[Mo. Rev. Stat. §§ 429.605, .627 \(2020\)](#)

Montana

Montana, Lien creation

No relevant provisions were located. However, the Montana legislature has considered broker liens. For example, [S.B. 314, 2011 Leg., Reg. Sess. \(Mont. 2011\)](#) would have created real estate licensee commission liens, but it did not pass into law.

Montana, Notice requirements

No relevant provisions were located.

Montana, Property encumbered

No relevant provisions were located.

Nebraska

Nebraska, Lien creation

FORMAL REQUIREMENTS

Overview

A commercial real estate broker may claim a lien on commercial real estate that is the subject of a purchase, lease, or other conveyance in an amount equal to the commissions the broker is due.

Nebraska law provides that the real estate commission may discipline a licensee who files a "listing contract or any document or instrument purporting to create a lien based on a listing contract for the purpose of casting a cloud upon the title to real estate when no valid claim under the listing contract exists." No provision was located in the real estate licensing laws addressing such a recording when a valid claim exists under the listing contract.

Commission agreement requirements

The commission agreement must be a "written agreement with a designated commercial real estate broker as required by subsections (2) through (6) of section 76-2422." The agreement must be signed by an owner or buyer or their respective authorized agents.

Other requirements

No relevant provisions were located.

PROPERTY COVERED

A broker's lien is a lien on the commercial real estate (or commercial real estate interest) that is the subject of a purchase, lease, or other conveyance to a buyer or tenant.

The lien amount equals the commissions the commercial real estate broker is due for performance of licensed services.

"Commercial real estate" is:

- real estate "other than real estate containing no more than four residential units"; or
- real estate that is zoned for single-family residential use and contains no buildings or structures.

"Commercial real estate" does *not* include single-family residential units "when sold, leased, or otherwise conveyed on a unit-by-unit basis, even though these units may be a part of a larger building or parcel of real estate containing more than four residential units."

SERVICES THAT CREATE THE LIEN

No specific services are identified. Generally, the broker's lien amount equals the amount of commissions that the commercial real estate broker is due for his or her performance of licensed services.

WAIVER

No relevant provisions were located.

PRIORITY

Attachment

A broker's lien attaches when:

- the broker is entitled to a commission provided in a signed commission agreement; and
- the broker records a lien notice before the commercial real estate's actual conveyance or transfer.

The lien attaches as of the date the lien notice is recorded and does not relate back to the commission agreement's date.

In the case of a lease, the lien notice must be recorded no later than 90 days after the tenant possesses the leased premises. The lien attaches as of the recording of the lien notice and does not relate back to the commission agreement's date.

If a broker has a commission agreement with a prospective buyer, the lien attaches as of the date the lien notice is recorded and does not relate back to the commission agreement's date.

Other liens

The following have priority over a broker's lien:

- recorded liens, mortgages, trust deeds, and other encumbrances recorded before the date the commercial real estate broker's lien is recorded;

- a construction lien claim recorded after the commercial real estate broker's lien notice but that relates back to a date before the recording date of the commercial real estate broker's lien notice; and
- a purchase-money lien executed by a commercial real estate buyer in connection with a loan for which any part of the proceeds are used to pay the property's purchase price.

OTHER RELEVANT PROVISIONS

A broker's lien is not available to a broker's employee, agent, subagent, or independent contractor.

Statutory sections 52-2102, 52-2103, and 52-2107 enacted 2013; § 81-885.24 amended 2017.

[Neb. Rev. Stat. Ann. §§ 52-2102, -2103, -2107; 81-885.24\(25\) \(2019\)](#)

Nebraska, Notice requirements

TIMING OF NOTICE

A broker generally must record a lien notice before the commercial real estate's actual conveyance or transfer. In the case of a lease, the lien notice must be recorded no later than 90 days after the tenant possesses the leased premises.

Within 10 days after recording a lien notice, a broker must mail a copy of the lien notice to the property's owner of record.

REQUIRED CONTENTS OF NOTICE

A lien notice must:

- state the broker's name, the owner's name, and the name of any person the commercial real estate broker believes to be obligated to pay the commission under the commission agreement;
- state a description legally sufficient to identify the commercial real estate;
- include the lien amount;
- recite that the information contained in the notice is true and accurate to the signatories' knowledge;
- be signed by the broker or a person authorized to sign on the broker's behalf; and
- be notarized.

RECORDING REQUIREMENTS FOR NOTICE

A broker's lien attaches when the broker:

- is entitled to a commission provided in a signed commission agreement; and
- before the actual conveyance or transfer of the commercial real estate, records a lien notice at the register of deeds office of the county in which the property is located.

In the case of a lease, the lien notice must be recorded no later than 90 days after the tenant possesses the leased premises.

The broker's lien is unenforceable if the broker does not give the notice or if the recording does not occur in the required time and manner.

SERVICE OF NOTICE

Within 10 days after recording a lien notice, the broker must either:

- mail a copy of the lien notice to the property's owner of record by registered or certified mail at the owner's address stated in the commission agreement; or
- if no such address is given, mail a lien notice to the address of the commercial real estate on which the lien claim is based.

A broker's lien is unenforceable if the mailing or service of the lien notice does not occur as required by statute.

OTHER RELEVANT PROVISIONS

Installment payments

If a broker is due an additional commission as a result of future actions, the broker may record its lien notice at any time after executing the lease or other commission agreement, but no later than 90 days after the event on which the future commission is claimed occurs.

If commercial real estate is sold or conveyed before the date on which a future commission is due, and if the broker has filed a valid lien notice before the property's sale or conveyance, then the purchaser or transferee is deemed to have notice of the lien and takes title to the property subject to the lien notice.

Statutory sections enacted 2013.

[Neb. Rev. Stat. Ann. §§ 52-2103, -2104, -2105 \(2019\)](#)

Nebraska, Property encumbered

TYPES OF PROPERTY ENCUMBERED

A broker's lien attaches to commercial real estate (or a commercial real estate interest) that is the subject of a purchase, lease, or other conveyance. Generally, a lien that has become enforceable continues to be enforceable for two years after a lien is recorded.

OTHER OPTIONS

Escrowed Funds

The record owner of commercial real estate may have a broker's lien released by depositing funds equal to the full amount stated in the lien notice plus 15 percent. The funds must be held in escrow by a person and using a process agreed to by the parties for payment to the broker or for otherwise resolving their dispute. In the absence of a mutually agreeable person or process, the funds may be deposited with the district court by filing an interpleader action. Upon deposit of the funds by interpleader, the commercial real estate is considered released from the lien.

Once the broker receives written notice that funds have been escrowed or an interpleader has been filed, the commercial real estate broker must, within 10 business days, record a document stating that the lien is released. Upon the filing of such document, the broker is deemed to have an equitable lien on the escrow funds pending a resolution of the broker's claim for payment.

Generally, whenever a broker's lien has been recorded and an escrow account is established, the lien against the property is extinguished and immediately becomes a lien on the funds contained in the escrow account.

Statutory sections enacted 2013.

[Neb. Rev. Stat. Ann. §§ 52-2103, -2106, -2108 \(2019\)](#)

Nevada

Nevada, Lien creation

FORMAL REQUIREMENTS

Overview

A broker may place a lien on an owner's net proceeds from the disposition of commercial real estate for any commission the broker earned pursuant to a brokerage agreement.

Brokerage agreement requirements

A "brokerage agreement," which is a contract between an owner and a broker pursuant to which the owner agrees to pay a commission to the broker for services relating to the disposition of commercial real estate, must be in writing.

Other requirements

A broker is deemed to have earned a commission when the broker has performed his or her duties as provided in the brokerage agreement.

To enforce a claim, a broker generally must provide written notice to the property's owner and to the escrow agent. See "**Notice Requirements**" for additional details regarding notice.

PROPERTY COVERED

A broker may place a lien on an owner's net proceeds from the disposition of commercial real estate. In this context, "commercial real estate" means any real estate located in Nevada, *except*:

- improved real estate that consists of no more than four residential units;
- unimproved real estate for which no more than four residential units may be developed or constructed pursuant to applicable zoning regulations or development plans; or
- a single-family residential unit, such as a condominium, townhouse, or home within a subdivision, provided that unit is sold, leased, or otherwise conveyed unit-by-unit, even if the unit is part of a larger building or parcel that consists of more than four units.

SERVICES THAT CREATE THE LIEN

A broker has a claim on an owner's net proceeds for any commission the broker earned pursuant to a brokerage agreement. A commission is deemed to be earned when the broker has performed his or her duties pursuant to the brokerage agreement. In this context, a "commission" is a fee or other compensation agreed upon by a broker and an owner, as specified in a brokerage agreement.

WAIVER

A broker may waive a lien claim if, on or before the broker signs the brokerage agreement, he or she signs a written waiver of his or her right to enforce the claim. The waiver must be:

- printed in uppercase letters; and
- limited to one transaction.

No person other than the broker may waive the broker's rights, even if that person may execute and bind the broker to a brokerage agreement.

PRIORITY

Attachment

A properly recorded claim:

- appears to attach to the net proceeds at the time of recording; and
- does not attach to the title of any real property.

Other liens

Generally, a properly recorded broker's lien claim has priority over any other encumbrance, claim, or lien, if the broker's claim is recorded before the encumbrance, claim, or lien. However, this provision does not apply to recorded mechanics' and materialmen's liens.

OTHER RELEVANT PROVISIONS

Lien ownership

A broker's lien claim belongs to the broker named in the brokerage agreement, not to the broker's employee or independent contractor.

Lien transfers

No person other than the broker and the owner may enforce a recorded broker's lien claim.

Statutory sections enacted 1999.

[Nev. Rev. Stat. §§ 645.8705, .8711, .8715, .8761, .8765, .8795 \(2019\)](#)

Nevada, Notice requirements

TIMING OF NOTICE

Generally, if a real estate broker wishes to enforce a claim, he or she must provide a written claim notice to the following persons within seven days after the broker earns a commission:

- the owner of the commercial real estate specified in the brokerage agreement; and
- the escrow agent closing the transaction.

A broker who fails to provide a claim notice in a timely manner may not enforce his or her claim.

REQUIRED CONTENTS OF NOTICE

A lien notice must include the following:

- the owner's name;
- the name of the person who executed the brokerage agreement, if other than the owner;

- the broker's name, business name, and license number;
- the claim amount;
- a detailed description of the commercial real estate; and
- a copy of the brokerage agreement.

The notice must also:

- be verified by the broker's oath; and
- include the broker's acknowledgment.

RECORDING REQUIREMENTS FOR NOTICE

An owner served with a claim notice must, within five days after service of the notice but no later than seven days before the disposition of the real estate,

- confirm or deny the claim set forth in the notice; and
- notify, in writing, the broker who provided the notice to the owner.

If the owner fails to notify the broker within that time period or if the owner notifies the broker that he denies the claim, the broker may record the claim notice in the county recorder's office of the county in which the commercial real estate is located.

SERVICE OF NOTICE

Generally, a broker who wishes to enforce a claim must, within seven days after the broker earns a commission pursuant to a brokerage agreement, provide a written claim notice to:

- the owner of the commercial real estate specified in the brokerage agreement; and
- the escrow agent closing the transaction.

A broker who fails to provide a claim notice within this time period may not enforce his or her claim.

A broker need not provide a written claim notice to an escrow agent if the broker does not know the escrow agent's identity at the time the broker provides notice to the owner.

The notice must be served in the same manner as notice of a mechanics' or materialmen's lien.

OTHER RELEVANT PROVISIONS

Owner's duties

An owner served with a claim notice must, within five days after service of the notice but no later than seven days before the disposition of the real estate,

- confirm or deny the claim set forth in the notice; and
- notify, in writing, the broker who provided the notice to the owner.

If the owner confirms the claim and notifies the broker of that fact, the owner may instruct the escrow agent to pay the broker the amount the broker claimed. If the owner fails to notify the broker within the specified time period or notifies the broker that he or she denies the claim, the broker may record the claim notice in the county recorder's office.

The reservation of an owner's net proceeds does not relieve the owner of his or her obligation to close escrow for the commercial real estate.

Escrow agent's duties

Generally, an escrow agent must reserve from the owner's net proceeds an amount equal to the amount the broker claimed if:

- the escrow agent receives a claim notice;
- the claim notice is properly recorded; or
- the escrow agent has actual notice of the claim.

If the owner's net proceeds are not sufficient to satisfy the claim amount, the escrow agent must reserve the entire amount of the owner's net proceeds. In determining whether net proceeds are sufficient, the escrow agent may consider encumbrances, claims, or liens that have priority over the broker's claim.

If the escrow agent determines that an owner's net proceeds are not sufficient, the escrow agent:

- must, within three days after making that determination but no later than the close of escrow, notify the broker of that fact in writing; and

- may not release to the owner any portion of the owner's net proceeds unless the escrow agent receives a copy of an executed written agreement between the owner and the broker, authorizing the escrow agent to release the proceeds to the owner.

Except as otherwise provided, if some or all of an owner's net proceeds are reserved, the escrow agent may not release the proceeds to any person until the owner's and the broker's rights are determined.

Statutory sections enacted 1999.

[Nev. Rev. Stat. §§ 645.8765, .8771, .8775, .8781, .8805 \(2019\)](#)

Nevada, Property encumbered

TYPES OF PROPERTY ENCUMBERED

A broker has claim on an owner's net proceeds from the disposition of commercial real estate. A recorded claim is a claim on personal property and does not attach to any real property.

"Owner's net proceeds" are the "gross receipts to which an owner is entitled upon the disposition of any commercial real estate specified in a brokerage agreement." The term does *not* include:

- money required to pay an encumbrance, claim, or lien that has priority over the recorded broker's lien claim, "other than an encumbrance, claim or lien that the person to whom the commercial real estate is conveyed or otherwise transferred authorizes to remain"; or
- costs the owner incurred to close escrow.

An "owner" is a person who "holds legal title to or any interest in any commercial real estate that is described in a brokerage agreement," including, without limitation, an assignee in interest and a person's agent. "Owner" does *not* include:

- a mortgagee;
- a trustee under or beneficiary of a deed of trust; or
- an owner or holder of a claim that encumbers real estate or real estate improvements.

OTHER OPTIONS

Generally, an escrow agent must reserve from the owner's net proceeds an amount equal to the amount claimed by the broker if:

- the escrow agent receives a claim notice;
- the claim notice is properly recorded; or
- the escrow agent has actual notice of the claim.

If the owner's net proceeds are not sufficient to satisfy the claim amount, the escrow agent must reserve the entire amount of the owner's net proceeds. In determining whether the net proceeds are sufficient, the escrow agent may consider any encumbrance, claim, or lien that has priority over the broker's claim.

If the escrow agent determines that the net proceeds are insufficient, the escrow agent:

- must, within three days after making that determination but no later than the close of escrow, notify the broker of that fact in writing; and

- may not release to the owner any portion of the owner's net proceeds unless the escrow agent receives a copy of a written agreement between the owner and the broker, authorizing the escrow agent to release the proceeds to the owner.

Except as otherwise provided, if some or all of an owner's net proceeds are reserved, the escrow agent may not release the proceeds to any person until the owner's and broker's rights have been determined. The reservation of any portion of an owner's net proceeds does not relieve the owner from its obligation to close escrow.

An escrow agent may deposit with the district court of the county in which the claim is recorded the amount of the owner's reserved net proceeds, if:

- the broker recorded a claim notice;
- an escrow agent has reserved the owner's net proceeds; and
- escrow for the disposition of the commercial real estate has closed.

If an escrow agent deposits an owner's net proceeds with a district court, the escrow agent has no further liability concerning those proceeds.

Statutory sections enacted 1999.

[Nev. Rev. Stat. §§ 645.8735, .8741, .8761, .8781, .8785 \(2019\)](#)

New Hampshire

New Hampshire, Lien creation

FORMAL REQUIREMENTS

Overview

A principal broker who is entitled to a fee, commission, or property management fee pursuant to a written contract with a commercial real estate owner, buyer, or tenant, which contract pertains to the real estate's sale or lease, may record a lien notice in the amount of the fee, commission, or property management fee.

"Principal broker" is defined as the individual broker that the New Hampshire real estate commission holds responsible for the action of licensees assigned to that broker.

Brokerage agreement requirements

A brokerage agreement must:

- be in writing; and
- be signed by the owner, buyer, or tenant, or his or her duly authorized agent.

Other requirements

A principal broker's lien is not valid until it is recorded in the registry of deeds for the county in which the real estate is located, even if the broker's lien rights arose before the recording date.

PROPERTY COVERED

A principal broker may record a lien notice in the amount of the fee, commission, or property management fee that he or she is owed pursuant to a signed written contract pertaining to the sale or lease of commercial real estate. In this context, "commercial real estate" is any real estate other than real estate containing one to four residential units.

"Real estate" includes:

- leaseholds;
- other interests or estates in land;
- business opportunities that involve a real estate interest; and
- the sale and resale of time-share developments and manufactured housing parks.

SERVICES THAT CREATE THE LIEN

A principal broker may record a lien notice for a fee, commission, or property management fee that the broker is owed pursuant to a signed written contract pertaining to the sale or lease of commercial real estate.

WAIVER

A waiver of a principal broker's right to lien commercial property is void, unless the broker provides the lien waiver or release in consideration of payment of the fee the broker claimed.

PRIORITY

Attachment

A broker's lien *generally* attaches to the commercial real estate (or real estate interest) when the principal broker:

- is otherwise entitled to a fee or commission pursuant to a written instrument signed by the owner, buyer, or tenant or his or her agent; and
- has recorded in a timely manner a lien notice in the registry of deeds of the county in which the real property is located.

A principal broker's lien is not valid until it is properly recorded, even if the broker's lien rights arose before the recording date.

If a principal broker has a written agreement with a prospective *buyer or tenant*, then the lien notice attaches upon both:

- the prospective buyer or tenant purchasing or leasing a commercial real estate interest in the subject property; and
- the principal broker recording a lien notice in the registry of deeds of the county in which the real property is located.

Other liens

The following have priority over a broker's lien:

- valid prior recorded liens, mortgages, and encumbrances; and
- "all other valid prior recorded interests of any sort or nature whatsoever."

A recorded principal broker's lien does *not* relate back to a time and date before the actual time and date the principal broker recorded his or her lien, even if the broker's lien rights arose at an earlier time.

Prior recorded liens, liens for ad valorem taxes, mortgages, encumbrances, and other similar interests have priority over a principal broker's lien. These liens include, without limitation:

- a mechanics' lien claim that is recorded after the principal broker's lien notice but that relates back to a date before the date of the principal broker recorded his or her lien notice;
- all types of prior recorded mortgages, including those that secure lines of credit, revolving credit lines, or future advances;
- prior recorded construction mortgages that secure construction loans;
- prior recorded UCC financing statements;
- UCC financing statements recorded after the date the principal broker recorded his or her lien, if the UCC financing statements would be entitled to priority over prior recorded UCC financing statements;
- prior recorded leases or notices of lease; and
- all prior recorded liens, encumbrances, or other real estate interests.

OTHER RELEVANT PROVISIONS

No other relevant provisions were located.

Statutory sections enacted 2002.

[N.H. Rev. Stat. §§ 447-A:1, :2, :4, :5 \(2019\)](#)

New Hampshire, Notice requirements

TIMING OF NOTICE

General provisions

A principal broker's lien generally is not valid until it is recorded in the registry of deeds for the county in which the real estate is located, even if the broker's lien rights arose before the recording date.

Sales

If the principal broker claims a fee or commission against the *seller*, the broker must record the lien notice before the deed conveying or transferring title to the commercial real estate is recorded.

If the broker's commission is payable by the *purchaser*, the broker must record the lien notice within 90 days of the recording of the deed conveying title to the property, but before the recording of the deed conveying the purchaser's title to a purchaser.

Installment payments

If a principal broker's payment is due in installments, a portion of which is due after the property transfer, the broker may record the lien notice for those payments due after the transfer at any time after that transfer, provided it is within 90 days of the date on which the payment is due. However, that lien notice is effective as a lien notice against the transferor's commercial real estate interest only to the extent the transferee still owes amounts to the transferor.

A single lien notice recorded before the transfer, claiming all amounts due under an installment payment agreement, is valid and enforceable as it pertains to payments due after the transfer, if, as the broker receives payments or partial commission payments, he or she provides partial releases, reducing the amount due the principal broker under the lien notice.

Leases

In the case of a lease, including a sublease or a lease assignment, a broker must record the lien notice no later than 90 days after the tenant takes possession of the leased premises.

Future commissions

If a principal broker may be due future commissions arising out of the exercise of an option or other right to expand leased premises, renew or extend a lease, purchase the property, or other future options, the principal broker may record its lien notice:

- at any time after execution of the lease or other written instrument that contains the option, but
- no later than 90 days after the event occurs.

Buyer's broker

If a principal broker has a written agreement with a prospective buyer or tenant, the broker must record the lien notice within 90 days after the purchase or other conveyance or transfer to the buyer or tenant.

REQUIRED CONTENTS OF NOTICE

A lien notice must contain the following:

- the claimant's name;
- the owner's name;
- the property's legal description;
- the lien amount;
- the broker's license number;
- a statement that the information contained in the notice is true and accurate to the signatory's knowledge;
- the broker's or the broker's authorized agent's signature; and
- a verification under oath.

RECORDING REQUIREMENTS FOR NOTICE

A principal broker's lien notice must be recorded in a timely manner at the registry of deeds of the county in which the property is located.

SERVICE OF NOTICE

The principal broker must, within 10 days of recording a lien notice, mail by registered or certified mail, return receipt requested:

- a copy of the lien notice to the commercial real estate's record owner (or the owner's agent) at the owner's address stated in the written instrument from which the lien arose; or
- if no address is provided, to the address of the lien property.

If the lien notice is recorded within 10 days before closing, the principal broker need not mail a copy of the lien notice.

Mailing a copy of the lien notice is effective when deposited in a United States mailbox with postage prepaid.

The broker's lien is not enforceable if mailing or service of the copy of the lien notice does not occur at the time and in the manner required.

OTHER RELEVANT PROVISIONS

Additional provision related to future commissions

A purchaser is generally deemed to have notice of and will take title to property subject to a lien notice, if:

- a principal broker may be due future commissions arising out of the exercise of an option;
- the property is sold before the date on which a future commission is due; and

- the principal broker has filed a valid lien notice before the property's sale.

However, if a principal broker claiming a future commission fails to record its lien notice for future commissions before the recording of a deed conveying legal title to the property to the purchaser, then the broker may not claim a lien on the property.

Statutory sections enacted 2002.

[N.H. Rev. Stat. §§ 447-A:3, :4 \(2019\)](#)

New Hampshire, Property encumbered

TYPES OF PROPERTY ENCUMBERED

A broker may claim a lien on:

- commercial real estate; or
- a commercial real estate interest.

OTHER OPTIONS

If a broker has filed a broker's lien notice, an escrow account may be established from the sale proceeds in an amount equal to the lien notice amount. The option to establish an escrow account is not cause for any party to refuse to close the sale.

The escrowed funds must be held in escrow until the parties' rights to the funds have been determined by:

- the parties' written agreement;

- a court of law; or
- any other process agreeable to the parties.

Upon the escrow of funds in the amount of the claimed lien:

- the lien is automatically dissolved; and
- the broker must provide and record a release of the lien notice.

A broker who has provided that release has an equitable lien on the escrowed funds.

The parties need not follow the escrow procedure described above if:

- alternative procedures that would allow the transaction to close are available and acceptable to the transferee, the transferor, and the principal broker; or
- the transaction's proceeds are not sufficient to release all liens claimed against the real estate, including the principal broker's lien.

Statutory sections enacted 2002.

[N.H. Rev. Stat. §§ 447-A:4, :6 \(2019\)](#)

New Jersey

New Jersey, Lien creation

No relevant statutes or regulations were located.

However, New Jersey courts have addressed the issue. For example, *Cohen v. Estate of Sheridan*, 528 A.2d 101 (N.J. Super. Ct. Ch. Div. 1987), held a broker who procured a real property buyer has an equitable lien for his or her commission on the sale proceeds owed to the seller at closing. In *VRG Corp. v. GKN Realty Corp.*, 641 A.2d 519, 522 (N.J. 1994), the court noted that although "a contract to pay for services out of a designated fund gives the party performing the services an equitable lien on that fund when it comes into existence," the intent to have a particular property subjected to the payment of a debt must be clear.

Numerous other New Jersey cases discuss a broker's right to assert a lien under various circumstances.

New Jersey, Notice requirements

No relevant statutes or regulations were located.

New Jersey, Property encumbered

No relevant statutes or regulations were located.

New Mexico

New Mexico, Lien creation

FORMAL REQUIREMENTS

Overview

A real estate broker may claim a lien on commercial real estate or a commercial real estate interest in the amount the broker is due for licensed services connected with the *leasing* of the commercial real estate.

Brokerage agreement requirements

A broker is entitled to a stated fee or commission provided in a written instrument that:

- identifies the commercial real estate;
- sets forth (a) the fee or commission due and (b) the dates or circumstances under which the fee or commission is due; and
- is signed by the commercial real estate's owner (or an authorized agent).

Other requirements

A broker has a lien on commercial real estate (or a commercial real estate interest) in the amount the broker is due for licensed services connected with leasing the real estate, if the broker:

- is entitled to a stated fee or commission provided in a written instrument that meets statutory requirements; and
- records a lien notice.

PROPERTY COVERED

A broker's lien is a lien on commercial real estate or commercial real estate interest in the amount the broker is due for licensed services connected with leasing the real estate.

"Commercial real estate" is any real estate other than:

- real estate zoned for single-family residential use on which no buildings or structures are located; or

- real estate containing one or more single-family residential units sold, leased, or otherwise conveyed on a unit-by-unit basis.

The lien is valid only against the commercial real estate identified in the written instrument.

SERVICES THAT CREATE THE LIEN

No specific services are identified. Generally, the broker's lien amount equals "the amount that the broker is due for licensed services connected with the leasing of the commercial real estate."

WAIVER

No relevant provisions were located.

PRIORITY

Attachment

A broker's lien attaches as of the date the lien notice is recorded.

Other liens

No relevant provisions were located.

OTHER RELEVANT PROVISIONS

No other relevant provisions were located.

Statutory sections enacted 2014.

[N.M. Stat. §§ 48-12-2, -3, -4 \(2020\)](#)

New Mexico, Notice requirements

TIMING OF NOTICE

A broker must record a lien notice within 90 days after the date on which payment is due as set forth in the related written instrument.

REQUIRED CONTENTS OF NOTICE

A lien notice must include:

- the broker's name, address, and license number;
- the lien amount;
- a legal description of the commercial real estate or a "description sufficient to identify" the property; and
- the owner's name and last known address.

RECORDING REQUIREMENTS FOR NOTICE

Within 90 days after the date on which payment is due, the broker must record a lien notice in the county clerk's office of the county in which the commercial real estate is located.

SERVICE OF NOTICE

Within 10 days of recording the lien notice, the broker must mail a copy of the lien notice by certified mail, return receipt requested, to the owner's last known address or to the owner's authorized agent.

OTHER RELEVANT PROVISIONS

Installment payments

If a broker's payment is to be paid in installments, a broker may elect to file:

- a single lien claim for all installments due within 90 days following the date the first installment is due; or
- a lien for future installments within 90 days following the date the future installments are due.

If a broker is due an additional commission as a result of future actions related to a lease, the broker must record a lien notice:

- no earlier than the occurrence for which the broker earned the additional commission; and
- no later than 90 days after that occurrence.

Statutory sections enacted 2014.

[N.M. Stat. §§ 48-12-3, -4 \(2020\)](#)

New Mexico, Property encumbered

TYPES OF PROPERTY ENCUMBERED

A broker may claim a lien on commercial real estate or on a commercial real estate interest.

OTHER OPTIONS

The owner of any commercial real estate upon which a broker's lien has been filed may petition the district court for an order canceling the lien. The district court judge must examine the broker's recorded demands and determine an amount sufficient to satisfy the recorded demands and any other damages, court costs, or attorney fees the broker may recover. The owner must deposit security with the district court in the amount and of the type the judge determines. Upon deposit of the security, the district court judge must immediately issue an order canceling the lien. Upon recording of the order, the county clerk must cancel the filed lien. The broker's lien then attaches to the deposited security and is enforceable in the district court.

Statutory sections enacted 2014.

[N.M. Stat. §§ 48-12-3, -6 \(2020\)](#)

New York

New York, Lien creation

FORMAL REQUIREMENTS

Overview

New York law provides that a real estate broker may:

- file an "*affidavit of entitlement* to commission for completed brokerage services" ("affidavit of entitlement"), which does not create a lien or invalidate any subsequent title transfer, but requires the seller in residential transactions to deposit funds with the recording officer; and
- file a *lien* pursuant to the New York mechanics' lien laws on a lessor's interest for broker's services that produce a lessee for a term of more than three years of real property to be used for other than residential purposes.

Brokerage agreement requirements

Affidavit of entitlement

For an affidavit of entitlement, the broker's agreement:

- must be between the real property's owner and the broker; and
- may be written or oral.

Leasing services lien

For a broker's services to be subject to the state's mechanics' lien laws, the broker's employment or compensation contract must be in writing.

Other requirements

Affidavit of entitlement

A broker may file an affidavit of entitlement in the recording office of any county in which the real property is located, if the broker asserts:

- that he or she has "produced a person who was ready, able and willing to purchase or lease all or any part of a parcel of real property or any interest in a cooperative apartment" as provided in the brokerage employment contract between the owner and the broker;
- that the person (or a party acting on his or her behalf) subsequently contracted to purchase or lease, or actually did purchase or lease, the real property or cooperative apartment interest; and
- that the broker is entitled to a commission pursuant to a written or oral contract.

Leasing services lien

A real estate broker generally may file a notice of lien ("lien notice") only:

- after the broker performs the brokerage services;
- after the lessor and lessee execute the lease; and
- if a copy of the written employment or compensation agreement is attached to the lien notice.

PROPERTY COVERED

Affidavit of entitlement

A broker may file an affidavit of entitlement for completed brokerage services related to "all or any part of a parcel of real property or any interest in a cooperative apartment pursuant to a written or oral contract of brokerage employment."

Leasing services lien

A broker may record a lien for real estate brokerage services that produce "a lessee for a term of more than three years of all or any part of real property to be used for other than residential purposes pursuant to a written contract of brokerage employment or compensation."

SERVICES THAT CREATE THE LIEN

Affidavit of entitlement

A broker may file an affidavit of entitlement if the broker asserts:

- that he or she has "produced a person who was ready, able and willing to purchase or lease all or any part of a parcel of real property or any interest in a cooperative apartment," as provided in the brokerage employment contract between the owner and the broker;
- that the person (or a party acting on his or her behalf) subsequently contracted to purchase or lease, or did purchase or lease, the real property or cooperative apartment interest; and
- that the broker is entitled to a commission pursuant to the written or oral contract.

Leasing services lien

Pursuant to New York's mechanics' lien laws, a property "improvement" includes, among other things, the performance of real estate brokerage services to obtain a lessee for a "term of more than three years of all or any part of real property to be used for other than residential purposes" pursuant to a written brokerage employment or compensation contract.

A broker generally may file a lien notice only after:

- he or she has performed the brokerage services; and
- the lessor and lessee have executed the lease.

WAIVER

Affidavit of entitlement

No specifically relevant provisions were located. However, note that a broker may waive the statutory deposit requirement related to affidavits of entitlement recorded in connection with services rendered for residential property. For additional details, see "**Property Encumbered by Lien: OTHER OPTIONS: Affidavit of entitlement.**"

Leasing services lien

A contract, agreement, or understanding that waives a mechanic's right to file or enforce a mechanics' lien is "void as against public policy and wholly unenforceable." However, the parties may enter into a written agreement to subordinate, release, or satisfy all or part of a lien made after the mechanic has filed a lien notice.

PRIORITY

Attachment

Affidavit of entitlement

No relevant provisions were located because filing an affidavit of entitlement does not create a lien.

Leasing services lien

No specifically relevant provisions were located. However, except as otherwise provided by statute (see "*Other liens*" below), a lien for labor performed in a real property improvement generally has priority over a conveyance, mortgage, judgment, or other claim not recorded, docketed or filed at the time the broker records the lien notice.

Other liens

Affidavit of entitlement

No relevant provisions were located because filing an affidavit of entitlement does not create a lien.

Leasing services lien

Generally, a lien for labor performed in a real property improvement has priority over:

- a conveyance, mortgage, judgment, or other claim not recorded, docketed, or filed at the time the lien notice is filed;
- advances made on any mortgage or other encumbrance after the filing, except as otherwise provided;

- the claim of a creditor who has not furnished materials or performed labor on the property, if the owner has assigned the property by a general assignment for the benefit of creditors within 30 days before the filing of either notices;
- an attachment later issued or a money judgment later recovered on a claim that was not for materials furnished, labor performed, or funds advanced to improve the real property;
- a claim or lien acquired in proceedings on that judgment; and
- advances an owner made on a real property improvement contract that contains an option for the contractor to purchase the property, if the advances were made after the time the labor began or the first item of material was furnished.

See N.Y. Lien Law § 13 for additional, detailed provisions that relate to the priority of mechanics' liens.

OTHER RELEVANT PROVISIONS

Lien ownership

No specifically relevant provisions were located.

Lien transfers

Affidavit of entitlement

No relevant provisions were located because filing an affidavit of entitlement does not create a lien.

Leasing services lien

Generally, a lienor may assign, by a signed and acknowledged written instrument, a filed mechanics' lien at any time before the lien is discharged. The assignment must:

- contain the assignor's and the assignee's names and residences;
- identify the lien amount;
- contain the lien notice's filing date; and
- be filed in the office in which the lien notice is filed.

Statutory section 14 amended 1944; § 34 amended 1977; §§ 3 and 4 amended 1985; § 13 amended 1991; § 2 amended 1992; § 10 amended 2011; § 294-b amended 2008.

[N.Y. Lien Law §§ 2, 3, 4, 10, 13, 14, 34; N.Y. Real Prop. Law § 294-b \(2020\).](#)

New York, Notice requirements

TIMING OF NOTICE

Affidavit of entitlement

A broker may file an affidavit of entitlement once he or she asserts as follows:

- that the broker has "produced a person who was ready, able and willing to purchase or lease all or any part of a parcel of real property or any interest in a cooperative apartment," as provided in the brokerage employment contract between the owner and the broker;
- that the person (or a party acting on the person's behalf) subsequently contracted to purchase or lease, or did purchase or lease, the real property or cooperative apartment interest; and
- that the broker is entitled to a commission pursuant to the written or oral contract.

Leasing services lien

A broker generally may file a lien notice only:

- after the broker's performance of the brokerage services; and
- after the lessor's and the lessee's execution of the lease.

If the broker's payment is to be made in installments, the broker may file a lien notice:

- within eight months after the final payment is due; but
- no later than five years after the first payment was made.

REQUIRED CONTENTS OF NOTICE

Affidavit of entitlement

An affidavit of entitlement must include the following:

- the broker's name and license number;
- the name of the seller or the person responsible for the commission;
- the name of any person authorizing the sale on behalf of the seller and the authorization date;
- a copy of any written agreement;
- a description of the real property or cooperative apartment interest;
- the commission amount claimed;
- a description of the brokerage services performed; and
- the dates of the services.

Leasing services lien

A lien notice must state:

- the lienor's name and residence, along with additional specified information if the lienor is a partnership or a corporation;

- the name and address of the lienor's attorney, if any;
- the real property owner's name and interest "as far as known to the lienor";
- the name of the person who employed the lienor;
- the labor performed;
- the agreed price;
- the amount unpaid to the lienor;
- the time when the first and last work was performed;
- the property subject to the lien, including a property description sufficient for identification;
- if the property is located in a city or village, the property's street and number, if known; and
- whether the property subject to the lien is real property improved or to be improved with a single-family dwelling or not

The lienor or his agent must verify the notice by stating that the notice's statements "are true to his knowledge except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true."

RECORDING REQUIREMENTS FOR NOTICE

Affidavit of entitlement

A broker who asserts that he or she is entitled to a commission may file an affidavit of entitlement in the office of the recording officer of the county in which any of the real property is located. The affidavit, which does *not* create a lien, must be discharged one year after filing.

Leasing services lien

A broker must file a lien notice in the clerk's office of the county in which the property is located. If the property is located in two or more counties, the broker must file the lien notice in the clerk's office of each county.

SERVICE OF NOTICE

Affidavit of entitlement

Within five business days after filing an affidavit of entitlement, a broker must serve a copy of the affidavit, along with the required fees, on the seller at the address set forth in the written brokerage employment contract. The service must be by:

- registered or certified mail, return receipt requested; or
- personal delivery.

If the delivery of a deed or proprietary lease will occur in five or fewer business days from affidavit of entitlement's filing date, the broker must personally deliver a copy of the affidavit to the seller. If there is more than one seller, service on one seller meets the notice requirements. Failure to serve the affidavit of entitlement on the seller causes a forfeiture of the broker's rights.

If the seller is represented by an attorney and has given the broker the attorney's contact information before the broker files the affidavit of entitlement, the broker must provide, within five business days of the date he or she files the affidavit of entitlement, a copy of the affidavit to the seller's attorney by:

- mail;
- facsimile;
- e-mail;
- personal delivery; or
- any other agreed upon method.

Failure to deliver a copy of the affidavit of entitlement to the seller's attorney does *not* cause a forfeiture of the broker's rights.

Leasing services lien

Within five days before or 30 days after filing a lien notice, the lienor must serve a copy of the notice on the owner, if a natural person:

- by delivering it personally;
- if the owner cannot be found, by delivering it to his agent or attorney;

- by leaving it at his last known residence in the city or town in which the real property (or part of the real property) is located, with a "person of suitable age and discretion";
- by registered or certified mail addressed to the owner's last known residence; or
- if the owner has no residence in the city or town or cannot be found and if the owner has no agent or attorney, by affixing a copy of the notice conspicuously on the property, between 9 a.m. and 4 p.m.

If the owner is a corporation, the service must be made:

- by delivering the copy personally to one of the specified officers within the state;
- if one of the specified officers cannot be found within the state, by affixing a copy of the notice conspicuously on the property between 9 a.m. and 4 p.m.; or
- by registered or certified mail addressed to the corporation's last known place of business.

Failure to file proof of service with the county clerk within 35 days after the lien notice is filed "terminate[s] the notice as a lien."

Until the broker serves the lien notice, an owner without knowledge of the lien is protected in any payment made in good faith to any contractor or other person claiming a lien.

OTHER RELEVANT PROVISIONS

No other relevant provisions were located.

Statutory section 9 amended 2020; § 2 amended 1992; § 11 amended 1996; § 10 amended 2011; § 294-b amended 2008.

[N.Y. Lien Law §§ 2, 9, 10, 11; N.Y. Real Prop. Law § 294-b \(2020\)](#)

New York, Property encumbered

TYPES OF PROPERTY ENCUMBERED

Affidavit of entitlement

No specifically relevant provisions were located because filing an affidavit of entitlement does not create a lien. See "OTHER OPTIONS: *Affidavit of entitlement*" below for deposit requirements related to recorded affidavits of entitlement.

Leasing services lien

A broker's lien for commercial leasing services generally "extends to the owner's right, title or interest in the real property and improvements" that exist at the time the broker files the lien notice or that are "thereafter acquired," except as provided by statute. Thus, the lien applies to a lessor's, not the lessee's, property interest.

OTHER OPTIONS

Affidavit of entitlement

No specifically relevant provisions were located because filing an affidavit of entitlement does not create a lien.

However, whenever a broker has properly recorded an affidavit of entitlement before the delivery of a deed in connection with a real property sale or the delivery of the stock certificate or proprietary

lease in connection with a cooperative apartment sale, and the broker does not receive his or her compensation, the seller must deposit with the recording officer at the time of delivery of the deed, stock certificate, or proprietary lease, the lesser of:

- the net sale proceeds; or
- the unpaid portion of the compensation.

If multiple affidavits of entitlement are filed, the seller must deposit an amount equal to the lesser of:

- the net sale proceeds; or
- the "greatest amount of the unpaid portion of the compensation" agreed to in the written contracts attached to the multiple affidavits of entitlement.

Upon deposit of these funds, the broker must pay a recording fee. The recording officer must hold the funds until a court has determined the seller's and the broker's rights.

Neither this deposit obligation nor the seller's failure to deposit the funds creates a lien or encumbrance against any real property. A seller's failure to deposit the required funds does *not* invalidate any real property transfer. A broker may waive a seller's obligation to deposit money in an instrument signed by or on behalf of the broker.

This deposit requirement applies only if the written brokerage employment contract contains the following statement in clear and conspicuous bold face type:

At the time of closing, you may be required to deposit the broker's commission with the county clerk in the event that you do not pay the broker his or her commission as set forth herein. Your obligation to deposit the broker's commission with the county clerk may be waived by the broker.

The deposit requirement applies only to the transactions involving a dwelling, condominium unit, or cooperative apartment that is used or occupied, in whole or in part, as a home or residence and that is real property improved by a one- to four-family dwelling, individual condominium units, or individual cooperative apartments.

Leasing services lien

The owner may, either before or after the commencement of the improvement, execute as a principal, a bond to the county clerk of the county in which the premises are located in an amount equal to the amount the New York Supreme Court or the county court directs. The bond amount may not be less than the amount unpaid under the contract, "conditioned for the payment of any judgment or judgments" that may be recovered in an action brought to enforce all claims arising out of labor performed or materials furnished in performing the contract.

The bond must be executed as a surety by a fidelity or surety company:

- authorized to do business in New York; and
- to which state regulators have issued a certificate of solvency.

The bond must contain the following:

- the owner's, contractor's, and surety company's names;
- the contract's date and amount; and
- the real property's description.

Upon approval of the bond and its filing with the county clerk, the court must issue an order discharging the property from the lien of every "contractor, subcontractor, material man or laborer performing labor or furnishing materials in or about the performance of the contract." That person's claim then attaches to and is secured by the bond. In order to perfect that claim, the claimant must file a claim notice (in the time required for filing a lien notice) in the clerk's office of the county in which the bond is filed. See N.Y. Lien Law § 37 for additional details regarding the recording of the claim notice and the required contents of that notice.

Statutory section 37 amended 1984; § 294-b amended 2008.

[N.Y. Lien Law § 37](#); [N.Y. Real Prop. Law § 294-b \(2020\)](#)

North Carolina

North Carolina, Lien creation

FORMAL REQUIREMENTS

Overview

A broker may place a lien on commercial real estate equal to the amount the broker is due pursuant to a written agreement for broker services signed by the owner or the owner's agent, if:

- the broker has performed "under the provisions of the agreement";
- the written agreement clearly sets forth the broker's duties; and
- the written agreement sets forth the conditions upon which the broker earns the compensation and the compensation amount.

Brokerage agreement requirements

The brokerage agreement must be in writing and must clearly state:

- the broker's duties to the owner;
- the conditions upon which the broker earns the compensation; and
- the compensation amount.

An action between a broker and the broker's client for recovery under an agreement for broker services is not valid unless the contract is reduced to writing and signed by the party to be charged or other authorized person.

Other requirements

A broker's lien is available only:

- to the broker named in the instrument signed by the owner or the owner's agent; and
- against the commercial real estate that is the subject of the written agreement for broker services.

The lien attaches only when the lien claimant files a timely lien notice in the superior court clerk's office.

PROPERTY COVERED

A broker has a lien on commercial real estate in the amount the broker is due under a written agreement for broker services.

"Commercial real estate" is real property that, at the time the property or interest is made the subject of an agreement for broker services,

- is "lawfully used primarily for sales, office, research, institutional, agricultural, forestry, warehouse, manufacturing, industrial, or mining purposes or for multifamily residential purposes involving five or more dwelling units;"
- is zoned for any of the above uses;
- is the subject of an official application or petition to amend the applicable zoning ordinance to permit any of the uses listed above; or
- is "in good faith intended to be immediately used" for any of the purposes listed above by the "parties to any contract, lease, option, or offer to make any contract, lease, or option."

SERVICES THAT CREATE THE LIEN

A broker may assert a lien on commercial real estate in the amount due pursuant to a written agreement signed by the owner or the owner's authorized agent if the broker has "performed under the provisions of the agreement."

WAIVER

No relevant provisions were located.

PRIORITY

Attachment

A broker's lien attaches to the commercial real estate only when the lien claimant files in the office of the clerk of superior court a timely lien notice that conforms to statutory requirements.

Other liens

Valid prior recorded liens or mortgages have priority over a broker's lien. Also, a lien on real property or a claim of lien on funds allowed under Part 1 or Part 2 of Article 2 (which both deal with mechanics', laborers', and materialmen liens) are "deemed superior in all respects" to any brokers' lien, regardless of the competing liens' effective dates. Those liens survive any judgment awarding a broker's lien. A broker filing a broker's lien is not entitled to participate in pro rata distributions to claimants pursuant to § 44A-21.

OTHER RELEVANT PROVISIONS

Failure to file suit or answer

If a lien claimant fails to file a suit to enforce a lien or fails to file an answer in a pending suit to enforce a lien within 30 days after a properly served written demand, the lien is extinguished.

Lien ownership

A broker's lien is available only to the broker named in the instrument signed by the owner or the owner's agent.

Statutory sections 44A-24.3, 44A-24.4, 44A-24.9, 44A-24.14; and 93A-13 enacted 2011; § 44A-24.2 amended 2017; § 44A-24.10 amended 2012.

[N.C. Gen. Stat. §§ 44A-24.2, .3, .4, .9, .10, .14; 93A-13 \(2019\)](#)

North Carolina, Notice requirements

TIMING OF NOTICE

A broker's lien attaches to commercial real estate only when the lien claimant files in the superior court clerk's office a timely lien notice that conforms to statutory requirements. A lien notice is timely if the claimant files it:

- after the claimant's performance under the written agreement for broker services; and
- before the conveyance or transfer of the commercial real estate.

If a broker files a lien notice more than 30 days before the settlement or possession date set out in a purchase offer, a sales contract, or a lease, the lien is available only "upon grounds of the owner's breach of the written agreement for broker services."

REQUIRED CONTENTS OF NOTICE

A lien notice must:

- be signed by the lien claimant;
- contain an attestation that the information it contains is "true and accurate to the best of the lien claimant's knowledge and belief"; and
- include all of the following information:
 - the lien claimant's and the owner's names;

- a description of the commercial real estate;
- the lien claim amount and whether the amount is due in installments; and
- the claimant's grounds for the lien, including a reference to the written agreement for broker services.

RECORDING REQUIREMENTS FOR NOTICE

A broker's lien attaches to commercial real estate only when the lien claimant files in the superior court clerk's office a timely notice of the lien that conforms to the statutory requirements.

SERVICE OF NOTICE

A lien claimant who files a broker's lien on commercial real estate must:

- mail a copy of the lien notice to the owner by certified mail, return receipt requested; or
- serve a copy of the lien notice "in accordance with any of the provisions for service of process set forth in G.S. 1A-1, Rule 4."

The lien claimant must also file proof of service with the clerk of the superior court. The lien is void if the lien claimant does not properly file and serve the lien.

OTHER RELEVANT PROVISIONS

Installment payments

If a commission payment is due in installments and a portion is due only after the conveyance or transfer of the commercial real estate, the lien notice for the payments due after the transfer or conveyance may be recorded at any time after the transfer or conveyance of the real estate and within 90 days of the payment's due date. The lien notice is effective as a lien against the owner's interest only to the extent the transferee owes funds to the owner. However, the lien is "effective as a lien against the transferee's interest in the commercial real estate."

A single lien claim that is filed before the transfer or conveyance of the real estate and that claims all commissions due in installments is also "valid and enforceable as it pertains to payments due after the transfer or conveyance." However, as the broker receives payments or partial payments, the broker must provide partial releases for those payments, reducing the amount due under the broker's lien.

Notice requirements for liens arising out of leases

In the case of a lease or transfer of a nonfreehold interest, the claimant must file the lien notice no later than:

- 90 days after the tenant's possession of the commercial real estate; or
- 60 days following any dates for subsequent payments set forth in the written broker-services agreement.

Statutory sections enacted 2011.

[N.C. Gen. Stat. §§ 44A-24.3, .4, .5, .7 \(2019\)](#)

North Carolina, Property encumbered

TYPES OF PROPERTY ENCUMBERED

A broker's lien is available only against the commercial real estate that is the subject of the written agreement for broker services.

OTHER OPTIONS

Generally, a lien may be discharged if it is satisfied, not enforced in a timely manner, or dismissed by judgment, or if "an alternative procedure is available and is acceptable to the transferee in a real estate transaction." Also, the lien may be discharged if:

- funds in an amount equal to 125 percent of the lien claim amount are deposited with the superior court clerk to be applied to the payment finally determined to be due; or
- a corporate surety bond in an amount equal to 125 percent of the lien claim amount that is conditioned upon the payment of the amount finally determined to be due is deposited with the superior court clerk.

If such funds or a bond have been deposited with the clerk of superior court, the lien claimant must release the lien claim and he or she has a lien on the deposited amounts.

Statutory sections enacted 2011.

[N.C. Gen. Stat. §§ 44A-24.3, .13 \(2019\)](#)

North Dakota

North Dakota, Lien creation

No relevant provisions were located.

North Dakota, Notice requirements

No relevant provisions were located.

North Dakota, Property encumbered

No relevant provisions were located.

Ohio

Ohio, Lien creation

FORMAL REQUIREMENTS

Overview

A broker who enters into a written contract for services related to *selling, leasing, or conveying* a commercial real estate interest may claim a lien on that commercial real estate. As of March 27, 2013, a broker that enters into a written contract for services related to *purchasing* a commercial real estate interest also has a lien on real estate purchased pursuant to that contract.

Brokerage agreement requirements

A broker's lien for services related to *selling or conveying* an interest is effective only if the contract for services is in writing and signed by the broker (or the broker's agent) and the lien property owner (or the owner's agent).

A broker's lien for services related to *purchasing* an interest is also effective only if the contract for services is in writing and signed by the broker (or the broker's agent) and the owner (or the owner's agent).

Other requirements

No relevant provisions were located.

PROPERTY COVERED

A broker may claim a lien on commercial real estate that is the subject of a written contract for services related to selling, leasing, or conveying a commercial real estate interest. "Commercial real estate" means any Ohio real estate other than that containing one to four residential units. "Commercial real estate" does *not* include:

- single-family residential units, such as condominiums, townhouses, manufactured housing, or homes in a subdivision, if they are sold, leased, or otherwise conveyed on a unit-by-unit basis, even though the units may be a part of a larger building or real estate parcel containing more than four residential units; or
- real estate owned by a public authority.

SERVICES THAT CREATE THE LIEN

The lien amount for services related to *selling* an interest in commercial real estate is limited to the amount due to the broker pursuant to the brokerage contract. If that amount is payable in installments, some of which are due after the property's conveyance, the lien amount is limited to the amount due to the broker before or upon conveyance.

The lien amount for services related to *leasing* a commercial real estate interest is limited to the amount due to the broker pursuant to the contract. If that amount is payable in installments, the lien amount is limited to the "amount of all installment payments due to the broker over the life of the contract" minus the amount of any installment payments made before the owner's default.

The lien amount for services related to *purchasing* a commercial real estate interest is limited to the amount due to the broker. If that amount is payable in installments, the lien amount is limited to the "amount of all installment payments due to the broker over the life of the contract" minus the amount of any installment payments made before the lien is filed.

WAIVER

No relevant provisions were located.

PRIORITY

Attachment and perfection

A lien is perfected as of the date the broker:

- is entitled to a fee or commission under the contract; and
- has met statutory recording requirements.

The broker's lien does not relate back to an earlier date.

Other liens

All valid and perfected mechanic's liens and all prior recorded liens and mortgages have priority over a perfected broker's lien.

OTHER RELEVANT PROVISIONS

Lien ownership

Only the broker named in the brokerage contract has the right to claim a broker's lien. The lien is not available to the broker's employees or independent contractors.

Statutory section 1311.91 enacted 1997; §§ 1311.85 and 1311.86 amended 2012.

[Ohio Rev. Code §§ 1311.85, .86, .91 \(2019\)](#)

Ohio, Notice requirements

TIMING OF NOTICE

A lien affidavit based on the *sale* of property must be recorded before the property's conveyance.

A lien affidavit based on the *purchase* of property must be recorded within 90 days after the property's conveyance.

A lien affidavit based on a property *lease* must be recorded within 90 days after the owner's default in the payment of an amount due under the written contract.

On the day the broker files the lien affidavit, he or she must provide a copy of the lien affidavit to the property owner, and, if a contract for the sale or other conveyance of the lien property is involved, to any known prospective transferee.

REQUIRED CONTENTS OF NOTICE

A lien affidavit must:

- include the broker's and the property owner's names, the property's legal description, the lien amount, the date and a summary of the written contract on which the lien is based, and the broker's real estate license number;
- state that the information contained in the affidavit is "true and accurate to the knowledge of the signator";

- be signed by the broker or the broker's agent; and
- be verified.

RECORDING REQUIREMENTS FOR NOTICE

A broker's lien is perfected when both of the following have occurred:

- the broker is entitled to a fee or commission under the contract; and
- the broker has met statutory recording requirements.

To perfect the lien, the broker must record the lien affidavit in the county recorder's office for the county in which the real estate is located. The recorder must record on the affidavit "the date and precise time the affidavit was presented for record."

SERVICE OF NOTICE

On the day the broker files the lien affidavit, he or she must provide a copy of the lien affidavit to the property owner, and, if a contract for the sale or other conveyance of the lien property is involved, to a prospective transferee (if known), by personal delivery or certified mail, return receipt requested.

OTHER RELEVANT PROVISIONS

Notice to broker regarding closing

Ohio law previously provided that if an owner has served the broker with a lease-signing notice at least 10 days before the intended signing date by personal delivery or by certified mail, return receipt requested, the broker must record his or her lien affidavit before "that date." This provision no longer exists as of March 27, 2013.

Statutory section amended 2012.

[Ohio Rev. Code § 1311.87 \(2019\)](#)

Ohio, Property encumbered

TYPES OF PROPERTY ENCUMBERED

A broker's lien is effective against only the real estate interest that is the subject of the contract that creates the lien rights.

OTHER OPTIONS

Generally, to enable a property transfer to close when a broker's perfected lien may otherwise prevent the closing, the owner may establish a separate escrow account for closing proceeds in an amount sufficient to release the broker's lien. An owner may not refuse to close because of the requirement to establish such an escrow account. A prospective transferee may not refuse to close solely because the broker recorded a lien affidavit, if:

- the owner has established the escrow account described above; and
- the prospective transferee has received from the escrow agent a verified statement that the escrow account has been established.

If sufficient funds have been placed in escrow:

- the broker has an equitable lien on the escrowed funds; and
- the lien recorded on the property is extinguished.

The broker and owner need not follow the escrow procedures described above if either:

- an alternative procedure, acceptable to the broker and the prospective transferee, is available that would allow a property transfer to close; or
- the property transfer proceeds would be insufficient to release all liens claimed against the property, including the broker's lien.

Statutory section 1311.92 enacted 1997; § 1311.86 amended 2012.

[Ohio Rev. Code §§ 1311.86, .92 \(2019\)](#)

Oklahoma

Oklahoma, Lien creation

FORMAL REQUIREMENTS

Overview

A broker has a lien on commercial real estate, or on a commercial real estate interest, that is the subject of a purchase, lease, or other conveyance to a buyer or tenant. The lien is equal to the amount the broker is due for licensed services, including brokerage, consulting, and management fees.

Brokerage agreement requirements

The broker must be entitled to a stated fee or commission pursuant to a written instrument signed by the property's owner, buyer, or tenant, or his or her authorized agent.

Other requirements

No other requirements were located.

PROPERTY COVERED

A real estate broker's lien is a lien on commercial real estate or on an interest in commercial real estate that is the subject of a purchase, lease, or other conveyance to a buyer or tenant.

In this context, "commercial real estate" is any real estate *except*:

- real estate containing one to four residential units; or
- real estate on which no buildings or structures are located that is zoned for single-family residential use.

"Commercial real estate" does *not* include single-family residential units, such as condominiums, town houses, or homes in a subdivision, that are sold, leased, or otherwise conveyed on a unit-by-unit basis, even if the units are part of a larger building or parcel containing more than four residential units.

SERVICES THAT CREATE THE LIEN

A broker's lien amount is equal to the amount the broker is due for licensed services, including, without limitation, brokerage, consulting, and management fees.

WAIVER

No relevant provisions were located.

PRIORITY

Attachment

Generally, a broker's lien attaches when:

- the broker is entitled to a stated fee or commission, as provided in a written instrument signed by the owner, buyer, tenant, or his or her authorized agent; and
- the broker records in a timely manner a lien notice in the county clerk's office of the county in which the real property is located.

The lien attaches as of the lien notice's recording date and does not relate back to the date of the written instrument.

If a broker has a written agreement with a prospective *buyer or tenant*, the broker's lien attaches upon:

- the prospective buyer purchasing or otherwise accepting a conveyance or transfer of the commercial real estate; and
- the broker's timely recording of a lien notice in the county clerk's office of the county in which the real property (or real property interest) is located.

Other liens

Prior validly recorded liens, mortgages, and other encumbrances have priority over a broker's lien. Prior recorded liens, mortgages, and encumbrances that have priority include:

- a valid mechanics' lien claim that is recorded after the broker's lien notice, but that relates back to a date before the date the broker recorded the lien notice; and
- prior recorded liens securing revolving credit, future advances, or construction loans.

OTHER RELEVANT PROVISIONS

Lien ownership

A broker's lien is available only to the broker named in the written instrument signed by the property's owner, buyer, or tenant, or his or her agent.

Statutory sections enacted 2006.

[Okla. Stat. tit. 42, §§ 202, 203, 208 \(2019\)](#)

Oklahoma, Notice requirements

TIMING OF NOTICE

General requirements

A broker's lien attaches when:

- the broker is entitled to a stated fee or commission provided in a written instrument signed by the property's owner, buyer, or tenant, or his or her authorized agent; and
- the broker records a lien notice in the county clerk's office of the county in which the real property is located before the actual conveyance or transfer of the commercial real estate against which the broker is claiming a lien.

Leases

In the case of a lease, including a sublease or a lease assignment, the broker must record the lien notice no later than 90 days after the tenant takes possession of the leased premises.

Future commissions in lease transactions

If a broker may be due an additional commission as a result of future actions, such as the exercise of an option, the broker may record a lien notice:

- at any time after the execution of the lease or other written instrument that contains the option; but
- no later than 90 days after the event or occurrence on which the future commission is based occurs.

Buyer's broker

If a broker has a written agreement with a prospective buyer or tenant, the broker's lien attaches upon:

- the prospective buyer purchasing or otherwise accepting a conveyance of the commercial real estate; and
- the broker's recording of a lien notice in the county clerk's office of the county in which the real property or real property interest is located within 90 days after the purchase or other conveyance to the buyer or tenant.

REQUIRED CONTENTS OF NOTICE

A lien notice must:

- state the claimant's and the owner's names;
- describe the property upon which the broker is claiming a lien;
- include the lien claim amount;
- state the broker's license number;
- recite that the information contained in the notice is true and accurate to the signators' knowledge;
- be signed by the broker or a person authorized to sign on the broker's behalf; and
- be notarized.

RECORDING REQUIREMENTS FOR NOTICE

A broker's lien does not attach until the broker is entitled to the fee and the broker records, in a timely manner, a lien notice in the county clerk's office of the county in which the real property is located.

SERVICE OF NOTICE

Within 10 days of recording a lien notice, a broker must mail a copy of the lien notice to either:

- the commercial real estate's record owner by registered or certified mail at the owner's address stated in the written instrument on which the lien claim is based; or
- if no such address is given, the address of the commercial real estate.

Mailing the lien notice is effective when deposited in a United States mailbox with postage prepaid.

A broker's lien is not enforceable if the broker does not mail or serve a copy of lien notice at the required time and in the required manner.

OTHER RELEVANT PROVISIONS

Additional provisions related to future commissions in lease transactions

If property is sold or otherwise conveyed before the date on which a broker is due a future commission and if the broker has filed a valid lien notice before the property's sale, the purchaser or transferee:

- is deemed to have notice of the lien; and

- takes title to the property subject to the lien notice.

However, if a broker claiming a future commission fails to record a lien notice for that future commission before the deed conveying the property's legal title to the purchaser is recorded, then the broker may not claim a lien on the property.

Statutory sections enacted 2006.

[Okla. Stat. tit. 42, §§ 203, 204, 206 \(2019\)](#)

Oklahoma, Property encumbered

TYPES OF PROPERTY ENCUMBERED

A broker has a lien on commercial real estate or on a commercial real estate interest that is the subject of a purchase, lease, or other conveyance to a buyer or tenant, in the amount the broker is due for licensed services.

OTHER OPTIONS

If a broker has filed a lien claim with the county clerk and an escrow account has been established in an amount equal to 125 percent of the lien claim amount, the lien against the commercial real estate:

- is extinguished; and
- becomes a lien on the funds contained in the escrow account.

The escrowed funds may be proceeds from the transaction or any other funds.

Establishing an escrow account is not cause for a party to refuse to close the transaction.

Statutory sections enacted 2006.

[Okla. Stat. tit. 42, §§ 203, 209 \(2019\)](#)

Oregon

Oregon, Lien creation

FORMAL REQUIREMENTS

Overview

No specifically relevant provisions were located.

The Oregon legislature has considered, but not passed into law, legislation that would have created a commercial real estate broker lien act. *See, e.g.*, H.B. 2590, 72nd Leg., Reg. Sess. (Ore. 2003). Research located no similar legislation proposed during recent legislative sessions.

Although Oregon law does not provide for broker's liens, a broker may place a demand into a closing escrow if the seller disputes the broker's payment.

Brokerage agreement requirements

The amount held must equal the compensation amount the parties agreed to in a written broker's or principal broker's compensation agreement.

Other requirements

An escrow agent must hold the amount agreed to as compensation in a written compensation agreement, if the escrow agent has at the office at which the escrow is being closed and before the closing date:

- a written compensation notice, in the form set forth in § 696.582(2) and signed by the broker or principal broker authorized to enter into the compensation agreement and sign the compensation notice; and
- the principals' written closing instructions that do not honor the amount and terms of payment set forth in the compensation notice.

PROPERTY COVERED

Oregon law does not provide for broker's liens. However, an escrow agent who receives a written compensation notice must hold the disputed amount in escrow.

SERVICES THAT CREATE THE LIEN

Oregon law does not provide for broker's liens. However, an escrow agent must hold the amount agreed to as compensation in a written real estate broker's or principal broker's compensation agreement, if the broker meets specified notice requirements.

WAIVER

No relevant provisions were located.

PRIORITY

No relevant provisions were located.

OTHER RELEVANT PROVISIONS

No other relevant provisions were located.

Statutory section amended 2017.

[Or. Rev. Stat. § 696.582 \(2019\)](#)

Oregon, Notice requirements

TIMING OF NOTICE

An escrow agent must hold the amount agreed to as compensation in a written real estate broker's or principal broker's compensation agreement, if the escrow agent has, at the office at which the escrow is being closed and before the closing date:

- a written compensation notice in the form set forth in § 696.582(2), signed by the broker or principal broker; and
- the principals' written closing instructions that do not honor the amount and terms of payment set forth in the compensation notice.

REQUIRED CONTENTS OF NOTICE

A written compensation notice must be:

- signed by the broker or principal broker who is authorized to enter into the compensation agreement and sign the compensation notice; and

- in the form set forth in § 696.582(2).

RECORDING REQUIREMENTS FOR NOTICE

No relevant provisions were located.

SERVICE OF NOTICE

If the broker files a compensation notice with an escrow agent more than 10 days before the scheduled closing date, the broker must deliver a copy of the notice to the principal identified in the notice. If the notice is filed within 10 days of the scheduled closing date, the escrow agent must provide at closing a copy of the notice to the principal identified in the notice.

OTHER RELEVANT PROVISIONS

No other relevant provisions were located.

Statutory section amended 2017.

[Or. Rev. Stat. § 696.582 \(2019\)](#)

Oregon, Property encumbered

TYPES OF PROPERTY ENCUMBERED

Oregon law does not provide for broker's liens. However, an escrow agent who receives a written compensation notice must hold the disputed amount in escrow.

OTHER OPTIONS

An escrow agent who has received both a written compensation notice and closing instructions that do not honor the amount and terms of payment contained in that notice, may disburse the disputed amounts only to:

- the principal broker and principal, based on a written agreement between those parties and directed to the escrow agent as disbursement instructions;
- persons directed by court order; or
- the court, upon the escrow agent's filing of an interpleader action.

Statutory section amended 2017.

[Or. Rev. Stat. § 696.582 \(2019\)](#)

Pennsylvania

Pennsylvania, Lien creation

FORMAL REQUIREMENTS

Overview

A broker, unless he or she is employed by another broker, has a lien in the amount of the agreed compensation on commercial real estate or an interest in that commercial real estate.

Brokerage agreement requirements

A brokerage agreement must be in writing and be either:

- an agreement, signed by the owner or the owner's agent, to sell, lease, or otherwise convey a commercial real estate interest; or
- an agreement with a prospective buyer to represent the buyer in the purchase or other conveyance to the buyer of commercial real estate.

Other requirements

Buyer or lessor

A broker has a lien in the amount of the agreed compensation on commercial real estate (or commercial real estate interest) that is:

- listed with the broker pursuant to a written agreement to sell, lease or otherwise convey a commercial real estate interest; and
- as to which the broker or the broker's employees or independent contractors have provided licensed services that result, during the listing agreement's term, in a person or entity "that is ready, willing and able to purchase, lease or otherwise accept a conveyance of the commercial real estate" on the terms provided in the written agreement or on terms that are otherwise acceptable to the owner or the owner's agent, as shown in a signed written agreement.

Purchaser

A broker has a lien in the amount of the agreed compensation on commercial real estate (or a commercial real estate interest), if the broker:

- has a written agreement with a prospective buyer to represent the buyer in the purchase or other conveyance to the buyer of the commercial real estate; and
- becomes entitled to the compensation.

Tenant

In the case of a broker representing a tenant where the current owner is required to pay the broker's fee or commission, the broker's right to file a lien is conditioned on the owner agreeing in writing to pay the broker's fee or commission.

PROPERTY COVERED

A broker has a lien on commercial real estate or any interest in the commercial real estate that is listed with the broker.

"Commercial real estate" is any real estate *except*:

- real estate containing one to four residential units; or
- real estate zoned for agricultural purposes and not subject to a sale agreement that is contingent on the rezoning of all or any portion of the real estate to provide for nonagricultural uses.

"Commercial real estate" does *not* include single family residential units or lots, such as condominiums, townhouses, or homes in a subdivision, if they are sold, leased, or otherwise conveyed on a unit-by-unit basis, even if the units are part of a larger building or real estate parcel containing more than four residential units.

SERVICES THAT CREATE THE LIEN

A broker has a lien in the amount of the compensation agreed upon by the broker and the broker's client on commercial real estate (or any interest in commercial real estate) that is listed with the broker to sell, lease, or otherwise convey a property interest.

The broker or broker's employees or independent contractors must have provided licensed services that resulted, during the agreement's term, in procuring a person or entity ready, willing, and able to purchase, lease, or otherwise accept a conveyance of the commercial real estate on the terms that are provided in the listing agreement or that are otherwise acceptable to the owner.

A broker may also claim a lien arising out of a written agreement with a prospective buyer to represent the buyer as to the purchase or other conveyance to the buyer of commercial real estate.

In the case of a broker representing a tenant where the current owner is required to pay the fee or commission, the broker's right to file a lien is conditioned on the owner agreeing in writing to pay the broker's fee or commission.

WAIVER

Generally, an agreement to waive a broker's lien rights that is made contemporaneously with the signing of the listing agreement is void and unenforceable.

PRIORITY

Attachment

A broker's lien *generally* attaches upon:

- the broker "procuring a person or entity that is ready, willing and able to purchase, lease or otherwise accept a conveyance of the commercial real estate" on the terms set forth in the written listing agreement, terms that are otherwise acceptable to the owner or the owner's agent, or other terms set forth in a written agreement signed by the owner or the owner's agent; and
- the broker timely recording a lien notice in the prothonotary's office in the county in which the real property or real property interest is located.

If a broker has a written agreement with a prospective *buyer*, the lien attaches when the broker records, in a timely manner, a lien notice in the prothonotary's office in the county in which the real property or real property interest is located.

Other liens

The priority of a broker's lien is generally as set forth in 42 Pa. Con. Stat. § 8141, *except* that the following have priority over a broker's lien, regardless of the date recorded:

- mortgages;
- mechanics' liens; and
- defeasible deeds in the nature of a mortgage.

Note that the generally applicable hierarchy set forth in § 8141 provides that a lien's priority is determined as follows:

- purchase money mortgages recorded within 10 days, generally from the time they are delivered to the mortgagee;

- purchase money mortgages not recorded within 10 days and other mortgages and defeasible deeds in the nature of mortgages, from the time they are left for recording;
- verdicts for a specific sum, from the time they are recorded;
- adverse judgments and other orders, from the time they are rendered;
- amicable judgments, from the time the instruments are left for entry;
- writs, from the time they are issued; and
- other instruments, from the time they are left for entry or filing.

OTHER RELEVANT PROVISIONS

Lien ownership

A broker may not claim a lien if he or she is employed by another broker.

Lien transfers

A lien is not allowed in favor of any person other than a broker, even if that other person furnishes labor or materials that result in a person or entity ready, willing, and able to purchase, lease, or accept a conveyance of the commercial real estate.

Statutory section 8141 enacted 1978; §§ 1052, 1053, 1055, 1056, 1059, and 1061 enacted 1998.

[42 Pa. Stat. and Cons. Stat. § 8141](#); [68 Pa. Stat. and Cons. Stat. §§ 1052, 1053, 1055, 1056, 1059, 1061 \(2020\)](#)

Pennsylvania, Notice requirements

TIMING OF NOTICE

Sale

In the case of a broker providing services for an owner pursuant to a written listing agreement, the broker must record the lien notice before the actual conveyance of the commercial real estate against which the broker is claiming the lien.

Lease

In the case of a lease, the broker must record the lien notice "within 90 days of a default by the owner or successors in interest under the terms of the compensation agreement."

Purchase

If a broker has a written agreement with a prospective buyer, the broker must record the lien notice within 90 days after the purchase or other conveyance to the buyer.

REQUIRED CONTENTS OF NOTICE

A lien notice must:

- state the claimant's and the owner's names;
- describe the property;

- state the lien amount;
- include the broker's license number;
- be signed and verified by the broker or a person authorized to sign on the broker's behalf;
and
- be verified.

RECORDING REQUIREMENTS FOR NOTICE

A lien does not attach until the broker timely records a lien notice in the prothonotary's office in the county in which the real property or real property interest is located.

A broker's lien is void and unenforceable if the broker does not record the lien notice in the time and manner required by statute.

SERVICE OF NOTICE

A broker must mail a copy of the lien notice to the commercial real estate's owner by certified mail.

Also, a broker may not record a lien notice or a lien claim unless, no later than three days before the conveyance date, the broker gives written notice of the lien claim to the owner and the prospective buyer stating that the broker:

- is entitled to compensation under the written contract's terms; and

- intends to claim a lien on the commercial real property.

The broker must serve this notice on the owner and the prospective buyer by registered or certified mail. If there are two or more owners or two or more prospective buyers, the broker must serve the notice on each owner and each prospective buyer. The notice must include a statement regarding the buyer's right to deposit funds in escrow.

OTHER RELEVANT PROVISIONS

Real estate located in more than one county

If the liened real estate is located in more than one county, the broker may file the lien in any one or more of the counties in which the property is located. However, the lien is effective only as to the part of the commercial real estate located in the county in which the broker filed the lien.

Statutory sections enacted 1998.

[68 Pa. Stat. and Cons. Stat. §§ 1056, 1057 \(2020\)](#)

[Pennsylvania, Property encumbered](#)

TYPES OF PROPERTY ENCUMBERED

A broker's lien is a lien on commercial real estate or a commercial real estate interest.

OTHER OPTIONS

Generally, if a filed lien claim would prevent a closing, an escrow account must be established from the transaction's proceeds in an amount sufficient to release the lien claim. This escrow requirement is not cause for a party to refuse to close the transaction.

The amounts must be held in escrow until the parties' rights to the funds have been determined by:

- the parties' written agreement;
- a court; or
- another process agreeable to the parties.

Once sufficient funds are escrowed, the broker must provide a release of the lien claim.

The parties need not follow this escrow procedure if an alternative procedure that would allow the transaction to close is available and acceptable to the broker.

Statutory sections enacted 1998.

[68 Pa. Stat. and Cons. Stat. §§ 1053, 1060 \(2020\)](#)

Puerto Rico

Puerto Rico, Lien creation

No relevant provisions were located.

Puerto Rico, Notice requirements

No relevant provisions were located.

Puerto Rico, Property encumbered

No relevant provisions were located.

Rhode Island

Rhode Island, Lien creation

FORMAL REQUIREMENTS

Overview

A real estate broker may claim a lien on the commercial real estate (or commercial real estate interest) that is the subject of a purchase, lease, or other conveyance to a buyer or tenant. The lien amount is equal to the compensation the broker is due for licensed services. Rhode Island's Commercial Real Estate Broker Lien Act was effective as of June 7, 2013, and applies to claims for compensation based on written documents executed on or after that date.

Brokerage agreement requirements

The listing, brokerage, or agency agreement must be in writing. The lien amount equals the compensation the broker is due for licensed services, including brokerage, consulting, and management fees, that are set forth in a written instrument executed by:

- the commercial real estate interest's owner or its authorized agent; or
- a prospective buyer or tenant or its authorized agent.

Other requirements

A broker must record and serve a broker's lien notice.

PROPERTY COVERED

A broker's lien is a lien on the commercial real estate or commercial real estate interest that is the subject of a purchase, lease, or other conveyance to a buyer or tenant.

"Commercial real estate" is real estate other than:

- real estate containing one to four residential units;
- real estate on which no buildings or structures are located and that is zoned for single-family residential use; or
- single-family residential units "singly or in a subdivision when sold, leased, or otherwise conveyed on a unit by unit basis," even though the units may be a part of a larger building or parcel containing more than four residential units.

SERVICES THAT CREATE THE LIEN

No specific services are identified. In determining a lien amount, "compensation" means the fees, commissions, and other compensation due a real estate broker for licensed services.

WAIVER

Generally, a waiver of a real estate broker's right to lien commercial real estate is void.

PRIORITY

Attachment

A broker's lien attaches when:

- the real estate broker is entitled to compensation pursuant to a signed written instrument;
and

- except as otherwise provided, the real estate broker records the lien notice before the recording of an instrument conveying or transferring legal title to the subject commercial real estate.

The broker's lien attaches as of the date the lien notice is recorded. It does not relate back to the date of the written agreement.

If a lien notice is recorded after the recording date of an instrument conveying or transferring legal title from the party from whom the broker is claiming compensation, then the lien notice does not constitute a lien on the transferee's property interest.

Other liens

Prior recorded liens, mortgages, and encumbrances, including mechanic's lien claims recorded before the broker's lien notice is recorded, have priority over a broker's lien.

OTHER RELEVANT PROVISIONS

A broker's lien is available to the broker named or referred to in the signed agreement or instrument, and not to the broker's employee or affiliated independent contractor.

Note that in 2015, a Superior Court judge found that Rhode Island's broker's lien law violated the due process clauses of the U.S. Constitution and the state constitution. In an apparent response to this ruling, the Rhode Island General Assembly passed R.I. Gen. Laws § 34-49-6, which, effective May 19, 2016, provides that if any person of interest, including the owner, claims that a real estate broker lien is invalid because of the failure to comply with chapter 34-49, the person of interest may apply to the county superior court for "an order to show cause why the lien in question is invalid or otherwise void, that the basis of the lien is without probability of a judgment rendered in favor of the lienor." An order of notice to appear and show cause why the relief demanded in the complaint should not be granted is to be served on the necessary parties no later than one week before the scheduled hearing date.

Statutory sections 34-49-2, 34-49-3, and 34-49-4 enacted 2013; § 34-49-6 enacted 2016.

[R.I. Gen. Laws §§ 34-49-2, -3, -4, -6 \(2020\)](#)

Rhode Island, Notice requirements

TIMING OF NOTICE

A broker must record its lien notice before the recording of the instrument conveying the commercial real estate's legal title. If a broker records its lien notice after the recording of the instrument conveying legal title from the party from whom the broker is claiming compensation, then the lien notice does not constitute a lien on the transferee's property interest.

A real estate broker must personally serve, deliver to, or mail a copy of the lien notice to the property's record owner or its agent within 10 days of recording the lien notice.

In the case of a lease, sublease, or lease assignment, the broker must record the lien notice no later than 90 days after the tenant occupies the leased premises. However, if the landlord serves written notice of the intended execution of the lease by personal service on the broker entitled to a lien claim at least 10 days before the date of the intended lease execution, the lien notice must be recorded before the date indicated for the lease execution.

If a broker claims compensation based on a written instrument executed by a prospective buyer or tenant, the lien notice attaches on the prospective buyer or tenant if the broker records a lien notice within:

- 90 days after the deed to the buyer is recorded; or
- 90 days of the tenant occupying the leased premises, as applicable.

The lien attaches as of the lien notice's recording date and does not relate back to the date of the written agreement.

REQUIRED CONTENTS OF NOTICE

A lien notice must:

- state the claimant's name, the owner's name, the property's legal description, the claimed lien amount, and the real estate broker's license number;
- recite that the information contained in notice is true and accurate to the signator's knowledge;
- be executed by the broker or its authorized agent;
- be verified; and
- be substantially in the form set forth by statute.

RECORDING REQUIREMENTS FOR NOTICE

Generally, a broker must record a lien notice in the land evidence records for the municipality in which the commercial real estate is located. The broker must record the notice before the recording of the conveyance instrument by the party from whom compensation is claimed. The lien attaches as of the lien notice's recording date and does not relate back to the written agreement's date.

If a lien notice is recorded after the recording date of an instrument conveying legal title from the party from whom the broker claims compensation, then the lien notice does not constitute a lien on the transferee's interest.

SERVICE OF NOTICE

A broker must, within 10 days of recording its lien notice, personally serve, deliver to, or mail a copy of the lien notice by registered or certified mail, return receipt requested, to the property's record owner or agent. The notice must be sent to the record owner at:

- the owner's address, as stated in the written instrument on which the lien claim is based;
- if no such address is given, to the address where the real estate tax bills are sent; or
- to the property's address.

OTHER RELEVANT PROVISIONS

Installment payments

Except as otherwise provided, if a real estate broker's payments are due in installments, a portion of which are due only after the property's conveyance or transfer, the broker may record the lien notice for those payments at any time "which is subsequent to the transfer or conveyance of the commercial real estate or interest therein or which time is within ninety (90) days of the date on which the payment is due." That lien notice is effective as a lien against the *transferor's* property interest only to the extent the transferee owes funds to the transferor, but the lien is effective as a lien against the *transferee's* property interest without limitation. A single lien claim recorded before the property's transfer claiming all compensation due in installments is also valid and enforceable as it pertains to payments due after the conveyance. However, as the broker receives payments or partial payments, it must provide partial releases, reducing the amount due under the lien.

If commercial real estate is conveyed before the date a future commission is due and if the broker has recorded a valid lien notice before the conveyance, the purchaser is deemed to have notice of and takes title subject to the lien notice. However, if a broker claiming a future commission fails to record its lien notice before the recording of a deed conveying the property to the purchaser or transferee for consideration, then the broker may not claim a lien on the commercial real estate. In that case, any lien notice recorded after the recording of the deed does not constitute a lien on the property, and it is null and void.

Leases

In the case of a lease, sublease, or lease assignment, the lien notice must be recorded no later than 90 days after the tenant occupies the leased premises. However, if the landlord serves written notice of the intended lease execution by personal service on the broker entitled to a lien claim at least 10 days before the date of the intended lease execution, the broker must record the lien notice before the date indicated for the lease execution. The lien attaches as of the recording of the lien notice and does not relate back to the date of the written agreement.

If a broker may be due compensation other than upon execution of an initial lease, such as compensation arising from the exercise of an option, the broker may record its lien notice any time after execution of the lease, but no later than 90 days after the act or event upon which the broker claims the future commission.

Buyer's or tenant's brokers

If a broker claims compensation based on a written instrument executed by a prospective buyer or tenant, the lien notice attaches on the prospective buyer or tenant purchasing or otherwise accepting a transfer of the commercial real estate interest and the broker recording a lien notice within:

- 90 days after the recording of the deed; or
- 90 days after the tenant occupies the leased premises, in the case of a lease or sublease transaction.

The lien attaches as of the date the broker records the lien notice and does not relate back to the written agreement's date.

Statutory section enacted 2013.

[R.I. Gen. Laws § 34-49-3 \(2020\)](#)

Rhode Island, Property encumbered

TYPES OF PROPERTY ENCUMBERED

A broker's lien attaches to any commercial real estate (or commercial real estate interest) that is the subject of a purchase, lease, or other conveyance to a buyer or tenant.

OTHER OPTIONS

Generally, whenever a lien claim has been appropriately filed and an escrow account is established in an amount equal to 150 percent of the lien claim amount, the lien against the real estate is extinguished, and it immediately becomes a lien on the escrow account funds. Upon creation of the escrow account, the lien claimant must record a release within five business days.

Statutory sections enacted 2013.

[R.I. Gen Laws §§ 34-49-3, -5 \(2020\)](#)

South Carolina

South Carolina, Lien creation

FORMAL REQUIREMENTS

Overview

A real estate licensee who performs professional services incident to marketing, developing, or improving commercial real estate in preparation for or as a part of a commercial real estate lease or rental transaction has "furnished labor or material for the improvement of commercial real estate" pursuant to the South Carolina mechanics' lien laws.

Brokerage agreement requirements

A real estate licensee's agreement must be in writing.

Other requirements

For a real estate licensee to acquire a lien:

- the commercial real estate's owner or the owner's authorized agent must authorize the licensee, pursuant to a written agreement, to lease a commercial real estate interest; and
- the licensee or his or her affiliated licensees must provide licensed services that result, during the agreement's term, in a person or entity that rents or leases the commercial real estate interest on the terms contained in the agreement.

PROPERTY COVERED

A real estate licensee's lien arises out of a written agreement to perform professional services incident to marketing, developing, or improving commercial real estate in preparation for or as a part of a commercial real estate lease or rental transaction. A licensee may not acquire a lien on residential real estate.

SERVICES THAT CREATE THE LIEN

A real estate licensee's lien arises out of "professional services for which he is licensed under Title 40 incident to marketing, developing, or improving commercial real estate preparatory to or as a part of a commercial real estate lease or rental transaction involving the commercial real estate."

WAIVER

No relevant provisions were located.

PRIORITY

Attachment

South Carolina law provides that a real estate licensee who performs certain professional services related to marketing, developing, or improving commercial real estate before or as part of a commercial real estate lease or rental transaction is deemed to have "furnished labor or material for the improvement of commercial real estate" within the state's mechanics' lien laws. South Carolina's mechanics' lien laws provide that a lien attaches on the improved real estate once the laborer, mechanic, contractor, or materialman notifies the owner, in writing, of:

- the furnishing of labor or material; and
- its amount or value.

Other liens

Prior recorded liens have priority over a real estate licensee's lien. A prior recorded lien includes, without limitation:

- a valid mechanics' lien claim that is recorded before the real estate licensee's lien notice, but that relates back to a date before the real estate licensee's lien notice; and
- prior recorded liens securing revolving credit and future construction loan advances.

South Carolina's general mechanics' lien laws also provide that a mechanics' lien is not enforceable against a mortgage recorded before the mechanic files the notice setting forth the statement of account upon which the lien is based.

OTHER RELEVANT PROVISIONS

No other relevant provisions were located.

Statutory section 29-5-40 amended 1962; § 29-5-70 amended 1962; § 29-5-21 amended 2006.

[S.C. Code §§ 29-5-21, -40, -70 \(2019\)](#)

South Carolina, Notice requirements

TIMING OF NOTICE

Lien notice

South Carolina law provides that a real estate licensee who performs certain professional services related to marketing, developing, or improving commercial real estate before or as part of a commercial real estate lease or rental transaction is deemed to have "furnished labor or material for the improvement of commercial real estate" in the state's mechanics' lien laws. South Carolina's mechanics' lien laws require a mechanic to file a notice of project commencement ("lien notice") within 15 days of the commencement of work.

Lien statement

South Carolina's mechanics' lien laws provide that a lien is dissolved unless the person claiming the lien serves a lien statement on the owner within 90 days after the mechanic "ceases to labor on or furnish labor or materials for such building or structure." If the owner cannot be found, the lien statement must be served on the person in possession.

REQUIRED CONTENTS OF NOTICE

Lien notice

South Carolina's mechanics' lien laws require a project commencement lien notice to contain the following information:

- the name and address of the person filing the commencement notice;
- the owner's or the developer's name and address;
- a general description of the improvement; and
- the project's location.

Lien statement

South Carolina's mechanics' lien laws provide that a lien statement must contain the following:

- a "just and true account of the amount due," with all credits given;

- a property description; and
- the property owner's name, if known.

The lien statement certificate must be subscribed and sworn to by the person claiming the lien or his or her agent.

If, after diligent search, the mechanic cannot locate the owner or person in possession, the mechanic may preserve the lien by filing:

- the lien statement; and
- an affidavit verifying that, after a diligent search, the mechanic could not locate the owner or the person in possession.

RECORDING REQUIREMENTS FOR NOTICE

Lien notice

The state's mechanics' lien laws provide that a person entering into an direct agreement with an owner for the improvement of real property may file a project commencement notice with the clerk of court or register of deeds in the county or counties in which the real property is located. Filing a notice of project commencement does not create a cloud, lien, or encumbrance on the real property's title.

Lien statement

South Carolina's mechanics' lien laws provide that a lien is dissolved unless the person claiming the lien files, in a timely manner, a lien statement in the register of deeds' office or the clerk of court of the county in which the building is located.

SERVICE OF NOTICE

Lien notice

No relevant provisions were located.

Lien statement

South Carolina's mechanics' lien laws provide that a lien is dissolved unless the person claiming the lien serves a lien statement on the owner within 90 days after he or she "ceases to labor on or furnish labor or materials for such building or structure."

OTHER RELEVANT PROVISIONS

No other relevant provisions were located.

Statutory section 29-5-90 amended 1962; § 29-5-23 amended 2000; § 29-5-21 amended 2006.

[S.C. Code §§ 29-5-21, -23, -90 \(2019\)](#)

[South Carolina, Property encumbered](#)

TYPES OF PROPERTY ENCUMBERED

A real estate licensee's lien is a lien on commercial real estate.

OTHER OPTIONS

South Carolina's mechanics' lien laws provide that at any time after service and filing of the required lien statement, the owner or another person with an interest in or lien on the property may have the property discharged from the lien by filing, in the office of clerk of court or register of deeds in which the lien is filed, a "written undertaking, in an amount equal to one and one-third times the amount claimed in such statement." The undertaking must be secured by:

- the "pledge of United States or State of South Carolina securities";
- cash; or
- a surety bond executed by a surety company licensed to do business in South Carolina.

Upon the filing of the secured undertaking:

- the lien must be discharged; and
- the deposited cash, securities, or surety bond takes the place of the lien property.

Statutory section 29-5-110 amended 1976; § 29-5-21 amended 2006.

[S.C. Code §§ 29-5-21, -110 \(2019\)](#)

South Dakota

South Dakota, Lien creation

No relevant provisions were located.

South Dakota, Notice requirements

No relevant provisions were located.

South Dakota, Property encumbered

No relevant provisions were located.

Tennessee

Tennessee, Lien creation

FORMAL REQUIREMENTS

Overview

A broker who has earned and is owed the following fees or commissions from a commercial real estate owner may enforce the contract for that fee or commission against a subsequent owner to the extent the fee or commission accrues during the time the subsequent owner holds title to the real estate, provided the subsequent owner has received notice of the contract before obtaining title to the real estate:

- a fee or commission payable over time with respect to a lease; or
- a fee or commission payable upon the exercise of an option to renew or expand a lease, whether payable over time or in a lump sum.

In this context, "subsequent owner" means a commercial real estate transferee or purchaser, except a transferee or purchaser in a sale arising out of a delinquent property tax lien.

Brokerage agreement requirements

The brokerage contract must be:

- in writing; and
- entered into after October 1, 1997.

Other requirements

The subsequent owner must have received notice regarding the contract "with respect to" the broker's fee before the subsequent owner obtains title to the commercial real estate.

PROPERTY COVERED

A broker may enforce his or her contract for certain fees or commissions against a subsequent owner to the extent the fee or commission accrues during the time the subsequent owner holds title to the commercial real estate. In this context, "commercial real estate" means any real estate other than:

- real estate containing one to four residential units; or
- real estate on which no buildings or structures are located and that is zoned for no more than one to four residential units.

"Commercial real estate" does *not* include single family residential units, such as condominiums, town houses, or homes in a subdivision that are sold, leased, or otherwise conveyed on a unit-by-unit basis, even if the units may be a part of a larger building or real estate parcel that contains more than four residential units.

"Real estate" includes leaseholds, as well as any other interest or estate in land situated in Tennessee.

SERVICES THAT CREATE THE LIEN

A broker may enforce a cause of action for fees or commissions owed pursuant to a written contract for the broker's services in connection with a lease of commercial real estate.

A subsequent owner is liable for the fees or commissions only to the extent that the subsequent owner "receives rents pursuant to leases with respect to which the broker is entitled to receive a fee or commission under the written contract" referenced in the broker's notice.

WAIVER

A prohibition against a broker giving the notice required by § 62-13-501 is void and unenforceable.

PRIORITY

No relevant provisions were located.

OTHER RELEVANT PROVISIONS

Agreement with owner

A broker's right to record a notice for fees or commissions does *not*:

- change the agreement between an owner and a subsequent owner;

- release an owner from liability to a broker for the fees or commissions; or
- restrict or prevent a third-party claim by a subsequent owner against an owner or a previous subsequent owner for indemnification against a broker's claim based on that party's liability to the broker.

Drawing a lien without legal basis

Tenn. Code § 39-17-117, which makes the drawing of a lien without legal basis a Class E felony, explicitly does *not* apply to real estate licensees operating in compliance with the Tennessee Real Estate Broker License Act.

Statutory section 62-13-503 enacted 1997; § 39-17-117 amended 2013; § 62-13-501 amended 2014.

Tenn. Code §§ 39-17-117; 62-13-501, -503 (LexisNexis 2018)

Tennessee, Notice requirements

TIMING OF NOTICE

A broker has a cause of action to enforce his or her brokerage contract with respect to the broker's fee or commission against a subsequent owner, "if and only if the subsequent owner has notice of the contract . . . before obtaining title to the commercial real estate."

The broker must record the notice no fewer than 10 business days before the transfer of the commercial real estate that is the subject of the agreement.

REQUIRED CONTENTS OF NOTICE

The notice must:

- specifically reference an agreement entered into after October 1, 1997;
- be sworn to and executed by the broker;
- identify the subject real estate by lot and block number or by metes and bounds; and
- be in the form set forth in § 62-13-501(3).

RECORDING REQUIREMENTS FOR NOTICE

A broker must record the required notice in a timely manner in the register of deeds' office in the county in which the property is located.

SERVICE OF NOTICE

Notice to owner

After a person records the notice, he or she must "promptly deliver a copy to the owner of the subject commercial real estate." The delivery may be by:

- personal delivery;
- certified mail; or

- any delivery service that provides proof of delivery.

"Owner" means the person or persons to whom a real estate fee interest "is titled." It does *not* include a lessee or renter.

Notice to subsequent owner

A broker has a cause of action to enforce his or her brokerage contract against a subsequent owner, "even though the subsequent owner is not a party to the contract, if and only if the subsequent owner has notice of the contract . . . with respect to such fee before obtaining title to the commercial real estate."

OTHER RELEVANT PROVISIONS

No other relevant provisions were located.

Statutory section 62-13-503 enacted 1997; §§ 62-13-501 and 62-13-502 amended 2014.

Tenn. Code §§ 62-13-501, -502, -503 (LexisNexis 2018)

[Tennessee, Property encumbered](#)

TYPES OF PROPERTY ENCUMBERED

Tennessee's commercial broker laws "shall not be construed to create a lien on any commercial real estate."

OTHER OPTIONS

No relevant provisions were located.

Statutory section 62-13-503 enacted 1997; § 62-13-501 amended 2014.

Tenn. Code §§ 62-13-501, -503 (LexisNexis 2018)

Texas

Texas, Lien creation

FORMAL REQUIREMENTS

Overview

A broker has a lien in the amount specified in his or her commission agreement on the following:

- a *seller's* or *lessor's* commercial real estate interest, if the broker has earned a commission pursuant to a commission agreement signed by the seller or lessor or an authorized agent;
- the commercial real estate interest purchased by a prospective *buyer*, if the broker has earned a commission pursuant to a commission agreement signed by the prospective buyer or an authorized agent; or
- the leasehold interest in the commercial real estate that a prospective *tenant* leases, if the broker has earned a commission pursuant to a commission agreement signed by the prospective tenant or an authorized agent.

In all cases, the broker must record a notice of lien ("lien notice").

"Broker" includes a person who is:

- a licensed real estate broker and is not acting as a residential rental locator; or

- certified as a real estate appraiser.

Brokerage agreement requirements

A "commission agreement" means a written instrument that:

- entitles a broker to a commission;
- is signed by the person obligated to pay the commission or an authorized agent;
- references the commission amount or the formula used to determine the commission amount; and
- contains a description legally sufficient to identify the real estate interest that is the subject of the agreement if the person obligated to pay the commission is a seller or lessor.

The commission agreement must disclose the broker's right to claim a lien.

Other requirements

No other requirements were located.

PROPERTY COVERED

The "Texas Broker's and Appraiser's Lien on Commercial Real Estate Act" applies only to real estate that is commercial real estate on the date the broker files the lien notice. It does *not* apply to the following:

- a transaction involving a claim for a total commission of \$2500 or less; or
- a transaction for the sale of commercial real estate involving a claim for a total commission of \$5000 or less if the commercial real estate:
 - is the record title owner's principal place of business;
 - is occupied by more than one and fewer than five tenants; and
 - is improved with 7500 square feet or less of total gross building area.

"Commercial real estate" means all real estate *except*:

- real estate improved with one to four residential units;
- a single-family residential unit, including a condominium, townhouse, or home in a subdivision, if the unit is sold, leased, or otherwise conveyed on a unit-by-unit basis, even it is part of a larger building or located on real estate containing more than four residential units;
- real estate that is or includes a person's homestead;
- real estate that is not improved with a structure and is zoned for single-family residential use or restricted for single-family use under restrictive covenants that will remain in effect for at least the next two years; or

- real estate that is primarily used for farming and ranching purposes, that will continue to be used primarily for farming and ranching purposes, and that is located more than three miles from the corporate boundaries of any municipality.

If real estate is zoned or restricted for more than one use, the broker's lien attaches only to the part of the real estate that is commercial real estate.

Generally, any change in the real estate's use does not affect a broker's lien if the broker filed the lien notice when the real estate was commercial real estate. However, the broker's lien is extinguished if:

- no later than the 360th day after the date on which the broker's commission is payable, the commercial real estate interest is zoned for single-family use or restricted for single-family use under recorded restrictive covenants; and
- those zoning ordinances or restrictive covenants are in effect until at least the second anniversary of the date the commission is payable.

SERVICES THAT CREATE THE LIEN

A broker may place a lien if he or she has earned a commission pursuant to a commission agreement signed by:

- a seller or lessor or an authorized agent;
- a prospective buyer or an authorized agent; or
- a prospective tenant or an authorized agent.

"Commission" includes a fee or other valuable consideration.

WAIVER

Generally, the waiver of a broker's right to a lien or a release given for the purpose of releasing the broker's lien before the commission is satisfied or forgiven, is void. However, a broker's entitlement to a lien on an owner's or a tenant's commercial real estate interest is automatically waived if:

- the commission is earned and payable for services relating to a lease transaction; and
- the commission agreement is a provision of the lease agreement.

PRIORITY

Attachment

A broker's lien attaches to the commercial real estate interest owned by the person obligated to pay the commission on the date the broker records the lien notice. The lien does not relate back to the commission agreement's date.

Other liens

The following have priority over a broker's lien:

- a recorded lien, mortgage, or other commercial real estate encumbrance, including one securing revolving credit and future loan advances, that is recorded before the date a broker's lien is recorded;

- a purchase-money mortgage lien executed by a buyer; and
- a mechanic's lien that is recorded after a broker's lien, but that relates back to a date before the date the broker recorded his or her lien.

A broker's lien on the commercial real estate interest of a person obligated to pay a commission is not valid or enforceable against a grantee, buyer, lessee, or transferee of that interest if the deed, lease, or instrument transferring the interest is recorded before the broker's lien notice.

Subordination

If the person obligated to pay the commission sells that person's commercial real estate interest, the broker's lien is subordinate to a recorded purchase-money first lien authorized by the buyer, if the buyer:

- executes and files with the county clerk of the county in which the broker's lien is filed a memorandum that evidences the buyer's acknowledgment of the broker's lien's existence; and
- sends the broker, by certified mail, return receipt requested, or by registered mail, a copy of the recorded memorandum.

See § 62.029 for additional provisions that relate to the subordination of the broker's lien under other specified circumstances, such as if the person obligated to pay the commission refinances a recorded first lien or obtains an extension of credit for certain purposes and the credit is secured by that person's commercial real estate interest.

OTHER RELEVANT PROVISIONS

Lien ownership

A broker's lien is available only to the broker named in the commission agreement, not the broker's employee or independent contractor.

Affidavit identifying brokers

If requested, a commercial real estate seller and the seller's broker must provide the requesting party before closing a written affidavit identifying each broker with whom the affiant knows or believes the seller or the seller's authorized agent has signed a commission agreement pursuant to which a commission is claimed or earned and has not been paid.

Statutory sections 62.002, 62.021, 62.022, 62.023, 62.027, 62.028, 62.029, 62.030, and 62.031 enacted 1999; § 62.003 amended 2003.

[Tex. Prop. Code §§ 62.002, .003, .021, .022, .023, .027, .028, .029, .030, .031 \(2019\)](#)

Texas, Notice requirements

TIMING OF NOTICE

General provisions

A broker may not file a lien notice unless he or she has earned the commission on which the lien is based.

Seller

If a broker has earned a commission pursuant to a commission agreement with a seller, the broker must record a lien notice:

- after the broker has earned the commission; and
- before the conveyance of the commercial real estate interest.

Buyer

If a broker has earned a commission pursuant to a commission agreement with a prospective buyer, the broker must record a lien notice:

- after the buyer acquires legal title to the commercial real estate interest; and
- before the buyer conveys that commercial real estate interest.

Lease

If the lien is based on a lease transaction, the broker must record a lien notice after the commission is earned and before the earlier of:

- the 91st day after the date the event for which the commission becomes payable occurs; or
- the date the person obligated to pay the commission records a subsequent conveyance of that person's commercial real estate interest after executing the lease agreement related to the lease transaction for which the broker is claiming the lien.

If a broker does not file a lien notice in a timely manner, the lien is void.

REQUIRED CONTENTS OF NOTICE

A lien notice must be signed by the broker or an authorized person and must contain the following:

- a sworn statement of the nature and amount of the claim, including:
 - the commission amount or formula;
 - the type of commission, including any deferred commission; and
 - the month and year in which the broker earned the commission;
- the broker's name and real estate license number;
- the name of any person the broker believes is obligated to pay his or her commission;
- the name of any person the broker believes to be an owner of the commercial real estate interest;
- a description legally sufficient to identify the commercial real estate interest;
- the name of any cooperating broker or principal with whom the broker intends to share the commission and the dollar or percentage amount to be shared; and
- a copy of the commission agreement.

RECORDING REQUIREMENTS FOR NOTICE

A broker claiming a lien must timely file a lien notice with the county clerk of the county in which the commercial real estate is located. The county clerk must:

- record the notice in records kept for that purpose; and
- index and cross-index the notice in the names of the broker, each person obligated to pay the commission, and each person who owns an interest in the commercial real estate (if the broker claims a lien on that interest).

SERVICE OF NOTICE

No later than one business day after the date the broker files a lien notice, the broker must mail a copy of that notice by certified mail, return receipt requested, or by registered mail to the following:

- the record owner of the commercial real estate interest on which the lien is claimed or the owner's authorized agent; and
- the prospective buyer or tenant and any escrow agent named in a contract for the sale or lease of the commercial real estate interest, if (a) a binding written contract for the sale or lease of the interest is in effect between the owner and the prospective buyer or tenant and (b) the owner and the prospective buyer or tenant executed the binding written contract before the date the broker filed the lien notice.

Service is complete when the notice is deposited in the United States mail, postage prepaid, and addressed to the persons entitled to receive the notice.

If the broker has actual knowledge of the escrow agent's identity, the broker, before the first business day before the closing date, must also deliver a file-stamped copy or transmit a facsimile of a file-stamped copy of the lien notice to each escrow agent at the office in which the closing will

occur. The broker must deliver the copy or transmit the facsimile directly to the individual escrow agent responsible for closing if the broker knows that person's name.

If the escrow agent receives the broker's lien notice, the escrow agent and other parties may not close the transaction unless:

- the lien is released;
- the prospective buyer or tenant purchases or leases the property subject to the lien;
- the funds are held in escrow; or
- a bond is filed.

If the broker fails to provide notice as required, his or her lien notice is void.

OTHER RELEVANT PROVISIONS

Installment payments

A lien notice for amounts the broker earned pursuant to an installment contract or under a commission agreement for a deferred commission is enforceable only to the extent that the installment or commission has become payable. A "deferred commission" is a commission that is earned and not yet payable.

Statutory sections enacted 1999.

[Tex. Prop. Code §§ 62.005, .024, .025, .041 \(2019\)](#)

Texas, Property encumbered

TYPES OF PROPERTY ENCUMBERED

A broker's lien is a lien on the following:

- a *seller's* or *lessor's* commercial real estate interest, if the broker has earned a commission pursuant to a commission agreement with the seller or lessor;
- the commercial real estate interest purchased by a prospective *buyer*, if the broker has earned a commission pursuant to a commission agreement with the prospective buyer; or
- the leasehold interest in the commercial real estate that a prospective *tenant* leases, if the broker has earned a commission pursuant to a commission agreement with the prospective tenant.

OTHER OPTIONS

General requirements

A broker's lien is discharged by:

- court order;
- payment of the commission to the broker; or
- the parties establishing an escrow account.

Also, a person who assumes an owner's or a tenant's commercial real estate interest is bound by a commission agreement included in a lease agreement unless the parties establish an escrow account or provide a bond.

Escrow accounts

If a lien claim that is not paid or assumed at closing would prevent the closing or if a lien claim does not survive the closing, a person named in the lien notice as being obligated to pay the commission must, on the closing date:

- establish an escrow account from the net proceeds in an amount equal to the amount sufficient to satisfy the lien plus 15 percent; or
- file a bond to indemnify against the lien.

If an escrow agent is named in the contract on which the transaction is based, the escrow account must be established with the named escrow agent.

The person maintaining the escrow account may deduct from the escrow account the costs of any interpleader action.

A party may not refuse to close a transaction because of this requirement to establish an escrow account or bond if:

- the broker provides a copy of a lien notice that complies with statutory requirements;
- sufficient proceeds will result from the proposed transaction to pay the commission and the interpleader costs; and

- the broker executes and delivers a full release of the broker's lien in a recordable form.

Also, a prospective buyer may not refuse to close a purchase solely because a broker's lien is filed after the date a title commitment or abstract of title is issued, if an escrow account is established or a bond is filed.

The amount must be held in escrow until:

- the parties' rights are determined by a written agreement, court order, or alternative dispute resolution process agreeable to the parties;
- the broker's lien is no longer enforceable; or
- the funds are interpled into a district court for the county in which the commercial real estate is located.

Once the escrow account is established, the broker's lien against the commercial real estate is extinguished and becomes a lien on the escrow account proceeds.

Bond

A person may file a bond to indemnify against the lien. The bond must be filed with the county clerk of the county in which the real estate is located.

The bond must:

- describe the real estate;

- refer to the lien claimed in a manner sufficient to identify it;
- be in an amount that is double the lien amount as of the date of the surety executes the bond, unless the total amount claimed in the lien exceeds \$40,000, in which case the bond must be in an amount equal to 1.5 times the lien amount;
- be payable to the party claiming the lien;
- be executed by the party filing the bond as principal and a corporate surety licensed in Texas to execute the bond as surety;
- be "conditioned substantially that the principal and sureties will pay the named obligees or their assignees the amount that the named obligees would have been entitled to recover if their claim had been proved to be valid and enforceable liens on the commercial real estate"; and
- identify the lien claimant's last known mailing address.

After the bond is filed, the county clerk must:

- issue notice of the bond to all named obligees; and
- record the bond, the notice, and a certificate of mailing in the real property records.

A buyer, insurer of title, or lender "may rely on and is absolutely protected by the record of the bond and the notice to the same extent as if the lien claimant had filed a release of lien in the real property records."

Statutory sections enacted 1999.

[Tex. Prop. Code §§ 62.022, .101, .102, .103, .104, .105, .106, .121, .122, .123, .124 \(2019\)](#)

Utah

Utah, Lien creation

No relevant provisions were located.

Note that the Utah Division of Real Estate has emphasized that the state's "Mechanic's Lien statute is not available as a method to enforce payment of real estate commissions."

As of May 12, 2015, it is unlawful for:

- a principal broker to place a lien on real property, unless authorized by law; or
- a sales agent or associate broker to place a lien on real property for an unpaid commission or other compensation related to real estate brokerage services.

Statutory section 61-2f-401 amended 2020.

[Utah Code § 61-2f-401\(23\), \(24\) \(2020\)](#)

Utah, Notice requirements

No relevant provisions were located.

Utah, Property encumbered

No relevant provisions were located.

Vermont

Vermont, Lien creation

No relevant provisions were located.

Vermont, Notice requirements

No relevant provisions were located.

Vermont, Property encumbered

No relevant provisions were located.

Virgin Islands

Virgin Islands, Lien creation

No relevant provisions were located.

Virgin Islands, Notice requirements

No relevant provisions were located.

Virgin Islands, Property encumbered

No relevant provisions were located.

Virginia

Virginia, Lien creation

FORMAL REQUIREMENTS

Overview

A principal broker, who has provided, either himself or through the principal broker's or associated broker's employees or independent contractors, licensed services that result in a commercial real estate *tenant* on the terms that are provided for in a written agreement or otherwise acceptable to the owner, has a lien in the agreed compensation amount on rent paid by the tenant or the tenant's successors or assigns. The lien amount may not exceed the lesser of:

- the rent to be paid during the lease term; or
- the rent to be paid during the first 20 years of the lease term.

Brokerage agreement requirements

The broker's agreement must be in writing and signed by the real estate's owner.

Other requirements

No other requirements were located.

PROPERTY COVERED

A principal broker who has provided licensed services that produce a commercial real estate tenant may have a lien on rent paid by the tenant or the tenant's successors or assigns. "Commercial real estate" means any real estate, *except* real estate:

- containing one to four residential units; or
- classified for assessment purposes as real estate devoted to agricultural, horticultural, forest, or open-space use.

"Commercial real estate" does not include single-family residential units, including condominiums, townhouses, apartments, or homes in a subdivision that are leased on a unit-by-unit basis, even if the units are part of a larger building or real estate parcel containing more than four residential units.

SERVICES THAT CREATE THE LIEN

A broker may place a lien for providing licensed services that result in procuring a commercial real estate tenant on terms that are:

- provided for in a written agreement signed by the property's owner; or
- otherwise acceptable to the owner, as evidenced by a written agreement signed by the owner.

WAIVER

No relevant provisions were located.

PRIORITY

Attachment

A broker's lien does not attach until the broker records a memorandum of the lien ("lien memorandum") in the clerk's office of the circuit court of the county or city in which the commercial real estate is located.

Other liens

A broker's lien is perfected when the broker records a lien memorandum in the clerk's office of the circuit court of the county or city in which the commercial real estate is located. As of that date, the lien has priority over all liens recorded after it.

The broker's lien and the right to rents secured by the lien are subordinate to all of the following that are recorded before the broker's lien memorandum:

- liens;

- deeds of trust;
- mortgages or assignments of leases; or
- rents or profits.

The broker's lien does not affect a purchaser for valuable consideration without constructive or actual notice of the recorded lien. However, a purchaser acquiring fee simple title to commercial real estate who has actual knowledge of the terms of a lease agreement that provide for the payment of fees due and payable to a broker is liable for payment of those fees, unless the parties agree otherwise in writing at or before the sale. A purchaser with knowledge is liable regardless of whether the broker has perfected the lien. In this context, "purchaser" does *not* include:

- a trustee under or a beneficiary of a deed of trust;
- a mortgagee under a mortgage;
- a secured party or other assignee under an assignment as security; or
- a successor, assign, transferee, or purchaser from the above persons or entities.

OTHER RELEVANT PROVISIONS

No other relevant provisions were located.

Statutory sections renumbered 2019.

[Va. Code §§ 55.1-1000, -1001 \(2019\)](#)

Virginia, Notice requirements

TIMING OF NOTICE

A broker's lien does not attach and is not perfected until the broker records a signed lien memorandum in the clerk's office of the circuit court of the county or city in which the commercial real estate is located.

REQUIRED CONTENTS OF NOTICE

A lien memorandum must state:

- the claimant's name;
- the owner's name;
- the commercial real estate's description;
- the name and address of the person against whom the broker's compensation claim is made;
- the name and address of the tenant paying the rent against which the lien is being claimed;
- the lien claim amount; and
- the principal broker's real estate license number.

RECORDING REQUIREMENTS FOR NOTICE

A broker's lien does not attach and is not perfected until the broker records, in the clerk's office of the circuit court of the county or city in which the commercial real estate is located, a lien memorandum that:

- the broker signs under oath; and
- meets the state's statutory requirements.

SERVICE OF NOTICE

No specifically relevant provisions were located. However, a purchaser acquiring fee simple title to commercial real estate who has actual knowledge of the terms of a lease agreement that provide for the payment of fees due and payable to a broker is liable for payment of those fees, unless the parties agree otherwise in writing at or before the sale. A purchaser with knowledge is liable regardless of whether the broker has perfected the lien. In this context, "purchaser" does *not* include:

- a trustee under or beneficiary of a deed of trust;
- a mortgagee under a mortgage;
- a secured party or other assignee under an assignment as security; or
- a successor, assign, transferee or purchaser from the above persons or entities.

OTHER RELEVANT PROVISIONS

No other relevant provisions were located.

Section amended 1998.

[Va. Code § 55-527 \(2019\)](#)

Virginia, Property encumbered

TYPES OF PROPERTY ENCUMBERED

A broker's lien is a lien on rent paid by the tenant or the tenant's successors or assigns. The lien amount may not exceed the lesser of:

- the rent to be paid during the lease term; or
- the rent to be paid during the first 20 years of the lease term.

OTHER OPTIONS

A subsequent commercial real estate purchaser who is subject to a broker's lien may establish an escrow fund at settlement in an amount that is sufficient to satisfy a lien that may otherwise affect the title's transferability.

Statutory section amended 1998.

[Va. Code § 55-527 \(2019\)](#)

Washington

Washington, Lien creation

FORMAL REQUIREMENTS

Overview

A broker has a lien, equal to the amount the owner agreed to pay pursuant to a commission agreement, on:

- an owner's net proceeds from a commercial real estate disposition; and
- the net rental proceeds from a commercial real estate lease.

Brokerage agreement requirements

A "commission agreement" is a written instrument that:

- meets the requirements of Wash. Rev. Code § 19.36.010, which requires "an agreement authorizing or employing an agent or broker to sell or purchase real estate for compensation or a commission" to be in writing;
- is signed by the commercial real estate's owner or a party authorized to sign on the owner's behalf; and
- provides that the owner agrees to pay the broker a real estate commission upon either (a) the commercial real estate's disposition or lease or (b) the parties entering into an agreement for the commercial real estate's disposition or lease.

If a broker and owner execute multiple versions of a commission agreement for the same commercial real estate disposition, the final written version is the commission agreement that determines the lien amount.

Other requirements

Generally, a lien becomes effective on the date the broker records a notice of claim of lien against proceeds ("lien claim notice"). That recording also perfects the lien.

PROPERTY COVERED

A broker has a lien on an owner's:

- net proceeds from the disposition of commercial real estate; or
- net rental proceeds from the lease of commercial real estate.

In this context, "commercial real estate" is a "fee title interest or possessory estate" in real property located in Washington, *except* a real property interest that is:

- improved with one single-family residential unit or one multifamily structure with four or fewer residential units;
- unimproved and the maximum permitted development is one to four residential units or structures pursuant to the applicable zoning ordinances or comprehensive plans;
- classified for assessment purposes as farm and agricultural land or timber land; or
- improved with single-family residential units, such as "condominiums, townhouses, timeshares, or stand-alone houses in a subdivision," that may be sold, leased, or otherwise disposed of on a unit-by-unit basis.

Real estate is also considered "commercial real estate" if:

- the commission agreement so provides; or
- the real property meets the statutory definition of "commercial real estate" (as set forth above) on its disposition date.

"Real property" means "one or more parcels or tracts of land, including appurtenances or improvements."

SERVICES THAT CREATE THE LIEN

A broker has a lien on an owner's net proceeds from a commercial real estate disposition and the net rental proceeds from a commercial real estate lease for the commission amount the owner agrees to pay the broker upon either:

- the disposition or lease of commercial real estate; or
- the parties entering into an agreement for a commercial real estate disposition or lease.

"Disposition" is "a voluntary transfer or conveyance of commercial real estate."

A "lease" is a written agreement that:

- "gives rise to a relationship of landlord and tenant, affecting commercial real estate"; and
- meets the requirements of Wash. Rev. Code § 19.36.010 (regarding contracts that must be in writing), if applicable.

WAIVER

A commercial real estate owner may ask a broker to waive his or her lien rights. A waiver contained in a signed commission agreement is effective to waive the broker's lien rights.

If a court finds that payment is due to a broker pursuant to a commission agreement in which the broker has waived his or her lien rights, the court must award:

- normal damages;
- court costs;
- reasonable attorneys' fees; and
- statutory interest from the date the deed is recorded or the date the tenant takes possession of the premises, as applicable.

PRIORITY

Attachment

A lien recorded in a timely manner becomes effective and is perfected on the date the broker records the lien claim notice.

Other liens

The following, if recorded before the broker records a lien claim notice, have priority over the broker's lien:

- statutory liens;
- consensual liens;
- mortgages;
- deeds of trust;
- rent assignments; and
- other encumbrances, including:
 - advances or charges made or accruing under the above liens; and
 - all modifications, extensions, renewals, and replacements of the above liens.

A prior recorded lien includes, without limitation, a valid material supplier's or mechanics' lien claim that is recorded after the broker records the lien claim notice, but that relates back to a date before the recording date of the broker's lien claim notice.

OTHER RELEVANT PROVISIONS

Lien ownership

A broker's lien is available only to the broker named in the commission agreement.

Lien transfers

A broker's lien may not be assigned voluntarily or by operation of law.

Statutory section 19.36.010 amended 2011; §§ 60.42.010 and 60.42.005 enacted 1997; § 60.42.040 amended 2013.

[Wash. Rev. Code §§ 19.36.010; 60.42.005, .010, .040 \(2019\)](#)

Washington, Notice requirements

TIMING OF NOTICE

Disposition

In a commercial real estate disposition, a broker's lien is not effective unless it is recorded at least 30 days before the date a deed conveying the property is recorded in the county or counties in which the commercial real estate is located.

Also, the lien is null and void unless, within 10 days of the date the broker records a lien claim notice, he or she delivers a copy of the notice to the commercial real estate's owner. On or before the date the deed conveying the commercial real estate is recorded, the broker must also deliver a copy of the lien claim notice to the escrow closing agent who is closing the disposition, if broker knows the escrow closing agent's identity.

Lease

In a commercial real estate lease transaction, a broker's lien is not effective unless it is recorded within 90 days after the tenant takes possession of the leased commercial real estate.

Also, the lien is null and void unless, within 10 days of the date the broker records its lien claim notice, the broker delivers a copy of the notice to the commercial real estate's owner.

REQUIRED CONTENTS OF NOTICE

A lien claim notice must state the following:

- the broker's name, address, and telephone number;
- the commission agreement's date;
- the owner's name;
- the commercial real estate's legal description, as set forth in the commission agreement;
- the lien amount, which may be stated as a dollar amount or a formula;
- the broker's real estate license number;
- that the lien claimant has read the claim, knows its contents, and believes the contents to be "true and correct"; and
- that the claim is made pursuant to a valid commission agreement and is not frivolous, under penalties of perjury.

A copy of the commission agreement must be attached to the recorded lien claim notice.

The notice must also:

- recite that the information contained in the notice is true and accurate to the signatory's knowledge; and
- be acknowledged.

A lien claim notice substantially in the form set forth in § 60.42.010(g) is sufficient.

RECORDING REQUIREMENTS FOR NOTICE

A broker's lien becomes effective and is perfected on the recording date of the lien claim notice. The broker must record the lien with the county auditor or recorder in the county or counties in which the commercial real estate is located. The county auditor or recorder must record the lien claim notice in the same manner as it records deeds and other title instruments. Lien claim notices for registered land need not be recorded in the Torrens register.

SERVICE OF NOTICE

A broker's lien is null and void unless the broker delivers, in a timely manner, a copy of the lien claim notice to the commercial real estate's owner. In the case of a commercial real estate disposition, the broker must also timely deliver a copy of the notice to the escrow closing agent, if the broker knows his or her identity.

Notices must be by:

- service of process;
- registered or certified mail, return receipt requested; or

- personal or electronic delivery, with evidence of delivery in the form of a receipt or other acknowledgment by the party to whom the notice is delivered or an affidavit of service.

Delivery is effective at:

- the time of personal service or personal or electronic delivery; or
- three days following deposit in the mail.

A broker may give notice to the owner at:

- the address contained in the commission agreement;
- another address contained in a written notice from the broker or owner to the party giving the notice; or
- if no address is provided, to the commercial real estate's address.

OTHER RELEVANT PROVISIONS

No other relevant provisions were located.

Statutory sections enacted 1997.

[Wash. Rev. Code §§ 60.42.010, .060, .070 \(2019\)](#)

Washington, Property encumbered

TYPES OF PROPERTY ENCUMBERED

A broker's lien is a lien on the owner's net proceeds from a commercial real estate disposition or the owner's net rental proceeds from a commercial real estate lease in the amount the owner has agreed to pay the broker pursuant to a commission agreement. This lien is a lien on personal property, not real property.

"Net rental proceeds" are the base rent the tenant pays under a lease, *minus* "any amounts currently due under the terms of liens which have priority over" the broker's lien. "Base rent" is the rent so designated in a lease for the possession and use of commercial real estate, and it does *not* include separate payments tenants made for:

- insurance;
- taxes;
- utilities; or
- other expenses.

"Owner's net proceeds" are "the gross sales proceeds from the disposition of the commercial real estate" described in a lien claim notice, *minus* the following:

- amounts necessary to pay all encumbrances and liens that have priority over the broker's lien, other than those the buyer allows to remain;
- the owner's closing costs, such as real estate excise taxes, title insurance premiums, real estate taxes, and prorated assessments;

- escrow fees payable by the owner pursuant to an agreement with the buyer; and
- amounts held by a third party for the owner to use to complete a real estate exchange that is deferred from federal income tax under I.R.C. § 1031.

OTHER OPTIONS

A broker must release a recorded lien claim notice upon the recording of a receipt showing the deposit with the superior court of the county in which the real estate is located of an amount equal to 1.25 times the lien claim amount. The receipt must be recorded in the office in which the broker recorded the lien claim notice. The superior court must hold the deposited amount pending a resolution of the amounts due to the broker and the owner.

Statutory sections enacted 1997.

[Wash. Rev. Code §§ 60.42.005, .010, .050 \(2019\)](#)

West Virginia

West Virginia, Lien creation

No relevant provisions were located. However, the state legislature has considered broker liens. For example, [S.B. 523, 2012 Leg., Reg. Sess. \(W.V. 2012\)](#), which would have created a commercial real estate broker lien act, did not pass into law.

West Virginia, Notice requirements

No relevant provisions were located.

West Virginia, Property encumbered

No relevant provisions were located.

Wisconsin

Wisconsin, Lien creation

FORMAL REQUIREMENTS

Overview

If a broker complies with statutory notice requirements and perfects his or her lien, the broker has a lien on commercial real estate for unpaid commissions earned pursuant to a written commercial real estate listing contract, buyer agency agreement, tenant representation agreement, or lease or management agreement.

Brokerage agreement requirements

The broker's agreement must be in writing.

Other requirements

The broker has a lien on the commercial real estate or commercial real estate interest only if he or she:

- complies with the statutory notice requirements; and
- perfects the lien as required by statutes.

The broker must notify the person who owes the compensation in writing of the right to claim a lien. Also, a broker has a lien for unpaid commissions earned pursuant to a *listing* contract or a *buyer agency* or *tenant representation* agreement only if the broker records a written notice of interest. The lien is perfected when a broker records a lien in the office of the register of deeds for the county in which the commercial real estate is located.

See "**Notice Requirements**" for details regarding these notice and recording requirements.

PROPERTY COVERED

A broker may place a lien on commercial real estate for unpaid commissions owed pursuant to a written commercial real estate listing contract, buyer agency agreement, tenant representation agreement, or lease or management agreement. "Commercial real estate" means any real property, *except* real property that:

- contains eight or fewer dwelling units;
- is zoned for residential purposes and does not contain any buildings or structures; or
- is zoned for agricultural purposes.

SERVICES THAT CREATE THE LIEN

A broker may place a lien on commercial real estate for earned, but unpaid, commissions owed pursuant to a written commercial real estate:

- listing contract;
- buyer agency or tenant representation agreement; or
- lease or management agreement.

WAIVER

A broker may waive a lien in a writing signed by the broker. However, no action or agreement between any other persons may invalidate the lien, except payment in full to the broker.

PRIORITY

Attachment

No statutory provisions were located that specifically address attachment. However, a broker's lien is effective only from the date it is perfected. A broker's lien is perfected when the broker timely records a lien in the office of the register of deeds for the county in which the commercial real estate is located.

Other liens

A broker's lien has priority over all other liens on the commercial real estate, *except* the following:

- tax and special assessment liens;
- construction liens;
- purchase money mortgages;
- liens that are filed or recorded before the broker's lien is perfected; and
- "any other lien given priority under the law."

OTHER RELEVANT PROVISIONS

No other relevant provisions were located.

Statutory section amended 2010.

[Wis. Stat. § 779.32 \(2020\)](#)

Wisconsin, Notice requirements

TIMING OF NOTICE

Notice of lien rights

The broker must include a notice of lien rights in the commercial real estate listing contract, commercial real estate buyer agreement, tenant representation agreement, or written agreement for the lease or management of commercial real estate.

Notice of interest

A broker has a lien for unpaid commissions owed pursuant to a commercial real estate *listing* contract or *buyer agency* or *tenant representation* agreement only if the broker records a timely written notice of interest and delivers, in a timely manner, a copy of that notice to the person who owes the commission.

The broker must provide the required notice within the following time periods:

- in the case of a lien for a commission owed pursuant to a *listing* contract, at least 30 days before the real estate's conveyance; and

- in the case of a lien for a commission owed pursuant to a *buyer agency* or *tenant representation* agreement, at least 30 days before the real estate's conveyance.

Lien

A lien is perfected when the broker records a timely lien in the office of the register of deeds for the county in which the commercial real estate is located. The lien must be perfected no later than the following:

- in the case of a lien for a commission owed pursuant to a *listing* contract or *buyer agency* or *tenant representation* agreement, 30 days after the date the conveyance documents are recorded with the register of deeds; and
- in the case of a lien for a commission owed pursuant to a *lease* or *management* agreement, 90 days after the later of:
 - the date the broker earns a commission or compensation that gives rise to his or her lien; or
 - the date the broker receives notice that he or she has earned a commission or compensation that gives rise to a broker's lien.

REQUIRED CONTENTS OF NOTICE

Notice of lien rights

A broker must notify, in writing, the person who owes the commission or compensation of the right to claim a lien. The broker must include this notice in the commercial real estate listing contract, commercial real estate buyer agreement, tenant representation agreement, or written agreement for the lease or management of commercial real estate.

The notice must be in substantially the following form:

NOTICE: A broker has the authority under section 779.32 of the Wisconsin Statutes to file a broker lien for commissions or compensation earned but not paid when due against the commercial real estate, or the interest in the commercial real estate, that is the subject of this agreement.

Notice of interest

The notice of interest must contain the following:

- the name of each party to the agreement;
- the agreement's date; and
- a description of the commercial real estate.

Expiration of notice of interest

A notice of interest expires and is extinguished if a new notice of interest is not recorded within two years after the date the broker recorded the original notice of interest.

Lien

The lien must be signed by the broker and include the following information:

- the broker's name and license number;

- the name of the owner or acquirer of the commercial real estate that is subject to the lien;
- the real estate's legal description; and
- the lien amount at the time the broker records the lien.

RECORDING REQUIREMENTS FOR NOTICE

Notice of interest

A broker has a lien for unpaid commissions owed pursuant to a commercial real estate *listing* contract or *buyer agency* or *tenant representation* agreement only if the broker records a timely written notice of interest at the office of the register of deeds for the county in which the commercial real estate is located.

Lien

A lien is perfected when the broker records a lien in a timely manner in the office of the register of deeds for the county in which the commercial real estate is located.

SERVICE OF NOTICE

Notice of interest

A broker has a lien for unpaid commissions owed pursuant to a commercial real estate *listing* contract or *buyer agency* or *tenant representation* agreement only if the broker records a timely written notice of interest.

Lien

A broker must mail a copy of the lien to the owner or acquirer of the subject commercial real estate within 72 hours after the broker records the lien. The lien is effective only from the date that it is perfected.

OTHER RELEVANT PROVISIONS

Installment payments

A perfected lien secures all unpaid commissions or compensation that is due to that broker with respect to the commercial real estate that is subject to the lien, regardless of whether the commission or compensation was earned at the time the broker recorded the lien.

Statutory section amended 2010.

[Wis. Stat. § 779.32 \(2020\)](#)

Wisconsin, Property encumbered

TYPES OF PROPERTY ENCUMBERED

Listing contract

If a broker has earned his or her commission pursuant to a commercial real estate listing contract, the broker has a lien for the unpaid commission amount against the commercial real estate, or the commercial real estate interest, that is listed with the broker in that contract.

Buyer agency agreement

If a broker has earned a commission pursuant to a commercial real estate buyer agency or tenant representation agreement, the broker has a lien for the unpaid commission amount against the commercial real estate, or the commercial real estate interest, that is acquired as a result of the agreement.

Lease or management agreement

If a broker has earned compensation from the owner or landlord pursuant to a commercial real estate lease or management agreement or a tenant representation agreement, the broker has a lien for the unpaid compensation amount against the commercial real estate for which the broker provided the leasing or management services.

OTHER OPTIONS

A broker must execute and deliver a lien satisfaction to an interested party, if, among other things, the person who owes the commission or compensation pays an amount equal to 125 percent of the commission or compensation owed into:

- the broker's trust account;
- the trust account of an attorney who does not represent any party to the dispute and who is in good standing with the Wisconsin State Bar; or
- a mutually agreed-upon third party.

The funds must be held in escrow until disbursed pursuant to:

- the parties' written mutual agreement; or

- court order.

Statutory section amended 2010.

[Wis. Stat. § 779.32 \(2020\)](#)

Wyoming

Wyoming, Lien creation

No relevant provisions were located.

Wyoming, Notice requirements

No relevant provisions were located.

Wyoming, Property encumbered

No relevant provisions were located.