

By: Hewes

To: Business and
Financial
Institutions

SENATE BILL NO. 2957

1 AN ACT TO CREATE THE COMMERCIAL REAL ESTATE BROKER LIEN ACT;
2 TO DEFINE CERTAIN TERMS; TO ESTABLISH A COMMERCIAL REAL ESTATE
3 BROKER LIEN AND TO SPECIFY WHICH PERSONS ARE ENTITLED TO THE LIEN;
4 TO PROVIDE FOR THE FILING OF THE NOTICE OF THE LIEN AND ITS
5 CONTENTS; TO PROVIDE FOR THE ENFORCEMENT OF THE LIEN IN THE
6 CIRCUIT COURT OF THE COUNTY WHERE THE COMMERCIAL REAL ESTATE IS
7 LOCATED; TO PROVIDE FOR THE PRIORITY OF LIENS; TO REQUIRE THE
8 ESTABLISHMENT OF AN ESCROW ACCOUNT WHEN A NOTICE OF LIEN HAS BEEN
9 FILED THAT WOULD PREVENT THE CLOSING OF A TRANSACTION OR
10 CONVEYANCE; TO PROVIDE FOR THE RELEASE OR SATISFACTION OF THE
11 LIEN; AND FOR RELATED PURPOSES.

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

13 SECTION 1. **Short title.**

14 This act shall be known and may be cited as the "Commercial
15 Real Estate Broker Lien Act."

16 SECTION 2. **Definitions.**

17 As used in this act, the following terms have the following
18 meanings:

19 (a) "Broker" means a real estate broker as defined in
20 Section 73-35-3(1), Mississippi Code of 1972.

21 (b) "Commercial real estate" means any real estate in
22 this state except:

23 (i) Real estate improved with one (1) to four (4)
24 residential units;

25 (ii) A single-family residential unit, including a
26 condominium, townhouse, mobile home, residential lot, or home in a
27 subdivision, if the unit is sold, leased or otherwise conveyed on
28 a unit-by-unit basis and regardless of whether the unit is part of
29 a larger building or located on real estate containing more than
30 four (4) residential units;

31 (iii) Any property or any interest therein, which
32 is sold, leased or otherwise conveyed to a governmental entity or
33 to a utility, or to any subsidiary or affiliate thereof.

34 (c) "Commission agreement" means a written instrument
35 that:

36 (i) Entitles a broker to a commission;

37 (ii) Is signed by the person obligated to pay the
38 commission or the person's authorized agent;

39 (iii) References the commission amount or
40 describes the formula used to determine the commission amount; and

41 (iv) Contains a description legally sufficient for
42 identification of the real estate that is the subject of the
43 agreement.

44 (d) "Conveyance" means a sale, lease or other transfer
45 of commercial real estate.

46 (e) "Real estate" means real estate as defined in
47 Section 73-35-3(2), Mississippi Code of 1972.

48 **SECTION 3. Persons entitled to lien.**

49 (1) A broker who has earned a commission under a commission
50 agreement signed by the owner of commercial real estate or the
51 owner's authorized agent shall have a lien for the unpaid amount
52 of the commission against the commercial real estate, or the
53 interest in commercial real estate, that is listed with the broker
54 under the agreement.

55 (2) A broker who has earned a commission under a commission
56 agreement signed by a prospective buyer of commercial real estate
57 or the prospective buyer's authorized agent shall have a lien for
58 the unpaid amount of the commission against the commercial real
59 estate, or the interest in commercial real estate, that is
60 acquired as a result of the commission agreement.

61 (3) A broker who has earned a commission under a commission
62 agreement signed by a prospective tenant of commercial real estate
63 or the prospective tenant's authorized agent shall have a lien on

64 the interest, if any, of the commercial real estate that the
65 prospective tenant leases in the amount specified by the
66 commission agreement.

67 (4) A commission lien described by this section is available
68 only to the broker named in the contract and shall not be
69 available to any employee or independent contractor of the broker.

70 **SECTION 4. Filing of notice of lien.**

71 (1) A lien established pursuant to this section is perfected
72 when both of the following have occurred:

73 (a) The broker is entitled to a fee or commission under
74 the contract.

75 (b) Except as provided in paragraphs (c), (d) and (e)
76 of this subsection, the broker records a notice of lien in the
77 office of the chancery clerk in the county in which the commercial
78 real estate or interest in the commercial real estate is located
79 prior to the actual conveyance or transfer of the commercial real
80 estate against which the broker is claiming a lien. The lien
81 shall attach as of the date of the recording of the notice of lien
82 and does not relate back to the date of the written agreement.

83 (c) Except as provided in paragraphs (d) and (e) of
84 this subsection, and, when payment to a broker is due in
85 installments, a portion of which is due only after the conveyance
86 or transfer of the commercial real estate, any claim for lien for
87 those payments due after the transfer or conveyance may be
88 recorded at any time subsequent to the transfer or conveyances of
89 the commercial real estate and prior to the date on which the
90 payment is due but shall only be effective as a lien against the
91 commercial real estate to the extent monies are still owed to the
92 transferor by the transferee. A single claim for lien recorded
93 prior to transfer or conveyance of the commercial real estate
94 claiming all monies due under an installment payment agreement
95 shall not be valid or enforceable as it pertains to payments due
96 after the transfer or conveyance. The lien shall attach as of the

97 recording of the affidavit of lien and not relate back to the date
98 of the written agreement.

99 (d) In the case of a lease the claim of lien must be
100 recorded within ninety (90) days after the tenant takes possession
101 of the leased premises, unless written notice of the intended
102 signing of the lease is personally served on the broker entitled
103 to claim a lien at least ten (10) days prior to the date of the
104 intended signing of the lease, in which case the claim for lien
105 must be recorded before the date indicated for the signing of the
106 lease in the notice served on the broker. The lien shall attach
107 on the date of the recording of the notice of lien and not relate
108 back to the date of the written agreement.

109 (e) A notice of lien may be filed within a period of
110 three (3) days after the actual conveyance or transfer of the
111 commercial real estate against which the broker is claiming a lien
112 if, not later than three (3) days prior to the date of the
113 conveyance or transfer, the owner, or leasehold owner, and the
114 prospective buyer receive actual written notice of the broker's
115 claim for lien stating that he is entitled to compensation under
116 the terms set forth in the written contract and intends to claim a
117 lien on the commercial real property. Actual notice may be
118 evidenced by a registered or certified mail receipt signed by the
119 owner, or leasehold owner, and the buyer, or personal service made
120 on each party. Where there are two (2) or more owners or two (2)
121 or more prospective buyers, the notice shall be served upon each
122 owner and each prospective buyer. The notice shall include a
123 statement of the buyer's right to deposit funds into an escrow
124 account under Section 8 of this act.

125 (2) Where the commercial real estate is located in more than
126 one (1) county, the lien may be filed in any one or more of the
127 counties but shall be effective only as to the part of the
128 commercial real estate in the county in which it has been filed.

129 (3) The broker shall within five (5) days of recording its

130 notice of lien mail a copy of the notice of lien to the owner of
131 record of the commercial real estate by registered or certified
132 mail, with return receipt requested, or personally serve a copy
133 upon the owner of record or his agent. The broker shall also
134 notify, in similar manner, the prospective purchaser or tenant and
135 any escrow agent named in a contract for the sale or lease of the
136 interest in the commercial real estate on which the lien is
137 claimed if:

138 (a) A binding written contract for the sale or lease of
139 the interest of the commercial real estate on which the lien is
140 claimed is in effect between the owner and the prospective
141 purchaser or tenant in a transaction that is the basis for the
142 commission; and

143 (b) The binding written contract in the transaction
144 that is the basis for the commission is executed by the owner and
145 prospective purchaser or tenant before the date the notice of lien
146 is filed.

147 (4) Mailing of the copy of the notice of lien is effective
148 when deposited in the United States mailbox with postage prepaid.
149 The broker's lien shall be unenforceable if mailing of the copy
150 of the notice of lien recording does not occur at the time and in
151 the manner required by this act.

152 (5) The broker's election to exercise any rights authorized
153 by this act shall in no manner be construed as a violation of any
154 fiduciary relationship existing between the broker and the seller
155 or buyer, and any such action taken in accordance with this act
156 shall not be cause for any party to refuse to close the
157 transaction.

158 SECTION 5. Contents of notice of lien.

159 The notice of lien must be signed by the broker or by a
160 person authorized to sign on behalf of the broker and must contain
161 the following:

162 (a) A sworn statement of the claim, substantially

163 including the commission amount or the formula used to determine
164 the commission amount and the date or the occurrence of the event
165 when the commission is due;

166 (b) The name of the broker and the real estate license
167 number of the broker;

168 (c) Substantially the name of the owner and any other
169 person who the broker knows is obligated to pay the commission;

170 (d) A description legally sufficient for identification
171 of the commercial real estate sought to be charged with the lien;

172 (e) A description of the interest in the commercial
173 real estate sought to be charged with the lien;

174 (f) A copy of the applicable commission agreement; and

175 (g) The affidavit of lien shall be verified before a
176 notary public or other authorized officer.

177 **SECTION 6. Enforcement of lien.**

178 (1) A broker may bring suit to enforce a lien in the circuit
179 court of the county where the commercial real estate is located by
180 filing a verified complaint and sworn affidavit that the notice of
181 lien has been recorded in compliance with this act.

182 (2) A complaint in a suit filed under this section must
183 contain:

184 (a) A brief description of the commission agreement
185 that is the basis for the lien, including a description of the
186 disclosure of the broker's right to the lien contained in the
187 commission agreement;

188 (b) The date on which the commission agreement was
189 executed;

190 (c) A description of the services performed by the
191 broker;

192 (d) The amount due and unpaid;

193 (e) A description of the commercial real estate to
194 which the lien attaches; and

195 (f) Other facts necessary for a full understanding of

196 the rights of the parties.

197 (3) The plaintiff shall make all interested parties, whose
198 interest in the commercial real estate is affected by the action,
199 defendants to the action, and shall issue summons and provide
200 service as in other civil actions. The summons and complaint, and
201 all other particulars of suit, shall be made in accordance with
202 the Mississippi Rules of Civil Procedure.

203 (4) All liens claimed under this section shall be
204 foreclosed, as provided for by the law. Failure to commence
205 proceedings within one (1) year after recording the notice of lien
206 shall extinguish the lien.

207 (5) The owner, licensee or other authorized agent may demand
208 that the broker commence a suit to foreclose a broker's lien by
209 serving a written demand on the broker by registered or certified
210 mail, return receipt requested, or by personal service. A suit
211 shall be commenced or answer filed within thirty (30) days
212 thereafter, or the lien shall be extinguished.

213 **SECTION 7. Priority.**

214 All deeds of trust or mortgages, all purchase money mortgages
215 and all liens for ad valorem taxes, regardless of when recorded,
216 and all other liens recorded prior to the recording of the
217 broker's lien provided by this act shall have priority over the
218 broker's lien. A broker's lien against the interest of a person
219 owning the commission is not valid or enforceable against a
220 grantee, purchaser, lessee or transferee of an interest in the
221 commercial real estate from the person owing the commission if the
222 deed, lease or instrument transferring the interest is recorded
223 before the broker's lien is recorded.

224 **SECTION 8. Escrow of disputed amounts.**

225 (1) If a notice of lien described by this act has been filed
226 that would prevent the closing of a transaction or conveyance, an
227 escrow account shall be established from the proceeds of the
228 transaction or conveyance in an amount sufficient to satisfy the

229 lien and related costs for any interpleader action brought by the
230 person maintaining the escrow account. If an escrow agent is
231 named in the contract on which the transaction or conveyance is
232 based, the escrow account shall be established with the named
233 escrow agent.

234 (2) A party may not refuse to close a transaction because of
235 the requirement to establish an escrow account as proved by this
236 section.

237 (3) The amount held in escrow shall be held in escrow until:

238 (a) The rights of the parties claiming the amount in
239 escrow are determined by a written agreement of the parties, a
240 court of law, or an alternative dispute resolution process agreed
241 to by the parties;

242 (b) The broker's lien is no longer enforceable; or

243 (c) The funds are interpled into a court of competent
244 jurisdiction.

245 (4) When the escrow account is established under this
246 section, the brokers lien against the commercial real estate is
247 extinguished and becomes a lien on the proceeds in the escrow
248 account.

249 (5) The parties are not required to follow this escrow
250 procedure if alternative procedures which would allow the
251 transaction to close are available and are acceptable to the
252 transferee in the transaction.

253 **SECTION 9. Release of lien.**

254 (1) A broker shall record a written release or satisfaction
255 of the broker's lien in the office of the chancery clerk in which
256 the lien was recorded within ten (10) days after any of the
257 following:

258 (a) When a debt that is the basis for a lien under this
259 act is satisfied.

260 (b) Whenever a condition occurs that would preclude the
261 broker from receiving compensation under the terms of the broker's

262 written agreement.

263 (c) The claim upon which the broker's lien is based has
264 been resolved by a written agreement of the broker and owner, by a
265 court, or by any process agreed to by the broker and owner.

266 (d) Upon recording the release or satisfaction, the
267 broker shall immediately provide the owner with a copy of such
268 release or satisfaction by personal delivery or by certified or
269 registered mail, return receipt requested.

270 SECTION 10. **Broker liability.**

271 Any broker that asserts or records a spurious or materially
272 inaccurate broker's lien under this section, or in bad faith
273 refuses to release or acknowledge release or satisfaction of a
274 broker's lien in compliance with this section, is liable for
275 damages incurred by any person who has a legal or equitable
276 interest in the lien property.

277 SECTION 11. This act shall take effect and be in force from
278 and after July 1, 2000. The change in law made by this act
279 applies only to an agreement to compensate a licensed real estate
280 broker that is entered into on or after the effective date of this
281 act.