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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO PROPERTY - COMMERCIAL REAL ESTATE BROKER LIEN ACT

Introduced By: Senator Michael J. McCaffrey

Date Introduced: February 16, 2012

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 34 of the General Laws entitled "PROPERTY" is hereby amended by
2 adding thereto the following chapter:

3 CHAPTER 49

4 COMMERCIAL REAL ESTATE BROKER LIEN ACT

5 **34-49-1. Short title.** – This chapter shall be known and may be cited as the “Commercial
6 Real Estate Broker Lien Act.”

7 **34-49-2. Definitions.** – When used in this chapter, unless the context indicates otherwise:

8 (1) “Broker” means a real estate broker who is licensed pursuant to section 5-20.5 of the
9 general laws.

10 (2) “Broker services” means services for which a license issued by the Rhode Island
11 department of business regulation is required pursuant to section 5-20.5 of the general laws.

12 (3) “Commercial real estate” means and includes leaseholds as well as any and every
13 interest or estate in land, whether corporeal or incorporeal, freehold or non-freehold, which at the
14 time the property or interest is made the subject of an agreement for broker services, and does not
15 include any of the following:

16 (i) Vacant land that is zoned for single family use;

17 (ii) Land with physical improvements consisting of a house and/or structure comprised of
18 four (4) or fewer residential units.

19 (4) “Commission” means any compensation which is due to a broker for performance of

1 broker services.

2 (5) “Lien claimant” means a broker claiming a lien pursuant to this chapter.

3 (6) “Owner” means the owner of record of any interest in commercial real estate.

4 **34-49-3. Commercial real estate lien.** – (a) A broker may record a lien on commercial
5 real estate in the amount that the broker is due under a written agreement for broker services
6 signed by the owner or signed by the owner’s duly authorized agent, if:

7 (1) The broker has performed under the provisions of the agreement;

8 (2) The written agreement for broker services describes the broker’s duties to the owner;

9 and

10 (3) The written agreement for broker services states the conditions upon which the
11 compensation shall be earned and the amount of such compensation.

12 (4) The written agreement for broker services includes the following notice, “The real
13 estate broker may be entitled to certain lien rights pursuant to Rhode Island general laws chapter
14 34-49.”

15 (b) The lien under this section shall be available only to the broker named in the
16 instrument signed by the owner or the owner’s duly authorized agent. A lien under this section
17 shall be available only against the commercial real estate which is the subject of the written
18 agreement for broker services.

19 (c) When payment of commission to a broker is due in installments, a portion of which is
20 due only after the conveyance or transfer of the commercial real estate, any notice of lien for
21 those payments due after the transfer or conveyance may be recorded at any time subsequent to
22 the transfer or conveyance of the commercial real estate and within ninety (90) days of the date
23 on which the payment is due.

24 **34-49-4. Notice of intent to record lien.** – (a) The notice of lien shall be effective as a
25 lien against the owner’s interest in the commercial real estate only to the extent funds are owed to
26 the owner by the transferee, but the lien shall be effective as a lien against the transferee’s interest
27 in the commercial real estate. A single claim for lien filed prior to transfer or conveyance of the
28 commercial real estate claiming all commissions due in installments shall also be valid and
29 enforceable as it pertains to payments due after the transfer or conveyance; provided, however,
30 that as payments or partial payments of commission are received, the broker shall provide partial
31 releases for those payments, thereby reducing the amount due the broker under the broker’s lien.

32 (b) A lien authorized by this chapter attaches to the commercial real estate only when the
33 lien claimant files a timely notice of the lien conforming to the requirements of section 34-49-5
34 and this section in the office of the clerk of the superior court. A notice of lien is timely if it is

1 filed after the claimant's performance under the written agreement for broker services and before
2 the conveyance or transfer of the commercial real estate which is the subject of the lien, except
3 that in the case of a lease or transfer of a nonfreehold interest, the notice of a lien shall be filed no
4 later than ninety (90) days following the tenant's possession of the commercial real estate or no
5 later than sixty (60) days following any date or dates set out in the written agreement for broker
6 services for subsequent payment or payments. When a notice of a lien is filed more than thirty
7 (30) days preceding the date for settlement or possession set out in an offer to purchase, sales
8 contract, or lease, which establishes the broker's claim of performance, the lien shall be available
9 only upon grounds of the owner's breach of the written agreement for broker service.

10 **34-49-5. Content of lien notice.** – (a) A lien notice under this chapter shall be signed by
11 the lien claimant and shall contain an attestation by the lien claimant that the information
12 contained in the notice is true and accurate to the best of the lien claimant's knowledge and belief.

13 (b) The lien notice shall include all of the following information:

14 (1) The name of the lien claimant;

15 (2) The name of the owner;

16 (3) A description of the commercial real estate upon which the lien is being claimed;

17 (4) The amount for which the lien is claimed and whether the amount is due in
18 installments; and

19 (5) The claimant's grounds for the lien, including a reference to the written agreement for
20 broker services that is the basis for the lien.

21 **34-49-6. Demand for release or satisfaction of lien claim.** – If a claim for a lien has
22 been filed with the clerk of the superior court and a condition occurs that would preclude the lien
23 claimant from receiving compensation under the terms of the written agreement for broker
24 services on which the lien is based, the lien claimant shall file and serve the owner of record a
25 written release or satisfaction of the lien promptly, and in no event more than thirty (30) days
26 after the demand.

27 **34-49-7. Lien claimant to mail copy of notice of lien to owner by certified mail.** –
28 Any lien claimant who files a lien on commercial real estate pursuant to the provisions of this
29 chapter shall mail a copy of the notice of the lien to the owner of the commercial real estate by
30 certified mail, return receipt requested, or shall serve a copy of the notice of the lien in
31 accordance with any of the provisions for service of process. The lien claimant shall file proof of
32 service with the clerk of the superior court. The lien is void if the lien claimant does not file and
33 serve the lien as provided in this chapter.

34 **34-49-8. Enforcement of lien.** – A lien claimant may bring suit to enforce a lien which

1 attaches pursuant to the provisions of this chapter in any court of competent jurisdiction in the
2 county where the commercial real estate is located. The lien claimant shall commence
3 proceedings within eighteen (18) months after filing the lien, and failure to commence
4 proceedings within the eighteen (18) months shall extinguish the lien. If a claim is based upon an
5 option to purchase the commercial real estate, the lien claimant shall commence proceedings
6 within one year of the option to purchase being exercised. A claim for the same lien extinguished
7 pursuant to this section may not be asserted in any subsequent proceeding. A lender shall not be
8 made a party to any suit to enforce a lien under this chapter unless the lender has willfully caused
9 the nonpayment of the commission giving rise to the lien.

10 **34-49-9. Complaint; content; parties' foreclosure action; procedure. – (a) A**
11 complaint filed pursuant to the provisions of this chapter shall contain all of the following:

12 (1) A statement of the terms of the written agreement for broker services on which the
13 lien is based or a copy of the written contract or agreement;

14 (2) The date when the written agreement for broker services was made;

15 (3) A description of the services performed;

16 (4) The amount due and unpaid;

17 (5) A description of the property that is subject to the lien; and

18 (6) Any other facts necessary for a full understanding of the rights of the parties.

19 (b) The plaintiff shall file the action against all parties that have an interest of record in
20 the commercial real estate; provided, that a lender shall not be made a party to any suit to enforce
21 a lien under this chapter unless the lender has willfully caused the nonpayment of the commission
22 giving rise to the lien; a foreclosure action for a lien claimed pursuant to this chapter shall be
23 brought pursuant to the provisions of this chapter.

24 (c) Valid prior recorded liens or mortgages shall have priority over a lien under this
25 chapter.

26 **34-49-10. Lien extinguished for lien claimant failing to file suit or answer in pending**
27 **suit within thirty (30) days after service on owner . – If a lien claimant fails to file suit to**
28 **enforce the lien or fails to file an answer in a pending suit to enforce a lien within thirty (30) days**
29 **after a properly served written demand of the owner, lienee, or other duly authorized agent, the**
30 **lien shall be extinguished. Service of the demand shall be by registered or certified mail, return**
31 **receipt requested, or by personal service. The claimant shall file proof of properly served written**
32 **demand with the clerk of the superior court. The provisions of this section shall not extend to any**
33 **other deadline provided by law for the filing of any pleadings or for the foreclosure of any lien**
34 **governed by this chapter.**

1 **34-49-11. Satisfaction or release of lien.** – If a claim for a lien has been filed pursuant to
2 the provisions of this chapter with the clerk of the superior court and the claim has been paid in
3 full, or if the lien claimant fails to institute a suit to enforce the lien within the time as provided
4 by law, the lien claimant shall acknowledge satisfaction or release of the lien in writing upon
5 written demand of the owner promptly, and in no event more than thirty (30) days after the
6 demand.

7 **34-49-12. Cost of proceeding to be paid by non prevailing party.** – The costs of any
8 proceeding brought to enforce a lien filed pursuant to this chapter, including reasonable attorneys’
9 fees and prejudgment interest due to the prevailing party, shall be paid by the non-prevailing
10 party or parties. If more than one party is responsible for costs, fees, and prejudgment interest, the
11 costs, fee, and prejudgment interest shall be equitably apportioned by the court among the
12 responsible parties.

13 **34-49-13. Discharge of lien.** – (a) Unless an alternative procedure is available and is
14 acceptable to the transferee in a real estate transaction, any claim of lien on commercial real
15 estate filed under this chapter may be discharged by any of the following methods:

16 (1) The lien claimant of record, the claimant’s agent, or attorney, in the presence of the
17 clerk of the superior court, may acknowledge the satisfaction of the claim of lien on the
18 commercial real estate indebtedness, whereupon the clerk of the superior court shall enter on the
19 record of the claim of lien on the commercial real estate the acknowledgement of satisfaction,
20 which shall be signed by the lien claimant of record, the claimant’s agent, or attorney, and
21 witnessed by the clerk of the superior court.

22 (2) The owner may exhibit an instrument of satisfaction signed and acknowledged by the
23 lien claimant of record, which instrument states that the claim of lien on the commercial real
24 estate indebtedness has been paid or satisfied, whereupon the clerk of the superior court shall
25 cancel the claim of lien on the commercial real estate by entry of satisfaction on the record of the
26 claim of lien on the commercial real estate.

27 (3) By failure to enforce the claim of lien on the commercial real estate within the time
28 prescribed in this chapter.

29 (4) By filing in the office of the clerk of the superior court the original or certified copy
30 of a judgment or decree of a court of competent jurisdiction showing that the action by the
31 claimant to enforce the claim of lien on the commercial real estate has been dismissed or finally
32 determined adversely to the claimant.

33 (5) Whenever funds in an amount equal to one hundred twenty-five percent (125%) of the
34 amount of the claim of lien on the commercial real estate is deposited with the clerk of the

1 superior court to be applied to the payment finally determined to be due, whereupon the clerk of
2 superior court shall cancel the claim of lien on the commercial real estate.

3 (6) Whenever a corporate surety bond, in an amount equal to one hundred twenty-five
4 percent (125%) of the amount of the claim of lien on the commercial real estate and conditioned
5 upon the payment of the amount finally determined to be due in satisfaction of the claim of lien
6 on the commercial real estate is deposited with the clerk of the superior court, whereupon the
7 clerk of the superior court shall cancel the claim of lien on the commercial real estate.

8 (7) By failure to file documentation if required pursuant to section 34-49.6 or section 34-
9 49.10.

10 (b) If funds in an amount equal to one hundred twenty-five percent (125%) of the amount
11 that is sufficient to release the claim of lien have been deposited with the clerk of the superior
12 court, or a bond in an equal amount has been secured, the lien claimant shall release the claim for
13 the lien on the commercial real estate, and the lien claimant shall have a lien on the funds
14 deposited with the clerk of the superior court.

15 **34-49-14. Priority of lien under this chapter.** – Any claim of lien on real property or
16 claim of lien on funds allowed under this chapter shall be deemed superior in all respects to any
17 other lien claimed under this chapter, regardless of the effective date of the competing liens and
18 shall survive notwithstanding any judgment awarding a lien under this chapter.

19 SECTION 2. This act shall take effect 90 days after passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO PROPERTY - COMMERCIAL REAL ESTATE BROKER LIEN ACT

- 1 This act would enable a real estate broker to record a lien on commercial real estate in the
- 2 amount that the broker is due under a written agreement for broker services.
- 3 This act would take effect 90 days after passage.

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