

2013 -- S 0507 SUBSTITUTE A

=====
LC01759/SUB A/2
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

—————
A N A C T

RELATING TO PROPERTY - COMMERCIAL REAL ESTATE BROKER LIEN ACT

Introduced By: Senators McCaffrey, and Lynch

Date Introduced: February 28, 2013

Referred To: Senate Corporations

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.** – As used in this chapter, the following words shall have the
8 following meanings:

9 (1) "Commercial real estate" means any real estate other than: (i) Real estate containing
10 one to four (4) residential units; (ii) Real estate on which: (A) No buildings or structures are
11 located; and (B) Which is zoned for single-family residential use; or (iii) Single-family residential
12 units such as condominiums, townhouses, or homes singly or in a subdivision when sold, leased,
13 or otherwise conveyed on a unit by unit basis, even though these units may be a part of a larger
14 building or parcel of real estate containing more than four (4) residential units.

15 (2) "Compensation" means fees, commissions, and any and all other compensation which
16 may be due a real estate broker for performance of licensed services as defined in section 5-20-1
17 et seq.

18 (3) "Real estate" and "real estate broker" are as defined in section 5-20.5-1 et seq.

19 **34-49-3. Broker's lien.** – (a) Any real estate broker shall have a lien upon commercial

1 real estate or any interest in that commercial real estate which is the subject of a purchase, lease
2 or other conveyance to a buyer or tenant (which transferee includes without limitation subtenant
3 and assignee) of an interest in the commercial real estate, in the amount of compensation that the
4 real estate broker is due for licensed services, which compensation shall include without
5 limitation, brokerage fees, consulting fees, and management fees:

6 (1) Under a written instrument which is executed either by the owner of an interest in the
7 commercial real estate or by the owner's authorized agent; or

8 (2) Under a written instrument executed by a prospective buyer or prospective tenant or
9 its respective authorized agent.

10 The lien shall be available to the real estate broker named or referred to in the agreement
11 or instrument signed by the owner, buyer, or tenant (or their respective agents) and not to an
12 employee or independent contractor employed by or affiliated with the real estate broker.

13 (b) A lien under this chapter shall attach to the commercial real estate or any interest in
14 the commercial real estate upon:

15 (1) The real estate broker being entitled to compensation under a written instrument
16 signed by the owner, buyer, tenant, or their authorized agent, as applicable; and

17 (2) Except as provided in subsections (c), (d), (e), or (f) below, the real estate broker
18 recording a notice of lien in the land evidence records for the municipality in which the
19 commercial real estate or any interest in the commercial real estate is located, prior to the
20 recording of an actual instrument of conveyance or transfer of legal title to the commercial real
21 estate against which the real estate broker claims a lien by the party from whom compensation is
22 claimed. The lien shall attach as of the date of the recording of the notice of lien and does not and
23 shall not relate back to the date of the written agreement. If a notice of lien is recorded after the
24 date of recording of an instrument conveying or transferring legal title to the commercial real
25 estate from the party from whom compensation is claimed, then such notice of lien shall not
26 constitute a lien on the interest in commercial real estate held by the transferee.

27 (c) Except as provided in subsections (d), (e), or (f) when payment to a real estate broker
28 is due in installments, a portion of which is due only after the conveyance or transfer of the
29 commercial real estate or interest therein, any notice of lien for those payments due after the
30 transfer or conveyance may be recorded at any time which is subsequent to the transfer or
31 conveyance of the commercial real estate or interest therein or which time is within ninety (90)
32 days of the date on which the payment is due. Such notice of lien shall only be effective as a lien
33 against the transferor's interest in the commercial real estate to the extent funds are owed to the
34 transferor by the transferee, but the lien shall be effective as a lien against the transferee's interest

1 in the commercial real estate without limitations described above in this section. A single claim
2 for lien recorded prior to transfer or conveyance of the commercial real estate or interest therein
3 claiming all compensation due in installments shall also be valid and enforceable as it pertains to
4 payments due after the transfer or conveyance; provided however, that as payments or partial
5 payments of compensation are received, the real estate broker shall provide partial releases
6 therefor, thereby reducing the amount due the real estate broker under its lien.

7 (d) In the case of a lease (which shall also include a sublease or assignment of lease), the
8 notice of lien must be recorded not later than ninety (90) days after the tenant occupies the leased
9 premises. Provided, however, that if the landlord serves written notice of the intended execution
10 of the lease by personal service on the real estate broker entitled to claim a lien, at least ten (10)
11 days prior to the date of the intended execution of the lease, the notice of lien must be recorded
12 before the date indicated in such notice for the execution of the lease. The lien shall attach as of
13 the recording of the notice of lien and does not and shall not relate back to the date of the written
14 agreement.

15 (e) If a real estate broker may be due any compensation excluding compensation due
16 upon execution of the initial lease, such as compensation arising from and including, but not
17 limited to, the exercise of an option: (1) To expand leased premises; (2) To renew or extend a
18 lease; or (3) To purchase commercial real estate; which compensation is due, pursuant to a
19 written agreement or instrument signed by the then owner or tenant (collectively “future
20 commissions”), then the real estate broker may record its notice of lien at any time after execution
21 of the lease or other written agreement which contains such rights, but not later than ninety (90)
22 days after the occurrence of the act or event on which the future commission is claimed. An
23 action to enforce a lien to collect future commissions must be commenced within two (2) years of
24 the act or event for which the future commission is claimed.

25 (f) In the event that the commercial real estate is sold or otherwise conveyed prior to the
26 date on which a future commission is due, if the real estate broker has recorded a valid notice of
27 lien prior to the sale or other conveyance of the commercial real estate, then the purchaser or
28 transferee shall be deemed to have notice of and shall take title to the commercial real estate
29 subject to the notice of lien. Provided, however, that if a real estate broker claiming a future
30 commission fails to record its notice of lien for future commission prior to the recording of a deed
31 conveying legal title to the commercial real estate to the purchaser or transferee for consideration,
32 then such real estate broker may not claim a lien on the commercial real estate, and any notice of
33 lien recorded subsequent to the recording of such deed shall not constitute a lien on the
34 commercial real estate and shall be null and void and of no effect.

1 (g) If a real estate broker claims compensation based on a written instrument executed by
2 a prospective buyer or tenant or agent as described in subdivision (a)(2) of this section, then the
3 notice of lien shall attach upon the prospective buyer or tenant purchasing or otherwise accepting
4 a conveyance or transfer of the commercial real estate or interest therein and the recording of a
5 notice of lien by the real estate broker in the land evidence records in which the commercial real
6 estate, or any interest in the commercial real estate is located, within ninety (90) days after the
7 recording of the deed or other instrument for the purchase or other conveyance or transfer to the
8 buyer or within ninety (90) days of such tenant occupying the leased premises in the case of a
9 lease or sublease transaction. The lien shall attach as of the date of the recording of the notice of
10 lien and does not and shall not relate back to the date of the written agreement.

11 (h) The real estate broker shall, within ten (10) days of recording its notice of lien, either
12 personally serve, deliver to, or mail a copy of the notice of lien by registered or certified mail,
13 return receipt requested, to the owner of record or to the agent of the owner of record at: (1) The
14 address of the owner stated in the written instrument on which the claim for lien is based; or (2) If
15 no such address is given, then to the address where the real estate tax bill(s) are sent for the
16 commercial real estate on which the claim of the lien is based; or (3) To the address of the
17 property. Mailing of the copy of the notice of lien is effective when deposited in a United States
18 mailbox with postage prepaid.

19 (i) A real estate broker may bring suit to enforce a lien in the superior court for the county
20 where the commercial real estate is located by filing a complaint and sworn affidavit that the
21 notice of lien has been recorded.

22 (j) A real estate broker claiming a lien shall, within two (2) years after recording the
23 notice of lien, commence proceedings by filing a complaint and recording a notice of lis pendens
24 in the land evidence records in the municipality in which the commercial real estate is located.
25 Failure to commence proceedings as required herein within two (2) years after recording the
26 notice of lien shall extinguish the lien.

27 (k) A real estate broker claiming a lien based upon an option or other right to purchase or
28 lease shall, within two (2) years after the transfer or conveyance of the commercial real estate
29 under the exercise of the option to purchase or lease, commence proceedings by filing a
30 complaint and recording a notice of lis pendens in the land evidence records in the municipality in
31 which the commercial real estate is located.

32 (l) Failure to commence proceedings within the time limits set forth herein shall
33 extinguish the lien.

34 (m) A complaint under this section shall contain a brief statement or description of the

1 agreement, contract, or instrument on which the notice of lien was filed, the date when the
2 agreement, contract or instrument was made, a description of the services performed, the amount
3 of compensation due and unpaid, a description of the commercial real estate which is subject to
4 the notice of lien, and other facts reasonably necessary to describe the rights of the parties. The
5 plaintiff shall make all interested parties of whose interest the plaintiff real estate broker is
6 notified or has knowledge defendants to the action, and shall issue summons and provide service
7 as in other civil action. When any defendant resides outside or has left the state, or on inquiry
8 cannot be found, or is concealed within the state so that process cannot be served on that
9 defendant, the plaintiff shall cause a notice to be given to that defendant, or cause a copy of the
10 complaint to be served upon that defendant in the manner and upon the same condition as in other
11 civil actions. Failure of the plaintiff to provide proper summons or notice shall be grounds for
12 judgment against the plaintiff and in favor of the defendant which is not properly served with
13 summons or notice. All liens claimed under this chapter shall be foreclosed as provided in chapter
14 34-27.

15 (n) The notice of lien shall state the name of the claimant, the name of the legal title
16 owner of the commercial real estate, a legal description of the commercial real estate upon which
17 the lien is claimed, the amount for which the lien is claimed, and the number of the real estate
18 broker's license. The notice of lien shall recite that the information contained in notice is true and
19 accurate to the knowledge of the signator. The notice of lien shall be executed by the real estate
20 broker or by a person authorized to execute on behalf of the real estate broker and shall be
21 verified. A notice of lien substantially in the following form shall be deemed to comply with the
22 foregoing requirements:

23 NOTICE OF COMMERCIAL REAL
24 ESTATE BROKER LIEN

25
26 LAND EVIDENCE RECORDS

27 XXX

28 Broker-Claimant,

29 vs.

30 XXX,

31 Owner

32 Notice is hereby given that the undersigned Broker-Claimant, whose real estate license number is
33 _____ , and whose business address is _____ , makes the
34 following statement and claims a Commercial Real Estate Broker Lien under the law entitled

1 "Commercial Real Estate Broker Lien Act," chapter 34-49 states:

2 (1) _____, Rhode Island _____, Plat and
3 Lot Number, _____ and which is legally described on Exhibit A attached
4 hereto is improved with a commercial building. The record owner of the Property ("Owner") is
5 _____ and _____ as Tenant/Sublessor.

6 (2) There is a written agreement to which the Tenant/Sublessor of the Property, is a party
7 by which Tenant/Sublessor is obligated to pay Broker-Claimant a commission.

8 (3) That the Broker-Claimant by its sponsored licensee(s) provided services for said
9 Tenant/Sublessor and is in compliance with Broker-Claimant's obligations under a written
10 agreement to which Tenant/Sublessor is a party;

11 (4) That the amount of the commission or fee to which Broker-Claimant is entitled is
12 \$ _____; and

13 (5) Broker-Claimant now claims a lien on the Property and all improvements thereon and
14 against all persons interested therein in the sum of _____
15 and 00/100 (\$ _____).

16 By: _____
17 Its Authorized Agent

18 STATE OF RHODE ISLAND
19 COUNTY OF _____

20 _____ as agent for _____, being
21 first duly sworn on his/her oath, deposes and states that he/she has read the foregoing Lien Notice
22 for Commercial Real Estate Broker Lien and knows the contents thereof and that all the
23 Statements therein contained are true and accurate to the knowledge of the undersigned.

24 Subscribed and sworn to before me this
25 _____ day of _____.
26 _____

27 Notary Public
28 My commission expires:

29
30 Prepared by: ATTY
31 FIRM
32 ADDRESS
33 PHONE

34

1 Return to: ATTY
2 FIRM
3 ADDRESS
4 PHONE

5 (o) Whenever a notice of lien has been filed with the office of the applicable land
6 evidence records and a condition occurs which would preclude the real estate broker's right to
7 compensation under the terms of the written instrument on which the lien is based, the real estate
8 broker shall provide to the owner of record of the commercial real estate, within ten (10) days
9 following written demand by such owner of record, a recordable written release or satisfaction of
10 the notice of lien.

11 (p) Upon written demand of the owner, hence, or other authorized agent of the owner or
12 lienee, which demand shall be served on the real estate broker claiming the lien requiring suit to
13 be commenced to enforce the lien or answer to be filed in pending suit, a suit shall be commenced
14 or answer filed within thirty (30) days after actual receipt thereof or the lien shall be extinguished.
15 Service of such written demand may be made by registered or certified mail, return receipt
16 requested, or by personal service.

17 (q) Whenever a notice of lien has been recorded with the land evidence records and such
18 claimed commission has been paid to the real estate broker claiming the lien, or where there is
19 failure to institute a suit to enforce the lien within the time provided by this chapter, the real estate
20 broker shall acknowledge satisfaction or release of the notice of lien in writing, on written
21 demand of the owner within five (5) days after payment or within five (5) days of expiration of
22 the time in which the complaint was to be filed.

23 (r) If the real estate broker and the party or parties from whom the commission is
24 claimed agree to alternative dispute resolution ("ADR"), the claim shall be heard and resolved in
25 the forum on which these parties have agreed. The court before which the lien enforcement
26 proceeding is brought shall retain jurisdiction to enter judgment on the award or other result made
27 or reached in ADR on all parties to the foreclosure. The real estate broker's notice of lien shall
28 remain on record and the enforcement proceeding shall be stayed during the pendency of the
29 ADR process.

30 (s) The cost of proceedings brought under this chapter including in trial, appellate courts,
31 and ADR proceedings including reasonable attorneys' fees, costs, and prejudgment interest, costs,
32 and fees shall be equitably apportioned by the court or ADR tribunal among the responsible
33 parties.

34 (t) Except for a waiver or release of lien provided in consideration of payment of the fee

1 claimed by the real estate broker, or pursuant to subsections 3(o) and 3(q) above, and waiver of a
2 real estate broker's right to lien commercial real estate under this chapter, or any other waiver or
3 release of lien shall be void.

4 (u) The foregoing provisions of this subsection shall not limit or otherwise affect claims
5 or defenses or other remedies a real estate broker, owner, or any other party may have in law or in
6 equity.

7 **34-49-4. Priority.** – Prior recorded liens, mortgages, and other encumbrances shall have
8 priority over a real estate broker's lien. Such prior recorded liens, mortgages, and encumbrances
9 shall include, without limitation, a mechanic's lien claim that is recorded prior to the real estate
10 broker's notice of lien.

11 **34-49-5. Escrow of disputed amounts.** – (a) Except as otherwise provided in this
12 section, whenever a claim for lien has been filed with the appropriate land evidence records, and
13 an escrow account is established either from the proceeds from the transaction, conveyance, or
14 any other source of funds in an amount computed as one hundred fifty percent (150%) of the
15 amount of the claim for lien, then the lien against the real estate shall be extinguished and
16 immediately become a lien on the funds contained in the escrow account. Upon creation of such
17 escrow, the lien claimant shall be required to provide and record a release of lien against the real
18 estate within five (5) business days. In the event that the lien claimant fails to provide or record a
19 release of lien, then the escrowee is hereby authorized to either: (1) Execute and record a release
20 of lien; or (2) Pay into the registry of the superior court in the county where the land is located an
21 amount equal to one hundred fifty percent (150%) of the amount claimed in the notice of lien; or
22 (3) In lieu of cash, deposit in the registry of the court the bond of a surety company licensed to do
23 business in this state in the amount of one hundred fifty percent (150%) of the amount claimed in
24 the notice of lien. On proper proof of payment or deposit and on motion of the owner or lessee or
25 tenant, any justice of the superior court shall enter ex parte, an order discharging and releasing the
26 notice of lien and dismissing the cause as to the owner or lessee or tenant and as to all persons
27 having any title, claim, lease, mortgage, attachment, or other lien or encumbrance, and upon entry
28 of the order, the property shall be as if no notice of lien was recorded. Provided, however, that
29 with respect to the escrowed funds and/or surety bond, proceeds the real estate broker's lien
30 attaches to such escrowed funds and/or surety bond proceeds whichever applies;

31 (b) The requirement to establish an escrow account or election to take measures described
32 in subdivision (a)(2) or (a)(3) above, shall not be cause for any party to refuse to complete or
33 close the transaction.

34 SECTION 2. This act shall take effect upon passage and shall apply to claims for

1 compensation based on written instruments executed on or subsequent to the effective date.

=====
LC01759/SUB A/2
=====

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

- 1 This act would establish the Commercial Real Estate Broker Lien Act.
- 2 This act would take effect upon passage and shall apply to claims for compensation based
- 3 on written instruments executed on or subsequent to the effective date.

=====
LC01759/SUB A/2
=====