

Commercial Lien Laws

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Background

In reaction to the problem of commercial brokers completing a commercial lease or sales transaction that is subject to a listing or commission agreement, only to receive a portion of the agreed upon fee, or sometimes no fee at all, commercial brokers have sought the statutory right to place a lien on the property in question as a means to ensure the commission would be paid.

These laws are intended to allow a commercial broker to obtain and foreclose upon a lien as a legal remedy against a property if the buyer/seller or lessee/lessor fails to pay the broker the agreed upon commission, as their interests in the real property may apply. Litigation to recover fees often consumes the entire fee the broker earned and would have been paid, and is not always swift. This process is to the detriment of the real estate brokerages and commissioned agents involved in the transaction.

Issue Analysis

There are currently twenty nine jurisdictions which allow a commercial real estate broker to claim a lien under certain circumstances. Twenty five of those jurisdictions have specifically adopted broker's lien acts or statutory schemes that allow a broker to claim a lien resulting from his or her brokerage services, and the other four jurisdictions include brokers' services as a qualifying property improvement within their mechanics' lien laws.

Generally, commercial property is defined as real property acquired or developed for investment and designed for use by business entities such as retail, wholesale, office, industrial, hotel, or service users. However, it varies from state to state. Although most states recognize commercial real estate as property used for agricultural purposes, and property on which buildings or structures are located, the unit definition varies. Some states recognize commercial property as structures larger than four residential units, while some recognize structures containing eight or more units. Condominiums, townhouses and homes comprising a subdivision are not included in this definition.

Although the language in each law varies from state to state, most laws state that the lien language must be placed in the written agreement signed by both the party the broker represents, and the real estate brokerage agency. This agreement is only valid with the principal broker, thus those working under the broker have no authority to place a lien.

The enactment of commercial lien laws serve as a safety net for brokers who previously had no means of insuring payment of the agreed upon fee, other than costly legal battles.

The following jurisdictions do not have commercial lien laws:

Alaska, California, Delaware, District of Columbia, Guam, Hawaii, Idaho, Iowa, Massachusetts, Minnesota, Mississippi, Montana, Nebraska, New Jersey, New Mexico, North Dakota, Oregon, Puerto Rico, Rhode Island, South Dakota, Utah, U.S. Virgin Islands, Vermont, West Virginia and Wyoming.

Because these laws vary from state to state, brokers should check with their legal counsel regarding specific provisions of law in the state in which they are doing business. Below is a chart compiled by the REALTORS® Commercial Alliance, outlining state laws across the country, as of June 2011.

AS A NOTE OF CAUTION, IT MUST BE UNDERSTOOD THAT THIS REPORT DOES NOT CONSTITUTE LEGAL ADVICE. THIS REPORT IS INTENDED TO PROVIDE GENERAL INFORMATION, AND SHOULD NOT BE RELIED UPON AS LEGAL GUIDANCE. BEFORE ACTING, BOTH THE LAWS OF THE STATE AND LEGAL COUNSEL SHOULD BE CONSULTED. INFORMATION SHOULD NOT BE CONSTRUED AS SPECIFIC LEGAL ADVICE OR AN OPINION ON INDIVIDUAL CASES OR SITUATIONS. THIS RESEARCH WAS INITIALLY PERFORMED IN EARLY 2002. REMEMBER, THAT LAWS ARE IN FLUX, AND THIS RESEARCH MAY OR MAY NOT BE VALID AT THE TIME IT IS CONSULTED.

State	Citation	Written brokerage agreement required?	Type of transactions for which broker can claim lien.	Type of property which can be liened.
Alabama	§35-11-450 , 35-11-451	Yes	Sale, lease	Commercial
Arizona	§33-1071 §33-1072 §33-1073 §33-1074 §33-1075 §33-1076	Yes – and disclosure of lien rights in the agreement is mandatory	Lease	Commercial
Arkansas	§18-48-802 §18-48-803 §18-48-804 §18-48-809	Yes	Sale, lease	Commercial
Colorado	§38-22.5-101 §38-22.5-102 §38-22.5-103 §38-22.5-104 §38-22.5-105 §38-22.5-106 §38-22.5-107 §38-22.5-108 §38-22.5-109 §38-22.5-110 §38-22.5-111	Yes	Lease	Commercial
Connecticut	§20-325a	Yes – and notice of lien rights must appear in the commission agreement	Sale, lease	All real property
Florida	FRS 475.700-475.719 FRS 475.800-475.813	Yes	Sale (lien on proceeds), lease (lien on property)	Commercial
Georgia	§44-14-602	Yes	Sale, lease	Commercial
Indiana	IC 32-28-12-3	Yes	Sale, lease	Commercial
Illinois	770 ILCS 15/1 et seq.	Yes	Sale, lease	Commercial
Kansas	K.S.A. 58-30a-01 et seq.	Yes	Sale, lease	Commercial
Kentucky	§376.075	Yes	Sale, lease	All real property
Louisiana	Title 9, Ch. 3, Sec 2781	Yes	Sale, lease	Commercial
Maine	10 MRSA §3251	No	Sale, lease	All real property
Maryland	§14-301 to 313	Yes	Lease	Commercial
Michigan	§570.581 §570.582 §570.583 §570.584 §570.593	Yes		Commercial
Missouri	§429.600 to 630	Yes	Sale, lease	Commercial
Nevada	NRS 645.8701 et seq.	Yes	Sale; lease	Personal: owner's net proceeds from

				the transaction
New Hampshire	§447-A et seq.	Yes	Sale, lease	Commercial
New York	Real Property, Sec. 294-b; Lien, Sec. 2.4	Yes	Lease (for a term of more than 3 years); Sale (non-lien)	Commercial (for lease transactions)
North Carolina	Available October 2011			Commercial
Ohio	§1311.85-93	Yes	Sale, lease	Commercial
Oklahoma	§42-202 §42-203 §42-208	Yes	Sale, lease	Commercial
Pennsylvania	Title 68, Ch. 24, Sec. 1051-1063	Yes	Sale, lease	Commercial
South Carolina	§29-5-21 §29-5-40 §29-5-70	Yes	Lease	Commercial
Tennessee	§62-13-501 §62-13-503	Yes	Lease	Commercial
Texas	Property Code Title 5, Ch. 62.001-141	Yes – notice of lien rights must appear in the written commission agreement	Sale, lease	Commercial
Virginia	§55-527	Yes	Lease	Tenant's rent payments up to 1st 20 years of rent payments
Washington	RCW Chapter 60.42.005 - 60.42.900	Yes	Sale, lease	Personal – only sale or lease proceeds
Wisconsin	§779.32	Yes	Sale, lease	Commercial

Sources for more information on Commercial Lien Laws

REALTORS® Library Field Guide to Commercial Broker Lien Law
<http://www.legalebook.com/ebook/eBookFrame.asp>