ENGROSSED SENATE
BILL NO. 876

By: Branan and Jolley of the Senate

and

Martin of the House

[liens - Commercial Real Estate Broker Lien Act -

codification -

effective date]

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 201 of Title 42, unless there is created a duplication in numbering, reads as follows:

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

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 202 of Title 42, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Commercial real estate" means any real estate other than:

   a. real estate containing one to four residential units, or

   b. real estate on which no buildings or structures are located and which is zoned for single-family residential use.

Commercial real estate shall not include single family residential units such as condominiums, townhouses, or homes in a subdivision 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 or real estate containing more than four residential units;

2. “Commission” means any and all compensation which may be due a broker for performance of licensed services; and

3. “Real estate broker” shall be defined pursuant to Section 858-102 of Title 59 of the Oklahoma Statutes.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 203 of Title 42, unless there is created a duplication in numbering, reads as follows:

A. A real estate broker shall have a lien, upon commercial real estate or any interest in that commercial real estate which is the subject of a purchase, lease or other conveyance to a buyer or tenant of an interest in the commercial real estate, in the amount that the broker is due for licensed services which shall include without limitation, brokerage fees, consulting fees, and management fees.

The lien shall be available only to the broker named in a written instrument signed by an owner, buyer, or tenant or their respective agents as applicable.

B. A lien under this act shall attach to commercial real estate or any interest in the commercial real estate when:

1. The broker is entitled to a stated fee or commission provided in a written instrument signed by the owner, buyer, tenant, or their respective authorized agents, as applicable; and

2. The broker records a notice of lien in the county clerk’s office of the county in which the real property is located, prior to the actual conveyance or transfer of the commercial real estate against which the broker is claiming a lien, except as provided in subsection C, D, E or F of this section. The lien shall attach as of the date of the recording of the notice of lien and does not and shall not relate back to the date of the written instrument.

C. <u>INSTALLMENTS.</u> Except as provided in subsections D, E or F of this section, when payment to a broker is due in installments, a portion of which is due after the conveyance or transfer of the

commercial real estate, any notice of lien for those payments due after the transfer or conveyance may be recorded at any time after the transfer or conveyance of the commercial real estate but within ninety (90) days of the date on which the payment is due. However, such notice of lien shall only be effective as a lien against the transferor's interest in the commercial real estate to the extent monies are still owed to the transferor by the transferee; but the lien shall be effective as a lien against the transferee's interest without limitations described above in this section. A single claim for a lien recorded prior to transfer or conveyance of the commercial real estate claiming all monies due under an installment payment agreement shall be valid and enforceable as it pertains to payment due after the transfer or conveyance; provided, however, as payments or partial payments of commission are received, the broker shall provide partial releases therefor, thereby reducing the amount due the broker under its notice of lien.

D. LEASES. In the case of a lease, including a sublease or assignment of lease, the notice of lien must be recorded not later than ninety (90) days after the tenant takes possession of the leased premises. The lien shall attach as of the recording of the notice of lien and shall not relate back to the date of the written instrument.

E. FUTURE COMMISSIONS. 1. If a broker may be due additional commission either as a result of future actions, including but not limited to the exercise of an option to expand the leased premises, to renew or extend a lease, or to purchase the property, or otherwise, pursuant to a written instrument signed by the then owner or tenant, the broker may record its notice or lien at any time after execution of the lease or other written instrument which contains such option but not later than ninety (90) days after the event or occurrence on which the future commission is claimed occurs. An action to foreclose a lien to collect future commissions

must be commenced within two (2) years of the occurrence or transaction on which the future commission is claimed.

2. In the event that the property is sold or otherwise conveyed prior to the date on which a future commission is due and if the broker has filed a valid notice of lien prior to the sale or other conveyance of the property, then the purchaser or transferee shall be deemed to have notice of and shall take title to the property subject to the notice of lien. Provided, however, that if a broker claiming a future commission fails to record its notice of lien for future commission prior to the recording of a deed conveying legal title to the property to the purchaser or transferee, then such broker may not claim a lien on the property. The provisions of this subsection shall not limit or otherwise affect claims or defenses a broker or owner or any other party may have on any other basis, in law or in equity.

F. BUYER'S BROKER. If a broker has a written agreement with a prospective buyer or tenant as described in paragraph 2 of subsection A of this section, then the lien shall attach upon the prospective buyer purchasing or otherwise accepting a conveyance or transfer of the commercial real estate and the recording of a notice of lien by the broker in the county clerk's office of the county in which the real property, or any interest in the real property is located, within ninety (90) days after the purchase or other conveyance or transfer to the buyer or tenant. The lien shall attach as of the date of the recording of the notice of lien and shall not relate back to the date of the written instrument.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 204 of Title 42, unless there is created a duplication in numbering, reads as follows:

The broker shall, within ten (10) days of recording its notice of lien, either mail a copy of the notice of lien to the owner of record on the commercial real estate by registered or certified mail

at the address of the owner stated in the written instrument on which the claim for lien is based, or if no such address is given, then to the address of the commercial real estate on which the claim of lien is based. Mailing of the copy of the notice of lien is effective when deposited in the United States mailbox with postage prepaid. The broker's lien shall be unenforceable if mailing or service of the copy of notice of lien does not occur at the time and in the matter required by this section.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 205 of Title 42, unless there is created a duplication in numbering, reads as follows:

A. A broker claiming a lien under this act shall, within two (2) years after recording the notice of lien, bring suit to enforce the lien in the district court in the county where the property is located. Failure to commence proceedings as required herein within two (2) years after recording the notice of lien shall extinguish the lien. No subsequent notice of lien may be given for the same claim nor may that claim be asserted in any proceedings under this act.

B. A broker claiming a lien based upon an option or other right to purchase or lease shall, within two (2) years after the transfer or conveyance of the commercial real estate under the exercise of the option to purchase or lease, commence proceedings by filing a complaint. Failure to commence proceedings within this time shall extinguish the lien. No subsequent notice of lien may be given for the same claim nor may that claim be asserted in any proceedings under this act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 206 of Title 42, unless there is created a duplication in numbering, reads as follows:

The notice of lien shall state the name of the claimant, the name of the owner, a description of the property upon which the lien

is being claimed, the amount for which the lien is claimed, and the license number of the real estate broker. The notice of lien shall recite that the information contained in the notice is true and accurate to the knowledge of the signator. The notice of lien shall be signed by the broker or by a person authorized to sign on behalf of the broker and shall be notarized.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 207 of Title 42, unless there is created a duplication in numbering, reads as follows:

A. Whenever a notice of lien has been filed with the county clerk and a condition occurs that would preclude the broker from receiving compensation under the terms of the written agreement on which the lien is based, the broker shall provide to the owner of record a written release or satisfaction of the lien.

B. An owner, lienee, or other authorized agent may serve written demand on the broker claiming the lien requiring the broker to file suit to enforce the lien. Upon receipt of the written demand, the broker shall file suit within thirty (30) days, or the lien shall be extinguished. Service of such written demand may be made by registered or certified mail, return receipt requested, or by personal service.

C. Whenever a notice of lien has been filed with the county clerk and such claimed commission has been paid to the broker claiming the lien, or where there is failure to institute a suit to enforce the lien within the time provided by this act, the broker shall acknowledge satisfaction or release of the notice of lien in writing, on written demand of the owner within five (5) days after payment or within five (5) days of expiration of the time in which the notice of lien was to be filed.

D. If the broker and the party or parties from whom the commission is claimed agree to alternative dispute resolution, the claim shall be heard and resolved in the forum on which these

parties have agreed. The court before which the lien foreclosure proceeding is brought shall retain jurisdiction to enter judgment on the award or other result made or reached on ADR on all parties to the foreclosure. The broker's notice of lien shall remain of record and the foreclosure proceeding shall be stayed during the pendency of the resolution process.

E. The cost of proceedings brought under this act, including reasonable attorneys' fees, costs, and prejudgment interest due to the prevailing party, shall be borne by the non-prevailing party or parties. When more than one party is responsible for costs, fees, and prejudgment interest, the costs, fees, and prejudgment interest shall be equitably appointed by the court or tribunal among those responsible parties.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 208 of Title 42, unless there is created a duplication in numbering, reads as follows:

Prior valid recorded liens, mortgages, and other encumbrances shall have priority over a broker's lien. Such prior recorded liens, mortgages, and encumbrances shall include, without limitation:

1. A valid mechanic's lien claim that is recorded after the broker's notice of lien but which relates back to a date prior to the recording date of the broker's notice of lien; and

2. Prior recorded liens securing revolving credit and future advances or construction loans.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 209 of Title 42, unless there is created a duplication in numbering, reads as follows:

Except as otherwise provided in this section, whenever a claim for lien has been filed with the county clerk, and an escrow account has been established either from the proceeds from the transaction or any other source of funds in an amount equal to one hundred

twenty-five percent (125%) of the amount of the claim for lien, then the lien against the commercial real estate shall be extinguished and become a lien on the funds contained in the escrow account. The establishment of an escrow account, as provided for in this section, shall not be cause for any party to refuse to close the transaction.

SECTION 10. This act shall become effective November 1, 2006.

Passed the Senate the 14th day of March, 2006.

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Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2006.

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Presiding Officer of the House
of Representatives