

3 Senate Bill No. 876
4 As Amended

5 SENATE BILL NO. 876 - By: BRANAN of the Senate and MARTIN of the
6 House.

7 [liens - Commercial Real Estate Broker Lien Act -
8 codification - effective date]

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

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

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

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

18 As used in this act:

- 19 1. "Commercial real estate" means any real estate other than:
20 a. real estate containing one to four residential units,
21 or
22 b. real estate on which no buildings or structures are
23 located and which is zoned for single-family
24 residential use.

1 Commercial real estate shall not include single family
2 residential units such as condominiums, townhouses, or homes in a
3 subdivision when sold, leased, or otherwise conveyed on a unit by
4 unit basis, even though these units may be a part of a larger
5 building or parcel or real estate containing more than four
6 residential units;

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

9 3. "Real estate broker" shall be defined pursuant to Section
10 858-102 of Title 59 of the Oklahoma Statutes.

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

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

21 1. Provided in a written instrument signed either by the owner
22 of an interest in the commercial real estate or by the owner's
23 authorized agent; or

1 2. Provided in a written instrument signed by a prospective
2 buyer or prospective tenant or their respective authorized agent.

3 The lien shall be available to only the broker named in the
4 instrument signed by the owner, buyer, or tenant or their respective
5 agents and not to an employee or independent contractor of the
6 broker.

7 B. This lien under this act shall attach to the commercial real
8 estate or any interest in the commercial real estate upon:

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

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

20 C. Except as provided in subsections D, E or F of this section,
21 when payment to a broker is due in installments, a portion of which
22 is due only after the conveyance or transfer of the commercial real
23 estate, any notice of lien for those payments due after the transfer

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

17 D. In the case of a lease, including a sublease or assignment
18 of lease, the notice of lien must be recorded not later than ninety
19 (90) days after the tenant takes possession of the leased premises.
20 However, if the transferor personally serves written notice of the
21 intended execution of the lease on the broker entitled to claim a
22 lien at least ten (10) days prior to the date of the intended
23 execution of the lease, the lien shall attach as of the recording of

1 the notice of lien and shall not relate back to the date of the
2 written instrument.

3 E. If a broker may be due additional commission either as a
4 result of future actions, including but not limited to the exercise
5 of an option to expand the leased premises, to renew or extend a
6 lease, or to purchase the property, or otherwise, pursuant to a
7 written instrument signed by the then owner or tenant, the broker
8 may record its notice or lien at any time after execution of the
9 lease or other written instrument which contains such option but not
10 later than ninety (90) days after the event or occurrence on which
11 the Future Commission is claimed occurs. Notwithstanding subsection
12 I of this section, an action to foreclose a lien to collect Future
13 Commissions must be commenced within two years of the occurrence or
14 transaction on which the Future Commission is claimed.

15 F. In the event that the property is sold or otherwise conveyed
16 prior to the date on which a Future Commission is due and if the
17 broker has filed a valid notice of lien prior to the sale or other
18 conveyance of the property, then the purchaser or transferee shall
19 be deemed to have notice of and shall take title to the property
20 subject to the notice of lien. Provided, however, that if a broker
21 claiming a Future Commission fails to record its notice of lien for
22 Future Commission prior to the recording of a deed conveying legal
23 title to the property to the purchaser or transferee, then such

1 broker may not claim a lien on the property. The provisions of this
2 subsection shall not limit or otherwise affect claims or defenses a
3 broker or owner or any other party may have on any other basis, in
4 law or in equity.

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

16 H. The broker shall, within ten (10) days of recording its
17 notice of lien, either mail a copy of the notice of lien to the
18 owner of record on the commercial real estate by registered or
19 certified mail, or the agent of the owner of record at the address
20 of the owner stated in the written instrument on which the claim for
21 lien is based, or if no such address is given, then to the address
22 of the property on which the claim of lien is based. In the notice
23 of lien is recorded within ten (10) days prior to closing, the

1 broker is not required to mail or personally serve a copy of the
2 notice of lien. Mailing of the copy of the notice of lien is
3 effective when deposited in the United States mailbox with postage
4 prepaid. The broker's lien shall be unenforceable if mailing or
5 service of the copy of notice of lien does not occur at the time and
6 in the matter required by this section.

7 I. A broker may bring suit to enforce a lien in the district
8 court in the county where the property is located by filing a
9 complaint and sworn affidavit that the notice of lien has been
10 recorded.

11 The broker claiming a lien shall, within two years after
12 recording the notice of lien, commence proceedings, by filing a
13 complaint. Failure to commence proceedings as required herein
14 within two (2) years after recording the notice of lien shall
15 extinguish the lien. No subsequent notice of lien may be given for
16 the same claim nor may that claim be asserted in any proceedings
17 under this act.

18 A broker claiming a lien based upon an option or other right to
19 purchase or lease shall, within two (2) years after the transfer or
20 conveyance of the commercial real estate under the exercise of the
21 option to purchase or lease, commence proceedings by filing a
22 complaint. Failure to commence proceedings within this time shall
23 extinguish the lien. No subsequent notice of lien may be given for

1 the same claim nor may that claim be asserted in any proceedings
2 under this act.

3 A complaint under this section shall contain a brief statement
4 of the contract or instrument on which the lien is founded, the date
5 when the contract or instrument was made, a description of the
6 services performed, the amount due and unpaid, a description of the
7 property that is subject to the lien, and other facts necessary for
8 a full understanding of the rights of the parties. The plaintiff
9 shall make all interested parties, of whose interest the plaintiff
10 is notified or has knowledge, defendants to the action, and shall
11 issue summons and provide services as in other civil actions. When
12 any defendant resides or has gone out of the state, or on inquiry
13 cannot be found, or is concealed within the state so that process
14 cannot be served on that defendant, the plaintiff shall cause a
15 notice to be given to that defendant, or cause a copy of the
16 complaint to be served upon that defendant in the manner and upon
17 the same conditions as in other civil actions. Failure of the
18 plaintiff to provide proper summons or notice shall be grounds for
19 judgment against the plaintiff and in favor of the defendant who is
20 not properly served with summons or notice with prejudice. All
21 liens claimed under this act shall be foreclosed pursuant to the
22 laws of this state.

1 J. The notice of lien shall state the name of the claimant, the
2 name of the owner, a description of the property upon which the lien
3 is being claimed, the amount for which the lien is claimed, and the
4 real estate broker's license number of the broker. The notice of
5 lien shall recite that the information contained in the notice is
6 true and accurate to the knowledge of the signator. The notice of
7 lien shall be signed by the broker or by a person authorized to sign
8 on behalf of the broker and shall be verified.

9 K. Whenever a notice of lien has been filed with the county
10 clerk and a condition occurs that would preclude the broker from
11 receiving compensation under the terms of the written agreement on
12 which the lien is based, the broker shall provide to the owner of
13 record, within ten (10) days following written demand by the owner
14 of record, a written release or satisfaction of the lien.

15 L. Upon written demand of the owner, lienee, or other
16 authorized agent of the owner or lienee, which demand shall be
17 served on the broker claiming the lien requiring suit to be
18 commenced to enforce the lien or answer to filed in a pending suit,
19 a suit shall be commenced or answer filed within thirty (30) days
20 thereafter, or the lien shall be extinguished. Service of such
21 written demand may be made by registered or certified mail, return
22 receipt requested, or by personal service.

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

9 N. If the broker and the party or parties from whom the
10 commission is claimed agree to alternative dispute resolution, the
11 claim shall be heard and resolved in the forum on which these
12 parties have agreed. The court before which the lien foreclosure
13 proceeding is brought shall retain jurisdiction to enter judgment on
14 the award or other result made or reached on ADR on all parties to
15 the foreclosure. The broker's notice of lien shall remain of record
16 and the foreclosure proceeding shall be stayed during the pendency
17 of the resolution process.

18 O. The cost of proceedings brought under this act, including
19 reasonable attorneys' fees, costs, and prejudgment interest due to
20 the prevailing party, shall be borne by the non-prevailing party or
21 parties. When more than one party is responsible for costs, fees,
22 and prejudgment interest, the costs, fees, and prejudgment interest

1 shall be equitably appointed by the court or tribunal among those
2 responsible parties.

3 P. Except for a waiver or release of lien provided in
4 consideration of payment of the fee claimed by the broker, or
5 pursuant to subsections K and M of this section, any waiver of a
6 broker's right to lien commercial property under this statute, any
7 other waiver or release of lien shall be void.

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

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

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

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

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

1 Except as otherwise provided in this section, whenever a claim
2 for lien has been filed with the county clerk, and an escrow account
3 is established either from the proceeds from the transaction
4 conveyance or any other source of funds in a amount computed as One
5 Hundred Twenty-five percent (125%) of the amount of the claim for
6 lien then the lien against the real estate shall be extinguished and
7 become alien on the funds contained in the escrow account. The
8 requirement to establish an escrow account, as provided for in this
9 section, shall not be cause for any party to refuse to close the
10 transaction.

11 SECTION 6. This act shall become effective November 1, 2005.

12 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-22-05 - DO
13 PASS, As Amended and Coauthored.