STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

SENATE BILL 876 By: Branan

AS INTRODUCED

An Act relating to liens; creating the Commercial Real Estate Broker Lien Act; providing short title; defining terms; creating lien on certain property for specified fees; stating form of specified lien; requiring certain acts for certain lien to attach; stating effect of installment payments on specified lien; stating effect of certain notice of lien; stating validity of certain lien; requiring certain lien to be recorded within stated time period under certain circumstances; requiring certain action be commenced within specified time period; stating consequences for failure to file certain notice; requiring mailing of certain notice to specified owner; stating jurisdiction for certain suit; requiring certain content of specified complaint; requiring certain notice and service of process; requiring certain content for specified notice of lien; requiring release of specified lien under certain circumstances; allowing certain methods of service; requiring written release of lien under certain circumstances; allowing alternative dispute resolution for certain claims; requiring certain parties to pay specified fees and costs; declaring certain waiver void; establishing priority of certain lien; authorizing establishment of certain escrow accounts in certain amounts; providing for codification; and providing an 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:

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

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

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

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

1. The broker being otherwise 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 recording 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. 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 only 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 which is subsequent to the transfer or conveyance of the commercial real estate and which time is 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 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 therefore, thereby reducing the amount due the broker under its notice of lien.

D. 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. However, if the transferor personally serves written notice of the intended execution of the lease on the broker entitled to claim a lien at least ten (10) days prior to the date of the intended execution of the lease, 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. 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. Notwithstanding subsection I of this section, an action to foreclose a lien to collect Future Commissions must be commenced within two years of the occurrence or transaction on which the Future Commission is claimed.

F. 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.

G. 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.

H. 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, or the agent of the owner of record 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 property on which the claim of lien is based. In the notice of lien is recorded within ten (10) days prior to closing, the broker is not required to mail or personally serve a copy of the notice of lien. 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.

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

The broker claiming a lien shall, within two years after recording the notice of lien, commence proceedings, by filing a complaint. 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.

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.

A complaint under this section shall contain a brief statement of the contract or instrument on which the lien is founded, the date when the contract or instrument was made, a description of the services performed, the amount due and unpaid, a description of the property that is subject to the lien, and other facts necessary for a full understanding of the rights of the parties. The plaintiff shall make all interested parties, of whose interest the plaintiff is notified or has knowledge, defendants to the action, and shall issue summons and provide services as in other civil actions. When any defendant resides or has gone out of the state, or on inquiry cannot be found, or is concealed within the state so that process cannot be served on that defendant, the plaintiff shall cause a notice to be given to that defendant, or cause a copy of the

complaint to be served upon that defendant in the manner and upon the same conditions as in other civil actions. Failure of the plaintiff to provide proper summons or notice shall be grounds for judgment against the plaintiff and in favor of the defendant who is not properly served with summons or notice with prejudice. All liens claimed under this act shall be foreclosed pursuant to the laws of this state.

J. 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 real estate broker's license number of the 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 verified.

K. 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, within ten (10) days following written demand by the owner of record, a written release or satisfaction of the lien.

L. Upon written demand of the owner, lienee, or other authorized agent of the owner or lienee, which demand shall be served on the broker claiming the lien requiring suit to be commenced to enforce the lien or answer to filed in a pending suit, a suit shall be commenced or answer filed within thirty (30) days thereafter, 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.

M. 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 or the notice of lien in writing, on written demand of the owner within five (5) days after payment or within five (5) days or expiration of the time in which the notice of lien was to be filed.

N. 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.

O. 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.

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

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:

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 subsequent to 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 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:

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

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

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