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Short Title: Commercial Real Estate Broker Lien Act.

(Public)

Sponsors:

Referred to:

February 24, 2011

A BILL TO BE ENTITLED

AN ACT TO ENACT THE COMMERCIAL REAL ESTATE BROKER LIEN ACT.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 2 of Chapter 44A of the General Statutes is amended by adding a new Part to read:

"Part 4. Commercial Real Estate Broker Lien Act.

**"§ 44A-24.1. Short title.**

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

**"§ 44A-24.2. Definitions.**

The following definitions apply in this Part:

- (1) Broker. – A real estate broker licensed pursuant to Chapter 93A of the General Statutes.
- (2) Broker services. – Services for which a license issued by the North Carolina Real Estate Commission is required pursuant to Chapter 93A of the General Statutes.
- (3) Commercial real estate. – Any real property or interest therein, whether freehold or nonfreehold, which at the time the property or interest is made the subject of an agreement for broker services:
  - a. Is lawfully used primarily for sales, office, research, institutional, warehouse, manufacturing, industrial, or mining purposes or for multifamily residential purposes involving five or more dwelling units;
  - b. May lawfully be used for any of the purposes listed in subdivision (3) of this section by a zoning ordinance adopted pursuant to the provisions of Article 18 of Chapter 153A or Article 19 of Chapter 160A of the General Statutes or which is the subject of an official application or petition to amend the applicable zoning ordinance to permit any of the uses listed in subdivision (3) of this section which is under consideration by the government agency with authority to approve the amendment; or
  - c. Is in good faith intended to be immediately used for any of the purposes listed in subdivision (3) of this section by the parties to any contract, lease, option, or offer to make any contract, lease, or option.



1           (4)    Commission. – Any compensation which is due a broker for performance of  
2               broker services.

3           (5)    Lien claimant. – A broker claiming a lien pursuant to this Part.

4           (6)    Owner. – The owner of record of any interest in commercial real estate.

5    **"§ 44A-24.3. Commercial real estate lien.**

6           (a)    A broker shall have a lien upon commercial real estate in the amount that the broker  
7    is due under a written agreement for broker services signed by the owner or signed by the  
8    owner's duly authorized agent, if:

9               (1)    The broker has performed under the provisions of the agreement;

10              (2)    The written agreement for broker services clearly sets forth the broker's  
11               duties to the owner; and

12              (3)    The written agreement for broker services sets forth the conditions upon  
13               which the compensation shall be earned and the amount of such  
14               compensation.

15           (b)    The lien under this section shall be available only to the broker named in the  
16    instrument signed by the owner or the owner's duly authorized agent. A lien under this section  
17    shall be available only against the commercial real estate which is the subject of the written  
18    agreement for broker services.

19           (c)    When payment of commission to a broker is due in installments, a portion of which  
20    is due only after the conveyance or transfer of the commercial real estate, any notice of lien for  
21    those payments due after the transfer or conveyance may be recorded at any time subsequent to  
22    the transfer or conveyance of the commercial real estate and within 90 days of the date on  
23    which the payment is due. The notice of lien shall be effective as a lien against the owner's  
24    interest in the commercial real estate only to the extent funds are owed to the owner by the  
25    transferee, but the lien shall be effective as a lien against the transferee's interest in the  
26    commercial real estate. A single claim for lien filed prior to transfer or conveyance of the  
27    commercial real estate claiming all commissions due in installments shall also be valid and  
28    enforceable as it pertains to payments due after the transfer or conveyance; provided, however,  
29    that as payments or partial payments of commission are received, the broker shall provide  
30    partial releases for those payments, thereby reducing the amount due the broker under the  
31    broker's lien.

32    **"§ 44A-24.4. When lien attaches to commercial real estate.**

33           A lien authorized by this Part attaches to the commercial real estate only when the lien  
34    claimant files a timely notice of the lien conforming to the requirements of G.S. 44A-24.5 and  
35    this section in the office of the clerk of superior court. A notice of lien is timely if it is filed  
36    after the claimant's performance under the written agreement for broker services and before the  
37    conveyance or transfer of the commercial real estate which is the subject of the lien, except that  
38    in the case of a lease or transfer of a nonfreehold interest, the notice of a lien shall be filed no  
39    later than 90 days following the tenant's possession of the commercial real estate or no later  
40    than 60 days following any date or dates set out in the written agreement for broker services for  
41    subsequent payment or payments. When a notice of a lien is filed more than 30 days preceding  
42    the date for settlement or possession set out in an offer to purchase, sales contract, or lease,  
43    which establishes the broker's claim of performance, the lien shall be available only upon  
44    grounds of the owner's breach of the written agreement for broker services.

45    **"§ 44A-24.5. Lien notice; content.**

46           (a)    A lien notice under this Part shall be signed by the lien claimant and shall contain an  
47    attestation by the lien claimant that the information contained in the notice is true and accurate  
48    to the best of the lien claimant's knowledge and belief.

49           (b)    The lien notice shall include all of the following information:

50               (1)    The name of the lien claimant.

51               (2)    The name of the owner.

1           (3)    A description of the commercial real estate upon which the lien is being  
2               claimed.

3           (4)    The amount for which the lien is claimed and whether the amount is due in  
4               installments.

5           (5)    The claimant's grounds for the lien, including a reference to the written  
6               agreement for broker services that is the basis for the lien.

7    **"§ 44A-24.6. When lien claim release or satisfaction to be filed.**

8           If a claim for a lien has been filed with the clerk of superior court and a condition occurs  
9           that would preclude the lien claimant from receiving compensation under the terms of the  
10           written agreement for broker services on which the lien is based, the lien claimant shall file and  
11           serve the owner of record a written release or satisfaction of the lien promptly, and in no event  
12           more than 30 days after the demand.

13   **"§ 44A-24.7. Lien claimant to mail copy of notice of lien to owner by certified mail.**

14           Any lien claimant who files a lien on commercial real estate pursuant to the provisions of  
15           this Part shall mail a copy of the notice of the lien to the owner of the commercial real estate by  
16           certified mail, return receipt requested, or shall serve a copy of the notice of the lien in  
17           accordance with any of the provisions for service of process set forth in G.S. 1A-1, Rule 4. The  
18           lien claimant shall file proof of service with the clerk of the superior court. The lien is void if  
19           the lien claimant does not file and serve the lien as provided in this Part.

20   **"§ 44A-24.8. Enforcing lien.**

21           A lien claimant may bring suit to enforce a lien which attaches pursuant to the provisions of  
22           this Part in any court of competent jurisdiction in the county where the commercial real estate  
23           is located. The lien claimant shall commence proceedings within 18 months after filing the lien,  
24           and failure to commence proceedings within the 18 months shall extinguish the lien. If a claim  
25           is based upon an option to purchase the commercial real estate, the lien claimant shall  
26           commence proceedings within one year of the option to purchase being exercised. A claim for  
27           the same lien extinguished pursuant to this section and G.S. 44A-24.10 may not be asserted in  
28           any subsequent proceeding. A lender shall not be made a party to any suit to enforce a lien  
29           under this Part unless the lender has willfully caused the nonpayment of the commission giving  
30           rise to the lien.

31   **"§ 44A-24.9. Complaint; content; parties' foreclosure action; procedure.**

32           (a)    A complaint filed pursuant to the provisions of this section and G.S. 44A-24.8 shall  
33           contain all of the following:

34               (1)    A statement of the terms of the written agreement for broker services on  
35                which the lien is based or a copy of the written contract or agreement.

36               (2)    The date when the written agreement for broker services was made.

37               (3)    A description of the services performed.

38               (4)    The amount due and unpaid.

39               (5)    A description of the property that is subject to the lien.

40               (6)    Any other facts necessary for a full understanding of the rights of the parties.

41           (b)    The plaintiff shall file the action against all parties that have an interest of record in  
42           the commercial real estate; provided that a lender shall not be made a party to any suit to  
43           enforce a lien under this Part unless the lender has willfully caused the nonpayment of the  
44           commission giving rise to the lien: a foreclosure action for a lien claimed pursuant to this Part  
45           shall be brought pursuant to the provisions of this Article.

46           (c)    Valid prior recorded liens or mortgages shall have priority over a lien under this  
47           Part.

48   **"§ 44A-24.10. Lien extinguished for lien claimant failing to file suit or answer in pending**  
49           suit within 30 days after service on owner.

50           If a lien claimant fails to file a suit to enforce the lien or fails to file an answer in a pending  
51           suit to enforce a lien within 30 days after a properly served written demand of the owner,

1 lienee, or other authorized agent, the lien shall be extinguished. Service of the demand shall be  
2 by registered or certified mail, return receipt requested, or by personal service. The claimant  
3 shall file proof of properly served written demand with the clerk of the superior court. The  
4 provisions of this section shall not extend to any other deadline provided by law for the filing  
5 of any pleadings or for the foreclosure of any lien governed by this Part.

6 **"§ 44A-24.11. Satisfaction or release of lien.**

7 If a claim for a lien has been filed pursuant to the provisions of this Part with the clerk of  
8 superior court and the claim has been paid in full, or if the lien claimant fails to institute a suit  
9 to enforce the lien within the time as provided by law, the lien claimant shall acknowledge  
10 satisfaction or release of the lien in writing upon written demand of the owner promptly, and in  
11 no event more than 30 days after the demand.

12 **"§ 44A-24.12. Cost of proceeding to be paid by nonprevailing party.**

13 The costs of any proceeding brought to enforce a lien filed pursuant to this Part, including  
14 reasonable attorneys' fees and prejudgment interest due to the prevailing party, shall be paid by  
15 the nonprevailing party or parties. If more than one party is responsible for costs, fees, and  
16 prejudgment interest, the costs, fees, and prejudgment interest shall be equitably apportioned by  
17 the court among the responsible parties.

18 **"§ 44A-24.13. Discharge of lien.**

19 (a) Unless an alternative procedure is available and is acceptable to the transferee in a  
20 real estate transaction, any claim of lien on commercial real estate filed under this Article may  
21 be discharged by any of the following methods:

- 22 (1) The lien claimant of record, the claimant's agent, or attorney, in the presence  
23 of the clerk of superior court, may acknowledge the satisfaction of the claim  
24 of lien on the commercial real estate indebtedness, whereupon the clerk of  
25 superior court shall enter on the record of the claim of lien on the  
26 commercial real estate the acknowledgment of satisfaction, which shall be  
27 signed by the lien claimant of record, the claimant's agent, or attorney, and  
28 witnessed by the clerk of superior court.
- 29 (2) The owner may exhibit an instrument of satisfaction signed and  
30 acknowledged by the lien claimant of record, which instrument states that  
31 the claim of lien on the commercial real estate indebtedness has been paid or  
32 satisfied, whereupon the clerk of superior court shall cancel the claim of lien  
33 on the commercial real estate by entry of satisfaction on the record of the  
34 claim of lien on the commercial real estate.
- 35 (3) By failure to enforce the claim of lien on the commercial real estate within  
36 the time prescribed in this Article.
- 37 (4) By filing in the office of the clerk of superior court the original or certified  
38 copy of a judgment or decree of a court of competent jurisdiction showing  
39 that the action by the claimant to enforce the claim of lien on the commercial  
40 real estate has been dismissed or finally determined adversely to the  
41 claimant.
- 42 (5) Whenever funds in an amount equal to one hundred twenty-five percent  
43 (125%) of the amount of the claim of lien on the commercial real estate is  
44 deposited with the clerk of superior court to be applied to the payment  
45 finally determined to be due, whereupon the clerk of superior court shall  
46 cancel the claim of lien on the commercial real estate.
- 47 (6) Whenever a corporate surety bond, in an amount equal to one hundred  
48 twenty-five percent (125%) of the amount of the claim of lien on the  
49 commercial real estate and conditioned upon the payment of the amount  
50 finally determined to be due in satisfaction of the claim of lien on the  
51 commercial real estate is deposited with the clerk of superior court,

1                    whereupon the clerk of superior court shall cancel the claim of lien on the  
2                    commercial real estate.

3                    (7)            By failure to file documentation if required pursuant to G.S. 44A-24.6 or  
4                    G.S. 44A-24.10.

5                    (b)            If funds in an amount equal to one hundred twenty-five percent (125%) of the  
6                    amount that is sufficient to release the claim of lien have been deposited with the clerk of  
7                    superior court, or a bond in an equal amount has been secured, the lien claimant shall release  
8                    the claim for the lien on the commercial real estate, and the lien claimant shall have a lien on  
9                    the funds deposited with the clerk of superior court.

10                    **"§ 44A-24.14. Priority of lien under this Part.**

11                    Any claim of lien on real property or claim of lien on funds allowed under Part 1 or Part 2  
12                    of this Article shall be deemed superior in all respects to any lien asserted under this Part,  
13                    regardless of the effective date of the competing liens and shall survive notwithstanding any  
14                    judgment awarding a lien under this Part. No lien claimant filing a lien pursuant to this Part  
15                    shall be entitled to participate in any pro rata distributions to claimants proceeding under  
16                    G.S. 44A-21."

17                    **SECTION 2.** Article 1 of Chapter 93A of the General Statutes is amended by  
18 adding a new section to read:

19                    **"§ 93A-13. Contracts for broker services.**

20                    No action between a broker and the broker's client for recovery under an agreement for  
21                    broker services is valid unless the contract is reduced to writing and signed by the party to be  
22                    charged or by some other person lawfully authorized by the party to sign."

23                    **SECTION 3.** This act becomes effective October 1, 2011, and applies to written  
24 agreements signed by the owner of commercial real estate or the owner's duly authorized agent  
25 on or after that date.