

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1356

Short Title: Commercial Real Estate Broker Lien Act. (Public)

Sponsors: Representatives McCormick, Gibson (Primary Sponsors); Brubaker, Cole, Crawford, Daughtry, Goforth, Holliman, Howard, Jones, Killian, Lewis, Samuelson, Stewart, Tillis, and Wray.

Referred to: Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary II.

April 9, 2009

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) 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 brokerage 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 (1) 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 (1) 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 (1) of this section by the parties to any contract, lease, option, or offer to make any contract, lease, or option.
- (2) Broker. – A real estate broker licensed pursuant to Chapter 93A of the General Statutes.
- (3) Broker services. – Services for which a license issued by the North Carolina Real Estate Commission is required.
- (4) Commission. – Any compensation which is due a broker for performance of broker services.



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

2 (6) Owner. – The owner of record of commercial real estate.

3 **"§ 44A-24.3. Commercial real estate lien.**

4 (a) A broker shall have a lien upon commercial real estate or any interest in that
5 commercial real estate in the amount that the broker is due under either:

6 (1) A written instrument signed by the owner of an interest in the commercial
7 real estate or signed by the owner's duly authorized agent.

8 (2) A written instrument signed by a prospective buyer or prospective tenants or
9 signed by their duly authorized agent as to the purchase, lease, or other
10 conveyance to the buyer or tenant of an interest in the commercial real
11 estate.

12 (b) The lien under this section shall be available only to the broker named in the
13 instrument signed by the owner, buyer, or tenant or by the agent of the owner, buyer, or tenant.

14 **"§ 44A-24.4. Lien notice; content.**

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

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

19 (1) The name of the lien claimant.

20 (2) The name of the owner of the commercial real estate.

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

23 (4) The amount for which the lien is claimed.

24 (5) The basis for the lien.

25 **"§ 44A-24.5. When lien attaches to commercial real estate.**

26 A lien authorized by this Part attaches to the commercial real estate, or an interest in the
27 commercial real estate, when the lien claimant files notice of the lien in the office of the
28 register of deeds of the county in which the real property, or any interest in the real property is
29 located, if such lien is filed prior to the actual conveyance or transfer of the commercial real
30 estate subject to the lien, except that:

31 (1) In the case of a lease, the claim for lien shall be filed within 90 days after the
32 tenant takes possession of the leased property, unless written notice of the
33 intention to sign the lease is personally served on the person entitled to claim
34 a lien at least 10 days before the date of the intended signing of the lease,
35 then the claim for lien shall be filed before the date indicated for the signing
36 of the lease. The lien attaches for purposes of this subdivision when the
37 claim for lien is filed.

38 (2) If the lien claimant has a written agreement with a prospective buyer or the
39 prospective buyer's agent as provided in subdivision (2) of subsection (a) of
40 G.S. 44A-24.3, or if the buyer or the buyer's agent has signed a written
41 instrument as described in that subdivision, then the lien attaches when the
42 prospective buyer purchases or otherwise accepts a conveyance or transfer of
43 the commercial real estate and files a notice of the lien within 90 days after
44 the purchase or other conveyance or transfer to the buyer in the office of the
45 register of deeds in the county in which the commercial real estate, or any
46 interest in the commercial real estate, is located.

47 **"§ 44A-24.6. When lien claim release or satisfaction to be filed.**

48 If a claim for a lien has been filed with the register of deeds and a condition occurs that
49 would preclude the lien claimant from receiving compensation under the terms of the written
50 instrument on which the lien is based, the lien claimant shall file and provide the owner of
51 record a written release or satisfaction of the lien.

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

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

"§ 44A-24.8. Enforcing lien.

A lien claimant may bring suit to enforce a lien which attaches pursuant to the provisions of this Part in any court of competent jurisdiction in the county where the property is located by filing a verified petition that the lien has been properly filed. Unless the claim is based upon an option to purchase the commercial real estate, the lien claimant shall commence proceedings within two years after filing the lien, and failure to commence proceedings within the two years shall extinguish the lien. A claim for the same lien extinguished pursuant to this section and G.S. 44A-24.10, may not be asserted in any subsequent proceeding.

"§ 44A-24.9. Petition; content; parties' foreclosure action; procedure.

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

- (1) A statement of the terms of the contract or agreement on which the lien is based.
- (2) The date when the contract or agreement was made.
- (3) A description of the services performed.
- (4) The amount due and unpaid.
- (5) A description of the property that is subject to the lien.
- (6) Any other facts necessary for a full understanding of the rights of the parties.

(b) The plaintiff shall file the action against all parties which have an interest of record in the commercial real estate. A foreclosure action for a lien claimed pursuant to this Part shall be brought pursuant to the provisions of Article 1 of Chapter 44A of the General Statutes.

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

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

If a lien claimant fails to file a suit to enforce the lien or fails to file an answer in a pending suit to enforce a lien within 30 days after a properly served written demand of the owner, lienee, or other authorized agent, the lien shall be extinguished. Service of the demand shall be by registered or certified mail, return receipt requested, or by personal service. The provisions of this section shall not extend to any other deadline provided by law or the filing of any pleadings or for the foreclosure of any lien governed by this Part.

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

If a claim for lien has been filed pursuant to the provisions of this Part with the register of deeds and the claim has been paid in full or if the lien claimant fails to institute a suit to enforce the lien within the time as provided by law, the lien claimant shall acknowledge satisfaction or release of the lien in writing upon written demand of the owner within 30 days after the demand.

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

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

"§ 44A-24.13. Escrow account.

1 (a) Unless an alternative procedure is available and is acceptable to the transferee in a
2 real estate transaction, if a lien claim under this Part has been filed with the register of deeds
3 and that lien would prevent the closing of a transaction or conveyance, an escrow account shall
4 be established with the clerk of the superior court in the county in which the commercial real
5 estate is located from the proceeds of the transaction or conveyance in an amount equal to one
6 hundred fifty percent (150%) of the amount that is sufficient to release the claim of lien. The
7 requirement to establish an escrow account, as provided in this section, shall not be cause for
8 any party to refuse to close a transaction. The proceeds held in that escrow account shall be
9 held by the clerk until the parties' rights to the escrowed funds have been determined by either:

10 (1) Written agreement of the parties.

11 (2) A final judgment of a court of competent jurisdiction.

12 (3) Other process to which the parties may agree.

13 (b) If funds in an amount equal to one hundred fifty percent (150%) of the amount that
14 is sufficient to release the claim of lien have been deposited in the escrow account, the lien
15 claimant shall release the claim for the lien on the real estate, and the lien claimant shall have a
16 lien on the escrowed funds."

17 **SECTION 2.** This act becomes effective December 1, 2009.