

AMENDMENTS TO LB 3

(Amendments to Standing Committee amendments, AM351)

Introduced by Lathrop

1 1. Insert the following new sections:

2 Sec. 7. Sections 7 to 14 of this act shall be known and
3 may be cited as the Commercial Real Estate Broker Lien Act.

4 Sec. 8. For purposes of the Commercial Real Estate Broker
5 Lien Act:

6 (1) Commercial real estate means any real estate other
7 than real estate containing no more than four residential units or
8 real estate on which no buildings or structures are located and
9 that is zoned for single-family residential use. Commercial real
10 estate does not include single-family residential units such as
11 condominiums, town houses, or homes in a subdivision when sold,
12 leased, or otherwise conveyed on a unit-by-unit basis, even though
13 these units may be a part of a larger building or parcel of real
14 estate containing more than four residential units;

15 (2) Commission means any and all compensation that may
16 be due a commercial real estate broker for performance of licensed
17 services; and

18 (3) Commission agreement means a written agreement
19 with a designated commercial real estate broker as required by
20 subdivisions (2) through (6) of section 76-2422.

21 Sec. 9. (1)(a) A commercial real estate broker shall
22 have a lien upon commercial real estate or any interest in that

1 commercial real estate that is the subject of a purchase, lease,
2 or other conveyance to a buyer or tenant of an interest in the
3 commercial real estate in the amount of commissions that the
4 commercial real estate broker is due.

5 (b) The lien shall be available only to the commercial
6 real estate broker named in a commission agreement signed by an
7 owner, buyer, or tenant or their respective authorized agents as
8 applicable and is not available to an employee, agent, subagent, or
9 independent contractor of a commercial real estate broker.

10 (2) A lien under this section shall attach to commercial
11 real estate or any interest in the commercial real estate when:

12 (a) The commercial real estate broker is entitled to
13 a commission provided in a commission agreement signed by the
14 owner, buyer, tenant, or their respective authorized agents, as
15 applicable; and

16 (b) The commercial real estate broker records a notice
17 of lien in the office of the register of deeds of the county in
18 which the commercial real estate is located, prior to the actual
19 conveyance or transfer of the commercial real estate against which
20 the commercial real estate broker is claiming a lien, except as
21 provided in this section. The lien shall attach as of the date of
22 the recording of the notice of lien and shall not relate back to
23 the date of the commission agreement.

24 (3) In the case of a lease, including a sublease or an
25 assignment of a lease, the notice of lien shall be recorded not
26 later than ninety days after the tenant takes possession of the
27 leased premises. 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 commission agreement.

3 (4) (a) If a commercial real estate broker is due an
4 additional commission as a result of future actions, including, but
5 not limited to, the exercise of an option to expand the leased
6 premises or to renew or extend a lease pursuant to a commission
7 agreement signed by the then owner or tenant, the commercial real
8 estate broker may record its notice of lien at any time after
9 execution of the lease or other commission agreement which contains
10 such option, but not later than ninety days after the event or
11 occurrence on which the future commission is claimed occurs.

12 (b) In the event that the commercial real estate is
13 sold or otherwise conveyed prior to the date on which a future
14 commission is due, and if the commercial real estate broker
15 has filed a valid notice of lien prior to the sale or other
16 conveyance of the commercial real estate, then the purchaser or
17 transferee shall be deemed to have notice of and shall take title
18 to the commercial real estate subject to the notice of lien. If
19 a commercial real estate broker claiming a future commission fails
20 to record its notice of lien for future commission prior to the
21 recording of a deed conveying legal title to the commercial real
22 estate to the purchaser or transferee, then such commercial real
23 estate broker shall not claim a lien on the commercial real estate.
24 This subsection shall not limit or otherwise affect claims or
25 defenses a commercial real estate broker or owner or any other
26 party may have on any other basis, in law or in equity.

27 (5) If a commercial real estate broker has a commission

1 agreement as described in subdivision (4)(a) of this section with
2 a prospective buyer or tenant, then the lien shall attach upon the
3 prospective buyer purchasing or otherwise accepting a conveyance
4 or transfer of the commercial real estate and the recording of a
5 notice of lien by the commercial real estate broker in the office
6 of the register of deeds of the county in which the commercial
7 real estate, or any interest in the commercial real estate, is
8 located, within ninety days after the purchase or other conveyance
9 or transfer to the buyer or tenant. The lien shall attach as of the
10 date of the recording of the notice of lien and shall not relate
11 back to the date of the commission agreement.

12 Sec. 10. The commercial real estate broker shall, within
13 ten days after recording its notice of lien, either mail a copy of
14 the notice of lien to the owner of record of the commercial real
15 estate by registered or certified mail at the address of the owner
16 stated in the commission agreement on which the claim for lien is
17 based or, if no such address is given, then to the address of the
18 commercial real estate on which the claim of lien is based. Mailing
19 of the copy of the notice of lien is effective when deposited in
20 a United States mailbox with postage prepaid. The commercial real
21 estate broker's lien shall be unenforceable if mailing or service
22 of the copy of notice of lien does not occur at the time and in the
23 manner required by this section.

24 Sec. 11. The notice of lien shall state the name of
25 the commercial real estate broker, the name as reflected in
26 the commercial real estate broker's records of any person the
27 commercial real estate broker believes to be an owner of the

1 commercial real estate on which the lien is claimed, the name
2 as reflected in the commercial real estate broker's records of
3 any person whom the commercial real estate broker believes to be
4 obligated to pay the commission under the commission agreement, a
5 description legally sufficient for identification of the commercial
6 real estate upon which the lien is claimed, and the amount for
7 which the lien is claimed. The notice of lien shall recite that
8 the information contained in the notice is true and accurate to the
9 knowledge of the signatories. The notice of lien shall be signed
10 by the commercial real estate broker or by a person authorized to
11 sign on behalf of the commercial real estate broker and shall be
12 notarized.

13 Sec. 12. (1) Except as provided in subsections (2) and
14 (3) of this section, a lien that has become enforceable as provided
15 in section 9 of this act shall continue to be enforceable for two
16 years after the recording of the lien.

17 (2) Except as provided in subsection (3) of this section,
18 if an owner, holder of a security interest, mortgage, or trust
19 deed, or other person having an interest in the commercial real
20 estate gives the commercial real estate broker written demand to
21 institute a judicial proceeding within thirty days, the lien lapses
22 unless, within thirty days after receipt of the written demand, the
23 commercial real estate broker institutes judicial proceedings.

24 (3) If a judicial proceeding to enforce a lien is
25 instituted while a lien is effective under subsection (1) or (2)
26 of this section, the lien continues during the pendency of the
27 proceeding.

1 Sec. 13. (1) Recorded liens, mortgages, trust deeds, and
2 other encumbrances on commercial real estate, including a recorded
3 lien securing revolving credit and future advances for a loan,
4 recorded before the date the commercial real estate broker's lien
5 is recorded, shall have priority over the commercial real estate
6 broker's lien.

7 (2) A construction lien claim that is recorded after the
8 commercial real estate broker's notice of lien but that relates
9 back to a date prior to the recording date of the commercial real
10 estate broker's notice of lien has priority over the commercial
11 real estate broker's lien.

12 (3) A purchase-money lien executed by the buyer of
13 commercial real estate in connection with a loan for which any
14 part of the proceeds are used to pay the purchase price of the
15 commercial real estate has priority over a commercial real estate
16 broker's lien claimed for the commission owed by the buyer against
17 the commercial real estate purchased by the buyer.

18 Sec. 14. (1) Whenever a notice of a commercial real
19 estate broker's lien has been recorded, the record owner of the
20 commercial real estate, or the tenant in case of a lien upon
21 the leasehold estate, may have the lien released by depositing
22 funds equal to the full amount stated in the notice of lien plus
23 fifteen percent to be applied towards any lien under section 9
24 of this act. These funds shall be held in escrow by such person
25 and by such process which may be agreed to by the parties, either
26 in the commission agreement or otherwise, for the payment to the
27 commercial real estate broker or otherwise for resolution for their

1 dispute or, in the absence of any such mutually agreed person
2 or process, the funds may be deposited with the district court
3 by the filing of an interpleader. Upon such deposit of funds
4 by interpleader, the commercial real estate shall be considered
5 released from such lien or claim of lien. Upon written notice to
6 the commercial real estate broker that the funds have been escrowed
7 or an interpleader filed, the commercial real estate broker shall,
8 within ten business days, record in the office of the register of
9 deeds where the notice of commercial real estate broker's lien was
10 filed pursuant to section 9 of this act a document stating that
11 the lien is released and the commercial real estate released by
12 an escrow established pursuant to this section or by interpleader.
13 If the commercial real estate broker fails to file such document,
14 the person holding the funds may sign and file such document and
15 deduct from the escrow the reasonable cost of preparing and filing
16 the document. Upon the filing of such document, the commercial real
17 estate broker shall be deemed to have an equitable lien on the
18 escrow funds pending a resolution of the commercial real estate
19 broker's claim for payment and the funds shall not be paid to
20 any person, except for such payment to the holder of the funds as
21 set forth in this section, until a resolution of the commercial
22 real estate broker's claim for payment has been agreed to by all
23 necessary parties or ordered by a court having jurisdiction.

24 (2) Except as otherwise provided in this section,
25 whenever a commercial real estate broker's lien has been recorded
26 and an escrow account is established either from the proceeds from
27 the transaction, conveyance, or any other source of funds computed

1 as one-hundred-fifteen percent of the amount of the claim for
2 lien, then the lien against the commercial real estate shall be
3 extinguished and immediately become a lien on the funds contained
4 in the escrow account. The requirement to establish an escrow
5 account, as provided in this section, shall not be cause for any
6 party to refuse to complete or close the transaction.

7 2. Renumber the remaining sections accordingly.