



CLIENT UPDATE:

BROKERS: LIEN LAW MARKETING

“MULTI-STEP PROCESS TO SECURE YOUR RIGHTS”

Rhode Island has adopted a statute that permits real estate brokers to take a lien against, or an interest in, any commercial real estate that is subject to the purchase, lease or other transaction in which the broker plays a role. This statute is codified in the Rhode Island General Laws under Section 34-49-3 (the “Act”). The Act addresses those situations where a broker provides services to buyers, sellers or tenants, only to be cheated when their commission becomes due.

The statute imposes a multi-step process upon the broker to secure and enforce their rights.

- First, and certainly foremost, the broker must ensure that their right to compensation is included in a written instrument, which may include the instrument conveying the property. If there is no written instrument signed by the property’s owner, prospective buyer or an authorized agent thereof, a broker is not entitled to have a lien against the property.
- Second, the broker must record a notice of lien in the land evidence records of the municipality in which the real estate is located *before* the instrument conveying the property is recorded. As a lien only attaches to a property under the Act on the date of the lien’s recording, a broker that fails to timely record her notice of lien will have no standing to bring a claim against the owner of the property should she be inclined to do so.
- Lastly, the broker must provide the owner of the property with a copy of the notice of lien within ten days of the lien’s recording.
 - There is an exception to the requirement that the notice of lien be recorded prior to the conveyance. A broker may record her notice of lien subsequent to the recording of the conveyance instrument if the broker is being compensated on an installment basis and portions of such payments are still due after the property is finally conveyed. As a broker is gradually compensated under an installment plan she must provide partial releases to her lien of the property so that the lien reflects the amount actually owed to the broker.

The Act also protects brokers involved in commercial property rentals. A broker is provided a bit more leeway in filing her notice of lien under this circumstance, as she has up to ninety days from the date the tenant commences his occupancy of the property to record a notice of lien.

- There is one exception to the ninety-day deadline that brokers should be mindful of: if the landlord provides a broker with written notice of the parties’ intention to execute the lease at least ten days prior to the date of the intended execution, the broker must record her notice against the property prior to the execution of the lease.

The notice of lien provides notice to future transferees of the property. If a property is sold prior to the broker’s receipt of full compensation, then a properly recorded notice of lien may act as notice to a

subsequent purchaser of the broker's interest to the property. A broker who fails to record prior to such a transfer will not be protected under the Act.

The broker who has filed a lien must commence an action pursuant to the Act by filing a complaint and recording a notice of lis pendens in the land evidence records in the municipality of the property within two years of the date the notice of lien was recorded. A broker's failure to bring such an action will result in the extinguishment of the lien. An owner of a property may force the broker's hand and demand that the broker bring an action to enforce her right under the Act by sending notice to the broker. If the broker does not commence such an action within thirty days of receipt of such a notice, then the broker's lien will be extinguished.

At all times during which the notice of lien is in effect the broker must continue to be eligible to act upon the lien. Thus, if a lien is extinguished because a broker has not commenced an action in a timely fashion, conditions occur that preclude the broker from compensation under the written instrument upon which the lien was based or if the broker has received full compensation, the lien will no longer be in effect, and the broker may be required to provide the owner a written satisfaction or notice of release of the lien.

Although the Act requires brokers to follow several steps, it nonetheless provides a mechanism for brokers to protect their commission.

DarrowEverett has several knowledgeable and experienced attorneys who can guide and advise commercial property owners, buyer, tenants and brokers on this Act and how to protect their respective interests.

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