

Real Estate Law Update



by
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Legislative Update

On May 3, 2013, House Bill 29, known as the “Commercial Real Estate Broker’s Lien Act”, was signed into law. This legislation grants to a Delaware licensed real estate broker the statutory right to place a lien upon commercial real estate for unpaid commissions. These lien rights apply to brokerage agreements covering listing agreements, representation agreements, property management agreements, agreements of sale, leases, options or exchange agreements. The law applies to any brokerage agreements executed on or after August 1, 2013, but does not apply to any prior brokerage agreements unless agreed to in writing by the parties. The new statute is patterned after similar legislation enacted in many other states and generally provides that:

- only a broker who holds a broker license from the Delaware Real Estate Commission is entitled to the lien.
- the brokerage agreement must be in writing and contain the terms for the payment of services of the broker and identify the real estate covered by the agreement by description and/or tax parcel number.
- “commercial real estate” is broadly defined to include unapproved land which is zoned for commercial manufacturing, industrial, retail or multi-family use, as well as any other land of any zoning classification, with the exception of land with four or fewer single family residential lots, and includes any real estate used for agricultural purposes, unless it will continue to be farmed.

- provided a broker has performed his or her own duties under the brokerage agreement with the sole exception of the completion of the settlement, then the broker has the right to place a lien upon the commercial real estate for any unpaid commission due.

In order to establish a broker’s lien, the broker must file an affidavit and notice of broker’s lien with the Office of the Recorder of Deeds in the County where the commercial real estate is located and serve a copy to the affected parties. As an added safeguard, the affidavit and notice of broker’s lien may only be filed by a licensed Delaware attorney in good standing with the Delaware Supreme Court. The lien must be recorded within ninety (90) days of the failure of the responsible party to pay the compensation due to the broker under the brokerage agreement. The affidavit and notice of broker’s lien shall be effective for a one (1) year period following the date of filing and during any active litigation. In order to enforce a broker’s lien, the broker must file a debt action in Superior Court. The statute also expressly prohibits any agreement by a broker to waive its right to a broker’s lien.

It is important to note, however, that a broker’s lien, regardless when it is filed, shall not have priority over any mortgages, mechanics’ liens or other liens, imposed or created by statute, including liens of the federal government, the State of Delaware, or any of their respective political subdivisions. The full contents of the statute can be reviewed in Title 25, Chapter 26 of the Delaware Code by visiting: <http://delcode.delaware.gov>.