

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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HOUSE BILL 174  
PROPOSED COMMITTEE SUBSTITUTE H174-PCS11094-RN-2

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.
- (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 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 (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.



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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 commercial real estate.

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

6           (a)    A broker shall have a lien upon commercial real estate or any interest in that  
7   commercial real estate in the amount that the broker is due under a written instrument signed by  
8   the owner of an interest in the commercial real estate or signed by the owner's duly authorized  
9   agent.

10          (b)    The lien under this section shall be available only to the broker named in the  
11   instrument signed by the owner or the owner's duly authorized agent.

12   **"§ 44A-24.4. Lien notice; content.**

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

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

17               (1)    The name of the lien claimant.

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

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

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

22               (5)    The basis for the lien or a copy of the written contract or agreement.

23   **"§ 44A-24.5. When lien attaches to commercial real estate.**

24           A lien authorized by this Part attaches to the commercial real estate, or an interest in the  
25   commercial real estate, when the lien claimant files notice of the lien in the office of the  
26   register of deeds of the county in which the real property, or any interest in the real property is  
27   located, if such lien is filed prior to the actual conveyance or transfer of the commercial real  
28   estate subject to the lien, except that in the case of a lease, the claim for lien shall be filed  
29   within 90 days after the tenant takes possession of the leased property.

30   **"§ 44A-24.6. When lien claim release or satisfaction to be filed.**

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

35   **"§ 44A-24.7. Lien claimant to mail copy of notice of lien to owner by certified mail.**

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

41   **"§ 44A-24.8. Enforcing lien.**

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

49   **"§ 44A-24.9. Petition; content; parties' foreclosure action; procedure.**

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

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

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

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

13 **"§ 44A-24.10. Lien extinguished for lien claimant failing to file suit or answer in pending**  
14 **suit within 30 days after service on owner.**

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

21 **"§ 44A-24.11. Satisfaction or release of lien.**

22           If a claim for a lien has been filed pursuant to the provisions of this Part with the register of  
23 deeds and the claim has been paid in full, or if the lien claimant fails to institute a suit to  
24 enforce the lien within the time as provided by law, the lien claimant shall acknowledge  
25 satisfaction or release of the lien in writing upon written demand of the owner within 60 days  
26 after the demand.

27 **"§ 44A-24.12. Cost of proceeding to be paid by nonprevailing party.**

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

33 **"§ 44A-24.13. Escrow account.**

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

- 44                 (1) Written agreement of the parties.
- 45                 (2) A final judgment of a court of competent jurisdiction.
- 46                 (3) Other process to which the parties may agree.

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

1           **SECTION 2.** This act becomes effective October 1, 2011, and applies to written  
2 instruments signed by the owner of an interest in commercial real estate or the owner's duly  
3 authorized agent on or after that date.