

## **BILL ANALYSIS**

Senate Research Center

S.B. 573  
By: Wentworth  
State Affairs  
4-7-97  
As Filed

### **DIGEST**

Currently, a real estate broker may not obtain a lien on real property to secure the payment of the broker's commission arising from a commercial real estate transaction. For many years, the brokerage community has favored a statutory lien in order to secure payment of brokerage commission obligations. This bill creates a commercial real estate broker's lien.

### **PURPOSE**

As proposed, S.B. 573 creates a commercial real estate broker's lien.

### **RULEMAKING AUTHORITY**

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Title 5B, Property Code, by adding Chapter 62, as follows:

#### CHAPTER 62. COMMERCIAL REAL ESTATE BROKER'S LIEN

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 62.001. SHORT TITLE: Commercial Real Estate Broker's Lien Act.

Sec. 62.002. Provides that this chapter applies to commercial real estate. Provides that this chapter does not apply to certain other areas.

Sec. 62.003. DEFINITION. Defines "broker" and "real estate."

##### SUBCHAPTER B. BROKER'S LIEN

Sec. 62.021. PERSON ENTITLED TO LIEN. Provides that a broker has a lien on commercial real estate in an amount that the broker is owed under a written instrument signed by certain persons. Provides that a lien is available only to the broker named in the signed instrument. Provides that the lien is not available to an employee or independent contractor of the broker.

Sec. 62.022. FILING OF NOTICE OF LIEN. Requires a broker claiming a lien under this chapter to file a notice of lien as provided by Subchapter C with the county clerk of the county in which the commercial real estate is located. Requires the county clerk to record the notice of lien in records kept for that purpose and to index and cross-index the notice of lien in the names of the broker and the owner. Provides that failure of the county clerk to properly record or index a filed notice of lien does not invalidate the lien.

Sec. 62.023. CONTENTS OF NOTICE OF LIEN. Requires the notice of lien to be signed by the broker or by a person authorized to sign on behalf of the broker and to contain certain information. Authorizes the broker to attach to the notice of lien a copy of the applicable written agreement.

Sec. 62.024. NOTICE OF FILING TO OWNER. Requires the broker to mail a copy of the notice of lien by registered or certified mail to the owner of record of the commercial real estate or the owner's authorized agent, except as provided by Subsection (b), not later than the 10th day after the date the broker files a notice of lien. Provides that service of the notice is complete when the notice is deposited in the United States mail, postage prepaid, and addressed to the owner. Provides that the broker is not required to mail a copy of the notice of the lien under certain circumstances.

Sec. 62.025. INCEPTION OF BROKER'S LIEN. Provides that a broker's lien attaches on the date the notice of lien is recorded.

Sec. 62.026. PRIORITY. Provides that a recorded lien, mortgage, or other encumbrance, including a recorded lien securing revolving credit and future advances for a construction loan, recorded before the date a broker's lien is recorded has priority over the broker's lien. Provides that a mechanic's lien that is recorded after a broker's lien and that relates back to a date before the date the broker's lien is recorded has priority over the broker's lien.

#### SUBCHAPTER C. TIME FOR FILING NOTICE OF LIEN

Sec. 62.041. LIEN BASED ON GENERAL CONTRACT. Requires a broker to record a notice of lien under certain conditions.

Sec. 62.042. LIEN BASED ON INSTALLMENT CONTRACT. Provides that if a payment to a broker is owed in installments, a portion of which is due after the conveyance of the commercial real estate, the broker is to perform certain functions. Provides that a notice of lien recorded before the conveyance of commercial real estate for the entire amount owed to the broker under an installment contract is not enforceable to the extent of installment payments owed after the conveyance of the real estate.

Sec. 62.043. LIEN BASED ON FUTURE COMMISSIONS. Authorizes the broker to record the notice of lien any time after the written instrument relating to a certain commission owed to a broker is executed. Requires a broker to record a lien for a commission described by this section not later than the 90th day after the date the events for which the commission is owed occurs.

Sec. 62.044. LIEN BASED ON LEASE. Requires the broker to record the notice of lien not later than the 90th day after the date the tenant takes possession of the leased premises if the lien is claimed based in a lease contract. Requires the broker to record the notice of the lien before the date indicated in the notice for the execution of the lease if the owner of the real estate to be leased provides written notice to the broker entitled to claim a lien not later than the 10th day before the date the lease is to be executed informing the broker of the intended execution of the lease.

Sec. 62.045. LIEN BASED ON FUTURE CONVEYANCE. Requires the broker to record the notice of lien not later than the 90th day after the date the conveyance occurs if a broker has a written agreement with a prospective buyer or tenant.

#### SUBCHAPTER D. ENFORCEMENT OF LIEN

Sec. 62.061. SUIT TO FORECLOSE LIEN. Authorizes a broker to bring suit to foreclose a lien in any district court in the county in which the commercial real estate is located by filing a sworn complaint stating that the lien has been recorded. Requires a complaint in a suit to be filed under this section to contain certain information. Requires the broker to include as a defendant in a suit brought under this subchapter each person who the broker knows has an interest in the commercial real estate.

Sec. 62.062. STATUTE OF LIMITATIONS. Requires a broker claiming a lien under this chapter to bring a suit to foreclose the lien on or before the second anniversary of the date the

lien is recorded. Requires a broker claiming a lien to collect a future commission to bring a suit to foreclose the lien on or before the second anniversary of the date the transaction on which the commission is claimed occurs. Requires a broker claiming a lien on an option to purchase or lease to bring a suit to foreclose the lien not later than six months after the date of the conveyance of the commercial real estate under the exercise of the option to purchase or lease.

Sec. 62.063. ASSESSMENT OF COSTS, FEES, AND INTEREST. Provides that the prevailing party in a suit brought under this subchapter is entitled to court costs, attorney's fees, and prejudgements interest.

#### SUBCHAPTER E. RELEASE OF LIEN

Sec. 62.081. RELEASE OF LIEN. Requires the broker, not later than the fifth day after the date the broker receives a written request from the owner of the commercial real estate, to furnish to the owner a release of indebtedness and any lien claimed to the extent of the indebtedness paid when the debt that is the basis for a lien is satisfied. Requires the broker, not later than the 10th day after the date the broker receives a written request from the owner of the commercial real estate, to furnish the owner a release of indebtedness and any lien claimed under certain conditions. Requires a release of lien to be in a form that permits the instrument to be filed of record.

#### SUBCHAPTER F. ESCROW OF DISPUTED AMOUNTS

Sec. 62.101. ESCROW ACCOUNT. Requires an escrow account to be established from the proceeds of the transaction or conveyance in an amount sufficient to satisfy the lien, if a claim for a lien filed would prevent the closing of a transaction or conveyance. Prohibits a party from refusing to close a transaction because of the requirement to establish an escrow account as provided by this section.

SECTION 2. Effective date: September 1, 1997.  
Makes application of this Act prospective.

SECTION 3. Emergency clause.