

BILL ANALYSIS

Senate Research Center

C.S.S.B. 573
By: Wentworth
State Affairs
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Committee Report (Substituted)

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, C.S.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. BROKER'S LIEN ON COMMERCIAL REAL ESTATE

SUBCHAPTER A. GENERAL PROVISIONS

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

Sec. 62.002. APPLICABILITY. Provides that this chapter applies to real estate that is commercial real estate on the date the notice of lien is filed under this chapter. Provides that the broker's lien attaches only to the commercial portion of the real estate under certain conditions.

Sec. 62.003. DEFINITION. Defines "broker," "commercial real estate," "commission," "commission agreement," "future commission," and "real estate."

SUBCHAPTER B. BROKER'S LIEN

Sec. 62.021. PERSON ENTITLED TO LIEN. Provides that a broker is entitled to a commission under a certain commission agreement under certain conditions. Provides that a lien is available only to the broker named in the commission agreement. Provides that the lien is not available to an employee or independent contractor of the broker. Requires the broker's right to claim a lien based on the commission agreement to be disclosed in the commission agreement.

Sec. 62.022. WAIVER OR RELEASE. Provides that the waiver of a broker's entitlement to a lien under this chapter or the release of a lien given for the purpose of releasing a broker's lien before the commission is satisfied or forgiven is void.

Sec. 62.023. 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 of the interest in the real estate on which the lien is claimed.

Sec. 62.024. 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.

Sec. 62.025. NOTICE OF FILING. Requires the broker to mail a copy of the notice of lien by registered or certified mail to certain persons, before a certain date. Provides that service of the notice is complete when the notice is deposited in the United States mail, postage prepaid, and addressed to the person entitled to receive the notice under this section.

Sec. 62.026. INCEPTION OF BROKER'S LIEN. Provides that a broker's lien attaches to the interest in the commercial real estate owned by the person obligated to pay the commission on the date the notice of lien is recorded. Provides that the lien does not relate back to the date of the commission agreement. Provides that a notice of lien for certain amounts is enforceable only to the extent that the installment of future commission is due.

Sec. 62.027. 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 broker's lien against the interest of a person owing the commission is not valid or enforceable against certain persons before the broker's lien is recorded. 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.

Sec. 62.028. SUBORDINATION. Provides that the broker's lien is subordinate to a recorded purchase-money first lien authorized by the purchaser under certain conditions. Provides that the broker's lien is subordinate to the recorded refinanced first lien, regardless of the amount of the first lien after refinancing under certain conditions. Provides that the broker's lien is subordinate to the lien securing the extension of credit, according to the lien documents, the extension of credit is made for only certain purposes.

Sec. 62.029. CHANGE IN USE OF REAL ESTATE. Provides that any change in the use of the real estate does not affect a broker lien if the notice of the lien was filed when the real estate was commercial real estate. Provides that the broker's lien is extinguished under certain conditions.

SUBCHAPTER C. TIME FOR FILING NOTICE OF LIEN

Sec. 62.041. TIME TO FILE. Requires a broker to record a notice of lien under certain conditions.

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 this is subordinate to or encumbered by the broker's lien. Provides that the broker's lien remains valid under certain conditions.

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 notice of 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 on which the commission is due. Provides that a lien is void if a suit to foreclose the lien is not brought

within the time required by this section. Requires a broker claiming a lien for a commission due to bring a suit to foreclose the lien from the owner of the interest. Requires a broker claiming a lien to collect a commission to bring suit to foreclose the lien on or before a certain date.

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 interest in the commercial real estate on which the lien is claimed, 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 interest in the commercial real estate on which the lien is claimed, 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 a person named in the notice of lien as obligated to pay the commission to establish an escrow account from the proceeds of the transaction or conveyance in a certain amount. Authorizes related costs for an interpleader action to be deducted from the escrow account by the person maintaining the escrow account. Requires the escrow account to be established with the named escrow agent. Prohibits a party from refusing to close a transaction because of the requirement to establish an escrow account as provided by this section provided that the broker executes and delivers a release of the broker's lien in a recordable form for the amount of the commission that is due. Requires an amount held in escrow to be held in escrow until a certain time. Provides that a broker's lien against the commercial real estate is extinguished and becomes a lien on the proceeds in the escrow account when the escrow account is established.

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

SECTION 3. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 1.

Amends Chapter 62, Property Code, to amend the heading and short title.

Amends Section 62.002, Property Code, by adding the heading "APPLICABILITY."
Deletes proposed Subsection (b), which provided that this chapter did not apply in certain instances.

Amends Section 62.003, Property Code, to redefine "broker" and define "commercial real estate," "commission," "commission agreement," and "future commission."

Amends Section 62.021, Property Code, regarding persons entitled to liens.

Amends Section 62.022, Property Code, regarding a waiver or release.

Amends Section 62.023, Property Code, regarding the filing of notices of liens.

Amends Section 62.024, Property Code, to provide that the notice of lien must contain certain information not required under the proposed version. Deletes Subsection (b), which provides that a broker is not required to mail a copy of this notice of lien under certain conditions.

Amends Section 62.025, Property Code, to require a notice of lien to be mailed to certain persons under certain conditions.

Adds Section 62.029, Property Code, relating to subordination.

Adds Section 62.029, Property Code, relating to a change in use of real estate.

Amends Section 62.041, Property Code, to provide a new heading: "TIME TO FILE. " Requires a broker to record a notice of lien under certain conditions. Deletes proposed Sections 62.042 through 62.045.

Amends Section 62.061, Property Code, to require a complaint in a suit filed under this section to contain certain information. Provides conditions under which a broker's lien remains valid.

Amends Section 62.062, Property Code, to delete proposed Subsections (c)-(e) and to add new Subsections (c)-(e). Requires a broker claiming a lien for a commission that is due to foreclose the lien by a certain date. Provides that the lien is void under certain conditions. Requires a broker claiming a lien to collect a commission to bring suit to foreclose on the lien on or before a certain date. Makes nonsubstantive changes.

Amends Section 62.081, Property Code, to require a broker to complete certain tasks not later than the fifth day after the date the broker received a written request from the owner of the interest in the commercial real estate on which the lien is claimed. Makes conforming changes.

Deletes proposed Section 62.101, Property Code, and replaces with new Subsection 62.101 regarding escrow accounts.