

Broker Lien Law and Cold Storage

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Broker Lien Law

- ▶ Challenging Times
- ▶ Broker Liens Rarely Filed (judgment call)
- ▶ Preserve Your Commission Lien Rights
- ▶ Who, What, When, Where
- ▶ Wis. Stat. 779.32
- ▶ Who?
 - ▷ You! (Ch. 452 Licensed RE Broker)

What kinds of property can be subjected to a broker lien?

- ▶ Any commercial real property
- ▶ Cannot place a lien on:
 - ▷ Real property containing 8 or fewer dwelling units
 - ▷ Zoned residential, but vacant
 - ▷ Zoned agricultural

Lien Requirements - Overview

- ▶ Written agreement
- ▶ Initial Notice of Lien Rights
- ▶ Record Notice of Interest
- ▶ Record/Perfect the Lien
- ▶ Mail Copy of Lien within 72 hrs

Types of WRITTEN* agreements entitling broker to a commission

- ▶ Commercial real estate listing contract
 - ▷ Sale or lease
- ▶ Commercial real estate buyer agency agreement
- ▶ Commercial tenant representation agreement
- ▶ Management Agreement
- ▶ *Writing is key.

Initial Notice of Lien Rights

- ▶ Must include language as specified in Wis. Stats.:
 - ▷ Broker has authority to file lien for commission earned but not paid when due against commercial real estate subject thereto
- ▶ WB Commercial Listing Agreement Form – included
- ▶ Include or Add WRA Addendum CL to
 - ▷ Buyer Agency Agreement
 - ▷ Tenant Rep Agreement
 - ▷ Agreement w/Owner for Mgmt or Lease

Record Notice of Interest: What, When, Where

▶ Notice of Interest must include:

- ▷ Names of parties
- ▷ Date of written agreement
- ▷ Legal description
- ▷ Recordable form

When to Record?

Depends on underlying agreement

Commercial RE Listing and Buyer Agency Agreement – at least 30 days before recording

Management Agreement or Agreement to Lease – Stat. is silent. Recommended to file Notice of interest as soon as possible after entering into the agreement for lease or management.

Best Practice: At least 30 days before conveyance

Where to Record?

County ROD Office where the Commercial RE is located

Record/Perfect the Commission Lien

- ▶ To perfect, Broker must record lien
- ▶ WRA Real Estate Broker Commission Lien Form
- ▶ Requirements:
 - ▷ Broker name and license no.
 - ▷ Name of property owner
 - ▷ Legal Description
 - ▷ Amt of Lien (@recording)
 - ▷ Broker's signature

Not done yet!

Mail a copy

- ▶ Within 72 hrs after recording, broker must mail a copy to owner or acquirer of the real estate
- ▶ Wis. Stats reqmt
- ▶ Belt and Suspenders:
 - ▷ Recorded lien
 - ▷ Owner on notice

Lien Commission Foreclosure

- ▶ Chapter 846 Wis. Stats.

Recent Cases

- ▶ Ash Park, LLC v. Alexander & Bishop, Ltd., 356 Wis. 2d 249 (2014)
 - ▷ Commission earned if “Enforceable Contract”
- ▶ Sunday v. Dave Kohel Agency, Inc., 293 Wis. 2d 458 (2006)
 - ▷ Commission Earned if “Effective change in ownership”

Questions?

- ▶ Does an auto renewal of a listing contract affect the broker's ability to file a lien on a property or the enforceability of such lien?