

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 923

Short Title: Commercial Realtor Lien Act.

(Public)

Sponsors: Senators Odom; Allran, Carpenter, and Foxx.

Referred to: Judiciary.

April 17, 1997

1 A BILL TO BE ENTITLED
ACT TO CREATE LIENS FOR FEES TO BE PAID TO COMMERCIAL REAL
ESTATE BROKERS.

2 The General Assembly of North Carolina enacts:

3 Section 1. Chapter 93A is amended by adding a new Article to read:

4 **"ARTICLE 6.**

5 **"COMMERCIAL REAL ESTATE BROKERS' LIEN ACT.**

6 **"§ 93A-90. Short title.**

7 This Article may be known as the 'Commercial Real Estate Brokers' Lien Act.'

8 **"§ 93A-91. Definitions.**

9 As used in this Article, the following terms mean:

- 10 (1) 'Commercial real estate', any real estate other than real estate containing
11 one to four residential units, real estate on which no buildings or
12 structures are located, or real estate classified as agricultural and
13 horticultural property for tax assessment purposes. Commercial real
14 estate does not include single-family residential units including
15 condominiums, townhouses, or homes in a subdivision when that real
16 estate is sold, leased, or otherwise conveyed on a unit-by-unit basis even
17 though the units may be part of a larger building or parcel of real estate
18 containing more than four residential units;

1 (2) 'Owner', the owner of record of commercial real estate;

2 (3) 'Real estate broker' and 'real estate salesperson', as such terms are
3 defined in G.S. 93A-2.

4 **"§ 93A-92. Broker's lien for compensation.**

5 Any licensed real estate broker shall have a lien, upon commercial real estate or any
6 interest in that commercial real estate, in the amount that the real estate broker is due:

7 (1) Under a written instrument signed by the owner of an interest in the
8 commercial real estate or signed by the owner's duly authorized agent;
9 or

10 (2) Under a written instrument signed by a prospective buyer or prospective
11 tenants or signed by their duly authorized agent as to the purchase,
12 lease, or other conveyance to the buyer or tenant of an interest in the
13 commercial real estate.

14 **"§ 93A-93. Lien notice, content.**

15 A lien notice, for purposes of this Article, shall state:

16 (1) The name of the claimant;

17 (2) The name of the owner;

18 (3) A description of the property upon which the lien is being claimed;

19 (4) The amount for which the lien is claimed; and

20 (5) The real estate license number of the real estate broker.

21 The notice of lien shall be signed by the real estate broker, and the broker shall attest
22 that the information contained in the notice is true and accurate as to his knowledge and
23 belief.

24 **"§ 93A-94. When broker's lien attaches to commercial real estate.**

25 A real estate broker's lien authorized by this Article attaches to the commercial real
26 estate, or an interest in the commercial real estate, when the real estate broker records a
27 notice of the lien in the office of the register of deeds of the county in which the real
28 property, or any interest in the real property is located, if such lien is filed prior to the
29 actual conveyance or transfer of the commercial real estate subject to such real estate
30 broker's lien, except that:

31 (1) If payment to a real estate broker is due in installments and a portion of
32 the payment is due after the conveyance or transfer of the commercial
33 real estate, any claim for a lien for installment payments due after the
34 transfer or conveyance of the real estate may be recorded any time after
35 the transfer or conveyance of the commercial real estate but shall be
36 recorded before the date on which the payment is due. This lien shall
37 only be effective as a lien against the commercial real estate to the
38 extent moneys are still owed to the transferor by the transferee. A
39 single claim for a lien recorded before the transfer or conveyance of the
40 commercial real estate, claiming all moneys due under an installment
41 payment agreement, is not valid or enforceable to the extent of the
42 payments due after the transfer or conveyance. The lien attaches for
43 purposes of this paragraph when the claim for lien is recorded;

1 (2) In the case of a lease, the claim for lien shall be recorded within 90 days
2 after the tenant takes possession of the leased property, unless written
3 notice of the intention to sign the lease is personally served on the real
4 estate broker entitled to claim a lien at least 10 days before the date of
5 the intended signing of the lease, then the claim for lien shall be
6 recorded before the date indicated for the signing of the lease. The lien
7 attaches for purposes of this subdivision when the claim for lien is
8 recorded; or

9 (3) If the real estate broker has a written agreement with a prospective
10 buyer as provided in subdivision (2) of G.S. 93A-92, then the lien
11 attaches when the prospective buyer purchases or otherwise accepts a
12 conveyance or transfer of the commercial real estate and records a
13 notice of the lien within 90 days after the purchase or other conveyance
14 or transfer to the buyer in the office of the register of deeds in the
15 county in which the commercial real estate, or any interest in the
16 commercial real estate, is located.

17 **"§ 93A-95. When lien claim release or satisfaction to be filed.**

18 If a claim for a lien has been filed with the register of deeds and a condition occurs
19 that would preclude the broker from receiving compensation under the terms of the real
20 estate broker's written agreement, the real estate broker shall record and provide the
21 owner of record a written release or satisfaction of the lien.

22 **"§ 93A-96. Broker to mail copy of notice of lien to owner by certified mail.**

23 Any real estate broker who attaches a lien on commercial property pursuant to the
24 provisions of this Article shall mail a copy of the notice of the lien to the owner of the
25 commercial real estate by certified mail. The real estate broker's lien is void if the broker
26 does not record the lien as provided in this Article.

27 **"§ 93A-97. Enforcing lien.**

28 A real estate broker may bring suit to enforce a lien which attaches pursuant to the
29 provisions of this Article in any court of competent jurisdiction in the county where the
30 property is located by filing a verified petition that the lien has been recorded. Unless the
31 claim is based upon an option to purchase the commercial real estate, the broker claiming
32 the lien shall commence proceedings within six months after recording the lien and
33 failure to commence proceedings within the six months shall extinguish the lien. A claim
34 for the same lien, extinguished pursuant to this section and G.S. 93A-99, may not be
35 asserted in any subsequent proceeding.

36 **"§ 93A-98. Petition, content, parties' foreclosure action, procedure.**

37 (a) A petition filed pursuant to the provisions of this section and G.S. 93A-97 shall
38 contain:

39 (1) A statement of the terms of the contract or agreement on which the lien
40 is based;

41 (2) The date when the contract or agreement was made;

42 (3) A description of the services performed;

43 (4) The amount due and unpaid;

- 1 (5) A description of the property that is subject to the lien; and
2 (6) Any other facts necessary for a full understanding of the rights of the
3 parties.

4 The plaintiff shall file the action against all known parties who have an interest in the
5 real estate. A foreclosure action for a lien claimed pursuant to this Article shall be
6 brought pursuant to the provisions of Article 1 of Chapter 44A of the General Statutes.

7 (b) Valid prior recorded liens or mortgages shall have priority over a real estate
8 broker's lien.

9 **"§ 93A-99. Lien extinguished for broker failing to file suit or answer in pending suit**
10 **within 30 days after service on owner.**

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

18 **"§ 93A-100. Satisfaction or release of lien.**

19 If a claim for lien has been filed pursuant to the provisions of this Article with the
20 register of deeds and the claim has been paid in full or if the lienor fails to institute a suit
21 to enforce the lien within the time as provided by law, the real estate broker shall
22 acknowledge satisfaction or release of the lien in writing upon written demand of the
23 owner within 30 days after the demand.

24 **"§ 93A-101. Cost of proceeding to be paid by nonprevailing party.**

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

30 **"§ 93A-102. Escrow account.**

31 Unless an alternative procedure is available and is acceptable to the transferee in a
32 real estate transaction, if a claim for a real estate broker's lien has been filed with the
33 register of deeds and that lien would prevent the closing of a transaction or conveyance,
34 an escrow account shall be established with the clerk of the superior court in the county
35 in which the commercial real estate is located from the proceeds of the transaction or
36 conveyance in an amount sufficient to release the claim for the lien. The requirement to
37 establish an escrow account, as provided in this section, shall not be cause for any party
38 to refuse to close a transaction. The proceeds held in that escrow account shall be held by
39 the clerk until the parties' rights to the escrowed funds have been determined by:

- 40 (1) Written agreement of the parties;
41 (2) A final judgment of the court of competent jurisdiction; or
42 (3) Other process as may be agreed to by the parties.

1 If funds sufficient to satisfy the amount claimed in the lien have been deposited in the
2 escrow account, the real estate broker shall release the claim for the lien on the real
3 estate.

4 **"§ 93A-103. Broker to give written notice of right to lien on premises at time of**
5 **closing.**

6 Any real estate broker who proposes to assert a lien pursuant to this Article shall be
7 prohibited from asserting the lien unless, at the time of the closing for the transaction, the
8 broker has given written notice to the purchaser of the commercial real estate that
9 payment of the broker's fee is due and that he or she is entitled to a lien on the premises."

10 Section 2. This act becomes effective December 1, 1997.