



House of Representatives

File No. 690

General Assembly

February Session, 2000

(Reprint of File No. 173)

House Bill No. 5857
As Amended by House
Amendment Schedule "A"

Approved by the Legislative Commissioner
April 29, 2000

An Act Concerning Commercial Real Estate Transactions And Brokers' Liens.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 20-311 of the general statutes, as amended by
2 section 1 of public act 99-229, is amended by adding subdivision (9) as
3 follows:

4 (NEW) (9) "Commercial real estate transaction" means any
5 transaction involving the sale, exchange, lease or sublease of real
6 property other than real property containing any building or structure
7 occupied or intended to be occupied by no more than four families or a
8 single building lot to be used for family or household purposes.

9 Sec. 2. Section 20-325a of the general statutes is repealed and the
10 following is substituted in lieu thereof:

11 (a) No person who is not licensed under the provisions of this
12 chapter, and who was not so licensed at the time [he] the person
13 performed the acts or rendered the services for which recovery is

14 sought, shall commence or bring any action in any court of this state,
15 after October 1, 1971, to recover any commission, compensation or
16 other payment [in respect of] with respect to any act done or service
17 rendered by [him] the person, the doing or rendering of which is
18 prohibited under the provisions of this chapter except by persons duly
19 licensed under this chapter.

20 (b) No person, licensed under the provisions of this chapter, shall
21 commence or bring any action [in respect of] with respect to any acts
22 done or services rendered after October 1, 1995, as set forth in
23 subsection (a), unless the acts or services were rendered pursuant to a
24 contract or authorization from the person for whom the acts were done
25 or services rendered. To satisfy the requirements of this subsection any
26 contract or authorization shall: (1) Be in writing, (2) contain the names
27 and addresses of the real estate broker performing the services and the
28 name of the person or persons for whom the acts were done or services
29 rendered, (3) show the date on which such contract was entered into or
30 such authorization given, (4) contain the conditions of such contract or
31 authorization, (5) be signed by the real estate broker or the real estate
32 broker's authorized agent, (6) if such contract or authorization pertains
33 to any real property, include the following statement: "THE REAL
34 ESTATE BROKER MAY BE ENTITLED TO CERTAIN LIEN RIGHTS
35 PURSUANT TO [SUBSECTION (d) OF] SECTION 20-325a OF THE
36 CONNECTICUT GENERAL STATUTES", and (7) be signed by the
37 person or persons for whom the acts were done or services rendered or
38 by an agent authorized to act on behalf of such person or persons,
39 pursuant to a written document executed in the manner provided for
40 conveyances in section 47-5, except, if the acts to be done or services
41 rendered involve a listing contract for the sale of land containing any
42 building or structure occupied or intended to be occupied by no more
43 than four families, be signed by the owner of the real estate or by an
44 agent authorized to act on behalf of such owner pursuant to a written
45 document executed in the manner provided for conveyances in section
46 47-5.

47 (c) Notwithstanding the provisions of subsection (b) of this section,

48 no person licensed under the provisions of this chapter, shall
49 commence or bring any action with respect to any acts done or services
50 rendered after October 1, 2000, in a commercial real estate transaction,
51 unless the acts or services were rendered pursuant to (1) a contract or
52 authorization meeting the requirements of subsection (b) of this
53 section, or (2) a memorandum, letter or other writing stating for whom
54 the licensee will act or has acted, signed by the party for whom the
55 licensee will act or has acted in the commercial real estate transaction,
56 the duration of the authorization and the amount of any compensation
57 payable to the licensee, provided (A) the licensee provides written
58 notice to the party, substantially similar to the following: "THE REAL
59 ESTATE BROKER MAY BE ENTITLED TO CERTAIN LIEN RIGHTS
60 PURSUANT TO SECTION 20-325a OF THE CONNECTICUT
61 GENERAL STATUTES" and (B) the notice is provided at or before the
62 execution of the contract, authorization, memorandum, letter or other
63 writing, and may be made part of the contract, authorization,
64 memorandum, letter or other writing.

65 [(c)] (d) Nothing in subsection (a) of this section, [or] subdivisions
66 (2) to [(6)] (7), inclusive, of subsection (b) of this section or subsection
67 (c) of this section shall prevent any licensee from recovering any
68 commission, compensation or other payment [in] with respect to any
69 acts done or services rendered, if [such person] it would be inequitable
70 to deny such recovery and the licensee (1) has substantially complied
71 with subdivisions (2) to [(6)] (7), inclusive, of subsection (b) of this
72 section [and it would be inequitable to deny such recovery] or (2) with
73 respect to a commercial real estate transaction, has substantially
74 complied with subdivisions (2) to (6), inclusive, of subsection (b) of this
75 section or subdivision (2) of subsection (c) of this section.

76 [(d)] (e) A licensed real estate broker who has performed acts or
77 rendered services relating to real property upon terms provided for in
78 a written contract or agreement between such broker and the owner or
79 buyer for whom such acts were done or services rendered shall have a
80 lien upon such real property. Such lien shall be in the amount of the
81 compensation agreed upon by and between the broker and the owner

82 or buyer for whom such acts were done or services rendered.

83 [(e)] (f) Except as provided in subsections [(f), (g) and (h)] (g), (h)
84 and (i) of this section, the lien provided for in this section shall not
85 attach until the broker is entitled to compensation, without any
86 contingencies, other than closing or transfer of title, under the terms set
87 forth in the written listing or buyer representation contract and the
88 broker has recorded the claim for lien prior to the actual conveyance or
89 lease of such real property with the town clerk of the town where such
90 property is located.

91 [(f)] (g) Except as provided in subsection [(g)] (h) of this section,
92 when a broker is entitled to compensation from the owner of real
93 property in instalments, a portion of which is due only after the
94 conveyance or lease of the real property, any claim for lien for those
95 payments due after the conveyance or lease may be recorded at any
96 time subsequent to the conveyance or lease of the real property and
97 prior to the date on which the payment is due but shall only be
98 effective as a claim for lien against the real property to the extent
99 moneys are still owed to the transferor by the transferee. A single
100 claim for lien recorded prior to conveyance or lease of the real
101 property claiming all moneys due under an instalment payment
102 agreement shall not be valid or enforceable as it pertains to payments
103 due after the conveyance or lease. The lien shall attach as of the
104 recording of the claim for lien.

105 [(g)] (h) In the case of a lease for real property the claim for lien
106 must be recorded within thirty days after the tenant takes possession
107 of the leased premises unless written notice of the intended signing of
108 the lease is delivered to the broker entitled to claim a lien by registered
109 or certified mail, return receipt requested, or by personal service, at
110 least ten days prior to the date of the intended signing of the lease for
111 the real property in which case the claim for lien must be recorded
112 before the date indicated for the signing of the lease in the notice
113 delivered to the broker. The lien shall attach as of the recording of the
114 claim for lien.

115 [(h)] (i) If a broker's written contract for payment is with a
116 prospective buyer, then the lien shall attach only after the prospective
117 buyer accepts the conveyance or lease of the real property and the
118 claim for lien is recorded by the broker with the town clerk of the town
119 in which such property is located. Any claim for lien shall be filed by
120 the broker no later than thirty days after the conveyance or the tenant
121 takes possession of the real property.

122 [(i)] (j) The broker shall serve a copy of the claim for lien on the
123 owner of the real property. Service shall be made by mailing a copy of
124 the claim for lien by registered or certified mail, return receipt
125 requested, or by personal service upon the owner by any indifferent
126 person, sheriff or other proper officer, by leaving with such owner or
127 at the owner's usual place of abode a true and attested copy thereof. A
128 copy of the claim for lien may be served at the same time as the notice
129 required by subsection [(q)] (r) of this section. The broker's lien shall be
130 void and unenforceable if recording does not occur within the time
131 period and in the manner required by this section.

132 [(j)] (k) A broker may bring suit to enforce a claim for lien in the
133 superior court in the judicial district where the real property is located
134 by filing a complaint and sworn affidavit that the claim for lien has
135 been recorded in accordance with this section. The person claiming a
136 lien shall, unless the claim is based upon an option to purchase the real
137 property, within one year after recording the claim for lien, commence
138 foreclosure by filing a complaint. Failure to commence foreclosure
139 within one year after recording the lien shall extinguish the lien. No
140 subsequent claim for lien may be given for the same claim nor may
141 that claim be asserted in any proceedings under this section. A person
142 claiming a lien based upon an option to purchase shall, within six
143 months after the conveyance or lease of the real property under the
144 exercise of the option to purchase, commence foreclosure by filing a
145 complaint and a sworn affidavit that the claim for lien has been
146 recorded in accordance with this section. Failure to commence
147 foreclosure within this time shall extinguish that claim for lien. No
148 subsequent claim for lien may be given for the same claim nor may

149 that claim be asserted in any proceedings under this section. The
150 plaintiff shall issue summons and provide service as in actions to
151 foreclose a mortgage. When any defendant resides out of the state or is
152 temporarily located out of the state, or on inquiry cannot be found, or
153 is concealed within this state so that process cannot be served on that
154 defendant, the plaintiff shall cause a notice to be given to that
155 defendant, or cause a copy of the complaint to be served upon that
156 defendant, in the manner and upon the same conditions as in actions
157 to foreclose a mortgage. Except as otherwise provided in this section,
158 all liens claimed under this section shall be foreclosed in the manner in
159 which mortgage foreclosures are conducted.

160 [(k)] (l) The claim for lien shall state the name of the claimant, the
161 name of the owner, a description of the real property upon which the
162 lien is being claimed, the amount for which the lien is claimed, and the
163 real estate license number of the broker. The claim for lien shall contain
164 a sworn statement by the signatory that the information contained in
165 the notice is true and accurate to the knowledge of the signatory. The
166 claim for lien shall be signed by the broker.

167 [(l)] (m) Whenever a claim for lien has been recorded with the town
168 clerk and a condition occurs that would preclude the broker from
169 receiving compensation under the terms of the broker's written
170 contract or agreement, the broker shall provide within thirty days of
171 demand to the owner of record a written release or satisfaction of the
172 lien.

173 [(m)] (n) Upon written demand of the owner or the owner's
174 authorized agent, served on the broker claiming the lien requiring suit
175 to be commenced to enforce the lien, a suit shall be commenced within
176 forty-five days thereafter, or the claim for lien shall be extinguished.
177 Service of any such written demand shall be by registered or certified
178 mail, return receipt requested, or by personal service upon the broker
179 by any indifferent person, sheriff or other proper officer, by leaving
180 with such broker or at the broker's usual place of abode a true and
181 attested copy thereof.

182 [(n)] (o) Whenever a claim for lien has been recorded with the town
183 clerk and is paid, or where there is failure to foreclose to enforce the
184 lien within the time provided by this section, the broker shall
185 acknowledge satisfaction or release the claim for lien, in writing, on
186 written demand of the owner within thirty days after payment or
187 expiration of the time in which to commence foreclosure on the lien.

188 [(o)] (p) Except as otherwise provided in this section, whenever a
189 claim for lien has been recorded with the town clerk, that would
190 prevent the closing of a conveyance or lease, an escrow account shall
191 be established from the proceeds of the conveyance or lease in the
192 amount of the compensation agreed upon by the parties. Upon the
193 establishment of the escrow account the broker shall immediately
194 release the claim for lien. The establishment of an escrow account, as
195 provided for in this section, shall not be the sole cause for the owner to
196 refuse to complete the conveyance or lease. These moneys shall be held
197 in escrow by the attorney for the lessor in the case of a lease for real
198 property and by the attorney for the owner in the case of the actual
199 conveyance or lease of such real property until the parties' rights to the
200 escrowed moneys have been determined by the written contract or
201 agreement of the parties, a determination by the Superior Court, or
202 some other process which may be agreed to by the parties. When there
203 are sufficient funds in the amount of the claimed lien, there shall be a
204 release of the claim for lien which would allow completion of the
205 conveyance or lease on such terms as are acceptable to the parties
206 involved in the conveyance or lease. If the proceeds from the
207 conveyance or lease are insufficient to release all liens claimed against
208 the real property, including the broker's claim for lien, then the parties
209 are not required to establish the escrow account under this section.

210 [(p)] (q) The provisions of subsections (a) and (b) of this section shall
211 not apply to any person excepted from the provisions of this chapter
212 by section 20-329 with respect to any acts performed by [him] the
213 person which are included in such exception; or to any real estate
214 broker or real estate salesperson who has provided services to the
215 federal government, any political subdivision thereof, or any

216 corporation, institution or quasi-governmental agency chartered by the
217 federal government.

218 [(q)] ~~(r)~~ No broker is entitled to claim any lien under this section,
219 unless, after the broker is entitled to compensation, without
220 contingencies, other than closing or transfer of title, under the terms set
221 forth in the written contract and not later than three days prior to the
222 later of the date of the conveyance or lease as set forth in the real estate
223 sales contract or lease or the actual date of the conveyance or the date
224 when the tenant takes possession, the broker gives written notice of the
225 claim for lien to the owner of the real property and to the prospective
226 buyer or tenant that [he] the broker is entitled to compensation under
227 the terms set forth in the written contract and intends to claim a lien on
228 the real property. The notice shall be served upon the owner and the
229 prospective buyer or tenant, by any indifferent person, sheriff or other
230 proper officer, by leaving with such owner and prospective buyer or at
231 their usual place of abode a true and attested copy thereof. When there
232 are two or more owners, or two or more buyers, the notice shall be
233 served on each owner and on each buyer.

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: None

Affected Agencies: Department of Consumer Protection

Municipal Impact: None

Explanation

State Impact:

The bill makes a variety of changes which have no fiscal impact.

House "A" makes additional changes which have no fiscal impact.

OLR Bill Analysis

HB 5857 (as amended by House "A")*

**AN ACT CONCERNING COMMERCIAL REAL ESTATE
TRANSACTIONS AND BROKERS' LIENS.****SUMMARY:**

This bill (1) sets conditions under which real estate licensees may bring a lawsuit to recover commissions, compensation, or other payments for services rendered with respect to commercial transactions; (2) adds a slightly modified procedure for licensees to bring a lawsuit to recover commissions, compensation, or other payments in commercial transactions; and (3) modifies the three-day advance notice of lien real estate brokers must give an owner and prospective buyer.

The bill specifies that as long as the licensee substantially complies with either the current law's procedure or the bill's modified procedure in seeking to recover commissions, compensation, or other payments for services rendered, there should be no statutory barrier to recovery if it would be inequitable to deny it.

It defines a "commercial real estate transaction" as one involving the sale, lease, sublease, or exchange of real property other than a building or structure occupied or intended to be occupied by four or fewer families or a single building used for family or household purposes.

*House Amendment "A" (1) defines a "commercial real estate transaction" as one involving buildings or structures other than those occupied or intended to be occupied by four rather than eight families, (2) adds the requirements that notice about the lien be given to the owner or buyer when a memorandum, letter, or other writing is used instead of a written authorization, (3) eliminates from the scope of the lien contractual agreements between a broker and tenant and compensation paid in installments for a new, renewal or the extension of a lease, and (4) makes technical changes.

EFFECTIVE DATE: October 1, 2000

REQUIREMENTS FOR COMMERCING A LAWSUIT FOR COMMISSIONS

Beginning October 1, 2000, the bill prohibits licensees in commercial real estate transactions from seeking to recover commissions through litigation unless they perform their services under either (1) a contract or authorization or (2) a memorandum, letter, or other writing.

Contract or Authorization

The contract or authorization must (1) be in writing, (2) include the names and addresses of the broker performing the service and the person for whom the services are performed, (3) show the date the contract was entered into or the authorization given, (4) include any contract or authorization condition, (5) be signed by the broker or his authorized agent, and (6) include the following statement if the contract or authorization involves real property: "THE REAL ESTATE BROKER MAY BE ENTITLED TO CERTAIN LIEN RIGHTS PURSUANT TO SECTION 20-325 OF THE CONNECTICUT GENERAL STATUTES."

Memorandum, Letter, or Other Writing

The memorandum, letter, or other writing must (1) state for whom the licensee will act or has acted, (2) be signed by the party for whom the licensee will act or has acted, (3) state the duration of the authorization, (4) state the amount of any compensation payable to the licensee, and (5) provide notice about the lien to the owner or prospective buyer at or before the execution of the contract, authorization, memorandum, letter or other writing. The notice must state: "THE REAL ESTATE BROKER MAY BE ENTITLED TO CERTAIN LIEN RIGHTS PURSUANT TO SECTION 20-325a OF THE CONNECTICUT GENERAL STATUTES." The notice must be delivered to the owner or prospective buyer at or before the execution of any contract or other written agreement and may be made a part of the contract, authorization, memorandum, letter or other writing.

ADVANCE NOTICE OF LIEN

The bill requires the broker to give written notice of his claim for a lien to the owner and the prospective buyer or tenant three days before the

later of either the date of conveyance as set in the sales contract or lease or the actual date of conveyance or the date when the tenant takes possession.

Current law requires written notice three days before the date of the conveyance as set in the contract.

BACKGROUND

Legislative History

On March 28, the House referred the bill to the Judiciary Committee, which reported it favorably without change on April 7. On April 11, the House referred the bill to the General Law Committee, which reported it favorably without change on April 13.

COMMITTEE ACTION

Insurance and Real Estate Committee

Joint Favorable Report
Yea 17 Nay 0

Judiciary Committee

Joint Favorable Report
Yea 33 Nay 0

General Law Committee

Joint Favorable Report
Yea 11 Nay 0