



Senate

File No. 673

General Assembly

February Session, 2004

(Reprint of File No. 130)

Senate Bill No. 486
As Amended by House
Amendment Schedule "A"

Approved by the Legislative Commissioner
April 26, 2004

AN ACT CONCERNING REAL ESTATE BROKER LIENS.

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

1 Section 1. Subsections (e) to (r), inclusive, of section 20-325a of the
2 general statutes are repealed and the following is substituted in lieu
3 thereof (*Effective October 1, 2004*):

4 (e) A licensed real estate broker who has performed acts or rendered
5 services relating to real property upon terms provided for in a written
6 contract or agreement between [such] the broker and the owner or
7 buyer for whom such acts were done or services rendered shall have a
8 lien upon such real property. [Such] The lien shall be in the amount of
9 the compensation agreed upon by [and between] the broker and the
10 owner or buyer for whom such acts were [done] performed or services
11 rendered.

12 (f) Except as provided in subsections (g), (h) and (i) of this section,
13 the lien provided for in this section shall not attach until the broker is
14 entitled to compensation, without any contingencies, other than
15 closing or transfer of title, under the terms set forth in the written

16 listing or buyer representation contract and the broker has recorded
17 the claim for lien prior to the actual conveyance or lease of such real
18 property with the town clerk of the town where such property is
19 located.

20 (g) Except as provided in subsection (h) of this section, when a
21 broker is entitled to compensation [from the owner of real property] in
22 installments, a portion of which is due only after the conveyance or
23 lease of the real property, any claim for lien for those payments due
24 after the conveyance or lease may be recorded at any time subsequent
25 to the conveyance or lease of the real property and prior to the date on
26 which the payment is due but shall only be effective as a claim for lien
27 against the real property to the extent moneys are still owed to the
28 transferor or lessor by the transferee or lessee. A single claim for lien
29 recorded prior to conveyance or lease of the real property claiming all
30 moneys due under an installment payment agreement shall not be
31 valid or enforceable as it pertains to payments due after the
32 conveyance or lease. The lien shall attach as of the recording of the
33 claim for lien.

34 (h) In the case of a lease for real property where the broker's
35 compensation will not be paid in installments, the claim for lien must
36 be recorded [within] no later than thirty days after the tenant takes
37 possession of the leased premises unless written notice of the intended
38 signing of the lease is delivered to the broker entitled to claim a lien by
39 registered or certified mail, return receipt requested, or by personal
40 service, at least ten days prior to the date of the intended signing of the
41 lease for the real property in which case the claim for lien must be
42 recorded before the date indicated for the signing of the lease in the
43 notice delivered to the broker. The lien shall attach as of the recording
44 of the claim for lien.

45 (i) If a broker's written contract for payment is with a prospective
46 buyer, then the lien shall attach only after the prospective buyer
47 accepts the conveyance or lease of the real property and the claim for
48 lien is recorded by the broker with the town clerk of the town in which

49 [such] the property is located. Any claim for lien shall be filed by the
50 broker no later than thirty days after the conveyance or the tenant
51 takes possession of the real property.

52 (j) The broker shall serve a copy of the claim for lien on the owner of
53 the real property. Service shall be made by mailing a copy of the claim
54 for lien by registered or certified mail, return receipt requested, or by
55 personal service upon the owner by any indifferent person, state
56 marshal or other proper officer, by leaving with such owner or at the
57 owner's usual place of abode a true and attested copy thereof. A copy
58 of the claim for lien may be served at the same time as the notice
59 required by subsection (r) of this section. The broker's lien shall be
60 void and unenforceable if recording does not occur within the time
61 period and in the manner required by this section.

62 (k) (1) A broker may bring suit to enforce a claim for lien in the
63 superior court in the judicial district where the real property is located
64 by filing a complaint and sworn affidavit that the claim for lien has
65 been recorded in accordance with this section.

66 (2) [The] A person claiming a lien shall, unless the claim is based
67 upon an option to purchase the real property, within one year after
68 recording the claim for lien, commence foreclosure by filing a
69 complaint. Failure to commence foreclosure within one year after
70 recording the lien shall extinguish the lien. No subsequent claim for
71 lien may be given for the same claim nor may that claim be asserted in
72 any proceedings under this section.

73 (3) A person claiming a lien based upon an option to purchase real
74 property shall, within six months after the conveyance or lease of the
75 real property under the exercise of the option to purchase, commence
76 foreclosure by filing a complaint and a sworn affidavit that the claim
77 for lien has been recorded in accordance with this section. Failure to
78 commence foreclosure within [this time] six months after the
79 conveyance or lease shall extinguish [that] the claim for lien. No
80 subsequent claim for lien may be given for the same claim nor may

81 that claim be asserted in any proceedings under this section.

82 (4) The plaintiff shall issue summons and provide service as in
83 actions to foreclose a mortgage. When any defendant resides out of the
84 state or is temporarily located out of the state, or on inquiry cannot be
85 found, or is concealed within this state so that process cannot be
86 served on that defendant, the plaintiff shall cause a notice to be given
87 to that defendant, or cause a copy of the complaint to be served upon
88 that defendant, in the manner and upon the same conditions as in
89 actions to foreclose a mortgage. Except as otherwise provided in this
90 section, all liens claimed under this section shall be foreclosed in the
91 manner in which mortgage foreclosures are conducted.

92 (l) The claim for lien shall state the name of the claimant, the name
93 of the owner, a description of the real property upon which the lien is
94 being claimed, the amount for which the lien is claimed, and the real
95 estate license number of the broker. The claim for lien shall contain a
96 sworn statement by the signatory that the information contained in the
97 notice is true and accurate to the knowledge of the signatory. The
98 claim for lien shall be signed by the broker or the real estate broker's
99 authorized agent.

100 (m) Whenever a claim for lien has been recorded with the town
101 clerk and a condition occurs that would preclude the broker from
102 receiving compensation under the terms of the broker's written
103 contract or agreement, the broker shall provide within thirty days of
104 demand to the owner of record a written release or satisfaction of the
105 lien.

106 (n) Upon written demand of the owner or the owner's authorized
107 agent, served on the broker claiming the lien requiring suit to be
108 commenced to enforce the lien, a suit shall be commenced within
109 forty-five days thereafter [] or the claim for lien shall be extinguished.
110 Service of any such written demand shall be by registered or certified
111 mail, return receipt requested, or by personal service upon the broker
112 by any indifferent person, state marshal or other proper officer, by

113 leaving with such broker or at the broker's usual place of abode a true
114 and attested copy thereof.

115 (o) Whenever a claim for lien has been recorded with the town clerk
116 and is paid, or where there is failure to foreclose to enforce the lien
117 within the time provided by this section, the broker shall acknowledge
118 satisfaction or release the claim for lien, in writing, on written demand
119 of the owner within thirty days after payment or expiration of the time
120 in which to commence foreclosure on the lien.

121 (p) Except as otherwise provided in this section, whenever a claim
122 for lien has been recorded with the town clerk [] that would prevent
123 the closing of a conveyance or lease, an escrow account shall be
124 established from the proceeds of the conveyance or lease in the amount
125 of the compensation agreed upon by the parties. Upon the
126 establishment of the escrow account the broker shall immediately
127 release the claim for lien. The establishment of an escrow account, as
128 provided for in this section, shall not be the sole cause for the owner to
129 refuse to complete the conveyance or lease. [These] The moneys shall
130 be held in escrow by the attorney for the lessor in the case of a lease for
131 real property, and by the attorney for the owner in the case of the
132 actual conveyance or lease of such real property, until the parties'
133 rights to the escrowed moneys have been determined by the written
134 contract or agreement of the parties, a determination by the Superior
135 Court, or some other process which may be agreed to by the parties.
136 When there are sufficient funds in the amount of the claimed lien,
137 there shall be a release of the claim for lien which would allow
138 completion of the conveyance or lease on such terms as are acceptable
139 to the parties involved in the conveyance or lease. If the proceeds from
140 the conveyance or lease are insufficient to release all liens claimed
141 against the real property, including the broker's claim for lien, then the
142 parties are not required to establish the escrow account under this
143 section.

144 (q) The provisions of subsections (a) and (b) of this section shall not
145 apply to any (1) person excepted from the provisions of this chapter by

146 section 20-329 with respect to any acts performed by the person which
 147 are included in such exception; or [to any] (2) real estate broker or real
 148 estate salesperson who has provided services to the federal
 149 government, any political subdivision thereof, or any corporation,
 150 institution or quasi-governmental agency chartered by the federal
 151 government.

152 (r) No broker is entitled to claim any lien under this section []
 153 unless [] (1) after the broker is entitled to compensation, without
 154 contingencies other than closing or transfer of title, under the terms set
 155 forth in the written contract and not later than three days prior to the
 156 later of the date of the conveyance or lease as set forth in the real estate
 157 sales contract or lease or the actual date of the conveyance or the date
 158 when the tenant takes possession, the broker gives written notice of the
 159 claim for lien to the owner of the real property and to the prospective
 160 buyer or tenant that the broker is entitled to compensation under the
 161 terms set forth in the written contract and intends to claim a lien on the
 162 real property, or (2) the broker is unable to give written notice
 163 pursuant to subdivision (1) of this subsection because the identity of
 164 the prospective buyer or tenant cannot be ascertained by the broker
 165 after due diligence and reasonable effort. The notice shall be served
 166 upon the owner and upon the prospective buyer or tenant [] by any
 167 indifferent person, state marshal or other proper officer, by leaving
 168 with such owner and prospective buyer or at their usual places of
 169 abode a true and attested copy thereof. When there are two or more
 170 owners, or two or more prospective buyers, the notice shall be served
 171 on each owner and on each prospective buyer unless the identity of the
 172 prospective buyer cannot be ascertained by the broker after due
 173 diligence and reasonable effort.

This act shall take effect as follows:	
Section 1	October 1, 2004

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

Municipal Impact: None

Explanation

The bill makes various changes to laws concerning real estate broker liens and has no fiscal impact.

House "A" changes the conditions under which a broker is entitled to claim a lien. This has no fiscal impact.

OLR BILL ANALYSIS

SB 486 (as amended by House "A")*

AN ACT CONCERNING REAL ESTATE BROKER LIENS**SUMMARY:**

This bill allows either a real estate broker or his authorized agent to sign a claim for lien. Under current law, the broker must sign. By law, a claim for lien must include the claimant's name, the property owner's name, a property description, the lien amount, and the broker's real estate license number. The lien amount is the commission or compensation owed to the broker.

Current law prohibits a broker from claiming a lien unless written notice of the lien is given to the property owner and the prospective buyer or tenant at least three days before the property conveyance or the date the tenant is to move in. The bill permits the broker to claim the lien if he is unable to give the required written notice because after due diligence and reasonable effort he cannot learn the prospective buyer's or tenant's identity.

The bill also makes technical corrections to the broker lien statutes.

*House Amendment "A" expands upon the original bill's exception to the written notice requirement if the prospective buyer's or tenant's identity is not known by adding the requirement that the broker use due diligence and reasonable effort to learn the identity.

EFFECTIVE DATE: October 1, 2004

BACKGROUND***Legislative History***

On April 7, the House referred the original bill (File 130) to the Judiciary Committee, which reported it favorably on April 15.

COMMITTEE ACTION

Insurance and Real Estate Committee

Joint Favorable Report
Yea 16 Nay 1

Judiciary Committee

Joint Favorable Report
Yea 40 Nay 0