

# **Commercial Lien Laws**

**By Legislative Affairs**

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## **Background**

In reaction to the problem of real estate managers and commercial brokers completing a commercial lease or sales transaction that is subject to a listing or commission agreement only to receive a portion of the agreed upon fee, or sometimes no fee at all, commercial brokers have sought the statutory right to place a lien on the property in question as a means to ensure the commission would be paid.

## **Issue Analysis**

Many states have been exploring, or have already enacted, a commercial real estate broker's commission lien law. These laws allow for a commercial broker to obtain and foreclose upon a lien as a legal remedy against a property if the buyer/seller or lessee/lessor fails to pay the broker the agreed upon commission, as their interests in the real property may apply. Litigation to recover fees often consumes the entire fee the broker earned and would have been paid, and is not always swift, to the detriment of the real estate brokerages and commissioned agents involved in the transaction. These laws have been enacted to solve the problem of brokers going into a closing of a sale, and without mutual consent, receiving a fee lower than previously agreed, upon, or in some cases, no fee at all.

Generally, commercial property is defined as real property acquired or developed for investment and designed for use by business entities such as retail, wholesale, office, industrial, hotel, or service users. However, it varies from state to state. Although most states recognize commercial real estate as property used for agricultural purposes, and property on which buildings or structures are located, the unit definition varies. Some states recognize commercial property as structures larger than four residential units, while some recognize structures containing eight or more units. Condominiums, townhouses and homes comprising a subdivision are not included in this definition.

Although the language in each law varies from state to state, most laws state that the lien language must be placed in the written agreement signed by both the party the broker represents, and the real estate brokerage agency. This agreement is only valid with the principal broker, thus those working under the broker have no authority to place a lien.

The enactment of commercial lien laws serve as a safety net for brokers who previously had no means of insuring payment of the agreed upon fee, other than costly legal battles. Of special interest to property managers is the need for the lien laws to be as forceful and efficient for the commercial lease transactions as for commercial real estate sales. As more and more states contemplate creation of such laws, commercial brokers will have a greater sense of security when completing a transaction.

Because these laws vary from state to state, brokers should check with their legal counsel regarding specific provisions of law in the state in which they are doing business. Below is a chart compiled by the REALTORS® Commercial Alliance, outlining state laws across the country, as of May 2006.

**AS A NOTE OF CAUTION, IT MUST BE UNDERSTOOD THAT THIS REPORT DOES NOT CONSTITUTE LEGAL ADVICE. THIS REPORT IS INTENDED TO PROVIDE GENERAL INFORMATION, AND SHOULD NOT BE RELIED UPON AS LEGAL GUIDANCE. BEFORE ACTING, BOTH THE LAWS OF THE STATE AND LEGAL COUNSEL SHOULD BE CONSULTED. INFORMATION SHOULD NOT BE CONSTRUED AS SPECIFIC LEGAL ADVICE OR AN OPINION ON INDIVIDUAL CASES OR SITUATIONS. THIS RESEARCH WAS INITIALLY PERFORMED IN EARLY 2002. REMEMBER, THAT LAWS ARE IN FLUX, AND THIS RESEARCH MAY OR MAY NOT BE VALID AT THE TIME IT IS CONSULTED.**

State	Citation	Written brokerage agreement required?	Type of transactions for which broker can claim lien.	Type of property which can be liened.
<b>Alabama</b>	<a href="#">§35-11-450, 35-11-451</a>	Yes	Sale, lease	Commercial
<b>Arizona</b>	<a href="#">§33-1071</a> <a href="#">§33-1072</a> <a href="#">§33-1073</a> <a href="#">§33-1074</a> <a href="#">§33-1075</a> <a href="#">§33-1076</a>	Yes – and disclosure of lien rights in the agreement is mandatory	Lease	Commercial
<b>Connecticut</b>	<a href="#">§20-325a</a>	Yes – and notice of lien rights must appear in the commission agreement	Sale, lease	All real property
<b>Florida</b>	<a href="#">FRS 475.700-475.719</a> <a href="#">FRS 475.800-475.813</a>	Yes	Sale (lien on proceeds), lease (lien on property)	Commercial
<b>Georgia</b>	<a href="#">§44-14-602</a>	Yes	Sale, lease	Commercial
<b>Indiana</b>	<a href="#">IC 32-28-12-3</a>	Yes	Sale, lease	Commercial
<b>Illinois</b>	<a href="#">770 ILCS 15/1 et seq.</a>	Yes	Sale, lease	Commercial
<b>Kansas</b>	<a href="#">K.S.A. 58-30a-01 et seq.</a>	Yes	Sale, lease	Commercial
<b>Kentucky</b>	<a href="#">§376.075</a>	Yes	Sale, lease	All real property
<b>Louisiana</b>	<a href="#">Title 9, Ch. 3, Sec 2781</a>	Yes	Sale, lease	Commercial
<b>Maine</b>	<a href="#">10 MRSA §3251</a>	No	Sale, lease	All real property
<b>Maryland</b>	<a href="#">§14-301 to 313</a>	Yes	Lease	Commercial
<b>Missouri</b>	<a href="#">§429.600 to 630</a>	Yes	Sale, lease	Commercial
<b>Nevada</b>	<a href="#">NRS 645.8701 et seq.</a>	Yes	Sale; lease	Personal: owner's net proceeds from the transaction
<b>New Hampshire</b>	<a href="#">§447-A et seq.</a>	Yes	Sale, lease	Commercial
<b>New York</b>	<a href="#">Real Property, Sec. 294-b; Lien, Sec. 2.4</a>	Yes	Lease (for a term of more than 3 years); Sale (non-lien)	Commercial (for lease transactions)
<b>Ohio</b>	<a href="#">§1311.85-93</a>	Yes	Sale, lease	Commercial
<b>Pennsylvania</b>	Title 68, Ch. 24, Sec. 1051-1063	Yes	Sale, lease	Commercial
<b>Texas</b>	<a href="#">Property Code Title 5, Ch. 62.001-141</a>	Yes – notice of lien rights must appear in the written commission agreement	Sale, lease	Commercial
<b>Virginia</b>	<a href="#">§55-527</a>	Yes	Lease	Tenant's rent payments up to 1st 20 years of rent payments
<b>Washington</b>	<a href="#">RCW Chapter 60.42.005 - 60.42.900</a>	Yes	Sale, lease	Personal – only sale or lease proceeds
<b>Wisconsin</b>	<a href="#">§779.32</a>	Yes	Sale, lease	Commercial

**Sources for more information on Commercial Lien Laws**

REALTORS® Library Field Guide to Commercial Broker Lien Law  
<http://www.realtor.org/libweb.nsf/pages/fg710>