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"Can a Real Estate Broker File a Lien Against Real Property for Unpaid Commissions?"

Yes, Wisconsin is one of about 25 states that allow a licensed real estate broker to file a lien against real property for unpaid commissions or other compensation arising out of a commercial real estate transaction. The commission giving rise to such lien must be earned by the broker under a written agreement for the sale, purchase, lease or management of commercial real estate. Commercial real estate is defined under the Wisconsin Statutes as any real property other than property containing 8 or fewer dwelling units or property that is zoned for residential or agricultural purposes.

In order for the lien to be effective, a real estate broker must comply with specific notice and recording requirements set forth in Section 779.32 of the Wisconsin Statutes. In the case of a lien arising from the sale of commercial real estate, a real estate broker must record a notice of intent to claim a lien with the county register of deeds office and deliver such notice to the person owing the commission at least 30 days before the conveyance occurs. In addition, in this same example, the broker must record a notice of lien with the county register of deeds office at least 3 days prior to the date the deed conveying the property is recorded. Once the notice of lien is properly recorded and a copy is delivered to the property owner within 72 hours thereafter, the lien is considered perfected and it will secure all unpaid commissions or other compensation due to the broker with respect to the property subject to the lien, regardless of whether or not such amounts were actually earned by the broker at the time the lien was filed.

A broker must execute a satisfaction of lien within 30 days after one of the following events occur: (1) the broker is paid the full amount specified in the lien; (2) 125% of the commission is placed into a trust account of the broker or an attorney that does not represent a party in the dispute; or (3) the parties to the contract or agreement giving rise to the lien agree to binding arbitration. If the broker fails to execute and deliver the requested satisfaction within such time period, the broker is liable for 50% of the amount claimed in the lien.

POSTED:

Apr 20, 2008

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