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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO PROPERTY - COMMERCIAL REAL ESTATE BROKER LIEN ACT

Introduced By: Representatives Petrarca, Winfield, Brien, and O'Neill

Date Introduced: February 09, 2012

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 34 of the General Laws entitled "PROPERTY" is hereby amended by
2 adding thereto the following chapter:

CHAPTER 49

COMMERCIAL REAL ESTATE BROKER LIEN ACT

5 **34-49-1. Short title.** – This chapter shall be known and may be cited as the “Commercial
6 Real Estate Broker Lien Act.”

7 **34-49-2. Definitions.** – When used in this chapter, unless the context indicates otherwise:

8 (1) “Broker” means a real estate broker who is licensed pursuant to section 5-20.5 of the
9 general laws.

10 (2) “Broker services” means services for which a license issued by the Rhode Island
11 department of business regulation is required pursuant to section 5-20.5 of the general laws.

12 (3) “Commercial real estate” means and includes leaseholds as well as any and every
13 interest or estate in land, whether corporeal or incorporeal, freehold or non-freehold, which at the
14 time the property or interest is made the subject of an agreement for broker services, and does not
15 include any of the following:

16 (i) Vacant land that is zoned for single family use;

17 (ii) Land with physical improvements consisting of a house and/or structure comprised of
18 four (4) or fewer residential units.

19 (4) “Commission” means any compensation which is due to a broker for performance of

1 broker services.

2 (5) “Lien claimant” means a broker claiming a lien pursuant to this chapter.

3 (6) “Owner” means the owner of record of any interest in commercial real estate.

4 **34-49-3. Commercial real estate lien.** – (a) A broker may record a lien on commercial
5 real estate in the amount that the broker is due under a written agreement for broker services
6 signed by the owner or signed by the owner’s duly authorized agent, if:

7 (1) The broker has performed under the provisions of the agreement;

8 (2) The written agreement for broker services describes the broker’s duties to the owner;

9 and

10 (3) The written agreement for broker services states the conditions upon which the
11 compensation shall be earned and the amount of such compensation.

12 (4) The written agreement for broker services includes the following notice, “The real
13 estate broker may be entitled to certain lien rights pursuant to chapter 34-49.”

14 (b) The lien under this section shall be available only to the broker named in the
15 instrument signed by the owner or the owner’s duly authorized agent. A lien under this section
16 shall be available only against the commercial real estate which is the subject of the written
17 agreement for broker services.

18 (c) When payment of commission to a broker is due in installments, a portion of which is
19 due only after the conveyance or transfer of the commercial real estate, any notice of lien for
20 those payments due after the transfer or conveyance may be recorded at any time subsequent to
21 the transfer or conveyance of the commercial real estate and within ninety (90) days of the date
22 on which the payment is due.

23 **34-49-4. Notice of intent to record lien.** – (a) The notice of lien shall be effective as a
24 lien against the commercial real estate as identified in the written agreement for broker services.
25 A single claim for lien filed prior to transfer or conveyance of the commercial real estate claiming
26 all commissions due in installments shall also be valid and enforceable as it pertains to payments
27 due after the transfer or conveyance; provided, however, that as payments or partial payments of
28 commission are received, the broker shall provide partial releases for those payments, thereby
29 reducing the amount due the broker under the broker’s lien.

30 (b) A lien authorized by this chapter attaches to the commercial real estate only when the
31 lien claimant files a timely notice of the lien conforming to the requirements of section 34-49-5
32 and this section in the land evidence records of the municipality where the commercial real estate
33 is located. A notice of lien is timely if it is filed after the claimant’s performance under the
34 written agreement for broker services and before the conveyance or transfer of the commercial

1 real estate which is the subject of the lien. Except that in the case of a lease or transfer of a
2 nonfreehold interest, the notice of a lien shall be filed no later than ninety (90) days following the
3 tenant's possession of the commercial real estate or no later than sixty (60) days following any
4 date or dates set out in the written agreement for broker services for subsequent payment or
5 payments. When a notice of a lien is filed more than thirty (30) days preceding the date for
6 settlement or possession set out in an offer to purchase, sales contract, or lease, which establishes
7 the broker's claim of performance, the lien shall be available only upon grounds of the owner's
8 breach of the written agreement for broker service.

9 **34-49-5. Content of lien notice.** – (a) A lien notice under this chapter shall be signed by
10 the lien claimant and shall contain an attestation by the lien claimant that the information
11 contained in the notice is true and accurate to the best of the lien claimant's knowledge and belief.

12 (b) The lien notice shall include all of the following information:

13 (1) The name of the lien claimant;

14 (2) The name of the owner;

15 (3) A description of the commercial real estate upon which the lien is being claimed;

16 (4) The amount for which the lien is claimed and whether the amount is due in
17 installments; and

18 (5) The claimant's grounds for the lien, including a reference to the written agreement for
19 broker services that is the basis for the lien.

20 **34-49-6. Demand for release or satisfaction of lien claim.** – If a claim for a lien has
21 been filed with the clerk of the land evidence records of the municipality where the commercial
22 real estate is located and a condition occurs that would preclude the lien claimant from receiving
23 compensation under the terms of the written agreement for broker services on which the lien is
24 based, the lien claimant shall file and serve the owner of record a written release or satisfaction of
25 the lien promptly, and in no event more than thirty (30) days after the demand.

26 **34-49-7. Lien claimant to mail copy of notice of lien to owner by certified mail.** –
27 Any lien claimant who files a lien on commercial real estate pursuant to the provisions of this
28 chapter shall mail a copy of the notice of the lien to the owner of the commercial real estate by
29 certified mail, return receipt requested, or shall serve a copy of the notice of the lien in
30 accordance with any of the provisions for service of process.

31 **34-49-8. Enforcement of lien.** – A lien claimant may bring suit to enforce a lien which
32 attaches pursuant to the provisions of this chapter in any court of competent jurisdiction in the
33 county where the commercial real estate is located. The lien claimant shall commence
34 proceedings within ninety (90) days after filing the lien, and failure to commence proceedings

1 within the ninety (90) days shall extinguish the lien. If a claim is based upon an option to
2 purchase the commercial real estate, the lien claimant shall commence proceedings within ninety
3 (90) days of the option to purchase being exercised. A claim for the same lien extinguished
4 pursuant to this section may not be asserted in any subsequent proceeding. A lender shall not be
5 made a party to any suit to enforce a lien under this chapter unless the lender has willfully caused
6 the nonpayment of the commission giving rise to the lien.

7 **34-49-9. Complaint; content; parties' foreclosure action; procedure.** – (a) A
8 complaint filed pursuant to the provisions of this chapter shall contain all of the following:

9 (1) A statement of the terms of the written agreement for broker services on which the
10 lien is based or a copy of the written contract or agreement;

11 (2) The date when the written agreement for broker services was made;

12 (3) A description of the services performed;

13 (4) The amount due and unpaid;

14 (5) A description of the property that is subject to the lien; and

15 (6) Any other facts necessary for a full understanding of the rights of the parties.

16 (b) The plaintiff shall file the action against all parties that have an interest of record in
17 the commercial real estate; provided, that a lender shall not be made a party to any suit to enforce
18 a lien under this chapter unless the lender has willfully caused the nonpayment of the commission
19 giving rise to the lien; a foreclosure action for a lien claimed pursuant to this chapter shall be
20 brought pursuant to the provisions of this chapter.

21 (c) Valid prior recorded liens or mortgages shall have priority over a lien under this
22 chapter.

23 **34-49-10. Lien extinguished for lien claimant failing to file suit or answer in pending**
24 **suit within ninety (90) days after service on owner .** – If a lien claimant fails to file suit to
25 enforce the lien or fails to file an answer in a pending suit to enforce a lien within ninety (90)
26 days after a properly served written demand of the owner, lienee, or other duly authorized agent,
27 the lien shall be extinguished. The provisions of this section shall not extend to any other deadline
28 provided by law for the filing of any pleadings or for the foreclosure of any lien governed by this
29 chapter.

30 **34-49-11. Satisfaction or release of lien.** – If a claim for a lien has been filed pursuant to
31 the provisions of this chapter with the clerk of the land evidence records of the municipality
32 where the commercial real estate is located and the claim has been paid in full, or if the lien
33 claimant fails to institute a suit to enforce the lien within the time as provided by law, the lien
34 claimant shall acknowledge satisfaction or release of the lien in writing upon written demand of

1 the owner promptly, and in no event more than thirty (30) days after the demand.

2 **34-49-12. Cost of proceeding to be paid by non prevailing party.** – The costs of any
3 proceeding brought to enforce a lien filed pursuant to this chapter, including reasonable attorneys’
4 fees and prejudgment interest due to the prevailing party, shall be paid by the non-prevailing
5 party or parties. If more than one party is responsible for costs, fees, and prejudgment interest, the
6 costs, fee, and prejudgment interest shall be equitably apportioned by the court among the
7 responsible parties.

8 **34-49-13. Dismissal of complaint for other cause.** – (a) If any person in interest,
9 including, but not limited to, an owner or lessor, claims:

10 (1) That it appears from the notice of intention that the claimant has no valid lien by
11 reason of the character of the agreement for which a lien is claimed; or

12 (2) That a notice or other instrument has not been filed or recorded in accordance with the
13 applicable provisions of section 34-49-4 et seq., or

14 (3) That for any other reason, a claimed lien is invalid by reason or failure to comply with
15 the provisions of section 34-49-5 et seq., then in such event, such person may apply forthwith to
16 the superior court for the county where the land lies for an order to show cause why the lien in
17 question is invalid, or otherwise void, or that the basis of the lien is without probability of a
18 judgment being rendered in favor of the lienor. A mortgage holder or servicer is not a necessary
19 party under this section and shall not be named as a party in any such application or order of
20 notice.

21 (b) An order of notice to appear and show cause why the relief demanded in the
22 complaint should not be granted shall be served upon the necessary parties no later than one week
23 prior to the date of the scheduled hearing. If the necessary parties cannot be found, such service
24 may be made as the court shall direct. The application shall be made upon a verified complaint
25 accompanied by other written proof of facts upon which the application is made. Upon granting
26 or denying the application, the court shall enter an order or judgment as applicable on the matter
27 involved.

28 **34-49-14. Discharge of lien.** – (a) Any claim of lien on commercial real estate filed
29 under this chapter may be discharged by any of the following methods:

30 (1) The lien claimant of record may acknowledge the satisfaction of the claim of lien on
31 the commercial real estate indebtedness, whereupon the clerk of the land evidence records of the
32 municipality where the commercial real estate is located shall enter on the record of the claim of
33 lien on the commercial real estate the acknowledgement of satisfaction, which shall be signed by
34 the lien claimant of record, the claimant’s agent, or attorney, and witnessed by the clerk of the

1 superior court.

2 (2) The owner may exhibit an instrument of satisfaction signed and acknowledged by the
3 lien claimant of record, which instrument states that the claim of lien on the commercial real
4 estate indebtedness has been paid or satisfied, whereupon the clerk of the superior court shall
5 cancel the claim of lien on the commercial real estate by entry of satisfaction on the record of the
6 claim of lien on the commercial real estate.

7 (3) By failure to enforce the claim of lien on the commercial real estate within the time
8 prescribed in this chapter.

9 (4) By filing in the office of the clerk of the land evidence records of the municipality
10 where the commercial real estate is located, the original or certified copy of a judgment or decree
11 of a court of competent jurisdiction showing that the action by the claimant to enforce the claim
12 of lien on the commercial real estate has been dismissed or finally determined adversely to the
13 claimant.

14 (5) Whenever funds in an amount equal to one hundred twenty-five percent (125%) of the
15 amount of the claim of lien on the commercial real estate is deposited with the clerk of the
16 superior court to be applied to the payment finally determined to be due, whereupon the clerk of
17 superior court shall cancel the claim of lien on the commercial real estate.

18 (6) Whenever a corporate surety bond, in an amount equal to one hundred twenty-five
19 percent (125%) of the amount of the claim of lien on the commercial real estate and conditioned
20 upon the payment of the amount finally determined to be due in satisfaction of the claim of lien
21 on the commercial real estate is deposited with the clerk of the superior court, whereupon the
22 clerk of the superior court shall cancel the claim of lien on the commercial real estate.

23 (7) By failure to file documentation if required pursuant to section 34-49.6 or section 34-
24 49.10.

25 (b) If funds in an amount equal to one hundred twenty-five percent (125%) of the amount
26 that is sufficient to release the claim of lien have been deposited with the clerk of the superior
27 court, or a bond in an equal amount has been secured, the lien claimant shall release the claim for
28 the lien on the commercial real estate, and the lien claimant shall have a lien on the funds
29 deposited with the clerk of the superior court.

30 SECTION 2. This act shall take effect ninety (90) days after passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO PROPERTY - COMMERCIAL REAL ESTATE BROKER LIEN ACT

- 1 This act would enable a real estate broker to record a lien on commercial real estate in the
- 2 amount that the broker is due under a written agreement for broker services.
- 3 This act would take effect ninety (90) days after passage.

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