

COMMERCIAL REAL ESTATE BROKER LIEN ACT - ACT 34 OF 1998

**By: Bradley S. Dornish, Esquire
Dornish & Scolieri, P.C**

Act 34 of 1998 became effect on May 20, 1998 and entitles a licensed real estate broker to a lien on commercial real estate for compensation owed in connection with services that are provided in the sale or leasing of commercial real estate. The Act contains detailed notice and filing requirements in order to perfect the lien and also contains procedures for escrowing disputed amounts.

The Act only applies to commercial transactions. There is no right to a lien for transactions involving one to four residential units, real estate zoned for agricultural purposes unless the land is subject to an agreement of sale contingent upon rezoning for nonagricultural uses, or single-family residential units or building units or building lots such as condominiums, town homes or homes in a subdivision when sold or leased on a unit-by-unit basis even though the development contains more than four units.

To assert a lien, the Broker must be licensed under Pennsylvania law, and there must be a written agreement between the broker and the owner/prospective buyer. The lien attaches to the real estate when the broker procure a person/entity that is ready, willing and able to purchase or lease upon the terms set forth in the written agreement with the owner, and the broker recording a notice of lien in the office of the Prothonotary in the county in which the real estate is located prior to the actual conveyance. Where the Broker has a written agreement with a buyer, the notice of lien must be filed within 90 days after the closing to the buyer; in the case of a lease, the notice of lien must be recorded within 90 days of a default by the owner under the terms of their compensation agreement with the Broker. The Broker also has mailed a copy of the notice of lien to the owner of the commercial real estate by certified mail.

A Broker is not entitled to record a notice of lien unless, at least three days before closing, he gives written notice of the claim for lien to the owner and prospective buyer that he/she is entitled to compensation under the terms set forth in the written agreement. This notice must be served by registered or certified mail and shall include a statement of the buyer's right to deposit funds in escrow in an amount sufficient to release the claim of lien.

The requirement to establish an escrow account can not be a cause for any party to refuse to close the transaction. Once an escrow is established, the broker has to provide a release of the lien claim. If the escrow is not established and the broker is not paid, he or she has two years after recording the notice of lien to file a lawsuit to collect.

Finally, for title purposes, the law provides that mortgage and mechanics liens shall have priority over a broker's lien, regardless of the date recorded. This means that the buyer's lender can foreclose and defeat the broker's lien even if the broker's lien notice is recorded before the mortgage.