

SESSION OF 2005

SUPPLEMENTAL NOTE ON SENATE BILL NO. 215

As Amended by House Committee of the Whole

Brief*

SB 215 would enact the Commercial Real Estate Broker Lien Act. Commercial real estate is defined to mean any real estate and any interest therein, except the following:

- ! Real estate containing one to four residential units;
- ! Real estate containing single-family residential units such as condominiums, townhouses, or homes in a subdivision when sold, leased, or otherwise conveyed on a unit by unit basis, even through these units may be a part of a larger building or parcel of real estate containing more than four residential units;
- ! Real estate on which no buildings or structures are located and which is zoned for single-family residential use; or
- ! Real estate used for agricultural purposes.

The bill would provide that a broker would have a lien on commercial real estate in the amount of compensation agreed upon if:

- ! Such real estate is listed with the broker under terms of a written agreement signed by the owner or the owner's agent; and
- ! The broker or salespersons retained by the broker have provided services that resulted in the procuring of a person or entity ready, willing, and able to purchase, lease, or otherwise accept a conveyance of the commercial real estate which were otherwise

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

acceptable to the owner or owner's agent as evidenced by a written agreement signed by the owner or the owner's agent.

- ! A broker also would have a lien on commercial real estate if the broker has a written agreement with a person to represent the person in the purchase, lease, or other conveyance to the buyer of the real estate when the broker becomes entitled to compensation under the written agreement.

A broker's lien would attach to the commercial real estate when:

- ! The broker procures a person or entity ready, willing, and able to purchase, lease, or otherwise accept a conveyance of such real estate; and
- ! The broker records a notice of the lien in the office of the register of deeds of the county in which the commercial real estate is located, so long as the lien is filed prior to the actual conveyance or transfer of the commercial real estate subject to the broker's lien.

In the case of a lease, the lien must be recorded within 90 days after the lessee takes possession of the property.

A broker may enforce a lien attaching against commercial real estate by filing a petition to foreclose the lien in the district court of the county in which the real estate is located. Failure to file a petition within two years of recording a lien shall extinguish the lien.

Senate Committee amendments were clarifying in nature.

The House Committee added provisions whereby if a lien is satisfied or discharged or if the broker fails to institute a suit to enforce the lien within the time provided, the broker shall record the satisfaction or release of the lien in writing upon written demand within 20 days, as opposed to 30 days in the bill, after the demand.

The following persons may make a demand upon the broker for entering a satisfaction or release of the lien:

- ! An owner or the owner's heir or assigns or anyone acting for such owner, heirs or assigns;
- ! An owner of real estate upon which a lien has been recorded by someone having no interest in the real estate; or
- ! A lender or designated closing agent acting as a closing agent in the sale, financing or refinancing of the real estate subject to such lien.

Any broker or assignee of a broker who refuses or neglects to enter satisfaction or release of such lien within 20 days after demand has been made shall be liable in damages to the person for whom the demand was made in the sum of \$500, together with a reasonable attorney's fee for preparing and prosecuting the action. The plaintiff in such action may recover any additional damages that the evidence in the case warrants. Civil actions may be brought before any court of competent jurisdiction, and attachments to property may be made.

The House Committee of the Whole added a provision regarding purchase money mortgages to clarify that the priority of a purchase money mortgage would apply to any lien pursuant to the Commercial Real Estate Broker Lien Act.

Background

The bill was supported by the Kansas Association of Realtors as a way to collect lawful commissions. Representatives of the Kansas Brokers Association offered clarifying amendments.

The Kansas Land Title Association opposed SB 215 as too complicated and not needed.

The bill has no fiscal impact.