

Stewart® Bulletin

MI2010008

Date: October 18, 2010
To: All Michigan Issuing Offices
RE: **Commercial Real Estate Broker's Liens**

Dear Associates:

Please be advised that on October 5, 2010, Public Act 201 of 2010 entitled the "Commercial Real Estate Broker's Lien Act", was signed into effect by the Governor. Effective immediately, this Act creates a right to enforce a lien by a real estate Broker against commercial property which is the subject of a written commission agreement if recorded against the subject property prior to the date of conveyance. The lien attaches and establishes its priority at the date of recordation. Commercial property is defined as property other than:

- | Real estate zoned for single family use on which no building or structure is located.
- | Real estate on which 4 or fewer residential units are located.
- | Real estate on which more than 4 residential units are located if the units are single-family residential units, including houses, condominiums or townhouses in a subdivision or condominium project, that are sold, leased, or otherwise conveyed on a unit-by-unit basis.

There are exceptions to the rule that the lien must be recorded prior to the date of conveyance, e.g. when the commission is payable in installments or when the commission is due as a result of a signed lease agreement. [Note: if a commission is due on the execution of an option to purchase real estate, the lien must be recorded prior to the actual conveyance of the property pursuant to the option.]

As a result of this Act, it is necessary in a commercial sale or lease transaction (as defined above) to use the following Schedule B requirement where we are closing and providing title insurance: As you are aware, all *policy* forms are to be acquired through Stewart Title's STEPS program for tracking and remittance purposes. Please disseminate this bulletin to all appropriate office personnel and assure that all employees are using the forms by the date indicated above.

Submit to the Company a Release of Lien from both the seller's and buyer's real estate Broker pursuant to the provisions of Public Act 201 or 2010 or submit an

Affidavit executed by the seller and buyer that they have not employed the use of a Broker or Broker's agent/employee in the transaction.

The Affidavit should indemnify and hold you harmless for any inaccuracy in that representation. The affidavit and indemnity language may be added to any existing "estoppel affidavit" or "seller's affidavit" secured at the closing but must be signed by both seller and buyer. This Act emphasizes the necessity of doing a "date-down" of title immediately prior to closing to assure that we are picking up any recorded liens so that we may require their release. In the event that we do *not* close the transaction, we must carefully review title to take exception for liens which come on record prior to the date of policy. [Note: We do not cover "gap" matters on transactions we do not close.]

In the event that a Broker's fee is due and owing, make sure to pay off the commission and secure a release of lien right from the Broker at the closing. [It would not need to be recorded unless a lien was recorded.] Also, be aware that the Act contemplates that the parties may escrow funds sufficient to cover the amount of the lien. The Act does not require that you act as escrow agent for this purpose. It simply states that it does not constitute grounds upon which the seller and buyer can terminate the sale. If you choose to act as Escrow Agent, you are to collect funds sufficient to cover the amount of the commission which funds "shall remain in the escrow account until the rights to the money have been determined by a written agreement...or order by a court of competent jurisdiction". Upon the escrowing of sufficient funds, the Broker shall provide a release of lien in substantially the form described by the statute. This should be secured in conjunction with the closing with the creation of the escrow account. Finally, failure to commence a foreclosure of the lien within one year from the date of recording of the lien acts to extinguish the lien similar to a lien under the Construction Lien Act.

Please disseminate this Bulletin to all appropriate personnel.

This Bulletin relates solely to Michigan.

If you have questions relating to this or other bulletins, please contact your local underwriting personnel or Stewart Legal Services.

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Note: Copy and distribute this bulletin to your escrow officers, title examiners, title officers, searchers and anyone else that you feel should know about it.

References

Bulletins Replaced:

None.

Related Bulletins:

None.

Underwriting Manual:

None.

Exceptions Manual:

None.

Forms:

None.

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