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Chapter No. 522
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SENATE BILL NO. 2559

Originated in Senate _____ Secretary

SENATE BILL NO. 2559

AN ACT TO CREATE THE COMMERCIAL REAL ESTATE BROKER LIEN ACT; TO DEFINE TERMS USED IN THE ACT; TO PROVIDE THAT A REAL ESTATE BROKER SHALL HAVE A LIEN UPON COMMERCIAL REAL ESTATE IN THE AMOUNT DUE UNDER A WRITTEN AGREEMENT FOR BROKER SERVICES IF CERTAIN CONDITIONS ARE MET; TO PROVIDE THE CONTENT FOR A LIEN NOTICE; TO PROVIDE FOR THE ENFORCEMENT OF THE LIEN; TO PRESCRIBE CONTENTS OF THE COMPLAINT FILED TO ENFORCE A LIEN; TO PROVIDE THAT THE COST OF ANY PROCEEDING BROUGHT TO ENFORCE A LIEN SHALL BE PAID BY THE NONPREVAILING PARTY; TO PROVIDE FOR THE DISCHARGE OF THE LIEN; TO PROVIDE A REMEDY FOR LIENS WRONGLY FILED; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. **Short title.** This act shall be known and may be cited as the "Commercial Real Estate Broker Lien Act."

SECTION 2. **Definitions.** As used in this act, the following terms have the following meanings:

(a) "Broker" means a real estate broker licensed pursuant to Section 73-35-3(1).

(b) "Broker services" means services for which a license issued by the Mississippi Real Estate Commission is required under Section 73-35-1 et seq.

(c) "Commercial real estate" means any real property or any and every interest or estate in land, including leaseholds, timeshares and condominiums, whether corporeal or incorporeal, freehold or nonfreehold, but excluding oil, gas or mineral leases and any other mineral leasehold, mineral estate or mineral interest of any nature whatsoever, which at the time the property or interest is made the subject of an agreement for broker services:

(i) Is lawfully used primarily for sales, office, research, institutional, warehouse, manufacturing, industrial or mining purposes involving five (5) or more dwelling units; or

(ii) May lawfully be used for any of the purposes listed in this paragraph (c) by a duly enacted zoning ordinance or which is the subject of an official application or petition to amend the applicable zoning ordinance to permit any of the uses listed in this paragraph (c) which is under consideration by the government agency with authority to approve the amendment; or

(iii) Is in good faith intended to be immediately used for any of the purposes listed in this paragraph (c) by the parties to any contract, lease, option or offer to make any contract, lease, or option.

(d) "Compensation" means any compensation that is due a broker for performance of broker services.

(e) "Lien claimant" means a broker claiming a lien under this act.

(f) "Owner" means the owner of record of any interest in commercial real estate.

SECTION 3. Commercial real estate lien. (1) A broker shall have a lien upon commercial real estate in the amount that the broker is due under a written agreement for broker services signed by the owner or signed by the owner's duly authorized agent, if:

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

(b) The written agreement for broker services clearly sets forth the broker's duties to the owner; and

(c) The written agreement for broker services sets forth the conditions upon which the compensation shall be earned and the amount of the compensation.

(2) The lien under this section shall be available only to the broker named in the instrument signed by the owner or the owner's duly authorized agent.

(3) A broker's lien is not valid or enforceable against a grantee or purchaser of an interest in the commercial real estate conveyed by the person owing the compensation if the grantee or purchaser is taking the property without existing tenants or leases covered by a written agreement for broker services if the deed or instrument transferring the interest is recorded before the broker's notice of lien is recorded.

SECTION 4. When lien attaches to commercial real estate. A lien authorized by this act attaches to the commercial real estate

only when the lien claimant files a timely notice of the lien in the office of the chancery clerk in the county in which the commercial real estate is located. A notice of lien is timely if it is filed after the claimant's performance under the written agreement for broker services and before the conveyance or transfer of the commercial real estate that is the subject of the lien, except in cases where payments of compensation are due in installments or upon renewal. When payment of compensation to a broker is due in installments or upon renewal under the written agreement for broker services, a portion of which is due or may become due after the conveyance or transfer of the commercial real estate, a single claim for a lien filed before transfer or conveyance of the commercial real estate claiming all compensation due in installments or upon renewal shall be valid and enforceable for a period of one (1) year from the date of filing as it pertains to payments due after the transfer or conveyance; however, as payments or partial payments of compensation are received, the broker shall provide partial releases for those payments, thereby reducing the amount due the broker under the broker's lien. The notice of single claim for a lien may be renewed for a period of one (1) year by the filing of a renewal notice meeting the requirements of this act before the expiration of the expiring notice, and may be likewise renewed from year to year so long as installments of compensation or renewal compensation are due. Notwithstanding any notice of single claim

for a lien filed, when payment of compensation to a broker is due in installments or contingent upon renewals under the written agreement for broker services, a portion of which is or would be due after the conveyance or transfer of the commercial real estate, any notice of lien for those payments due or becoming due after the transfer or conveyance may be recorded after the transfer or conveyance of the commercial real estate and within ninety (90) days of the date on which the payment is due; in that case the lien shall be effective as a lien against the transferee's interest in the commercial real estate as of the date filed and, in the case of a lease or transfer of a nonfreehold interest, the lien shall be effective as a lien against the owner's interest in the commercial real estate as of the date filed.

SECTION 5. Lien notice, content. (1) A lien notice under this act shall be signed by the lien claimant and shall contain an attestation by the lien claimant that the information contained in the notice is true and accurate to the best of the lien claimant's knowledge and belief.

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

(a) The name of the lien claimant;

(b) The name of the owner;

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

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

(e) The claimant's grounds for the lien, including a reference to the written agreement for broker services that is the basis for the lien. It is not necessary that the written agreement for broker services be attached to the notice.

(3) The chancery clerk shall index properly filed liens in the "Notice of Construction Liens" record maintained in his office as provided under Section 85-7-133.

SECTION 6. Lien claimant to mail copy of notice of lien to owner(s) by certified mail. Any lien claimant who files a lien on commercial real estate under the provisions of this act shall mail a copy of the notice of the lien to the owner(s) of the commercial real estate by certified mail, return receipt requested, or shall serve a copy of the notice of the lien in accordance with any of the provisions for service of process set forth in the Mississippi Rules of Civil Procedure, as amended from time to time. The lien claimant shall file proof of service with the chancery clerk. The lien is void if the lien claimant does not file and serve the lien as provided in this section.

SECTION 7. Enforcing lien. A lien claimant may bring suit to enforce a lien that attaches under the provisions of this act in any court of competent jurisdiction in the county where the commercial real estate is located. The lien claimant shall begin proceedings within one (1) year after filing the notice of lien,

and failure to begin proceedings within the one (1) year shall extinguish the lien. If a claim is based upon an option to acquire an interest in commercial real estate, the lien claimant shall begin proceedings within one (1) year of the option to purchase being exercised. A claim for the same lien extinguished under this section may not be asserted in any later proceeding. A lender shall not be made a party to any suit to enforce a lien under this act unless the lender has willfully caused the nonpayment of the compensation giving rise to the lien.

SECTION 8. Complaint; content; parties' foreclosure action; procedure. (1) A complaint filed under the provisions of this act shall contain all of the following:

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

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

(c) A description of the services performed;

(d) The amount due and unpaid;

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

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

(2) The plaintiff shall file the action against all parties that have an interest of record in the commercial real estate;

provided that a lender shall not be made a party to any suit to enforce a lien under this act unless the lender has willfully caused the nonpayment of the compensation giving rise to the lien. A foreclosure action for a lien claimed under this act shall be brought under the provisions of this section.

(3) Upon filing a complaint, the plaintiff shall file with the chancery clerk of each county where the commercial real estate, or any part thereof, is situated a lis pendens notice in accordance with Section 11-47-3.

SECTION 9. When lien claim release or satisfaction to be filed; extinguishment on certain conditions. If a notice of lien has been filed with the chancery clerk and the claim has been paid in full or in part, or if a condition occurs that would preclude the lien claimant from receiving compensation, in whole or in part, under the terms of the written agreement for broker services on which the lien is based, the lien claimant shall promptly, and in no event more than thirty (30) days after a properly served written demand of the owner, lienee, or other authorized agent, file with the chancery clerk and serve upon the owner(s) of record a written release, partial release or satisfaction of the lien. If a lien claimant fails to file a suit to enforce the lien within the time prescribed by this act or fails to file an answer in a pending suit to enforce a lien within thirty (30) days after a properly served written demand of the owner, lienee, or other authorized agent, the lien shall be extinguished. Service of the

demand shall be by registered or certified mail, return receipt requested, or by personal service under the Mississippi Rules of Civil Procedure, as amended from time to time. The claimant shall promptly file proof of properly served written demand with the chancery clerk. The provisions of this section shall not extend to any other deadline provided by law for the filing of any pleadings or for the foreclosure of any lien governed by this act.

SECTION 10. Cost of proceeding to be paid by nonprevailing party. The costs of any proceeding brought to enforce a lien filed under this act, including reasonable attorneys' fees and prejudgment interest due to the prevailing party, shall be paid by the nonprevailing party or parties. If more than one (1) party is responsible for costs, fees and prejudgment interest, the costs, fees and prejudgment interest shall be equitably apportioned by the court among the responsible parties.

SECTION 11. Discharge of lien. Unless an alternative procedure is available and is acceptable to the transferee in a real estate transaction, any claim of lien on commercial real estate filed under this act may be discharged by any of the following methods:

(a) The lien claimant of record, the claimant's lawful agent, or the claimant's duly authorized attorney-in-fact, in the presence of the chancery clerk or a notary public, may acknowledge in writing the satisfaction of the claim of lien on the commercial real estate indebtedness and file the same with the chancery

clerk, after which the chancery clerk shall enter on the record of the claim of lien on the commercial real estate the acknowledgment of satisfaction.

(b) The owner may exhibit an instrument of satisfaction signed and acknowledged by the lien claimant of record in the presence of the chancery clerk or a notary public, which instrument states that the claim of lien on the commercial real estate indebtedness has been paid or satisfied, after which the chancery clerk shall cancel the claim of lien on the commercial real estate by entry of satisfaction on the record of the claim of lien on the commercial real estate.

(c) By failure to enforce the claim of lien on the commercial real estate within the time prescribed by this act.

(d) By filing in the office of the chancery clerk the original or attested copy of a judgment or decree of a court of competent jurisdiction showing that the action by the claimant to enforce the claim of lien on the commercial real estate has been dismissed or finally determined adversely to the claimant.

(e) Whenever funds in an amount equal to one hundred twenty-five percent (125%) of the amount of the claim of lien on the commercial real estate are deposited with the chancery clerk to be applied to any payment finally determined to be due, after which the chancery clerk shall cancel the claim of lien on the commercial real estate. Thereafter, the lien of the claimant shall remain in place and be fully enforceable as to the funds

deposited with the chancery clerk, but the lien upon the commercial real property shall be deemed released.

(f) Whenever a corporate surety bond, in an amount equal to one hundred twenty-five percent (125%) of the amount of the claim of lien on the commercial real estate and conditioned upon the payment of the amount finally determined to be due in satisfaction of the claim of lien on the commercial real estate is deposited with the chancery clerk, after which the chancery clerk shall cancel the claim of lien on the commercial real estate. Thereafter, the lien of the claimant shall remain in place and be fully enforceable as to the funds deposited with the chancery clerk, but the lien upon the commercial real property shall be deemed released.

(g) By failure to file a written release or satisfaction of a lien when required by this act or to timely file or take other action required by this act.

SECTION 12. Remedy for lien wrongly filed. Any broker who falsely and maliciously files or causes to be filed a notice of lien under this act that brings in question or disparages the title to property may be held liable in a civil action for damages, in which case damages shall be recoverable up to two (2) times the amount of monetary damages caused by the broker's false and malicious acts, in addition to any other damages.

SECTION 13. Priority of deeds of trust or mortgages, tax liens and other liens. All deeds of trust or mortgages, all

purchase money mortgages and all liens for ad valorem taxes, regardless of when recorded, and all other liens afforded priority by law or recorded before the recording of the broker's lien provided by this act shall have priority over the broker's lien.

SECTION 14. This act shall stand repealed on July 1, 2017.

SECTION 15. This act shall take effect and be in force from and after July 1, 2014, and applies to written agreements signed by the owner of commercial real estate or the owner's duly authorized agent on or after that date.

PASSED BY THE SENATE
April 1, 2014

Tate Reeves

PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
March 31, 2014

Philip Gunn

SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR

Phil Bryant

GOVERNOR

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