

### Michigan Legislature Gives Special Protection to Real Estate Brokers

October 20, 2010

On October 5, 2010, the Governor passed the Commercial Real Estate Broker's Lien Act (the "Act"). The Act was created in response to situations in which commercial real estate brokers complete a commercial lease or sales transaction that is subject to a commission agreement, but do not receive the agreed-upon commission. The Act provides protection for real estate brokers who have no alternative for obtaining payment aside from costly litigation. Michigan has historically extended similar lien rights to a number of other occupations, including through the Construction Lien Act.

First, the Act is available only to an individual that is licensed as a real estate broker under Article 25 of the Occupational Code and it is not available to employees, agents, subagents or independent contractors of a licensed real estate broker.

Second, a commercial real estate broker's lien will attach only to commercial real estate. Commercial real estate is defined as real estate that is not any of the following:

- Real estate zoned for single family use and on which no building or structure is located.
- Real estate on which four or fewer residential units are located.
- Real estate on which more than four residential units are located if they 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.

In general, the lien would attach to commercial real estate in favor of a real estate broker if: (1) the real estate broker had a written commission agreement; (2) the real estate broker was entitled to a commission under that agreement; and (3) the real estate broker recorded a claim of lien before the conveyance of the commercial real estate.

To summarize, the Act does all of the following:

- Specifies the circumstances under which a lien would attach to commercial real estate.
- Requires the lien to generally be recorded before the conveyance.
- Provides for attachment of a lien in the case of lease agreements, brokers acting as buyer's agents and commissions owed on purchase options.
- Provides that prior-recorded liens or mortgages have priority over a commercial real estate broker's lien.
- Allows for the establishment of an escrow account in the event the existence of a lien would otherwise prevent a transaction from closing.
- Provides that an action to enforce a lien must be brought within one year after the lien was recorded.

If you have questions regarding the new Commercial Real Estate Broker's Lien Act and it's application, please contact Eric R. Starck at [erstarck@rhoadesmckee.com](mailto:erstarck@rhoadesmckee.com) or (616) 233-5205.