

LEGISLATURE OF NEBRASKA
 ONE HUNDRED THIRD LEGISLATURE
 FIRST SESSION
LEGISLATIVE BILL 3

Final Reading

Introduced by Krist, 10.

Read first time January 10, 2013

Committee: Judiciary

A BILL

1 FOR AN ACT relating to liens; to amend sections 52-1901 and 52-1902,
 2 Reissue Revised Statutes of Nebraska, and section 28-101,
 3 Revised Statutes Cumulative Supplement, 2012; to create
 4 the offense of fraudulently filing a financing statement,
 5 lien, or document; to provide a penalty; to provide and
 6 change provisions relating to nonconsensual common-law
 7 liens; to adopt the Commercial Real Estate Broker Lien
 8 Act; to harmonize provisions; to repeal the original
 9 sections; and to declare an emergency.

10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-101, Revised Statutes Cumulative
2 Supplement, 2012, is amended to read:

3 28-101 Sections 28-101 to 28-1356 and section 2 of this
4 act shall be known and may be cited as the Nebraska Criminal Code.

5 Sec. 2. (1) A person commits the offense of fraudulently
6 filing a financing statement, lien, or document if the person
7 directly, or through an intermediary, submits for filing or recording
8 in the public record, as defined in section 28-911:

9 (a) Any document purporting to create a nonconsensual
10 common-law lien, as defined in section 52-1901, knowing or having
11 reason to know that the lien is a nonconsensual common-law lien;

12 (b) A financing statement pursuant to article 9, Uniform
13 Commercial Code, knowing or having reason to know that the financing
14 statement is not based on a bona fide security agreement or was not
15 authorized or authenticated by the alleged debtor identified in the
16 financing statement or an authorized representative of the alleged
17 debtor; or

18 (c) Any document filed in an attempt to harass an entity,
19 individual, or public official or obstruct a government operation or
20 judicial proceeding, knowing or having reason to know such document
21 contained false information.

22 (2) Fraudulently filing a financing statement, lien, or
23 document is a Class IV felony.

24 (3) Lack of belief in the jurisdiction or authority of
25 the state or of the government of the United States is no defense to

1 prosecution under this section.

2 Sec. 3. Section 52-1901, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 52-1901 For purposes of sections 52-1901 to 52-1904 and
5 sections 4 to 6 of this act, nonconsensual common-law lien means a
6 document that purports to assert a lien against real or personal
7 property of any person or entity and:

8 (1) Is not expressly provided for by a specific state or
9 federal statute;

10 (2) Does not depend on the consent of the owner of the
11 real or personal property affected; and

12 (3) Is not an equitable or constructive lien imposed by a
13 state or federal court of competent jurisdiction.

14 Sec. 4. A nonconsensual common-law lien is not binding or
15 enforceable at law or in equity. Any nonconsensual common-law lien
16 that is recorded is void and unenforceable.

17 Sec. 5. In order that the owner of real property upon
18 which a nonconsensual common-law lien is recorded shall have notice
19 of the recording of the lien, the claimant shall cause the sheriff to
20 serve a copy of the recorded lien upon the owner of the real property
21 upon which the nonconsensual common-law lien is recorded and the
22 sheriff shall make return thereof without delay by filing proof of
23 service with the register of deeds as provided in subsection (1) of
24 section 25-507.01. There shall be no filing fee for filing the proof
25 of service. A judicial proceeding to enforce a nonconsensual common-

1 law lien shall be instituted by the claimant within ten days after
2 recording the lien. Failure to serve a copy of the recorded lien upon
3 the owner or failure to file a judicial proceeding to enforce the
4 lien shall cause the lien to lapse and be of no legal effect.

5 Sec. 6. Section 52-1902, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 ~~52-1902~~ If a person submits for filing or recording to
8 the Secretary of State, county clerk, register of deeds, or clerk of
9 any court any document purporting to create a nonconsensual common-
10 law lien against real or personal property in violation of ~~this~~
11 section 52-1901 and sections 4 to 6 of this act or section 76-296 and
12 such document is so filed or recorded, the ~~person~~ claimant submitting
13 the document is liable to the person or entity against whom the lien
14 is claimed for actual damages plus costs and reasonable attorney's
15 fees.

16 Sec. 7. Sections 7 to 14 of this act shall be known and
17 may be cited as the Commercial Real Estate Broker Lien Act.

18 Sec. 8. For purposes of the Commercial Real Estate Broker
19 Lien Act:

20 (1) Commercial real estate means any real estate other
21 than real estate containing no more than four residential units or
22 real estate on which no buildings or structures are located and that
23 is zoned for single-family residential use. Commercial real estate
24 does not include single-family residential units such as
25 condominiums, townhouses, or homes in a subdivision when sold,

1 leased, or otherwise conveyed on a unit-by-unit basis, even though
2 these units may be a part of a larger building or parcel of real
3 estate containing more than four residential units;

4 (2) Commission means any and all compensation that may be
5 due a commercial real estate broker for performance of licensed
6 services; and

7 (3) Commission agreement means a written agreement with a
8 designated commercial real estate broker as required by subsections
9 (2) through (6) of section 76-2422.

10 Sec. 9. (1)(a) A commercial real estate broker shall have
11 a lien upon commercial real estate or any interest in that commercial
12 real estate that is the subject of a purchase, lease, or other
13 conveyance to a buyer or tenant of an interest in the commercial real
14 estate in the amount of commissions that the commercial real estate
15 broker is due.

16 (b) The lien shall be available only to the commercial
17 real estate broker named in a commission agreement signed by an owner
18 or buyer or their respective authorized agents as applicable and is
19 not available to an employee, agent, subagent, or independent
20 contractor of a commercial real estate broker.

21 (2) A lien under this section shall attach to commercial
22 real estate or any interest in the commercial real estate when:

23 (a) The commercial real estate broker is entitled to a
24 commission provided in a commission agreement signed by the owner,
25 buyer, or their respective authorized agents, as applicable; and

1 (b) The commercial real estate broker records a notice of
2 lien in the office of the register of deeds of the county in which
3 the commercial real estate is located, prior to the actual conveyance
4 or transfer of the commercial real estate against which the
5 commercial real estate broker is claiming a lien, except as provided
6 in this section. The lien shall attach as of the date of the
7 recording of the notice of lien and shall not relate back to the date
8 of the commission agreement.

9 (3) In the case of a lease, including a sublease or an
10 assignment of a lease, the notice of lien shall be recorded not later
11 than ninety days after the tenant takes possession of the leased
12 premises. The lien shall attach as of the recording of the notice of
13 lien and shall not relate back to the date of the commission
14 agreement.

15 (4)(a) If a commercial real estate broker is due an
16 additional commission as a result of future actions, including, but
17 not limited to, the exercise of an option to expand the leased
18 premises or to renew or extend a lease pursuant to a commission
19 agreement signed by the then owner, the commercial real estate broker
20 may record its notice of lien at any time after execution of the
21 lease or other commission agreement which contains such option, but
22 not later than ninety days after the event or occurrence on which the
23 future commission is claimed occurs.

24 (b) In the event that the commercial real estate is sold
25 or otherwise conveyed prior to the date on which a future commission

1 is due, and if the commercial real estate broker has filed a valid
2 notice of lien prior to the sale or other conveyance of the
3 commercial real estate, then the purchaser or transferee shall be
4 deemed to have notice of and shall take title to the commercial real
5 estate subject to the notice of lien. If a commercial real estate
6 broker claiming a future commission fails to record its notice of
7 lien for future commission prior to the recording of a deed conveying
8 legal title to the commercial real estate to the purchaser or
9 transferee, then such commercial real estate broker shall not claim a
10 lien on the commercial real estate. This subsection shall not limit
11 or otherwise affect claims or defenses a commercial real estate
12 broker or owner or any other party may have on any other basis, in
13 law or in equity.

14 (5) If a commercial real estate broker has a commission
15 agreement as described in subdivision (4)(a) of this section with a
16 prospective buyer, then the lien shall attach upon the prospective
17 buyer purchasing or otherwise accepting a conveyance or transfer of
18 the commercial real estate and the recording of a notice of lien by
19 the commercial real estate broker in the office of the register of
20 deeds of the county in which the commercial real estate, or any
21 interest in the commercial real estate, is located, within ninety
22 days after the purchase or other conveyance or transfer to the buyer
23 or tenant. The lien shall attach as of the date of the recording of
24 the notice of lien and shall not relate back to the date of the
25 commission agreement.

1 Sec. 10. The commercial real estate broker shall, within
2 ten days after recording its notice of lien, either mail a copy of
3 the notice of lien to the owner of record of the commercial real
4 estate by registered or certified mail at the address of the owner
5 stated in the commission agreement on which the claim for lien is
6 based or, if no such address is given, then to the address of the
7 commercial real estate on which the claim of lien is based. Mailing
8 of the copy of the notice of lien is effective when deposited in a
9 United States mailbox with postage prepaid. The commercial real
10 estate broker's lien shall be unenforceable if mailing or service of
11 the copy of notice of lien does not occur at the time and in the
12 manner required by this section.

13 Sec. 11. The notice of lien shall state the name of the
14 commercial real estate broker, the name as reflected in the
15 commercial real estate broker's records of any person the commercial
16 real estate broker believes to be an owner of the commercial real
17 estate on which the lien is claimed, the name as reflected in the
18 commercial real estate broker's records of any person whom the
19 commercial real estate broker believes to be obligated to pay the
20 commission under the commission agreement, a description legally
21 sufficient for identification of the commercial real estate upon
22 which the lien is claimed, and the amount for which the lien is
23 claimed. The notice of lien shall recite that the information
24 contained in the notice is true and accurate to the knowledge of the
25 signatories. The notice of lien shall be signed by the commercial

1 real estate broker or by a person authorized to sign on behalf of the
2 commercial real estate broker and shall be notarized.

3 Sec. 12. (1) Except as provided in subsections (2) and
4 (3) of this section, a lien that has become enforceable as provided
5 in section 9 of this act shall continue to be enforceable for two
6 years after the recording of the lien.

7 (2) Except as provided in subsection (3) of this section,
8 if an owner, holder of a security interest, mortgage, or trust deed,
9 or other person having an interest in the commercial real estate
10 gives the commercial real estate broker written demand to institute a
11 judicial proceeding within thirty days, the lien lapses unless,
12 within thirty days after receipt of the written demand, the
13 commercial real estate broker institutes judicial proceedings.

14 (3) If a judicial proceeding to enforce a lien is
15 instituted while a lien is effective under subsection (1) or (2) of
16 this section, the lien continues during the pendency of the
17 proceeding.

18 Sec. 13. (1) Recorded liens, mortgages, trust deeds, and
19 other encumbrances on commercial real estate, including a recorded
20 lien securing revolving credit and future advances for a loan,
21 recorded before the date the commercial real estate broker's lien is
22 recorded, shall have priority over the commercial real estate
23 broker's lien.

24 (2) A construction lien claim that is recorded after the
25 commercial real estate broker's notice of lien but that relates back

1 to a date prior to the recording date of the commercial real estate
2 broker's notice of lien has priority over the commercial real estate
3 broker's lien.

4 (3) A purchase-money lien executed by the buyer of
5 commercial real estate in connection with a loan for which any part
6 of the proceeds are used to pay the purchase price of the commercial
7 real estate has priority over a commercial real estate broker's lien
8 claimed for the commission owed by the buyer against the commercial
9 real estate purchased by the buyer.

10 Sec. 14. (1) Whenever a notice of a commercial real
11 estate broker's lien has been recorded, the record owner of the
12 commercial real estate may have the lien released by depositing funds
13 equal to the full amount stated in the notice of lien plus fifteen
14 percent to be applied towards any lien under section 9 of this act.
15 These funds shall be held in escrow by such person and by such
16 process which may be agreed to by the parties, either in the
17 commission agreement or otherwise, for the payment to the commercial
18 real estate broker or otherwise for resolution for their dispute or,
19 in the absence of any such mutually agreed person or process, the
20 funds may be deposited with the district court by the filing of an
21 interpleader. Upon such deposit of funds by interpleader, the
22 commercial real estate shall be considered released from such lien or
23 claim of lien. Upon written notice to the commercial real estate
24 broker that the funds have been escrowed or an interpleader filed,
25 the commercial real estate broker shall, within ten business days,

1 record in the office of the register of deeds where the notice of
2 commercial real estate broker's lien was filed pursuant to section 9
3 of this act a document stating that the lien is released and the
4 commercial real estate released by an escrow established pursuant to
5 this section or by interpleader. If the commercial real estate broker
6 fails to file such document, the person holding the funds may sign
7 and file such document and deduct from the escrow the reasonable cost
8 of preparing and filing the document. Upon the filing of such
9 document, the commercial real estate broker shall be deemed to have
10 an equitable lien on the escrow funds pending a resolution of the
11 commercial real estate broker's claim for payment and the funds shall
12 not be paid to any person, except for such payment to the holder of
13 the funds as set forth in this section, until a resolution of the
14 commercial real estate broker's claim for payment has been agreed to
15 by all necessary parties or ordered by a court having jurisdiction.

16 (2) Except as otherwise provided in this section,
17 whenever a commercial real estate broker's lien has been recorded and
18 an escrow account is established either from the proceeds from the
19 transaction, conveyance, or any other source of funds computed as one
20 hundred fifteen percent of the amount of the claim for lien, then the
21 lien against the commercial real estate shall be extinguished and
22 immediately become a lien on the funds contained in the escrow
23 account. The requirement to establish an escrow account, as provided
24 in this section, shall not be cause for any party to refuse to
25 complete or close the transaction.

1 Sec. 15. Original sections 52-1901 and 52-1902, Reissue
2 Revised Statutes of Nebraska, and section 28-101, Revised Statutes
3 Cumulative Supplement, 2012, are repealed.

4 Sec. 16. Since an emergency exists, this act takes effect
5 when passed and approved according to law.