



Farrell Fritz Industry Advisory

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Brokers' Liens a Potential Tool to Ensure Payment of Commissions

Surely one of the most frustrating moments in a broker's career occurs when he successfully completes a leasing transaction, and the landlord attempts to renegotiate the commission, or simply refuses to pay the fee when due. In certain circumstances, New York law can help.

According to the New York State Lien Law ("Lien Law"), a mechanic's lien is a security interest in real property for materials furnished or labor performed in connection with the "improvement" of real property. Since 1982, the Lien Law has included services rendered by a broker to obtain a commercial tenant for a lease term of more than three years in its definition of "improvement." Accordingly, a real estate broker seeking to recover commissions wrongfully withheld by a lessor may obtain a mechanics lien as a means to compel payment for the services rendered.

A broker seeking to take advantage of this legal process must have: (i) provided services to secure a tenant under a commercial (non-residential) lease; (ii) secured a lease term of more than three years; (iii) executed a written brokerage agreement with the landlord, and (iv) been denied full payment for services rendered.

To obtain the mechanic's lien, the broker must file a notice of lien with the county clerk. This notice may be filed only after the execution of the lease and only if a copy of the commission agreement is attached to the notice. If the compensation is to be made in installments, the notice may be filed within eight months after the final payment is due, but in no event later than five years after the first payment was made. In the event the lessor fails to discharge the lien by making the appropriate payment to the broker, this lienholder may enforce the mechanic's lien by commencing a foreclosure action in court within one year of the filing. The mechanic's lien will be subordinate to all prior recorded mortgages, but will have priority over a conveyance, judgment, mortgage or other claim against the property filed after the mechanic's lien is filed.

As with any filing which impairs title to property, the broker should be extremely careful to correctly state the amount which is due, and to file against the correct property. An incorrect filing will be dismissed, and the broker may be liable for damages hurting title to the property. However, in the correct circumstances, filing the lien will be a powerful tool to ensure full payment of the hard-earned commissions.

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