

PROPERTY CODE

CHAPTER 62. BROKER'S AND APPRAISER'S LIEN ON COMMERCIAL REAL ESTATE  
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 62.001. SHORT TITLE. This chapter may be cited as the Broker's and Appraiser's Lien on Commercial Real Estate Act. Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.002. APPLICABILITY. (a) This chapter applies only to real estate that is commercial real estate on the date the notice of lien is filed under this chapter.

(b) This chapter does not apply to:

(1) a transaction involving a claim for a commission of \$2,500 or less in the aggregate; or

(2) a transaction for the sale of commercial real estate involving a claim for a commission of \$5,000 or less in the aggregate if the commercial real estate:

(A) is the principal place of business of the record title owner;

(B) is occupied by more than one and fewer than five tenants; and

(C) is improved with 7,500 square feet or less of total gross building area.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.003. DEFINITIONS. In this chapter:

(1) "Broker" means a person who:

(A) is licensed as a broker under Chapter 1101, Occupations Code, and is not acting as a residential rental locator as defined by Section 1101.002, Occupations Code; or

(B) is licensed or certified as a real estate appraiser under Chapter 1103, Occupations Code.

(2) "Commercial real estate" means all real estate except:

(A) real estate improved with one to four residential units;

(B) a single-family residential unit, including a condominium, townhouse, or home in a subdivision, if the unit is sold, leased, or otherwise conveyed on a unit-by-unit basis and regardless of whether the unit is part of a larger building or located on real estate containing more than four residential units;

(C) real estate that is or includes on the real estate a person's homestead;

(D) real estate that is not improved with a structure and is:

(i) zoned for single-family residential use; or

(ii) restricted for single-family use under restrictive covenants that will remain in effect for at least the next two years; or

(E) real estate that:

(i) is primarily used for farming and ranching purposes;

(ii) will continue to be used primarily for farming and ranching purposes; and

(iii) is located more than three miles from the corporate boundaries of any municipality.

(3) "Commission" includes a fee or other valuable consideration.

(4) "Commission agreement" means a written instrument that:

(A) entitles a broker to a commission;

(B) is signed by the person obligated to pay the commission or that person's authorized agent;

(C) references the commission amount or describes the formula used to determine the commission amount; and

(D) contains a description legally sufficient for identification of the real estate interest that is the subject of the agreement if the person obligated to pay the commission is a seller or lessor.

(5) "Deferred commission" means a commission that is earned and is not yet payable.

(6) "Real estate" has the meaning assigned by Section 1101.002, Occupations Code.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.803, eff. Sept. 1, 2003.

Sec. 62.004. PAYABLE COMMISSION AND EARNED COMMISSION. (a)

A commission is payable at the time provided in the commission agreement. If payment of the commission is conditioned on the occurrence of an event and that event does not occur, the person obligated to pay the commission is not required to pay the commission.

(b) Except as provided by Subsection (c), a commission is earned on the earlier of the date that:

(1) an event occurs that, under the commission agreement, defines when the commission is earned; or

(2) the person obligated to pay the commission enters into a purchase contract or a lease during the period prescribed by the commission agreement for all or part of the commercial real estate if the purchase contract or lease is contemplated by the commission agreement and if the parties to the purchase contract or lease are contemplated by the commission agreement.

(c) If a broker has earned a commission under a commission agreement relating to a lease transaction and the commission agreement provides that the broker may receive an additional commission when the lease is modified to expand the lease space or renewed, the additional commission is earned when:

(1) the broker performs all the additional services relating to the lease modification or renewal expressly prescribed by the commission agreement; or

(2) the broker first earned a commission under the commission agreement if the commission agreement does not expressly require the broker to perform additional services relating to a lease modification or renewal.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.005. BROKER'S ADDRESS FOR RECEIPT OF NOTICE. A seller, lessor, buyer, or tenant shall send any notice required to be sent to the broker under this chapter to the broker:

(1) at the broker's address as reflected in the records of the Texas Real Estate Commission; and

(2) at the broker's last address that the broker furnished the seller, lessor, buyer, or tenant by certified mail, return receipt requested, if the broker's license is expired.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

#### SUBCHAPTER B. BROKER'S LIEN

Sec. 62.021. PERSON ENTITLED TO LIEN. (a) A broker has a lien on a seller's or lessor's commercial real estate interest in the amount specified by the commission agreement if:

(1) the broker has earned a commission under a commission agreement signed by the seller or lessor of the commercial real estate interest or the seller's or lessor's authorized agent; and

(2) a notice of lien is recorded and indexed as provided by Section 62.024.

(b) A broker has a lien on the commercial real estate interest purchased by a prospective buyer in the amount specified by the commission agreement if:

(1) the broker has earned a commission under a commission agreement signed by the prospective buyer of the commercial real estate interest or the prospective buyer's authorized agent; and

(2) a notice of lien is recorded and indexed as provided by Section 62.024.

(c) A broker has a lien on the leasehold interest in the commercial real estate that a prospective tenant leases in the amount specified by the commission agreement if:

(1) the broker has earned a commission under a commission agreement signed by the prospective tenant of the commercial real estate interest or the prospective tenant's authorized agent; and

(2) a notice of lien is recorded and indexed as provided by Section 62.024.

(d) A lien described by this section is available only to the broker named in the commission agreement. The lien is not available to an employee or independent contractor of the broker.

(e) The broker's right to claim a lien based on the commission agreement must be disclosed in the commission agreement.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.022. WAIVER, RELEASE, OR DISCHARGE OF LIEN; ASSUMPTION OF COMMISSION OBLIGATION. (a) Except as provided by Subsection (b), the waiver of a broker's right to a lien under this chapter, or a release given for the purpose of releasing the

broker's lien before the commission is satisfied or forgiven, is void.

(b) A broker's entitlement to a lien on the interest of an owner or tenant in commercial real estate shall be automatically waived if:

(1) the commission is earned and payable for services provided relating to a lease transaction; and

(2) the commission agreement is included as a provision of the lease agreement.

(c) A lien under this chapter is discharged by:

(1) a court order discharging the lien;

(2) paying the commission to the broker named in the commission agreement; or

(3) establishing an escrow account described by Subchapter F.

(d) A person who assumes an owner's or tenant's commercial real estate interest is bound by a commission agreement included in a lease agreement unless an escrow account is established under Subchapter F or a bond is provided under Subchapter G.

(e) This section does not affect the rights of a mortgagee who forecloses on commercial real estate and does not assume the lease on which a commission agreement is based.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.023. AFFIDAVIT IDENTIFYING BROKER. If requested by the buyer, the buyer's authorized agent, or the escrow agent for the commercial real estate transaction, the seller of commercial real estate and the broker representing the seller shall provide to the requesting party before the closing of the transaction a written affidavit identifying each broker with whom the affiant knows or believes the seller or the seller's authorized agent has signed a commission agreement under which a commission is claimed or earned and has not been paid.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.024. FILING OF NOTICE OF LIEN. (a) A broker claiming a lien under this chapter may not file a notice of lien unless the commission on which the lien is based is earned.

(b) A broker claiming a lien under this chapter must file a notice of lien as provided by Subchapter C with the county clerk of the county in which the commercial real estate is located.

(c) The county clerk shall record the notice of lien in records kept for that purpose and shall index and cross-index the notice of lien in the names of the broker, each person obligated to pay the commission under the commission agreement, and each person who owns an interest in the commercial real estate if the broker claims a lien on that interest.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.025. CONTENTS OF NOTICE OF LIEN. The notice of lien must be signed by the broker or by a person authorized to sign on behalf of the broker and must contain the following:

(1) a sworn statement of the nature and amount of the claim, including:

(A) the commission amount or the formula used to determine the commission;

(B) the type of commission at issue, including a deferred commission; and

(C) the month and year in which the commission was earned;

(2) the name of the broker and the real estate license number of the broker;

(3) the name as reflected in the broker's records of any person who the broker believes is obligated to pay the commission under the commission agreement;

(4) the name as reflected in the broker's records of any person the broker believes to be an owner of the commercial real estate interest on which the lien is claimed;

(5) a description legally sufficient for identification of the commercial real estate interest sought to be charged with the lien;

(6) the name of any cooperating broker or principal in the transaction with whom the broker intends to share the commission and the dollar or percentage amount to be shared; and

(7) a copy of the commission agreement on which the lien is based.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.026. NOTICE OF FILING. (a) In this section,

"business day" means a day other than a Saturday, Sunday, or holiday recognized by this state.

(b) Not later than one business day after the date the broker files a notice of lien, the broker shall mail a copy of the notice of lien by certified mail, return receipt requested, or registered mail to:

(1) the owner of record of the commercial real estate interest on which the lien is claimed or the owner's authorized agent; and

(2) the prospective buyer or tenant and any escrow agent named in a contract for the sale or lease of the commercial real estate interest on which the lien is claimed if:

(A) a binding written contract for the sale or lease of the commercial real estate interest is in effect between the owner and the prospective buyer or tenant in a transaction that is the basis for the commission; and

(B) the binding written contract was executed by the owner and the prospective buyer or tenant before the date the notice of lien is filed.

(c) Service of the notice under Subsection (b) is complete when the notice is deposited in the United States mail, postage prepaid, and addressed to the persons entitled to receive the notice under this section.

(d) If the broker has actual knowledge of the identity of the escrow agent named in the contract for the sale or lease of the commercial real estate interest on which the broker claims a lien or of the escrow agent otherwise closing the sale or lease of the commercial real estate interest, the broker, before the first business day before the date that the sale or lease is closed on commercial real estate for which a notice of lien is filed, shall deliver a file-stamped copy or transmit a facsimile of a file-stamped copy of the notice of lien to each escrow agent at the office in which the closing of the sale or lease will occur for use during the closing of the sale or lease. The broker shall deliver the copy or transmit the facsimile directly to the individual escrow agent responsible for closing the sale or lease if the broker knows that person's name.

(e) If the escrow agent receives the notice of lien, the escrow agent and other parties to the sale or lease may not close the transaction unless the lien is released, the prospective buyer or tenant purchases or leases the property subject to the lien, the funds are held in escrow as provided by Subchapter F, or a bond is filed as provided by Subchapter G.

(f) If the broker fails to comply with this section, the notice of lien is void.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.027. INCEPTION OF BROKER'S LIEN. (a) A broker's lien attaches to the commercial real estate interest owned by the person obligated to pay the commission on the date the notice of lien is recorded as provided by this chapter. The lien does not relate back to the date of the commission agreement.

(b) A notice of lien for amounts earned by the broker under an installment contract or under a commission agreement for a deferred commission is enforceable only to the extent that the installment or commission has become payable.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.028. PRIORITY. (a) A recorded lien, mortgage, or other encumbrance on commercial real estate, including a recorded lien securing revolving credit and future advances for a loan, recorded before the date a broker's lien is recorded has priority over the broker's lien.

(b) A broker's lien on the commercial real estate interest of a person obligated to pay a commission is not valid or enforceable against a grantee, buyer, lessee, or transferee of the interest of the person obligated to pay the commission if the deed, lease, or instrument transferring the interest is recorded before the notice of the broker's lien is recorded.

(c) A purchase-money mortgage lien executed by the buyer of the commercial real estate interest has priority over a broker's lien claimed for the commission owed by the buyer against the commercial real estate interest purchased by the buyer.

(d) A mechanic's lien that is recorded after a broker's lien and that relates back to a date before the date the broker's lien is recorded has priority over the broker's lien.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.029. SUBORDINATION. (a) If the person obligated to pay the commission sells that person's commercial real estate interest, the broker's lien is subordinate to a recorded purchase-money first lien authorized by the buyer if the buyer:

(1) executes and files with the county clerk of the county in which the broker's lien is filed a memorandum that evidences the buyer's acknowledgment of the existence of the broker's lien; and

(2) sends the broker, by certified mail, return receipt requested, or registered mail, a copy of the recorded memorandum required by this subsection.

(b) If the person obligated to pay the commission refinances a recorded first lien secured by that person's commercial real estate interest, the broker's lien is subordinate to the recorded refinanced first lien, regardless of the amount of the first lien after refinancing, if the person obligated to pay the commission:

(1) executes and files with the county clerk of the county in which the broker's lien is filed a memorandum that evidences the person's acknowledgment of the existence of the broker's lien; and

(2) sends the broker, by certified mail, return receipt requested, or registered mail, a copy of the recorded memorandum required by this subsection.

(c) If the person obligated to pay the commission obtains an extension of credit secured by that person's commercial real estate interest, the broker's lien is subordinate to the lien securing the extension of credit if, according to the loan documents, the extension of credit is made only for the purpose of:

(1) repairing or renovating the commercial real estate; or

(2) completing construction or providing additional improvements on the commercial real estate.

(d) If the person obligated to pay the commission furnishes a subordination agreement as provided by this section to be executed by the broker, the broker must:

(1) execute and acknowledge the subordination agreement before a notary public; and

(2) return the subordination agreement to the person not later than the seventh day after the date the broker receives the subordination agreement and other documents the broker reasonably requests in order to determine that the subordination agreement complies with this section.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.030. MIXED-USE REAL ESTATE. If real estate is zoned or restricted for more than one use, the broker's lien attaches only to the portions of the real estate that constitute commercial real estate.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.031. CHANGE IN USE OF REAL ESTATE. (a) Except as provided by Subsection (b), any change in the use of the real estate does not affect a broker's lien if the notice of the lien was filed when the real estate was commercial real estate.

(b) The broker's lien is extinguished if:

(1) not later than the 360th day after the date on which the broker's commission is payable, the commercial real estate interest on which a broker claims a lien is zoned for single-family use or restricted for single-family use under recorded restrictive covenants; and

(2) the zoning ordinances or restrictive covenants for single-family use are in effect until at least the second anniversary of the date the commission is payable.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

#### SUBCHAPTER C. TIME FOR FILING NOTICE OF LIEN

Sec. 62.041. TIME TO FILE. (a) If a broker has earned a commission under a commission agreement signed by a seller or the seller's authorized agent, a broker must record a notice of lien:

(1) after the commission is earned; and

(2) before the conveyance of the commercial real estate interest on which the broker is claiming a lien.

(b) If a broker has earned a commission under a commission agreement signed by a prospective buyer or a prospective buyer's authorized agent, the broker must record a notice of lien:

(1) after the buyer acquires legal title to the commercial real estate interest on which the broker is claiming a lien; and

(2) before the buyer conveys the buyer's commercial real estate interest on which the broker is claiming a lien.

(c) If the lien is based on a lease transaction, the broker must record a notice of lien after the commission is earned and before the earlier of:

(1) the 91st day after the date the event for which the commission becomes payable occurs; or

(2) the date the person obligated to pay the commission records a subsequent conveyance of that person's commercial real estate interest after executing the lease agreement relating to the lease transaction for which the lien is claimed.

(d) If a notice of lien is not filed within the time required by this section, the lien is void.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

#### SUBCHAPTER D. ENFORCEMENT OF LIEN

Sec. 62.061. SUIT TO FORECLOSE LIEN. (a) A broker may not bring a suit to foreclose a lien under this chapter unless the commission is earned and payable. A broker may bring a suit to foreclose a lien in any district court for the county in which the commercial real estate is located by filing a sworn complaint stating that the notice of lien has been recorded.

(b) A complaint in a suit filed under this section must contain:

(1) a brief description of the commission agreement that is the basis for the lien, including:

(A) a description of the disclosure of the broker's right to the lien contained in the commission agreement;

(B) the date on which the commission agreement was executed;

(C) the event for which a commission is considered to be earned; and

(D) the event for which a commission is considered to be payable;

(2) a description of the services performed by the broker;

(3) the amount of the payable commission that is unpaid;

(4) a description of the commercial real estate to which the lien attaches; and

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

(c) The broker must include as a defendant in a suit brought under this subchapter each person the broker believes to have an interest in the commercial real estate that is subordinate to or encumbered by the broker's lien.

(d) If the broker and a person against whom the broker claims a commission use alternative dispute resolution procedures to resolve a dispute concerning entitlement to the broker's commission, the broker's lien remains valid, and any suit to foreclose the lien is stayed until the alternative dispute resolution process is completed.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.062. STATUTE OF LIMITATIONS. (a) Except as provided by this section, a broker claiming a lien under this chapter must bring a suit to foreclose the lien on or before the second anniversary of the date the notice of lien is recorded.

(b) A broker claiming a lien to collect a deferred commission must bring a suit to foreclose the lien on or before the earlier of:

(1) the second anniversary of the date on which the commission is payable; or

(2) the 10th anniversary of the date the lien is recorded or the 10th anniversary of the date the broker records a subsequent notice of the lien as a renewal of the broker's right to the lien, whichever date is later.

(c) A renewal of a notice of lien must state that it is a renewal of the broker's lien and must be recorded after the ninth anniversary after the date the original notice of lien or last renewal notice is recorded and on or before the 10th anniversary of the date the original notice of lien or last renewal notice is recorded.

(d) A broker claiming a lien for a commission that is payable must bring a suit to foreclose the lien not later than the 30th day after the date the broker receives a written demand to bring a suit to foreclose the lien from the owner of the commercial

real estate interest on which the lien is claimed.

(e) If a suit to foreclose the lien is not brought within the period prescribed by this section, the lien is void.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.063. ASSESSMENT OF COSTS, FEES, AND INTEREST. The prevailing party in a suit brought under this subchapter is entitled to court costs, reasonable attorney's fees, and prejudgment interest from the date the commission becomes payable or the date the damage accrues.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

#### SUBCHAPTER E. RELEASE OF LIEN

Sec. 62.081. RELEASE OF LIEN. (a) Not later than the fifth day after the date a broker receives a written request from the owner of a commercial real estate interest on which a lien is claimed, the broker shall furnish to the owner a release of indebtedness and any lien claimed if:

(1) the debt that is the basis for the lien is satisfied; or

(2) the lien is discharged under Section 62.022, rendered void under Section 62.026 or 62.062, or extinguished under Section 62.031.

(b) When a condition occurs that would preclude the broker from receiving a commission under the terms of the commission agreement that is the basis for the lien, the broker shall, not later than the 10th day after the date the broker receives a written request from the owner of the commercial real estate interest on which the lien is claimed, furnish to the owner a release of indebtedness and any lien claimed.

(c) Not later than the 10th day after the date a broker receives a written request for the release of the broker's lien from the escrow agent responsible for closing the purchase and sale of a commercial real estate interest on which the lien is claimed, the broker shall furnish to the escrow agent a release of indebtedness and any lien claimed if:

(1) the commercial real estate interest to which the lien attaches is subject to a contract for purchase and sale;

(2) the release of indebtedness and any lien claimed is conditioned on the closing of the transaction; and

(3) the broker would otherwise be obligated to release the indebtedness and any lien claimed under Subsection (a) or (b) on the closing of the transaction.

(d) A release of lien must be in a form that permits the instrument to be filed of record.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

#### SUBCHAPTER F. ESCROW OF DISPUTED AMOUNTS

Sec. 62.101. ESCROW ACCOUNT. If a claim for a lien under a recorded notice of lien is not paid or assumed at the closing of a sale, lease, or mortgage of the commercial real estate interest subject to the lien and would prevent the closing of the transaction or conveyance or if a claim for a lien under a recorded notice of lien does not survive the closing, any person named in the notice of lien as obligated to pay the commission shall, on the date of the closing:

(1) establish an escrow account from any net proceeds of the transaction or conveyance in an amount equal to the amount sufficient to satisfy the lien plus 15 percent of that amount; or

(2) file a bond to indemnify against the lien as provided by Subchapter G.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.102. NAMED ESCROW AGENT. If an escrow agent is named in the contract on which the transaction or conveyance is based, the escrow account shall be established with the named escrow agent.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.103. COSTS OF INTERPLEADER. Related costs for any interpleader action may be deducted from the escrow account by the person maintaining the escrow account.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.104. REFUSAL TO ESTABLISH ESCROW ACCOUNT OR BOND. (a) A party may not refuse to close a transaction because of the requirement to establish an escrow account or bond as provided by Section 62.101 if:

(1) the broker provides a copy of the notice of lien that complies with Sections 62.025 and 62.026;

(2) sufficient proceeds will result from the proposed transaction for the payment of the commission and costs of the

interpleader; and

(3) the broker executes and delivers a full release of the broker's lien in a recordable form.

(b) A prospective buyer of a commercial real estate interest may not refuse to close the purchase solely because a broker's lien is filed after the date a title commitment or abstract of title relating to the interest is issued if an escrow account is established as provided by this subchapter or a bond is filed as provided by Subchapter G.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.105. TERM OF ESCROW ACCOUNT. The amount held in escrow shall be held in escrow until:

(1) the rights of the parties claiming the amount in escrow are determined by a written agreement of the parties, a court order, or an alternative dispute resolution process agreed to by the parties;

(2) the broker's lien is no longer enforceable; or

(3) the funds are interpled into a district court for the county in which the commercial real estate is located.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.106. EXTINGUISHMENT OF LIEN UPON ESCROW. When the escrow account is established under this subchapter, the broker's lien against the commercial real estate is extinguished and becomes a lien on the proceeds in the escrow account.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

#### SUBCHAPTER G. BOND TO INDEMNIFY AGAINST LIEN

Sec. 62.121. BOND. (a) If a lien is fixed or is attempted to be fixed by a recorded instrument under this chapter, any person may file a bond to indemnify against the lien.

(b) The bond shall be filed with the county clerk of the county in which the commercial real estate subject to the lien is located.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.122. BOND REQUIREMENTS. The bond must:

(1) describe the commercial real estate on which the lien is claimed;

(2) refer to the lien claimed in a manner sufficient to identify it;

(3) be in an amount that is double the amount of the lien referred to in the bond as of the date of execution of the bond by the surety, unless the total amount claimed in the lien exceeds \$40,000, in which case the bond must be in an amount that is 1-1/2 times the amount of the lien;

(4) be payable to the party claiming the lien;

(5) be executed by:

(A) the party filing the bond as principal; and

(B) a corporate surety licensed by this state to execute the bond as surety;

(6) be conditioned substantially that the principal and sureties will pay the named obligees or their assignees the amount that the named obligees would have been entitled to recover if their claim had been proved to be valid and enforceable liens on the commercial real estate; and

(7) identify the last known mailing address of the person claiming the lien.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.123. NOTICE OF BOND. (a) After the bond is filed, the county clerk shall issue notice of the bond to all named obligees.

(b) A copy of the bond must be attached to the notice.

(c) The notice must be served on each obligee by mailing a copy of the notice and the bond to the obligee by certified mail, return receipt requested, addressed to the claimant at the address stated in the bond for the obligee.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.124. RECORDING OF BOND AND NOTICE. (a) The county clerk shall record the bond, the notice, and a certificate of mailing in the real property records.

(b) In acquiring an interest in or insuring title to the commercial real estate, a buyer, insurer of title, or lender may rely on and is absolutely protected by the record of the bond and the notice to the same extent as if the lien claimant had filed a release of lien in the real property records.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.125. ACTION ON BOND. (a) A party making or holding a



lien claim may not sue on the bond later than the last date on which a person may bring a suit to foreclose the lien under Section 62.062.

(b) The bond is not exhausted by one action against it. Each named obligee or assignee of an obligee may maintain a separate suit on the bond in any district court for the county in which the commercial real estate is located.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

#### SUBCHAPTER H. REMEDIES

Sec. 62.141. OWNER'S OR TENANT'S REMEDIES. (a) An owner or tenant may file suit against a broker under this chapter.

(b) In an action filed under this section, the court shall discharge a broker's lien if the broker:

(1) failed to mail a copy of the notice of lien within the period prescribed by Section 62.026;

(2) failed to execute, acknowledge, and return a subordination agreement within the period prescribed by Section 62.029(d);

(3) failed to record the notice of lien within the period prescribed by Section 62.041; or

(4) failed to release a lien within the period prescribed by Section 62.081.

(c) A broker is liable to an owner or tenant for damages as provided by Subsection (d) if:

(1) the broker recorded a lien on the commercial real estate interest of the owner or tenant;

(2) the broker failed to:

(A) execute, acknowledge, and return a subordination agreement within the period prescribed by Section 62.029(d); or

(B) release a lien within the period prescribed by Section 62.081;

(3) the owner, tenant, or escrow agent mailed to the broker by certified mail, return receipt requested, a copy of this section and a notice requesting the broker to execute, acknowledge, and return the subordination agreement or release the lien not later than the 10th day after the date the broker receives the notice; and

(4) the broker failed to comply with the owner's, tenant's, or escrow agent's written notice within the prescribed period.

(d) If the court finds that a broker is liable to an owner or tenant under Subsection (c), the court may award the owner or tenant:

(1) actual damages, including attorney's fees and court costs, incurred by the owner or tenant that are proximately caused by the broker's failure to execute, acknowledge, and return the subordination agreement or release the lien; and

(2) a civil penalty in an amount not to exceed three times the amount of the claimed commission if the court finds that the broker acted with gross negligence or acted in bad faith in violation of Chapter 1101, Occupations Code.

(e) This section does not prevent:

(1) a person from filing a complaint with the Texas Real Estate Commission against a broker who fails to comply with this chapter; or

(2) the Texas Real Estate Commission at any time from investigating or initiating a disciplinary proceeding against a broker who fails to comply with this chapter.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.804, eff. Sept. 1, 2003.

Sec. 62.142. BROKER'S REMEDIES. (a) A broker may file suit against an owner or tenant to enforce a commission agreement.

(b) If the court finds that the broker waived the right to file a lien under Section 62.022 and that the owner or tenant violated the commission agreement, the court may award to the broker:

(1) actual damages, including attorney's fees and court costs, that are proximately caused by the owner's or tenant's failure to comply with the commission agreement; and

(2) a civil penalty in an amount not to exceed three times the amount of the claimed commission if the court finds that the owner or tenant acted with gross negligence or in bad faith.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.