

Real Estate LAW**Addressing a landlord's broken promise to their real estate broker**

Imagine your favorite restaurant. You've just enjoyed a great meal, everything was perfectly prepared, and the service was impeccable. Would you ever imagine walking out without paying the bill or leaving a tip? The answer (I hope) is of course not. The restaurant and the server would be furious.

Now, imagine that you are leasing commercial real estate. Instead of a server, you're dealing with a licensed real estate broker or salesperson ("broker"). You would expect that the broker is getting compensated for helping to land a new tenant. What if, using the restaurant scenario, someone stiffed them on their tip? It happens. So, where does a licensed New York broker turn to find the right to lien a landlord's property for failing to pay a leasing commission in New York State? The answer is New York Lien Law § 10, where mechanics and tradesmen lien a property owner for failure to pay for labor or material of course.

So, how does this mechanics' lien work for a broker?

First and very important, there has to be a written brokerage agreement between the broker with the landlord. The agreement is for the procurement of a commercial tenant only. In other words, this lien right does not apply to residential matters or procuring a buyer or seller for a landlord. Also, a broker for a tenant would not be able to



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Daily Record
Columnist

utilize this lien. In addition, the lease procured by the broker must be for a term of more than three years. Secondly, the mechanics' lien needs to be filed with the county clerk where the landlord's property is located and within eight months after the brokerage services have been rendered by the broker, but in no event later than five years after the first compensation has been paid, if any, by the landlord. So, if the broker takes too long and "sleeps on its right," then this lien right will no longer be available to the broker.

The broker must also comply with all of the service procedures that are found in New York Lien Law § 10. Once filed and properly served upon the landlord, the broker's lien will be an encumbrance against the title to the landlord's property for one year. Since the mechanics' lien will encumber the landlord's property, which may result in harm to landlord's interest in the property, the broker must be very careful to ensure all of the elements

of filing and serving a mechanic's lien are strictly adhered to; otherwise, the broker runs the risk of being liable to the landlord for damages.

Upon filing the lien and properly serving the property owner, the broker now has the ability to use the lien as leverage to demand payment of the outstanding leasing commission. If the landlord attempts to finance or sell the property, the broker's lien will appear in a title search for the property. Please note, however, that the broker's lien will be subordinate to any mortgage or encumbrance that was recorded prior to the filing of the broker's lien. Even if a prior mortgage exists, the holder of such a mortgage typically prohibits the landlord from having a lien against the property. In such a scenario, the landlord would be incentivized to work with the broker to remove the broker's lien in order to avoid having its mortgage called by the mortgage lender. Thus, the broker's lien provides the broker with a significant amount of leverage over the landlord. Finally, if the landlord still has not paid the broker within the one-year period, the broker may either foreclose on the lien or renew the lien by filing a one-year extension with the county clerk pursuant to New York Lien Law § 19. If the broker fails to do either, the lien automatically terminates per the statute.

In conclusion, a broker should seek

the advice of an attorney to make sure that the broker has a written and enforceable leasing commission agreement. In addition, and to avoid liability, an attorney needs to be consulted to advise the broker how to file and serve the lien properly on the landlord. If these steps are followed, the lien provides the broker with

significant leverage over a landlord to ensure payment of a leasing commission.

The process of searching for and selecting commercial real estate can take a lot of effort. At the end of the road, ideally the tenant is happy in their new space, the landlord is happy to have the space leased, and the

broker who brought them together is happy to have another deal done. Maybe they'll even use part of their commission check to take the tenant and the landlord out to dinner.

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