

Report on Public Policy Position

Name of section:

Real Property Law Section

Contact person:

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Bill Number:

[SB 0610](#) (Allen) Liens; other; commercial real estate broker's lien act; enact. Creates new act.

Date position was adopted:

July 18, 2009

Process used to take the ideological position:

Position adopted after discussion and vote at a scheduled meeting.

Number of members in the decision-making body:

18

Number who voted in favor and opposed to the position:

14 Voted for position

0 Voted against position

1 Abstained from vote

3 Did not vote

Position:

Oppose

Explanation of the position, including any recommended amendments:

The Section opposes SB 610, which would create a statutory commercial real estate brokers' lien. The reasons for opposition are:

1. The proposed legislation provides for a non-consensual lien which interferes with basic property rights.
2. The proposed legislation makes brokers a special preferred class of persons and provides a very extraordinary remedy of a lien against real property.
3. Brokers deal directly with owners, purchasers, landlords and tenants and have adequate remedies at law for the collection of their commissions.

4. Providing lien rights to brokers will encourage other parties dealing with real estate such as appraisers, property managers, property inspectors, lawyers, title companies, escrow agents and accountants to request similar rights.
5. Once broker's liens are granted for commercial property there will be a substantial risk that lien rights will be subsequently extended to include residential property.
6. The proposed legislation is patterned after the Construction Lien Act, but the justification for protecting artisans who create physical improvements to property does not apply to brokers.
7. The proposed legislation seeks to force parties to a transaction to close the transaction and escrow funds sufficient to satisfy a lien, even though the validity of a lien is in dispute.
8. The proposed legislation is complex, will add substantial costs, expenses, litigation, delays and disruptions to closing real estate transactions.
9. The proposed legislation will result in the filing of more documents affecting property, problems of timely discovering such documents, and will create additional underwriting risks for title insurance companies.

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.

<http://legislature.mi.gov/doc.aspx?2009-SB-0610>