

New law protects N.C. commercial brokers

By Amanda Jones Hoyle

RALEIGH - When a broker for a national commercial real estate firm called Raleigh lawyer Beth Voltz awhile back seeking advice on how to force an owner to pay his commission for a transaction in the Triangle, there was little Voltz could do to help.

"I had to tell them there was no broker lien law in North Carolina," Voltz remembers. "They had no recourse" except filing a lawsuit for breach of contract.

That is about to change.

North Carolina in October became the 29th state to enact a law protecting commercial real estate brokers from property

owners who refuse to pay all or part of an agreed-upon commission fee.

The law is similar to rules that govern construction contractor liens: A broker who has filed a lien against a property owner can seek foreclosure against the property to satisfy the commission due, if necessary.

The North Carolina Association of Realtors had been trying since 1997 to get a version of the commercial broker lien law passed, and it was able to reach a compromise with lobbyists for the construction industry as well as the North Carolina Real



STEVE WILSON

Jimmy Barnes heads NAI Carolantic in Raleigh.

SEE LIENS PAGE 22

LIENS: With a lawsuit being the only recourse, commercial real estate brokers had little choice to collect fees

FROM PAGE 3

Estate Commission during the 2011 legislative session, says Cady Thomas, director of government affairs for NCAR.

The bill signed into law was co-sponsored by four legislators from across the state, including Reps. Darrell McCormick (R-Iredell), Pryor Gibson (D-Anson), Leo Daughtry (R-Johnston) and Tom Murry (R-Wake).

Before the lien law passed, commercial brokers, who are often paid thousands of

dollars in fees for a property sale or a lease transaction that could have taken months or even years to finalize, had a weak safety net when it came to collecting commissions.

If a broker chose to go to court and claim breach of contract, that process could often be long and expensive. Even if a court ruled in the broker's favor, the settlement might not even cover attorney's fees, says Michael Birch, a real estate lawyer with K&L Gates in Raleigh. "They had very little leverage to go back to a property owner or

developer and ask to be fully compensated," he says.

With the new lien law, brokers who choose to file suit to enforce the lien have more bargaining power, and attorney fees are usually included in a court ruling.

"We've certainly been in a position when disputes over commissions come into play," says Jimmy Barnes, president of NAI Carolantic Realty in Raleigh. "Oftentimes the broker is the easiest party to be affected when talks about cutting fees comes into play. A lien gives a broker more security

that they'll get paid if there was an agreement to do so."

The law does not include lien rights for residential real estate brokers, notes Orange County Clerk of Superior Court James Stanford, who says that word is just getting out among the commercial brokerage community about the nuances of the new lien law. Stanford hopes there will not be a flood of lien claims coming into his office over the next few months and years.

"We've not had any filed, yet," Stanford says.