

State of Arizona  
Senate  
Forty-fifth Legislature  
First Regular Session  
2001

# SENATE BILL 1500

AN ACT

AMENDING TITLE 33, CHAPTER 7, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 10;  
RELATING TO COMMERCIAL REAL ESTATE BROKER LIENS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 33, chapter 7, Arizona Revised Statutes, is amended  
3 by adding article 10, to read:

4 ARTICLE 10. COMMERCIAL REAL ESTATE BROKER LIENS

5 33-1071. Commercial real estate broker lien; definition

6 A. EXCEPT AS PRESCRIBED BY SUBSECTION C, AN EMPLOYING REAL ESTATE  
7 BROKER PURSUANT TO TITLE 32, CHAPTER 20 HAS A LIEN AGAINST REAL PROPERTY FOR  
8 THE AMOUNT OF COMPENSATION THAT IS AGREED TO BE PAID TO THE BROKER BY THE  
9 OWNER OF THE REAL PROPERTY FOR THE BROKER'S SERVICES IN THE LEASE OR RENTAL  
10 OF THE REAL PROPERTY. THE LIEN IS CREATED ONLY IF ALL OF THE FOLLOWING  
11 APPLY:

12 1. THERE IS A WRITTEN AGREEMENT BETWEEN THE BROKER AND THE OWNER OF  
13 THE REAL PROPERTY THAT PROVIDES FOR THE PAYMENT OF A COMMISSION OR OTHER  
14 COMPENSATION TO THAT BROKER FOR THE BROKER'S SERVICES IN A REAL ESTATE  
15 TRANSACTION AND THAT AGREEMENT DISCLOSES IN THE SAME SIZE TYPE AS THE  
16 MAJORITY OF THE REMAINDER OF THE AGREEMENT ABOVE THE PORTION OF THE AGREEMENT  
17 CALLING FOR THE SIGNATURE OF THE OWNER OF THE REAL PROPERTY THAT THE FAILURE  
18 TO PAY THE AGREED UPON COMMISSION OR COMPENSATION MAY GIVE RISE TO LIEN  
19 RIGHTS AS PROVIDED BY THIS ARTICLE.

20 2. THE BROKER PRODUCES A PERSON OR ENTITY THAT IS READY, WILLING AND  
21 ABLE TO LEASE OR RENT THE REAL PROPERTY ON THE TERMS PROVIDED IN THE WRITTEN  
22 AGREEMENT BETWEEN THE BROKER AND THE OWNER OF THE REAL PROPERTY OR ON TERMS  
23 THAT ARE OTHERWISE ACCEPTABLE TO THE OWNER AS EVIDENCED BY A WRITTEN  
24 INSTRUMENT THAT IS SIGNED BY THE OWNER.

25 3. THE BROKER FULLY COMPLIES WITH SECTIONS 33-1072 AND 33-1073.

26 4. ALL OF THE CONDITIONS FOR THE PAYMENT OF THE COMMISSION OR OTHER  
27 COMPENSATION DESCRIBED IN THE WRITTEN AGREEMENT HAVE BEEN SATISFIED.

28 B. MECHANICS' AND MATERIALMEN'S LIEN RIGHTS ESTABLISHED PURSUANT TO  
29 TITLE 33, CHAPTER 7, ARTICLE 6 HAVE PRIORITY OVER THE LIEN RIGHTS CREATED BY  
30 THIS ARTICLE.

31 C. CONSENSUAL LIENS, MORTGAGES AND DEEDS OF TRUST THAT ARE RECORDED  
32 BEFORE THE RECORDATION OF THE BROKER'S PRELIMINARY NOTICE OF INTENT TO LIEN  
33 HAVE PRIORITY OVER THE LIEN RIGHTS CREATED BY THIS ARTICLE AND OVER THE  
34 NOTICE OF COMMERCIAL REAL ESTATE BROKER LIEN RECORDED PURSUANT TO THIS  
35 ARTICLE.

36 D. REAL PROPERTY IS NOT SUBJECT TO A COMMERCIAL REAL ESTATE BROKER  
37 LIEN PURSUANT TO THIS ARTICLE IF EITHER OF THE FOLLOWING APPLY:

38 1. THE REAL PROPERTY IS CONVEYED TO A BONA FIDE PURCHASER FOR VALUE  
39 BEFORE THE RECORDATION OF A BROKER'S PRELIMINARY NOTICE OF INTENT TO LIEN.

40 2. IT IS ENCUMBERED BY A BONA FIDE LENDER FOR VALUE BEFORE THE  
41 RECORDATION OF A BROKER'S PRELIMINARY NOTICE OF INTENT TO LIEN.

42 E. EXCEPT AS PROVIDED IN SUBSECTION D OF THIS SECTION, THE LIEN RIGHTS  
43 PROVIDED BY THIS ARTICLE APPLY TO ALL COMMERCIAL REAL PROPERTY AND DO NOT  
44 APPLY TO ANY TRANSACTION INVOLVING EITHER OF THE FOLLOWING:

45 1. RESIDENTIAL REAL PROPERTY WITH FEWER THAN FIVE RESIDENTIAL UNITS.



1 INTENT TO LIEN WITHIN THE TIME PRESCRIBED BY THIS SUBSECTION EXTINGUISHES THE  
2 BROKER'S LIEN RIGHTS.

3 33-1073. Contents of notice of lien; license number; verification

4 A. THE NOTICE OF COMMERCIAL REAL ESTATE BROKER LIEN SHALL INCLUDE ALL  
5 OF THE FOLLOWING:

6 1. THE NAME AND THE ADDRESS OF THE PRINCIPAL PLACE OF BUSINESS OF THE  
7 BROKER WHO CLAIMS THE LIEN AND THE BROKER'S REAL ESTATE LICENSE NUMBER.

8 2. THE NAME AND THE MAILING ADDRESS OF THE OWNER OF THE REAL PROPERTY.

9 3. THE REAL PROPERTY INTEREST THAT IS OWNED BY THE OWNER.

10 4. THE AMOUNT OF THE LIEN.

11 5. THE LEGAL DESCRIPTION OF THE REAL PROPERTY THAT IS THE SUBJECT OF  
12 THE LIEN.

13 6. THE STREET ADDRESS OF THE REAL PROPERTY, IF ANY.

14 7. THE STATEMENT THAT THE BROKER WHO CLAIMS THE LIEN IS ENTITLED TO  
15 COMPENSATION FROM THE OWNER OF THE REAL PROPERTY.

16 8. THE NOTARIZED SIGNATURE OF THE REAL ESTATE BROKER THAT AVOWS THAT  
17 BASED ON INFORMATION AND BELIEF THE CONTENTS OF THE NOTICE OF COMMERCIAL REAL  
18 ESTATE BROKER LIEN ARE TRUE AND ACCURATE.

19 B. THE WORDS "UNKNOWN" OR "NOT AVAILABLE" AND SIMILAR TERMS MAY NOT BE  
20 USED IN LIEU OF THE INFORMATION PRESCRIBED BY SUBSECTION A, AND ANY USE OF  
21 THOSE TERMS IN THE NOTICE OF COMMERCIAL REAL ESTATE BROKER LIEN OR BROKER'S  
22 PRELIMINARY NOTICE OF INTENT TO LIEN INVALIDATES THE COMMERCIAL REAL ESTATE  
23 BROKER LIEN.

24 33-1074. Foreclosure; limitation of action; attorney fees

25 A. A COMMERCIAL REAL ESTATE BROKER LIEN RECORDED PURSUANT TO THIS  
26 ARTICLE IS ENFORCEABLE BY FORECLOSURE ACTION IN SUPERIOR COURT AS IF THE LIEN  
27 WERE A MORTGAGE.

28 B. A LIEN PURSUANT TO THIS ARTICLE IS ONLY VALID FOR TWO YEARS AFTER  
29 THE DATE THAT IT IS RECORDED UNLESS AN ACTION IS BROUGHT WITHIN THAT TWO  
30 YEARS TO ENFORCE THE LIEN AND A NOTICE OF PENDENCY OF THE ACTION IS RECORDED  
31 PURSUANT TO SECTION 12-1191 IN THE OFFICE OF THE COUNTY RECORDER IN THE  
32 COUNTY IN WHICH THE PROPERTY IS LOCATED WITHIN FIVE DAYS AFTER FILING THE  
33 ACTION.

34 C. IN ANY ACTION TO FORECLOSE A COMMERCIAL REAL ESTATE BROKER LIEN,  
35 THE PREVAILING PARTY SHALL BE AWARDED COSTS AND REASONABLE ATTORNEY FEES.

36 33-1075. Satisfaction of lien; damages

37 A. ON SATISFACTION OF ANY LIEN ESTABLISHED PURSUANT TO THIS ARTICLE,  
38 THE LIENHOLDER SHALL RECORD A SATISFACTION OF THE LIEN WITHIN THIRTY  
39 DAYS. THE SATISFACTION SHALL BE IN THE FORM PRESCRIBED BY SECTION 11-480. A  
40 LIENHOLDER WHO FAILS TO RECORD A SATISFACTION OF LIEN PURSUANT TO THIS  
41 SECTION IS SUBJECT TO THE PENALTIES PRESCRIBED BY SECTION 33-712.

42 B. A BROKER SHALL RECORD A WAIVER AND RELEASE OF CLAIM OF LIEN THAT  
43 EXTINGUISHES THE BROKER'S LIEN RIGHTS ON EITHER OF THE FOLLOWING:



1 ONE-HALF TIMES THE CLAIM SECURED BY THE LIEN AND SHALL BE CONDITIONED FOR THE  
2 PAYMENT OF THE JUDGMENT THAT WOULD HAVE BEEN RENDERED AGAINST THE PROPERTY  
3 FOR THE ENFORCEMENT OF THE LIEN. THE LEGAL DESCRIPTION OF THE PROPERTY AND  
4 THE DOCKET AND PAGE OF THE LIEN SOUGHT TO BE DISCHARGED SHALL BE SET FORTH IN  
5 THE BOND.

6 C. ON RECORDATION OF THE BOND WITH THE COUNTY RECORDER, THE PRINCIPAL  
7 ON THE BOND SHALL CAUSE A COPY OF THE BOND TO BE SERVED WITHIN A REASONABLE  
8 TIME ON THE LIEN CLAIMANT, AND IF A SUIT IS THEN PENDING TO FORECLOSE THE  
9 LIEN, THE CLAIMANT, WITHIN NINETY DAYS AFTER RECEIPT OF THE BOND, SHALL CAUSE  
10 PROCEEDINGS TO BE INSTITUTED TO ADD THE SURETY AND THE PRINCIPAL AS PARTIES  
11 TO THE LIEN FORECLOSURE SUIT.

12 D. THE BOND SHALL BE DISCHARGED AND THE PRINCIPAL AND SURETIES SHALL  
13 BE RELEASED ON ANY OF THE FOLLOWING:

14 1. THE FAILURE OF THE LIEN CLAIMANT TO COMMENCE A SUIT WITHIN THE TIME  
15 ALLOWED PURSUANT TO SECTION 33-1074.

16 2. FAILURE OF THE LIEN CLAIMANT TO NAME THE PRINCIPAL AND SURETIES AS  
17 PARTIES TO THE ACTION SEEKING FORECLOSURE OF THE LIEN IF A COPY OF THE BOND  
18 HAS BEEN SERVED ON THE CLAIMANT. IF THE BOND IS SERVED ON THE CLAIMANT FEWER  
19 THAN NINETY DAYS AFTER THE DATE THE CLAIMANT WOULD BE REQUIRED TO COMMENCE AN  
20 ACTION PURSUANT TO SECTION 33-1074, THE CLAIMANT HAS NINETY DAYS FROM THE  
21 DATE OF RECEIVING A COPY OF THE BOND TO ADD THE PRINCIPAL AND THE SURETIES AS  
22 PARTIES TO THE LIEN FORECLOSURE SUIT.

23 3. THE DISMISSAL OF THE FORECLOSURE SUIT WITH PREJUDICE AS TO THE  
24 CLAIMANT OR THE ENTRY OF JUDGMENT IN A SUIT AGAINST THE CLAIMANT.

25 E. IN AN ACTION TO FORECLOSE A LIEN UNDER THIS ARTICLE, IF A BOND HAS  
26 BEEN FILED AND SERVED AS PRESCRIBED BY THIS SECTION A JUDGMENT FOR THE  
27 CLAIMANT ON THE BOND SHALL BE AGAINST THE PRINCIPAL AND THE PRINCIPAL'S  
28 SURETIES AND SHALL NOT BE AGAINST THE PROPERTY.

29 F. IF A COPY OF THE BOND IS NOT SERVED ON THE CLAIMANT AS PROVIDED IN  
30 SUBSECTION C OF THIS SECTION, THE CLAIMANT HAS SIX MONTHS AFTER THE DISCOVERY  
31 OF THE BOND TO COMMENCE AN ACTION ON THE BOND, EXCEPT THAT NO ACTION MAY BE  
32 COMMENCED ON THE BOND AFTER TWO YEARS FROM THE DATE IT WAS RECORDED AS  
33 PROVIDED IN THIS SECTION.

34 G. THE COUNTY RECORDER OF THE COUNTY IN WHICH THE BOND AND CONTRACT  
35 ARE RECORDED SHALL INDEX THE BOND AND CONTRACT UNDER THE INDEX CLASSIFICATION  
36 IN WHICH COMMERCIAL REAL ESTATE BROKER LIENS ARE RECORDED.