



## WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

**2009 Wisconsin Act 348**  
[2009 Senate Bill 587]

**Real Estate Liens and Titles**

2009 Wisconsin Act 348 makes a number of changes in the laws relating to real estate liens and titles.

### **Correction Instruments**

Act 348 provides that an instrument correcting a previously recorded conveyance is entitled to be recorded in the office of the Register of Deeds in the county in which the conveyance is recorded. The instrument must include one or more of several enumerated items, including correction of a legal description; addition, correction, or clarification of information other than a legal description, including, for example, a party's name or the tax parcel number; the addition of an acknowledgement or authentication; the disclaimer by a grantee under a deed of that party's interest in the real property that is the subject of the deed; or the addition of a mortgagee's consent or subordination. The correction instrument must be acknowledged or authenticated as provided in the statutes and must include the document number of the conveyance, the names of the grantor and grantee, and, if given on the conveyance, the volume and page numbers.

The Act provides that a correction instrument that is executed after May 28, 2010, may be executed by a person having personal knowledge of the circumstances of the conveyance and the facts recited in the correction instrument, including the grantor, the grantee, the person who drafted the conveyance, or the person who acted as the settlement agent to the transaction that is the subject of the conveyance. The instrument must recite the basis for that person's personal knowledge. However, correction instruments executed before May 28, 2010 are not rendered ineffective by reason of the instrument's failure to recite that the person making the instrument had the knowledge or capacity required under the new statute.

The Act specifies who must sign a correction instrument, with differences depending on the nature of the correction being made. In addition, a person who executes and records a correction

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This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.state.wi.us/>.

instrument must send notice of that fact by first class mail to all parties to the transaction that was the subject of the conveyance at their last-known address.

The record of a correction instrument that complies with the new statute, or a certified copy of the record, is *prima facie* evidence of the facts stated in the instrument. It is presumed to be true, subject to rebuttal, and constitutes notice to a purchaser of the facts recited in the instrument. In addition, it may be asserted by a purchaser for a valuable consideration against any person making an adverse or inconsistent claim.

The Act states that any instrument recorded before May 28, 2010, that purports to correct a previously recorded conveyance and that would have been a valid correction instrument under the new statute had that statute been in effect when the instrument was recorded, is validated by the Act.

### **Commercial Real Estate Broker's Liens**

If a real estate broker has earned a commission with respect to sale of commercial real estate or compensation for lease or management of commercial real estate, the broker has a lien for the unpaid amount of the commission or compensation against the commercial real estate.

Under the statutes prior to Act 348, certain notices of an intent to claim a lien must be provided to the person owing the commission or compensation within specified time periods and, in the case of a commission, must be recorded with the Register of Deeds. Act 348 changes the reference from "notice of intent to claim a lien" to "notice of interest." A lien is perfected when a broker files a "notice of lien" in the Office of Register of Deeds. In the case of a lien involving the commission for the sale of commercial real estate, this must be filed no later than three days prior to the date the conveyance documents are recorded with the Register of Deeds. Act 348 amends this law to provide that in the case of such a lien, the lien must be filed with the Register of Deeds no later than 30 days after the date that the conveyance documents are recorded.

Act 348 also includes tenant representation agreements in the statutes dealing with commercial real estate. The term "tenant representation agreement" is defined as an agency agreement between a real estate broker and a person that grants the broker the right to represent the person in the lease of commercial real estate.

The Act also creates a statute that provides that to claim a lien, the broker must notify the person who owes the commission or compensation in writing of the right to claim a lien. The broker must include the notice in the commercial real estate listing contract, commercial real estate buyer agreement, tenant representation agreement, or written agreement for the lease or management of commercial real estate. The notice must be substantially in the form specified in the statutes, stating that a broker has the authority to file a broker lien for commissions or compensation earned but not paid when due against commercial real estate.

The Act provides that a broker may waive the lien in writing signed by the broker, but no action or agreement between any other persons may invalidate the lien, other than the payment in full of the commission or compensation to which the lien relates.

### **Changes in Streets and Highways**

The law prior to Act 348 provided that a person who makes an application to a court, county board, common council, or village or town board for laying out, widening, vacating, or extending any

street, alley, water channel, park, highway, or other public place, must, at or prior to the time of filing that application, file a notice of pendency of the application with the Register of Deeds. The law further provided that neglect to comply with this requirement renders all proceedings based upon the application void.

Act 348 amends this law to delete the reference to a “notice of the pendency” of the application and to provide that the person making the application must present for recording in the Office of the Register of Deeds a *lis pendens*, as set forth in the statutes. The Act also eliminates the provision that states that neglect to comply with this requirement renders all proceedings based upon the application void.

The law prior to Act 348 required that a final order, judgment, or decree or final resolution affecting the land must contain “a full and accurate description” of the land; Act 348 substitutes “legal description.” The Act also eliminates a statute that provided that a resolution or order made by one of the above bodies, without an application having been made, has no effect unless it is recorded.

***Effective date:*** The Act takes effect on May 28, 2010.

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