

By Senator Pruitt

27-652-01

1 A bill to be entitled
2 An act relating to liens; creating the
3 "Broker's and Appraiser's Lien on Commercial
4 Real Estate Act"; providing applicability,
5 definitions, and general provisions; providing
6 for a commission; specifying persons entitled
7 to such liens; providing for waiver, release,
8 or discharge of lien; providing for affidavits
9 identifying broker; providing for filing and
10 contents of notice of lien; providing for
11 notice of filing; specifying priorities of
12 liens; providing for effect of mixed-use
13 property and changed-in-use property;
14 prescribing time for filing notice of liens;
15 providing for enforcement of liens; providing a
16 statute of limitations; providing for
17 assessment of costs, fees, and interest;
18 providing for release of lien; providing for
19 escrow of disputed matters; providing for a
20 bond to indemnify against a lien; specifying
21 requirements, notice, recording, and actions;
22 providing owner's, tenant's, and broker's
23 remedies; authorizing civil penalties, damages,
24 court costs, and attorney's fees; providing an
25 effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:

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29 Section 1. Short title.--This act may be cited as the
30 "Broker's and Appraiser's Lien on Commercial Real Estate Act."

31 Section 2. Applicability.--

1 (1) This act applies only to real estate that is
2 commercial real estate on the date the notice of lien is filed
3 under this chapter.

4 (2) This act does not apply to:

5 (a) A transaction involving a claim for a commission
6 of \$2,500 or less in the aggregate; or

7 (b) A transaction for the sale of commercial real
8 estate involving a claim for a commission of \$5,000 or less in
9 the aggregate if the commercial real estate:

10 1. Is the principal place of business of the record
11 title owner;

12 2. Is occupied by more than one and fewer than five
13 tenants; and

14 3. Is improved with 7,500 square feet or less of total
15 gross building area.

16 Section 3. Definitions.--In this act, the term:

17 (1) "Broker" means a person who:

18 (a) Is licensed as a real estate broker under part I
19 of chapter 475, Florida Statutes; or

20 (b) Is licensed or certified as a real estate
21 appraiser under part II of chapter 475, Florida Statutes.

22 (2) "Commercial real estate" means all real estate
23 except:

24 (a) Real estate improved with one to four residential
25 units;

26 (b) A single-family residential unit, including a
27 condominium, townhouse, or home in a subdivision, if the unit
28 is sold, leased, or otherwise conveyed on a unit-by-unit basis
29 and regardless of whether the unit is part of a larger
30 building or located on real estate containing more than four
31 residential units;

- 1 (c) Real estate that is or includes on the real estate
2 a person's homestead;
- 3 (d) Real estate that is not improved with a structure
4 and is:
- 5 1. Zoned for single-family residential use; or
6 2. Restricted for single-family use under restrictive
7 covenants that will remain in effect for at least the next 2
8 years; or
- 9 (e) Real estate that:
- 10 1. Is primarily used for farming and agricultural
11 purposes;
- 12 2. Will continue to be used primarily for farming and
13 agricultural purposes; and
- 14 3. Is located more than three miles from the corporate
15 boundaries of any municipality.
- 16 (3) "Commission" includes a fee or other valuable
17 consideration.
- 18 (4) "Commission agreement" means a written instrument
19 that:
- 20 (a) Entitles a broker to a commission;
- 21 (b) Is signed by the person obligated to pay the
22 commission or that person's authorized agent;
- 23 (c) References the commission amount or describes the
24 formula used to determine the commission amount; and
- 25 (d) Contains a description legally sufficient for
26 identification of the real estate interest that is the subject
27 of the agreement if the person obligated to pay the commission
28 is a seller or lessor.
- 29 (5) "Deferred commission" means a commission that is
30 earned and is not yet payable.
- 31

1 (6) "Real estate" means real estate as defined in
2 section 475.01, Florida Statutes.

3 Section 4. Payable commission and earned commission.--

4 (1) A commission is payable at the time provided in
5 the commission agreement. If payment of the commission is
6 conditioned on the occurrence of an event and that event does
7 not occur, the person obligated to pay the commission is not
8 required to pay the commission.

9 (2) Except as provided by subsection (3), a commission
10 is earned on the earlier of the date that:

11 (a) An event occurs which, under the commission
12 agreement, defines when the commission is earned; or

13 (b) The person obligated to pay the commission enters
14 into a purchase contract or a lease during the period
15 prescribed by the commission agreement for all or part of the
16 commercial real estate if the purchase contract or lease is
17 contemplated by the commission agreement and if the parties to
18 the purchase contract or lease are contemplated by the
19 commission agreement.

20 (3) If a broker has earned a commission under a
21 commission agreement relating to a lease transaction and the
22 commission agreement provides that the broker may receive an
23 additional commission when the lease is modified to expand the
24 lease space or renewed, the additional commission is earned
25 when:

26 (a) The broker performs all the additional services
27 relating to the lease modification or renewal expressly
28 prescribed by the commission agreement; or

29 (b) The broker first earned a commission under the
30 commission agreement if the commission agreement does not
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1 expressly require the broker to perform additional services
2 relating to a lease modification or renewal.

3 Section 5. Broker's address for receipt of notice.--A
4 seller, lessor, buyer, or tenant shall send any notice
5 required to be sent to the broker under this chapter to the
6 broker:

7 (1) At the broker's address as reflected in the
8 records of the Florida Real Estate Commission; and

9 (2) At the broker's last address that the broker
10 furnished the seller, lessor, buyer, or tenant by certified
11 mail, return receipt requested, if the broker's license is
12 expired.

13 Section 6. Person entitled to lien.--

14 (1) A broker has a lien on a seller's or lessor's
15 commercial real estate interest in the amount specified by the
16 commission agreement if:

17 (a) The broker has earned a commission under a
18 commission agreement signed by the seller or lessor of the
19 commercial real estate interest or the seller's or lessor's
20 authorized agent; and

21 (b) A notice of lien is recorded and indexed as
22 provided by section 714.024, Florida Statutes.

23 (2) A broker has a lien on the commercial real estate
24 interest purchased by a prospective buyer in the amount
25 specified by the commission agreement if:

26 (a) The broker has earned a commission under a
27 commission agreement signed by the prospective buyer of the
28 commercial real estate interest or the prospective buyer's
29 authorized agent; and

30 (b) A notice of lien is recorded and indexed as
31 provided by section 714.024, Florida Statutes.

1 (3) A broker has a lien on the leasehold interest in
2 the commercial real estate that a prospective tenant leases in
3 the amount specified by the commission agreement if:

4 (a) The broker has earned a commission under a
5 commission agreement signed by the prospective tenant of the
6 commercial real estate interest or the prospective tenant's
7 authorized agent; and

8 (b) A notice of lien is recorded and indexed as
9 provided by section 714.024, Florida Statutes.

10 (4) A lien described by this section is available only
11 to the broker named in the commission agreement. The lien is
12 not available to an employee or independent contractor of the
13 broker.

14 (5) The broker's right to claim a lien based on the
15 commission agreement must be disclosed in the commission
16 agreement.

17 Section 7. Waiver, release, or discharge of lien;
18 assumption of commission obligation.--

19 (1) Except as provided by subsection (2), the waiver
20 of a broker's right to a lien under this part, or a release
21 given for the purpose of releasing the broker's lien before
22 the commission is satisfied or forgiven, is void.

23 (2) A broker's entitlement to a lien on the interest
24 of an owner or tenant in commercial real estate shall be
25 automatically waived if:

26 (a) The commission is earned and payable for services
27 provided relating to a lease transaction; and

28 (b) The commission agreement is included as a
29 provision of the lease agreement.

30 (3) A lien under this chapter is discharged by:

31 (a) A court order discharging the lien;

1 (b) Paying the commission to the broker named in the
2 commission agreement; or

3 (c) Establishing an escrow account described in this
4 act.

5 (4) A person who assumes an owner's or tenant's
6 commercial real estate interest is bound by a commission
7 agreement included in a lease agreement unless an escrow
8 account is established under this act.

9 (5) This section does not affect the rights of a
10 mortgagee who forecloses on commercial real estate and does not
11 assume the lease on which a commission agreement is based.

12 Section 8. Affidavit identifying broker.--If requested
13 by the buyer, the buyer's authorized agent, or the escrow
14 agent for the commercial real estate transaction, the seller
15 of commercial real estate and the broker representing the
16 seller shall provide to the requesting party before the
17 closing of the transaction a written affidavit identifying
18 each broker with whom the affiant knows or believes the seller
19 or the seller's authorized agent has signed a commission
20 agreement under which a commission is claimed or earned and
21 has not been paid.

22 Section 9. Filing of notice of lien.--

23 (1) A broker claiming a lien under this chapter may
24 not file a notice of lien unless the commission on which the
25 lien is based is earned.

26 (2) A broker claiming a lien under this chapter must
27 file a notice of lien as provided by this act with the clerk
28 of the circuit court of the county in which the commercial
29 real estate is located.

30 (3) The clerk of the circuit court shall record the
31 notice of lien in records kept for that purpose and shall

1 index and cross-index the notice of lien in the names of the
2 broker, each person obligated to pay the commission under the
3 commission agreement, and each person who owns an interest in
4 the commercial real estate if the broker claims a lien on that
5 interest.

6 Section 10. Contents of notice of lien.--The notice of
7 lien must be signed by the broker or by a person authorized to
8 sign on behalf of the broker and must contain the following:

9 (1) A sworn statement of the nature and amount of the
10 claim, including:

11 (a) The commission amount or the formula used to
12 determine the commission;

13 (b) The type of commission at issue, including a
14 deferred commission; and

15 (c) The month and year in which the commission was
16 earned;

17 (2) The name of the broker and the real estate license
18 number of the broker;

19 (3) The name as reflected in the broker's records of
20 any person whom the broker believes is obligated to pay the
21 commission under the commission agreement;

22 (4) The name as reflected in the broker's records of
23 any person whom the broker believes to be an owner of the
24 commercial real estate interest on which the lien is claimed;

25 (5) A description legally sufficient for
26 identification of the commercial real estate interest sought
27 to be charged with the lien;

28 (6) The name of any cooperating broker or principal in
29 the transaction with whom the broker intends to share the
30 commission and the dollar or percentage amount to be shared;

31 and

1 (7) A copy of the commission agreement on which the
2 lien is based.

3 Section 11. Notice of filing.--

4 (1) In this section, "business day" means a day other
5 than a Saturday, Sunday, or holiday recognized by this state.

6 (2) Not later than 1 business day after the date the
7 broker files a notice of lien, the broker shall mail a copy of
8 the notice of lien by certified mail, return receipt
9 requested, or registered mail to:

10 (a) The owner of record of the commercial real estate
11 interest on which the lien is claimed or the owner's
12 authorized agent; and

13 (b) The prospective buyer or tenant and any escrow
14 agent named in a contract for the sale or lease of the
15 commercial real estate interest on which the lien is claimed
16 if:

17 1. A binding written contract for the sale or lease of
18 the commercial real estate interest is in effect between the
19 owner and the prospective buyer or tenant in a transaction
20 that is the basis for the commission; and

21 2. The binding written contract was executed by the
22 owner and the prospective buyer or tenant before the date the
23 notice of lien is filed.

24 (3) Service of the notice under subsection (2) is
25 complete when the notice is deposited in the United States
26 mail, postage prepaid, and addressed to the persons entitled
27 to receive the notice under this section.

28 (4) If the broker has actual knowledge of the identity
29 of the escrow agent named in the contract for the sale or
30 lease of the commercial real estate interest on which the
31 broker claims a lien or of the escrow agent otherwise closing

1 the sale or lease of the commercial real estate interest, the
2 broker, before the first business day before the date that the
3 sale or lease is closed on commercial real estate for which a
4 notice of lien is filed, shall deliver a file-stamped copy or
5 transmit a facsimile of a file-stamped copy of the notice of
6 lien to each escrow agent at the office in which the closing
7 of the sale or lease will occur for use during the closing of
8 the sale or lease. The broker shall deliver the copy or
9 transmit the facsimile directly to the individual escrow agent
10 responsible for closing the sale or lease if the broker knows
11 that person's name.

12 (5) If the escrow agent receives the notice of lien,
13 the escrow agent and other parties to the sale or lease may
14 not close the transaction unless the lien is released, the
15 prospective buyer or tenant purchases or leases the property
16 subject to the lien, the funds are held in escrow, or a bond
17 is filed as provided by this act.

18 (6) If the broker fails to comply with this section,
19 the notice of lien is void.

20 Section 12. Inception of broker's lien.--

21 (1) A broker's lien attaches to the commercial real
22 estate interest owned by the person obligated to pay the
23 commission on the date the notice of lien is recorded as
24 provided by this act. The lien does not relate back to the
25 date of the commission agreement.

26 (2) A notice of lien for amounts earned by the broker
27 under an installment contract or under a commission agreement
28 for a deferred commission is enforceable only to the extent
29 that the installment or commission has become payable.

30 Section 13. Priority.--

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1 (1) A recorded lien, mortgage, or other encumbrance on
2 commercial real estate, including a recorded lien securing
3 revolving credit and future advances for a loan, recorded
4 before the date a broker's lien is recorded has priority over
5 the broker's lien.

6 (2) A broker's lien on the commercial real estate
7 interest of a person obligated to pay a commission is not
8 valid or enforceable against a grantee, buyer, lessee, or
9 transferee of the interest of the person obligated to pay the
10 commission if the deed, lease, or instrument transferring the
11 interest is recorded before the notice of the broker's lien is
12 recorded.

13 (3) A purchase-money mortgage lien executed by the
14 buyer of the commercial real estate interest has priority over
15 a broker's lien claimed for the commission owed by the buyer
16 against the commercial real estate interest purchased by the
17 buyer.

18 (4) A mechanic's lien that is recorded after a
19 broker's lien and that relates back to a date before the date
20 the broker's lien is recorded has priority over the broker's
21 lien.

22 Section 14. Mixed-use real estate.--If real estate is
23 zoned or restricted for more than one use, the broker's lien
24 attaches only to the portions of the real estate which
25 constitute commercial real estate.

26 Section 15. Change in use of real estate.--

27 (1) Except as provided by subsection (2), any change
28 in the use of the real estate does not affect a broker's lien
29 if the notice of the lien was filed when the real estate was
30 commercial real estate.

31 (2) The broker's lien is extinguished if:

1 (a) Not later than the 360th day after the date on
2 which the broker's commission is payable, the commercial real
3 estate interest on which a broker claims a lien is zoned for
4 single-family use or restricted for single-family use under
5 recorded restrictive covenants; and

6 (b) The zoning ordinances or restrictive covenants for
7 single-family use are in effect until at least the second
8 anniversary of the date the commission is payable.

9 Section 16. Time to file.--

10 (1) If a broker has earned a commission under a
11 commission agreement signed by a seller or the seller's
12 authorized agent, a broker must record a notice of lien:

13 (a) After the commission is earned; and

14 (b) Before the conveyance of the commercial real
15 estate interest on which the broker is claiming a lien.

16 (2) If a broker has earned a commission under a
17 commission agreement signed by a prospective buyer or a
18 prospective buyer's authorized agent, the broker must record a
19 notice of lien:

20 (a) After the buyer acquires legal title to the
21 commercial real estate interest on which the broker is
22 claiming a lien; and

23 (b) Before the buyer conveys the buyer's commercial
24 real estate interest on which the broker is claiming a lien.

25 (3) If the lien is based on a lease transaction, the
26 broker must record a notice of lien after the commission is
27 earned and before the earlier of:

28 (a) The 91st day after the date the event for which
29 the commission becomes payable occurs; or

30 (b) The date the person obligated to pay the
31 commission records a subsequent conveyance of that person's

1 commerical real estate interest after executing the lease
2 agreement relating to the lease transaction for which the lien
3 is claimed.

4 (4) If a notice of lien is not filed within the time
5 required by this section, the lien is void.

6 Section 17. Suit to foreclose lien.--

7 (1) A broker may not bring a suit to foreclose a lien
8 under this act unless the commission is earned and payable. A
9 broker may bring a suit to foreclose a lien in any circuit
10 court for the county in which the commercial real estate is
11 located by filing a sworn complaint stating that the notice of
12 lien has been recorded.

13 (2) A complaint in a suit filed under this section
14 must contain:

15 (a) A brief description of the commission agreement
16 that is the basis for the lien, including:

17 1. A description of the disclosure of the broker's
18 right to the lien contained in the commission agreement;

19 2. The date on which the commission agreement was
20 executed;

21 3. The event for which a commission is considered to
22 be earned; and

23 4. The event for which a commission is considered to
24 be payable;

25 (b) A description of the services performed by the
26 broker;

27 (c) The amount of the payable commission that is
28 unpaid;

29 (d) A description of the commercial real estate to
30 which the lien attaches; and

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1 (e) Other facts necessary for a full understanding of
2 the rights of the parties.

3 (3) The broker must include as a defendant in a suit
4 brought under this part each person the broker believes to
5 have an interest in the commercial real estate that is
6 subordinate to or encumbered by the broker's lien.

7 (4) If the broker and a person against whom the broker
8 claims a commission use alternative dispute resolution
9 procedures to resolve a dispute concerning entitlement to the
10 broker's commission, the broker's lien remains valid, and any
11 suit to foreclose the lien is stayed until the alternative
12 dispute resolution process is completed.

13 Section 18. Statute of limitations.--

14 (1) Except as provided by this section, a broker
15 claiming a lien under this act must bring a suit to foreclose
16 the lien on or before the second anniversary of the date the
17 notice of lien is recorded.

18 (2) A broker claiming a lien to collect a deferred
19 commission must bring a suit to foreclose the lien on or
20 before the earlier of:

21 (a) The second anniversary of the date on which the
22 commission is payable; or

23 (b) The 10th anniversary of the date the lien is
24 recorded or the 10th anniversary of the date the broker
25 records a subsequent notice of the lien as a renewal of the
26 broker's right to the lien, whichever date is later.

27 (3) A renewal of a notice of lien must state that it
28 is a renewal of the broker's lien and must be recorded after
29 the ninth anniversary after the date the original notice of
30 lien or last renewal notice is recorded and on or before the
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1 10th anniversary of the date the original notice of lien or
2 last renewal notice is recorded.

3 (4) A broker claiming a lien for a commission that is
4 payable must bring a suit to foreclose the lien not later than
5 the 30th day after the date the broker receives a written
6 demand to bring a suit to foreclose the lien from the owner of
7 the commercial real estate interest on which the lien is
8 claimed.

9 (5) If a suit to foreclose the lien is not brought
10 within the period prescribed by this section, the lien is
11 void.

12 Section 19. Assessment of costs, fees, and
13 interest.--The prevailing party in a suit brought under this
14 act is entitled to court costs, reasonable attorney's fees,
15 and prejudgment interest from the date the commission becomes
16 payable or the date the damage accrues.

17 Section 20. Release of lien.--

18 (1) Not later than the fifth day after the date a
19 broker receives a written request from the owner of a
20 commercial real estate interest on which a lien is claimed,
21 the broker shall furnish to the owner a release of
22 indebtedness and any lien claimed if:

23 (a) The debt that is the basis for the lien is
24 satisfied; or

25 (b) The lien is discharged under section 7, rendered
26 void under section 10 or section 17, or extinguished under
27 section 14.

28 (2) When a condition occurs that would preclude the
29 broker from receiving a commission under the terms of the
30 commission agreement that is the basis for the lien, the
31 broker shall, not later than the 10th day after the date the

1 broker receives a written request from the owner of the
2 commercial real estate interest on which the lien is claimed,
3 furnish to the owner a release of indebtedness and any lien
4 claimed.

5 (3) Not later than the 10th day after the date a
6 broker receives a written request for the release of the
7 broker's lien from the escrow agent responsible for closing
8 the purchase and sale of a commercial real estate interest on
9 which the lien is claimed, the broker shall furnish to the
10 escrow agent a release of indebtedness and any lien claimed
11 if:

12 (a) The commercial real estate interest to which the
13 lien attaches is subject to a contract for purchase and sale;

14 (b) The release of indebtedness and any lien claimed
15 is conditioned on the closing of the transaction; and

16 (c) The broker would otherwise be obligated to release
17 the indebtedness and any lien claimed under subsection (1) or
18 subsection (2) on the closing of the transaction.

19 (4) A release of lien must be in a form that permits
20 the instrument to be recorded.

21 Section 21. Escrow account.--If a claim for a lien
22 under a recorded notice of lien is not paid or assumed at the
23 closing of a sale, lease, or mortgage of the commercial real
24 estate interest subject to the lien and would prevent the
25 closing of the transaction or conveyance or if a claim for a
26 lien under a recorded notice of lien does not survive the
27 closing, any person named in the notice of lien as obligated
28 to pay the commission shall, on the date of the closing:

29 (1) Establish an escrow account from any net proceeds
30 of the transaction or conveyance in an amount equal to the
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1 amount sufficient to satisfy the lien plus 15 percent of that
2 amount; or

3 (2) File a bond to indemnify against the lien as
4 provided by this act.

5 Section 22. Named escrow agent.--If an escrow agent is
6 named in the contract on which the transaction or conveyance
7 is based, the escrow account must be established with the
8 named escrow agent.

9 Section 23. Costs of interpleader.--Related costs for
10 any interpleader action may be deducted from the escrow
11 account by the person maintaining the escrow account.

12 Section 24. Refusal to establish escrow account or
13 bond.--

14 (1) A party may not refuse to close a transaction
15 because of the requirement to establish an escrow account or
16 bond as provided by section 20 if:

17 (a) The broker provides a copy of the notice of lien
18 that complies with sections 10 and 11;

19 (b) Sufficient proceeds will result from the proposed
20 transaction for the payment of the commission and costs of the
21 interpleader; and

22 (c) The broker executes and delivers a full release of
23 the broker's lien in a recordable form.

24 (2) A prospective buyer of a commercial real estate
25 interest may not refuse to close the purchase solely because a
26 broker's lien is filed after the date a title commitment or
27 abstract of title relating to the interest is issued if an
28 escrow account is established or a bond is filed as provided
29 by this act.

30 Section 25. Term of escrow account.--The amount held
31 in escrow must be held in escrow until:

1 (1) The rights of the parties claiming the amount in
2 escrow are determined by a written agreement of the parties, a
3 court order, or an alternative dispute resolution process
4 agreed to by the parties;

5 (2) The broker's lien is no longer enforceable; or

6 (3) The funds are interpled into a circuit court for
7 the county in which the commercial real estate is located.

8 Section 26. Extinguishment of lien upon escrow.--When
9 the escrow account is established, the broker's lien against
10 the commercial real estate is extinguished and becomes a lien
11 on the proceeds in the escrow account.

12 Section 27. Bond.--

13 (1) If a lien is fixed or is attempted to be fixed by
14 a recorded instrument, any person may file a bond to indemnify
15 against the lien.

16 (2) The bond shall be filed with the clerk of the
17 circuit court of the county in which the commercial real
18 estate subject to the lien is located.

19 Section 28. Bond requirements.--The bond must:

20 (1) Describe the commercial real estate on which the
21 lien is claimed;

22 (2) Refer to the lien claimed in a manner sufficient
23 to identify it;

24 (3) Be in an amount that is double the amount of the
25 lien referred to in the bond as of the date of execution of
26 the bond by the surety, unless the total amount claimed in the
27 lien exceeds \$40,000, in which case the bond must be in an
28 amount that is 1.5 times the amount of the lien;

29 (4) Be payable to the party claiming the lien;

30 (5) Be executed by;

31 (a) The party filing the bond as principal; and

1 (b) A corporate surety licensed by this state to
2 execute the bond as surety;

3 (6) Be conditioned substantially so that the principal
4 and sureties will pay the named obligees or their assignees
5 the amount that the named obligees would have been entitled to
6 recover if their claim had been proved to be valid and
7 enforceable liens on the commercial real estate; and

8 (7) Identify the last known mailing address of the
9 person claiming the lien.

10 Section 29. Notice of bond.--

11 (1) After the bond is filed, the clerk of the circuit
12 court shall issue notice of the bond to all named obligees.

13 (2) A copy of the bond must be attached to the notice.

14 (3) The notice must be served on each obligee by
15 mailing a copy of the notice and the bond to the obligee by
16 certified mail, return receipt requested, addressed to the
17 claimant at the address stated in the bond for the obligee.

18 Section 30. Recording of bond and notice.--

19 (1) The clerk of the circuit court shall record the
20 bond, the notice, and a certificate of mailing in the real
21 property records.

22 (2) In acquiring an interest in or insuring title to
23 the commercial real estate, a buyer, insurer of title, or
24 lender may rely on and is absolutely protected by the record
25 of the bond and the notice to the same extent as if the lien
26 claimant had filed a release of lien in the real property
27 records.

28 Section 31. Action on bond.--

29 (1) A party making or holding a lien claim may not sue
30 on the bond later than the last date on which a person may
31 bring a suit to foreclose the lien under section 17.

1 (2) The bond is not exhausted by one action against
2 it. Each named obligee or assignee of an obligee may maintain
3 a separate suit on the bond in any district court for the
4 county in which the commercial real estate is located.

5 Section 32. Owner's or tenant's remedies.--

6 (1) An owner or tenant may file suit against a broker.

7 (2) In an action filed under this section, the court
8 shall discharge a broker's lien if the broker:

9 (a) Failed to mail a copy of the notice of lien within
10 the period prescribed by section 10;

11 (b) Failed to record the notice of lien within the
12 period prescribed by section 15; or

13 (c) Failed to release a lien within the period
14 prescribed by section 19.

15 (3) A broker is liable to an owner or tenant for
16 damages as provided by subsection (4) if:

17 (a) The broker recorded a lien on the commercial real
18 estate interest of the owner or tenant;

19 (b) The broker failed to release a lien within the
20 period prescribed by section 19;

21 (c) The owner, tenant, or escrow agent mailed to the
22 broker by certified mail, return receipt requested, a copy of
23 this section and a notice requesting the broker to release the
24 lien not later than the 10th day after the date the broker
25 receives the notice; and

26 (d) The broker failed to comply with the owner's,
27 tenant's, or escrow agent's written notice within the
28 prescribed period.

29 (4) If the court finds that a broker is liable to an
30 owner or tenant under subsection (3), the court may award the
31 owner or tenant:

1 (a) Actual damages, including attorney's fees and
2 court costs, incurred by the owner or tenant which are
3 proximately caused by the broker's failure to execute,
4 acknowledge, and return the subordination agreement or release
5 the lien; and

6 (b) A civil penalty in an amount not to exceed three
7 times the amount of the claimed commission if the court finds
8 that the broker acted with gross negligence or acted in bad
9 faith in violation of part I or part II of chapter 475,
10 Florida Statutes.

11 (5) This section does not prevent:

12 (a) A person from filing a complaint with the Florida
13 Real Estate Commission against a broker who fails to comply
14 with this chapter; or

15 (b) The Florida Real Estate Commission at any time
16 from investigating or initiating a disciplinary proceeding
17 against a broker who fails to comply with this act.

18 Section 33. Broker's remedies.--

19 (1) A broker may file suit against an owner or tenant
20 to enforce a commission agreement.

21 (2) If the court finds that the broker waived the
22 right to file a lien under section 7 and that the owner or
23 tenant violated the commission agreement, the court may award
24 to the broker:

25 (a) Actual damages, including attorney's fees and
26 court costs, that are proximately caused by the owner's or
27 tenant's failure to comply with the commission agreement; and

28 (b) A civil penalty in an amount not to exceed three
29 times the amount of the claimed commission if the court finds
30 that the owner or tenant acted with gross negligence or in bad
31 faith.

1 Section 34. This act shall take effect October 1,
2 2001.

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5 SENATE SUMMARY

6 Creates the "Broker's and Appraiser's Lien on Commercial
7 Real Estate Act." Provides definitions. Provides for
8 notice, enforcement, waiver, release, and discharge of
9 liens. Provides a statute of limitations. Provides for
10 assessment of costs, fees, and interest. Provides for
11 escrow of disputed matters. Provides for a bond to
12 indemnify against a lien. Provides owner's, tenant's, and
13 broker's remedies. Authorizes civil penalties, damages,
14 court costs, and attorney's fees.

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