

By Representative Mayfield

1                                   A bill to be entitled  
2           An act relating to liens on commercial real  
3           estate by brokers and appraisers; creating  
4           chapter 714, F.S., the "Broker's and  
5           Appraiser's Lien on Commercial Real Estate  
6           Act"; providing applicability; providing  
7           definitions; specifying conditions under which  
8           a commission is earned and payable; providing  
9           address requirements for required notices to  
10          brokers; specifying conditions under which a  
11          broker is entitled to a lien on commercial real  
12          estate and requiring disclosure of such right  
13          in the commission agreement; providing  
14          requirements relating to waiver, release, or  
15          discharge of a lien and assumption of an  
16          obligation for a commission; providing for  
17          affidavit identifying brokers due a commission;  
18          providing for filing of notice of lien;  
19          providing for contents of notice of lien;  
20          providing for service of notice of lien;  
21          providing for date of inception of lien;  
22          providing for priority of liens; providing  
23          applicability to mixed-use real estate;  
24          providing for change in use of real estate;  
25          providing time limits to file a notice of lien;  
26          providing for suit to foreclose lien; providing  
27          a statute of limitations on suits to foreclose  
28          a lien; providing for assessment of costs,  
29          fees, and interest in suits to foreclose a  
30          lien; providing for release of lien; providing  
31          for escrow accounts; providing for named escrow

1 agent; providing for costs of interpleader  
2 actions; providing conditions under which a  
3 party may not refuse to close a transaction;  
4 providing the term of an escrow account;  
5 providing for extinguishment of a lien on  
6 commercial real estate and transfer of the lien  
7 to the proceeds of the escrow account upon  
8 establishment thereof; providing for the filing  
9 of a bond to indemnify against a lien;  
10 providing bond requirements; providing for  
11 notice of bond; providing for recording of bond  
12 and notice; providing for action on bond;  
13 providing owner's or tenant's remedies;  
14 providing broker's remedies; amending s.  
15 475.42, F.S.; providing that brokers may place  
16 liens on property as provided by law; providing  
17 an effective date.

18  
19 Be It Enacted by the Legislature of the State of Florida:

20  
21 Section 1. Chapter 714, Florida Statutes, consisting  
22 of sections 714.001, 714.003, 714.005, 714.007, 714.009,  
23 714.011, 714.013, 714.015, 714.017, 714.019, 714.021, 714.023,  
24 714.025, 714.027, 714.029, 714.031, 714.033, 714.035, 714.037,  
25 714.039, 714.041, 714.043, 714.045, 714.047, 714.049, 714.051,  
26 714.053, 714.055, 714.057, 714.059, 714.061, 714.063, and  
27 714.065, is created to read:

28 714.001 Short title.--This chapter may be cited as the  
29 "Broker's and Appraiser's Lien on Commercial Real Estate Act."

30 714.003 Applicability.--  
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- 1       (1) This chapter 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 chapter 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       714.005 Definitions.--As used in this chapter:
- 17           (1) "Broker" means a person who:
- 18           (a) Is licensed as a real estate broker under part I  
19 of chapter 475; or
- 20           (b) Is licensed or certified as a real estate  
21 appraiser under part II of chapter 475.
- 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 it a person's  
2 homestead;
- 3       (d) Real estate that is not improved with a structure,  
4 but is:
- 5           1. Zoned for single-family residential use; or  
6           2. Restricted for single-family residential use under  
7 restrictive covenants that will remain in effect for at least  
8 the next 2 years; or
- 9       (e) Real estate that:
- 10           1. Is used primarily 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 3 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.  
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1           (6) "Real estate" shall have the same meaning as  
2 provided in s. 475.01.

3           714.007 Commission; when payable or earned.--

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 in subsection (3), a commission  
10 is earned on the earlier of the date that:

11           (a) An event occurs that, 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 either modified to  
24 expand the lease space or renewed, the additional commission  
25 is earned 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  
31

1 expressly require the broker to perform additional services  
2 relating to a lease modification or renewal.

3 714.009 Broker's address for receipt of notice.--A  
4 seller, lessor, buyer, or tenant shall send any notice  
5 required to be sent to a broker under this chapter to the  
6 broker at:

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

9 (2) 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 has  
12 expired.

13 714.011 Entitlement of broker 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 in s. 714.017.

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 in s. 714.017.

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 in s. 714.017.

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       714.013 Waiver, release, or discharge of lien;  
18 assumption of obligation for commission.--

19       (1) Except as provided in subsection (2), the waiver  
20 of a broker's right to a lien under this chapter, 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) Payment of the commission to the broker named in  
2 the commission agreement; or

3           (c) Establishment of an escrow account under s.  
4 714.041 or provision of a bond under s. 714.053.

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 s. 714.041 or a bond is provided  
9 under s. 714.053.

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

13           714.015 Affidavit identifying brokers due a  
14 commission.--If requested by the buyer, the buyer's authorized  
15 agent, or the escrow agent for the commercial real estate  
16 transaction, the seller of commercial real estate and the  
17 broker representing the seller shall provide to the requesting  
18 party before the closing of the transaction a written  
19 affidavit identifying each broker with whom the affiant knows  
20 or believes the seller or the seller's authorized agent has  
21 signed a commission agreement under which a commission is  
22 claimed or earned and has not been paid.

23           714.017 Filing of notice of lien.--

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

27           (2) A broker claiming a lien under this chapter must  
28 file a notice of lien as provided in s. 714.031 with the clerk  
29 of the circuit court of the county in which the commercial  
30 real estate is located.

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1       (3) The clerk of the circuit court shall record the  
2 notice of lien in records kept for that purpose and shall  
3 index and cross-index the notice of lien in the names of the  
4 broker, each person obligated to pay the commission under the  
5 commission agreement, and each person who owns an interest in  
6 the commercial real estate if the broker claims a lien on that  
7 interest.

8       714.019 Contents of notice of lien.--The notice of  
9 lien must be signed by the broker or by a person authorized to  
10 sign on behalf of the broker and must contain all of the  
11 following:

12       (1) A sworn statement of the nature and amount of the  
13 claim, including:

14       (a) The commission amount or the formula used to  
15 determine the commission;

16       (b) The type of commission at issue, including a  
17 deferred commission; and

18       (c) The month and year in which the commission was  
19 earned.

20       (2) The name of the broker and the real estate license  
21 number of the broker.

22       (3) The name, as reflected in the broker's records, of  
23 any person who the broker believes is obligated to pay the  
24 commission under the commission agreement.

25       (4) The name, as reflected in the broker's records, of  
26 any person the broker believes is an owner of the commercial  
27 real estate interest on which the lien is claimed.

28       (5) A description legally sufficient for  
29 identification of the commercial real estate interest sought  
30 to be charged with the lien.

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1       (6) The name of any cooperating broker or principal in  
2 the transaction with whom the broker intends to share the  
3 commission and the dollar or percentage amount to be shared.

4       (7) A copy of the commission agreement on which the  
5 lien is based.

6             714.021 Service of notice of lien.--

7       (1) As used in this section, "business day" means a  
8 day other than a Saturday, Sunday, or holiday recognized by  
9 the state.

10       (2) Not later than 1 business day after the date the  
11 broker files a notice of lien, the broker shall mail a copy of  
12 the notice of lien by certified mail, return receipt  
13 requested, or registered mail to:

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

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

21                 1. A binding written contract for the sale or lease of  
22 the commercial real estate interest is in effect between the  
23 owner and the prospective buyer or tenant in a transaction  
24 that is the basis for the commission; and

25                 2. The binding written contract was executed by the  
26 owner and the prospective buyer or tenant before the date the  
27 notice of lien is filed.

28             (3) Service of the notice under subsection (2) is  
29 complete when the notice is deposited in the United States  
30 mail, postage prepaid, and addressed to the persons entitled  
31 to receive the notice under this section.

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

16       (5) If the escrow agent receives the notice of lien,  
17 the escrow agent and other parties to the sale or lease may  
18 not close the transaction unless the lien is released, the  
19 prospective buyer or tenant purchases or leases the property  
20 subject to the lien, the funds are held in escrow as provided  
21 in s. 714.041, or a bond is filed as provided in s. 714.053.

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

24       714.023 Date of inception of lien.--

25       (1) A broker's lien attaches to the commercial real  
26 estate interest owned by the person obligated to pay the  
27 commission on the date the notice of lien is recorded as  
28 provided in this chapter. The lien does not relate back to the  
29 date of the commission agreement.

30       (2) A notice of lien for amounts earned by the broker  
31 under an installment contract or under a commission agreement

1 for a deferred commission is enforceable only to the extent  
2 that the installment or commission has become payable.

3 714.025 Priority of liens.--

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

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

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

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

25 714.027 Mixed-use real estate.--If real estate is  
26 zoned or restricted for more than one use, the broker's lien  
27 attaches only to the portions of the real estate that  
28 constitute commercial real estate.

29 714.029 Change in use of real estate.--

30 (1) Except as provided in subsection (2), any change  
31 in the use of the real estate does not affect a broker's lien

1 if the notice of the lien was filed when the real estate was  
2 commercial real estate.  
3 (2) The broker's lien is extinguished if:  
4 (a) Not later than the 360th day after the date on  
5 which the broker's commission is payable, the commercial real  
6 estate interest on which a broker claims a lien is zoned for  
7 single-family residential use or restricted for single-family  
8 residential use under recorded restrictive covenants; and  
9 (b) The zoning ordinances or restrictive covenants for  
10 single-family residential use are in effect until at least the  
11 second anniversary of the date the commission is payable.  
12 714.031 Time limits to file notice of lien.--  
13 (1) If a broker has earned a commission under a  
14 commission agreement signed by a seller or the seller's  
15 authorized agent, a broker must record a notice of lien:  
16 (a) After the commission is earned; and  
17 (b) Before the conveyance of the commercial real  
18 estate interest on which the broker is claiming a lien.  
19 (2) If a broker has earned a commission under a  
20 commission agreement signed by a prospective buyer or the  
21 prospective buyer's authorized agent, the broker must record a  
22 notice of lien:  
23 (a) After the buyer acquires legal title to the  
24 commercial real estate interest on which the broker is  
25 claiming a lien; and  
26 (b) Before the buyer conveys the buyer's commercial  
27 real estate interest on which the broker is claiming a lien.  
28 (3) If the lien is based on a lease transaction, the  
29 broker must record a notice of lien after the commission is  
30 earned and before the earlier of:  
31

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

3       (b) The date the person obligated to pay the  
4 commission records a subsequent conveyance of that person's  
5 commercial real estate interest after executing the lease  
6 agreement relating to the lease transaction for which the lien  
7 is claimed.

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

10       714.033 Suit to foreclose lien.--

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

17       (2) A complaint in a suit filed under this section  
18 must contain all of the following:

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

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

23           2. The date on which the commission agreement was  
24 executed;

25           3. The event for which a commission is considered to  
26 be earned; and

27           4. The event for which a commission is considered to  
28 be payable.

29       (b) A description of the services performed by the  
30 broker.

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1       (c) The amount of the payable commission that is  
2 unpaid.

3       (d) A description of the commercial real estate to  
4 which the lien attaches.

5       (e) Other facts necessary for a full understanding of  
6 the rights of the parties.

7       (3) The broker must include as a defendant in a suit  
8 brought under this section each person the broker believes has  
9 an interest in the commercial real estate that is subordinate  
10 to or encumbered by the broker's lien.

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

17       714.035 Statute of limitations.--

18       (1) Except as otherwise provided in this section, a  
19 broker claiming a lien under this chapter must bring a suit to  
20 foreclose the lien on or before the second anniversary of the  
21 date the notice of lien is recorded.

22       (2) A broker claiming a lien to collect a deferred  
23 commission must bring a suit to foreclose the lien on or  
24 before the earlier of:

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

27       (b) The 10th anniversary of the date the lien is  
28 recorded or the 10th anniversary of the date the broker  
29 records a subsequent notice of the lien as a renewal of the  
30 broker's right to the lien, whichever date is later. A renewal  
31 of a notice of lien must state that it is a renewal of the

1 broker's lien and must be recorded after the ninth anniversary  
2 after the date the original notice of lien or last renewal  
3 notice is recorded and on or before the 10th anniversary of  
4 the date the original notice of lien or last renewal notice is  
5 recorded.

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

12 (4) If a suit to foreclose the lien is not brought  
13 within the period prescribed by this section, the lien is  
14 void.

15 714.037 Assessment of costs, fees, and interest.--The  
16 prevailing party in a suit brought under s. 714.033 is  
17 entitled to court costs, reasonable attorney's fees, and  
18 prejudgment interest from the date the commission becomes  
19 payable or the date the damage accrues.

20 714.039 Release of lien.--

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

26 (a) The debt that is the basis for the lien is  
27 satisfied; or

28 (b) The lien is discharged under s. 714.013, rendered  
29 void under s. 714.021 or s. 714.035, or extinguished under s.  
30 714.029.

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1       (2) When a condition occurs that would preclude the  
2 broker from receiving a commission under the terms of the  
3 commission agreement that is the basis for the lien, the  
4 broker shall, not later than the 10th day after the date the  
5 broker receives a written request from the owner of the  
6 commercial real estate interest on which the lien is claimed,  
7 furnish to the owner a release of indebtedness and any lien  
8 claimed.

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

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

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

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

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

25       714.041 Requirement for escrow account or bond; escrow  
26 amount.--If a claim for a lien under a recorded notice of lien  
27 is not paid or assumed at the closing of a sale, lease, or  
28 mortgage of the commercial real estate interest subject to the  
29 lien and would prevent the closing of the transaction or  
30 conveyance or if a claim for a lien under a recorded notice of  
31 lien does not survive the closing, any person named in the

1 notice of lien as obligated to pay the commission shall, on  
2 the date of the closing:  
3 (1) Establish an escrow account from any net proceeds  
4 of the transaction or conveyance in an amount equal to the  
5 amount sufficient to satisfy the lien plus 15 percent of that  
6 amount; or  
7 (2) File a bond to indemnify against the lien as  
8 provided in s. 714.053.  
9 714.043 Named escrow agent.--If an escrow agent is  
10 named in the contract on which the transaction or conveyance  
11 is based, the escrow account shall be established with the  
12 named escrow agent.  
13 714.045 Costs of interpleader.--Related costs for any  
14 interpleader action may be deducted from the escrow account by  
15 the person maintaining the escrow account.  
16 714.047 Conditions precluding refusal to close a  
17 transaction.--  
18 (1) A party may not refuse to close a transaction  
19 because of the requirement under s. 714.041 to establish an  
20 escrow account or file a bond if:  
21 (a) The broker provides a copy of the notice of lien  
22 that complies with ss. 714.019 and 714.021;  
23 (b) Sufficient proceeds will result from the proposed  
24 transaction for the payment of the commission and costs of the  
25 interpleader; and  
26 (c) The broker executes and delivers a full release of  
27 the broker's lien in a recordable form.  
28 (2) A prospective buyer of a commercial real estate  
29 interest may not refuse to close the purchase solely because a  
30 broker's lien is filed after the date a title commitment or  
31 abstract of title relating to the interest is issued if an

1 escrow account is established as provided in s. 714.041 or a  
2 bond is filed as provided in s. 714.053.

3 714.049 Term of escrow account.--The amount held in  
4 escrow shall be held until:

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

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

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

12 714.051 Extinguishment of lien upon escrow.--When the  
13 escrow account is established under s. 714.041, the broker's  
14 lien against the commercial real estate is extinguished and  
15 becomes a lien on the proceeds in the escrow account.

16 714.053 Bond.--

17 (1) If a lien is fixed or is attempted to be fixed by  
18 a recorded instrument under this chapter, any person may file  
19 a bond to indemnify against the lien.

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

23 714.055 Bond requirements.--A bond filed under s.  
24 714.053 must do all of the following:

25 (1) Describe the commercial real estate on which the  
26 lien is claimed.

27 (2) Refer to the lien claimed in a manner sufficient  
28 to identify it.

29 (3) Be in an amount that is double the amount of the  
30 lien referred to in the bond as of the date of execution of  
31 the bond by the surety, unless the total amount claimed in the

1 lien exceeds \$40,000, in which case the bond must be in an  
2 amount that is one and one-half times the amount of the lien.  
3 (4) Be payable to the party claiming the lien.  
4 (5) Be executed by:  
5 (a) The party filing the bond as principal; and  
6 (b) A corporate surety licensed by this state to  
7 execute the bond as surety.  
8 (6) Be conditioned substantially that the principal  
9 and sureties will pay the named obligees or their assignees  
10 the amount that the named obligees would have been entitled to  
11 recover if their claim had been proven to be valid and  
12 enforceable liens on the commercial real estate.  
13 (7) Identify the last known mailing address of the  
14 person claiming the lien.  
15 714.057 Notice of bond.--  
16 (1) After a bond is filed pursuant to s. 714.053, the  
17 clerk of the circuit court shall issue notice of the bond to  
18 all named obligees.  
19 (2) A copy of the bond must be attached to the notice.  
20 (3) The notice must be served on each obligee by  
21 mailing a copy of the notice and the bond to the obligee by  
22 certified mail, return receipt requested, addressed to the  
23 claimant at the address stated in the bond for the obligee.  
24 714.059 Recording of bond and notice.--  
25 (1) The clerk of the circuit court shall record the  
26 bond, the notice, and a certificate of mailing in the real  
27 property records.  
28 (2) In acquiring an interest in or insuring title to  
29 the commercial real estate, a buyer, insurer of title, or  
30 lender may rely on and is absolutely protected by the record  
31 of the bond and the notice to the same extent as if the lien

1 claimant had filed a release of lien in the real property  
2 records.  
3 714.061 Action on bond.--  
4 (1) A party making or holding a lien claim may not sue  
5 on the bond later than the last date on which a person may  
6 bring a suit to foreclose the lien under s. 714.035.  
7 (2) The bond is not exhausted by one action against  
8 it. Each named obligee or assignee of an obligee may maintain  
9 a separate suit on the bond in any district court for the  
10 county in which the commercial real estate is located.  
11 714.063 Owner's or tenant's remedies.--  
12 (1) An owner or tenant may file suit against a broker  
13 under this chapter.  
14 (2) In an action filed under this section, the court  
15 shall discharge a broker's lien if the broker:  
16 (a) Failed to mail a copy of the notice of lien within  
17 the period prescribed in s. 714.021;  
18 (b) Failed to record the notice of lien within the  
19 period prescribed in s. 714.031; or  
20 (c) Failed to release a lien within the period  
21 prescribed in s. 714.039.  
22 (3) A broker is liable to an owner or tenant for  
23 damages as provided in subsection (4) if:  
24 (a) The broker recorded a lien on the commercial real  
25 estate interest of the owner or tenant;  
26 (b) The broker failed to release a lien within the  
27 period prescribed in s. 714.039;  
28 (c) The owner, tenant, or escrow agent mailed to the  
29 broker by certified mail, return receipt requested, a copy of  
30 this section and a notice requesting the broker to release the  
31

1 lien not later than the 10th day after the date the broker  
2 receives the notice; and  
3 (d) The broker failed to comply with the owner's,  
4 tenant's, or escrow agent's written notice within the  
5 prescribed period.  
6 (4) If the court finds that a broker is liable to an  
7 owner or tenant under subsection (3), the court may award the  
8 owner or tenant:  
9 (a) Actual damages, including attorney's fees and  
10 court costs, incurred by the owner or tenant that are  
11 proximately caused by the broker's failure to release the  
12 lien; and  
13 (b) A civil penalty in an amount not to exceed three  
14 times the amount of the claimed commission if the court finds  
15 that the broker acted with gross negligence or in bad faith in  
16 violation of part I or part II of chapter 475.  
17 (5) This section does not prevent:  
18 (a) A person from filing a complaint with the Florida  
19 Real Estate Commission against a broker who fails to comply  
20 with this chapter; or  
21 (b) The Florida Real Estate Commission at any time  
22 from investigating or initiating a disciplinary proceeding  
23 against a broker who fails to comply with this chapter.  
24 714.065 Broker's remedies.--  
25 (1) A broker may file suit against an owner or tenant  
26 to enforce a commission agreement.  
27 (2) If the court finds that the broker waived the  
28 right to file a lien under s. 714.013 and that the owner or  
29 tenant violated the commission agreement, the court may award  
30 to the broker:  
31

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

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

8       Section 2. Paragraph (j) of subsection (1) of section  
9 475.42, Florida Statutes, is amended to read:

10       475.42 Violations and penalties.--

11       (1) VIOLATIONS.--

12       (j) No broker or salesperson shall place, or cause to  
13 be placed, upon the public records of any county, any  
14 contract, assignment, deed, will, mortgage, affidavit, or  
15 other writing which purports to affect the title of, or  
16 encumber, any real property if the same is known to her or him  
17 to be false, void, or not authorized to be placed of record,  
18 or not executed in the form entitling it to be recorded, or  
19 the execution or recording whereof has not been authorized by  
20 the owner of the property, maliciously or for the purpose of  
21 collecting a commission, or to coerce the payment of money to  
22 the broker or salesperson or other person, or for any unlawful  
23 purpose. However, nothing in this paragraph shall be  
24 construed to prohibit a broker or a salesperson from recording  
25 a judgment rendered by a court of this state or to prohibit a  
26 broker from placing a lien on a property where expressly  
27 permitted by contractual agreement or otherwise allowed by  
28 law.

29       Section 3. This act shall take effect October 1, 2002.

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HOUSE SUMMARY

Creates chapter 714, F.S., the "Broker's and Appraiser's Lien on Commercial Real Estate Act," to provide for the securing of commissions of brokers and appraisers in transactions involving commercial real estate and for the protection of parties responsible for the payment of such commissions. See bill for details.