

By Senator Bennett

21-700-03

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.

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

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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, the
17 term:

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

19 (a) Is licensed as a real estate broker under part I
20 of chapter 475; or

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

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

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

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

3 (6) "Real estate" has the same meaning ascribed in s.
4 475.01.

5 714.007 Commission; when payable or earned.--

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

11 (2) Except as provided in subsection (3), a commission
12 is earned on the earlier of the date that:

13 (a) An event occurs that, under the commission
14 agreement, defines when the commission is earned; or

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

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

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

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

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

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

11 **(2) The broker's last address that the broker**
12 **furnished the seller, lessor, buyer, or tenant by certified**
13 **mail, return receipt requested, if the broker's license has**
14 **expired.**

15 **714.011 Entitlement of broker to lien.--**

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

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

23 **(b) A notice of lien is recorded and indexed as**
24 **provided in s. 714.017.**

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

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

1 (b) A notice of lien is recorded and indexed as
2 provided in s. 714.017.

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

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

10 (b) A notice of lien is recorded and indexed as
11 provided in s. 714.017.

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

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

19 714.013 Waiver, release, or discharge of lien;
20 assumption of obligation for commission.--

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

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

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

30 (b) The commission agreement is included as a
31 provision of the lease agreement.

1 (3) A lien under this chapter is discharged by:
2 (a) A court order discharging the lien;
3 (b) Payment of the commission to the broker named in
4 the commission agreement; or
5 (c) Establishment of an escrow account under s.
6 714.041 or provision of a bond under s. 714.053.
7 (4) A person who assumes an owner's or tenant's
8 commercial real estate interest is bound by a commission
9 agreement included in a lease agreement unless an escrow
10 account is established under s. 714.041 or a bond is provided
11 under s. 714.053.
12 (5) This section does not affect the rights of a
13 mortgagee who forecloses on commercial real estate and does
14 not assume the lease on which a commission agreement is based.
15 714.015 Affidavit identifying brokers due a
16 commission.--If requested by the buyer, the buyer's authorized
17 agent, or the escrow agent for the commercial real estate
18 transaction, the seller of commercial real estate and the
19 broker representing the seller shall provide to the requesting
20 party before the closing of the transaction a written
21 affidavit identifying each broker with whom the affiant knows
22 or believes the seller or the seller's authorized agent has
23 signed a commission agreement under which a commission is
24 claimed or earned and has not been paid.
25 714.017 Filing of notice of lien.--
26 (1) A broker claiming a lien under this chapter may
27 not file a notice of lien unless the commission on which the
28 lien is based is earned.
29 (2) A broker claiming a lien under this chapter must
30 file a notice of lien as provided in s. 714.031 with the clerk
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1 of the circuit court of the county in which the commercial
2 real estate is located.

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

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

14 (1) A sworn statement of the nature and amount of the
15 claim, including:

16 (a) The commission amount or the formula used to
17 determine the commission;

18 (b) The type of commission at issue, including a
19 deferred commission; and

20 (c) The month and year in which the commission was
21 earned.

22 (2) The name of the broker and the real estate license
23 number of the broker.

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

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

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1 (5) A description legally sufficient for
2 identification of the commercial real estate interest sought
3 to be charged with the lien.

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

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

9 714.021 Service of notice of lien.--

10 (1) As used in this section, the term "business day"
11 means a day other than a Saturday, Sunday, or holiday
12 recognized by the state.

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

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

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

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

28 2. The binding written contract was executed by the
29 owner and the prospective buyer or tenant before the date the
30 notice of lien is filed.

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

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

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

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

28 714.023 Date of inception of lien.--

29 (1) A broker's lien attaches to the commercial real
30 estate interest owned by the person obligated to pay the
31 commission on the date the notice of lien is recorded as

1 provided in this chapter. The lien does not relate back to the
2 date of the commission agreement.

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

7 714.025 Priority of liens.--

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

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

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

25 (4) A mechanic's lien that is recorded after a
26 broker's lien and that relates back to a date before the date
27 the broker's lien is recorded has priority over the broker's
28 lien.

29 714.027 Mixed-use real estate.--If real estate is
30 zoned or restricted for more than one use, the broker's lien
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1 attaches only to the portions of the real estate that
2 constitute commercial real estate.

3 714.029 Change in use of real estate.--

4 (1) Except as provided in subsection (2), any change
5 in the use of the real estate does not affect a broker's lien
6 if the notice of the lien was filed when the real estate was
7 commercial real estate.

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

9 (a) Not later than the 360th day after the date on
10 which the broker's commission is payable, the commercial real
11 estate interest on which a broker claims a lien is zoned for
12 single-family residential use or restricted for single-family
13 residential use under recorded restrictive covenants; and

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

17 714.031 Time limits to file notice of lien.--

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

21 (a) After the commission is earned; and

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

24 (2) If a broker has earned a commission under a
25 commission agreement signed by a prospective buyer or the
26 prospective buyer's authorized agent, the broker must record a
27 notice of lien:

28 (a) After the buyer acquires legal title to the
29 commercial real estate interest on which the broker is
30 claiming a lien; and

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

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

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

8 (b) The date the person obligated to pay the
9 commission records a subsequent conveyance of that person's
10 commercial real estate interest after executing the lease
11 agreement relating to the lease transaction for which the lien
12 is claimed.

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

15 714.033 Suit to foreclose lien.--

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

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

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

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

28 2. The date on which the commission agreement was
29 executed;

30 3. The event for which a commission is considered to
31 be earned; and

1 4. The event for which a commission is considered to
2 be payable.

3 (b) A description of the services performed by the
4 broker.

5 (c) The amount of the payable commission that is
6 unpaid.

7 (d) A description of the commercial real estate to
8 which the lien attaches.

9 (e) Other facts necessary for a full understanding of
10 the rights of the parties.

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

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

21 714.035 Statute of limitations.--

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

26 (2) A broker claiming a lien to collect a deferred
27 commission must bring a suit to foreclose the lien on or
28 before the earlier of:

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

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1 (b) The 10th anniversary of the date the lien is
2 recorded or the 10th anniversary of the date the broker
3 records a subsequent notice of the lien as a renewal of the
4 broker's right to the lien, whichever date is later. A renewal
5 of a notice of lien must state that it is a renewal of the
6 broker's lien and must be recorded after the ninth anniversary
7 after the date the original notice of lien or last renewal
8 notice is recorded and on or before the 10th anniversary of
9 the date the original notice of lien or last renewal notice is
10 recorded.

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

17 (4) If a suit to foreclose the lien is not brought
18 within the period prescribed by this section, the lien is
19 void.

20 714.037 Assessment of costs, fees, and interest.--The
21 prevailing party in a suit brought under s. 714.033 is
22 entitled to court costs, reasonable attorney's fees, and
23 prejudgment interest from the date the commission becomes
24 payable or the date the damage accrues.

25 714.039 Release of lien.--

26 (1) Not later than the fifth day after the date a
27 broker receives a written request from the owner of a
28 commercial real estate interest on which a lien is claimed,
29 the broker shall furnish to the owner a release of
30 indebtedness and any lien claimed if:

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1 (a) The debt that is the basis for the lien is
2 satisfied; or

3 (b) The lien is discharged under s. 714.013, rendered
4 void under s. 714.021 or s. 714.035, or extinguished under s.
5 714.029.

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

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

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

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

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

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

30 714.041 Requirement for escrow account or bond; escrow
31 amount.--If a claim for a lien under a recorded notice of lien

1 is not paid or assumed at the closing of a sale, lease, or
2 mortgage of the commercial real estate interest subject to the
3 lien and would prevent the closing of the transaction or
4 conveyance or if a claim for a lien under a recorded notice of
5 lien does not survive the closing, any person named in the
6 notice of lien as obligated to pay the commission shall, on
7 the date of the closing:

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

12 (2) File a bond to indemnify against the lien as
13 provided in s. 714.053.

14 714.043 Named escrow agent.--If an escrow agent is
15 named in the contract on which the transaction or conveyance
16 is based, the escrow account shall be established with the
17 named escrow agent.

18 714.045 Costs of interpleader.--Related costs for any
19 interpleader action may be deducted from the escrow account by
20 the person maintaining the escrow account.

21 714.047 Conditions precluding refusal to close a
22 transaction.--

23 (1) A party may not refuse to close a transaction
24 because of the requirement under s. 714.041 to establish an
25 escrow account or file a bond if:

26 (a) The broker provides a copy of the notice of lien
27 that complies with ss. 714.019 and 714.021;

28 (b) Sufficient proceeds will result from the proposed
29 transaction for the payment of the commission and costs of the
30 interpleader; and

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

3 (2) A prospective buyer of a commercial real estate
4 interest may not refuse to close the purchase solely because a
5 broker's lien is filed after the date a title commitment or
6 abstract of title relating to the interest is issued if an
7 escrow account is established as provided in s. 714.041 or a
8 bond is filed as provided in s. 714.053.

9 714.049 Term of escrow account.--The amount held in
10 escrow shall be held until:

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

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

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

18 714.051 Extinguishment of lien upon escrow.--When the
19 escrow account is established under s. 714.041, the broker's
20 lien against the commercial real estate is extinguished and
21 becomes a lien on the proceeds in the escrow account.

22 714.053 Bond.--

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

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

29 714.055 Bond requirements.--A bond filed under s.
30 714.053 must do all of the following:

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

3 (2) Refer to the lien claimed in a manner sufficient
4 to identify it.

5 (3) Be in an amount that is double the amount of the
6 lien referred to in the bond as of the date of execution of
7 the bond by the surety, unless the total amount claimed in the
8 lien exceeds \$40,000, in which case the bond must be in an
9 amount that is one and one-half times the amount of the lien.

10 (4) Be payable to the party claiming the lien.

11 (5) Be executed by:

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

13 (b) A corporate surety licensed by this state to
14 execute the bond as surety.

15 (6) Be conditioned substantially that the principal
16 and sureties will pay the named obligees or their assignees
17 the amount that the named obligees would have been entitled to
18 recover if their claim had been proven to be valid and
19 enforceable liens on the commercial real estate.

20 (7) Identify the last known mailing address of the
21 person claiming the lien.

22 714.057 Notice of bond.--

23 (1) After a bond is filed pursuant to s. 714.053, the
24 clerk of the circuit court shall issue notice of the bond to
25 all named obligees.

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

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

31 714.059 Recording of bond and notice.--

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

4 (2) In acquiring an interest in or insuring title to
5 the commercial real estate, a buyer, insurer of title, or
6 lender may rely on and is absolutely protected by the record
7 of the bond and the notice to the same extent as if the lien
8 claimant had filed a release of lien in the real property
9 records.

10 714.061 Action on bond.--

11 (1) A party making or holding a lien claim may not sue
12 on the bond later than the last date on which a person may
13 bring a suit to foreclose the lien under s. 714.035.

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

18 714.063 Owner's or tenant's remedies.--

19 (1) An owner or tenant may file suit against a broker
20 under this chapter.

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

23 (a) Failed to mail a copy of the notice of lien within
24 the period prescribed in s. 714.021;

25 (b) Failed to record the notice of lien within the
26 period prescribed in s. 714.031; or

27 (c) Failed to release a lien within the period
28 prescribed in s. 714.039.

29 (3) A broker is liable to an owner or tenant for
30 damages as provided in subsection (4) if:

31

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

3 (b) The broker failed to release a lien within the
4 period prescribed in s. 714.039;

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

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

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

16 (a) Actual damages, including attorney's fees and
17 court costs, incurred by the owner or tenant that are
18 proximately caused by the broker's failure to release the
19 lien; and

20 (b) A civil penalty in an amount not to exceed three
21 times the amount of the claimed commission if the court finds
22 that the broker acted with gross negligence or in bad faith in
23 violation of part I or part II of chapter 475.

24 (5) This section does not prevent:

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

28 (b) The Florida Real Estate Commission at any time
29 from investigating or initiating a disciplinary proceeding
30 against a broker who fails to comply with this chapter.

31 714.065 Broker's remedies.--

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

3 (2) If the court finds that the broker waived the
4 right to file a lien under s. 714.013 and that the owner or
5 tenant violated the commission agreement, the court may award
6 to the broker:

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

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

14 Section 2. Paragraph (j) of subsection (1) of section
15 475.42, Florida Statutes, is amended to read:

16 475.42 Violations and penalties.--

17 (1) VIOLATIONS.--

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

1 broker from placing a lien on a property where expressly
2 permitted by contractual agreement or otherwise allowed by
3 law.

4 Section 3. This act shall take effect October 1, 2003.

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7 SENATE SUMMARY

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