

Bill No. CS for SB 1788

Amendment No. ____ Barcode 380584

CHAMBER ACTION

Senate

House

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Senators Posey and Lee moved the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Chapter 714, Florida Statutes, consisting of sections 714.001, 714.003, 714.005, 714.007, and 714.009, is created to read:

714.001 Popular name.--This chapter may be referred to by the popular name the "Real Estate Lien Act."

714.003 Definitions.--As used in this chapter, the term:

(1) "Broker" has the same meaning as in s. 475.01.

(2) "Commission" means any compensation or consideration that may be due a broker licensed in this state for services performed within the scope of the broker's license.

(3) "Future commission" means any additional commission that may be due a broker as a result of future actions, including, but not limited to, the exercise of an

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1 option to expand the leased premises, to renew or extend a
2 lease, or to purchase the property.

3 (4) "Real estate" has the same meaning as in s.
4 475.01. For the purposes of ss. 714.001-714.009, the term
5 "real estate" does not include homestead property.

6 (5) "Transferee" means a person purchasing or
7 otherwise receiving any interest in real estate except a
8 sublessee or assignee of a lease.

9 (6) "Transferor" means the person selling or otherwise
10 conveying any interest in real estate except a sublessor or
11 assignor of a lease .

12 714.005 Broker's lien.--

13 (1) WRITTEN INSTRUMENT.--A broker shall have a lien
14 upon real estate or any interest in that real estate which is
15 the subject of a purchase, lease, or other conveyance to a
16 buyer or tenant of an interest in the real estate, in the
17 amount that the broker is due for licensed services,
18 including, but not limited to, brokerage fees, consulting
19 fees, and management fees, under a valid and enforceable
20 written instrument signed by a transferor or the transferor's
21 duly authorized agent or by a prospective transferee or the
22 transferee's duly authorized agent. The lien shall be
23 available to the broker named in the signed instrument, and
24 not to any employee or independent contractor of the broker.

25 (2) ENTITLEMENT OF BROKER TO LIEN.--

26 (a) A lien under this chapter shall attach to the real
27 estate or any interest in the real estate if the broker:

28 1. Is entitled to a fee or commission under a written
29 instrument signed in accordance with subsection (1); and

30 2. Except as otherwise provided in subsections

31 (4)-(7), records a notice of lien in the office of the clerk

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1 of the circuit court of the county in which the property is
2 located prior to the actual conveyance or transfer of the real
3 estate against which the broker is claiming the lien.

4 (b) The lien shall attach as of the date of the
5 recording of the notice of lien and shall not relate back to
6 the date of the written instrument.

7 (c) A broker shall not have the right under this act
8 to a lien for commission or other compensation owed to that
9 broker pursuant to a sublease or assignment of lease. The
10 provisions of this subsection do not limit or otherwise affect
11 the claims or defenses a broker or any other party may have on
12 any other basis, in law or in equity.

13 (3) CONTENTS OF NOTICE OF LIEN.--A notice of lien
14 shall state the name of the claimant, the name of the owner of
15 record of the real estate, a description of the property upon
16 which the lien is being claimed, the amount for which the lien
17 is claimed, and the real estate license number of the broker.
18 The notice of lien shall recite that the information contained
19 in the notice is true and accurate to the knowledge of the
20 signator. The notice of lien must be signed by the broker or a
21 person authorized to sign on behalf of the broker and must be
22 notarized.

23 (4) COMMISSION DUE IN INSTALLMENTS.--Except as
24 otherwise provided in subsections (5)-(7), when payment to a
25 broker is due in installments, a portion of which is due only
26 after the conveyance or transfer of the real estate, any
27 notice of lien for those payments due after the conveyance or
28 transfer may be recorded at any time subsequent to the
29 conveyance or transfer of the real estate but not later than
30 90 days after the date the payment is due. A notice of lien
31 recorded prior to conveyance or transfer of the real estate

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1 claiming all moneys due under an installment payment agreement
2 or for future commissions as described in subsection (6) shall
3 be valid and enforceable only to the extent it pertains to
4 payments due from the transferee to the transferor after the
5 conveyance or transfer. As payments or partial payments of
6 commission are received, a broker shall provide partial
7 releases therefor, thereby reducing the amount due the broker
8 under the broker's notice of lien.

9 (5) LEASE OF REAL ESTATE.--In the case of a lease, a
10 notice of lien must be recorded no later than 90 days after
11 the transferee takes possession of the leased premises.
12 However, if a transferor personally serves written notice of
13 the intended execution of the lease on a broker entitled to
14 claim a lien, at least 10 days prior to the date of the
15 intended execution of the lease, a notice of lien must be
16 recorded before the date indicated in such notice for the
17 execution of the lease. The lien shall attach as of the date
18 of the recording of the notice of lien and shall not relate
19 back to the date of the written instrument.

20 (6) FUTURE COMMISSION.--If a broker may be due future
21 commissions pursuant to a written instrument signed by the
22 then transferor or transferee, the broker may record a notice
23 of lien at any time after execution of the lease or other
24 written instrument which contains such option or options, but
25 may not record the notice of lien later than 90 days after the
26 event or occurrence on which the claimed future commission
27 occurs. Notwithstanding subsection (10), an action to enforce
28 a lien under this subsection must be commenced within 2 years
29 after the occurrence or transaction on which the future
30 commission is claimed.

31 (7) REAL ESTATE SOLD BEFORE COMMISSION DUE.--In the

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1 event that the real estate is sold or otherwise conveyed prior
2 to the date on which either a future commission or an unpaid
3 installment of a commission is due, if the broker has recorded
4 a valid notice of lien prior to the sale or other conveyance
5 of the real estate, then the purchaser or transferee shall be
6 deemed to have notice of and shall take title to the real
7 estate subject to the lien. However, if a broker claiming a
8 future commission fails to record a notice of lien for future
9 commission prior to the recording of a deed conveying legal
10 title to the real estate to the transferee, then such broker
11 may not claim a lien on the real estate. The provisions of
12 this subsection do not limit or otherwise affect claims or
13 defenses a broker or any other party may have on any other
14 basis, in law or in equity.

15 (8) WRITTEN INSTRUMENT WITH TRANSFEREE.--If a
16 transferee has executed a written instrument in accordance
17 with subsection (1), then a lien shall attach to the
18 transferee's interest upon the transferee purchasing or
19 otherwise accepting conveyance or transfer of the real estate
20 and the recording of a notice of lien by the broker in the
21 office of the clerk of the circuit court of the county in
22 which the property is located, within 90 days after the
23 purchase or other conveyance or transfer to the transferee.
24 The lien shall attach as of the date of the recording of the
25 notice of lien and shall not relate back to the date of the
26 written instrument.

27 (9) SERVICE OF NOTICE OF LIEN.--A broker shall, within
28 10 days after recording a notice of lien, personally deliver
29 or mail, by registered or certified mail, a copy of the notice
30 of lien to the owner of record of the real estate or the duly
31 authorized agent of the owner of record at the address of the

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1 owner of record as stated in the written instrument on which
2 the claim for lien is based or, if no such address is given,
3 to the address of the property on which the claim of lien is
4 based. Mailing of the copy of the notice of lien is effective
5 when deposited in the United States mail with postage prepaid.
6 A broker's lien on real estate shall be unenforceable if
7 delivery or mailing of the copy of notice of lien does not
8 occur within the time period and in the manner required by
9 this subsection.

10 (10) LAWSUIT TO ENFORCE LIEN.--

11 (a) A broker may bring suit to enforce a lien on real
12 estate in the circuit court in the county in which the
13 property is located by filing a complaint and sworn affidavit
14 that the notice of lien has been recorded.

15 (b) A broker claiming a lien on real estate shall,
16 within 2 years after recording the notice of lien, commence
17 proceedings by filing a complaint. Failure to commence
18 proceedings within 2 years after recording the notice of lien
19 shall extinguish the lien. No subsequent notice of lien may be
20 given for the same claim, nor may that claim be asserted in
21 any proceedings under this chapter.

22 (c) A broker claiming a lien on real estate based upon
23 an option or other right to purchase or lease shall, within 2
24 years after the conveyance or transfer of the real estate
25 under the exercise of the option to purchase or lease,
26 commence proceedings by filing a complaint. Failure to
27 commence proceedings within this time period shall extinguish
28 the lien. No subsequent notice of lien may be given for the
29 same claim, nor may that claim be asserted in any proceedings
30 under this chapter.

31 (d) A complaint under this section shall contain a

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1 brief statement of the contract or instrument on which the
 2 lien is based as well as its effective date, a description of
 3 the services performed, the amount due and unpaid, a
 4 description of the property that is subject to the lien, and
 5 other facts necessary for a full understanding of the rights
 6 of the parties. The plaintiff shall make all interested
 7 parties of whose interest the plaintiff is notified or has
 8 knowledge defendants to the action and shall issue summons and
 9 provide service as in other civil actions filed in this state.
 10 When any defendant resides or has gone out of the state, or on
 11 inquiry cannot be found, or is concealed within the state so
 12 that process cannot be served on the defendant, the plaintiff
 13 shall cause a notice to be given to the defendant or cause a
 14 copy of the complaint to be served on the defendant in the
 15 manner and on the same conditions as in other civil actions
 16 filed in this state. Failure of the plaintiff to provide
 17 proper summons or notice to the defendant as required by this
 18 paragraph shall be grounds for judgment against the plaintiff
 19 and in favor of the defendant with prejudice. All liens
 20 claimed under this chapter shall be foreclosed in the manner
 21 of foreclosing a mortgage under the provisions of chapter 702.

22 (11) DEMAND TO INITIATE OR FILE ANSWER TO

23 LAWSUIT.--Upon written demand of the owner of record or a
 24 lienee of the real estate, or a duly authorized agent of the
 25 owner or lienee, served on the broker claiming the lien to
 26 require suit to be commenced to enforce the lien or an answer
 27 to be filed in a pending suit to enforce the lien, the suit
 28 must be commenced or the answer filed within 30 days
 29 thereafter or the lien shall be extinguished. Service of such
 30 written demand may be made by registered or certified mail,
 31 return receipt requested, or by personal service.

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1 (12) SATISFACTION OR RELEASE OF LIEN.--

2 (a) Whenever a notice of lien on real estate has been
3 recorded with the clerk of the circuit court and the claimed
4 commission has been paid to a broker claiming a lien on the
5 property, or when there is a failure to initiate a suit to
6 enforce the lien within the time period provided by this
7 section, the broker shall acknowledge satisfaction or release
8 of the lien in writing, upon written demand of the owner of
9 the real estate, within 5 days after payment of the amount
10 claimed or within 5 days after expiration of the time period
11 in which the complaint to initiate the lawsuit was to be
12 filed.

13 (b) Whenever a notice of lien on real estate has been
14 recorded with the clerk of the circuit court and a condition
15 occurs that would preclude a broker from receiving
16 compensation under the terms of the written agreement on which
17 the lien is based, the broker shall provide to the owner of
18 record, within 10 days following written demand by the owner
19 of record, a written release or satisfaction of the lien.

20 (13) ALTERNATIVE DISPUTE RESOLUTION.--If the broker
21 and the party or parties from whom the commission is claimed
22 agree to alternative dispute resolution, the claim shall be
23 heard and resolved in the forum on which these parties have
24 agreed. The court before which the action to enforce the lien
25 is brought shall retain jurisdiction to enter judgment on the
26 award or other result made or reached in alternative dispute
27 resolution on all parties to the action to enforce the lien.
28 The broker's notice of lien shall remain of record and the
29 action to enforce the lien shall be stayed during the pendency
30 of the alternative dispute resolution process.

31 (14) ASSESSMENT OF COSTS, FEES, AND INTEREST.--The

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1 cost of proceedings brought under this section, including
2 reasonable attorney's fees, costs, and prejudgment interest
3 due to the prevailing party, shall be borne by the
4 nonprevailing party or parties. When more than one party is
5 responsible for costs, fees, and prejudgment interest, the
6 costs, fees, and prejudgment interest shall be equitably
7 apportioned by the court or alternative dispute resolution
8 tribunal among the responsible parties.

9 (15) WAIVER OF LIEN RIGHTS VOID.--Except for a
10 satisfaction or release of lien provided in consideration of
11 payment of the fee or commission claimed by a broker or other
12 consideration acceptable to broker or pursuant to subsection
13 (12), any waiver of a broker's right to a lien on real estate
14 under this section and any other waiver or release of such a
15 lien is void.

16 714.007 Priority of other recorded liens, mortgages,
17 and encumbrances.--Valid prior recorded liens, mortgages, and
18 other encumbrances shall have priority over a broker's lien
19 under this chapter. Such prior recorded liens, mortgages, and
20 encumbrances shall include, without limitation:

21 (1) Any valid mechanic's lien claim that is recorded
22 subsequent to the broker's notice of lien but which relates
23 back to a date prior to the recording date of the broker's
24 notice of lien.

25 (2) Prior recorded liens securing revolving credit and
26 future advances of construction loans.

27 714.009 Escrow of disputed amounts.--Except as
28 otherwise provided in this chapter, whenever a notice of lien
29 on real estate has been filed with the clerk of the circuit
30 court that would prevent the closing of a transaction or
31 conveyance, an escrow account shall be established from the

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1 proceeds from the transaction or conveyance, or other
 2 collateral or security in an amount sufficient to release the
 3 lien. The requirement to establish an escrow account as
 4 provided in this section shall not be cause for any party to
 5 refuse to close the transaction or conveyance. The moneys or
 6 other collateral or security required to be held in escrow
 7 under this section shall be held until the rights of the
 8 parties to the escrowed moneys or other collateral or security
 9 have been determined by written agreement of the parties, by a
 10 court of law, or by any other process that may be agreed to by
 11 the parties for resolution of their dispute. Upon the escrow
 12 of funds or other collateral or security in the amount claimed
 13 in the lien, the lien and notice of lien shall be
 14 automatically dissolved. Upon release of the lien by the
 15 broker, the broker shall be deemed to have an equitable lien
 16 on the escrow funds or other collateral or security, pending a
 17 resolution of the broker's claim, and the escrow shall not be
 18 released until a resolution is reached and agreed to by all
 19 necessary parties or ordered by a court. The parties are not
 20 required to follow the escrow procedure in this section if
 21 alternative procedures that would allow the transaction to
 22 close are available and are acceptable to the transferee in
 23 the transaction. If the proceeds from the transaction are
 24 insufficient to release all liens claimed against the real
 25 estate, including the broker's lien, then the parties are not
 26 required to follow the escrow procedure in this section.

27 Section 2. Paragraph (j) of subsection (1) of section
 28 475.42, Florida Statutes, is amended to read:

29 475.42 Violations and penalties.--

30 (1) VIOLATIONS.--

31 (j) A broker or sales associate may not place, or

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1 cause to be placed, upon the public records of any county, any
2 contract, assignment, deed, will, mortgage, affidavit, or
3 other writing which purports to affect the title of, or
4 encumber, any real property if the same is known to her or him
5 to be false, void, or not authorized to be placed of record,
6 or not executed in the form entitling it to be recorded, or
7 the execution or recording whereof has not been authorized by
8 the owner of the property, maliciously or for the purpose of
9 collecting a commission, or to coerce the payment of money to
10 the broker or sales associate or other person, or for any
11 unlawful purpose. However, nothing in this paragraph shall be
12 construed to prohibit a broker or a sales associate from
13 recording a judgment rendered by a court of this state or to
14 prohibit a broker from placing a lien on a property where
15 expressly permitted by contractual agreement or otherwise
16 allowed by law.

17 Section 3. This act shall take effect July 1, 2004.

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20 ===== T I T L E A M E N D M E N T =====

21 And the title is amended as follows:

22 Delete everything before the enacting clause

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24 and insert:

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A bill to be entitled

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An act relating to liens on real estate;

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creating ch. 714, F.S., the "Real Estate Lien

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Act"; providing definitions; specifying

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conditions under which a broker is entitled to

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a lien on real estate; requiring a written

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instrument; requiring the recording of a notice

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1 of lien; providing for the contents and service
2 of such notice; providing requirements with
3 respect to installment and future commissions,
4 leases, sales of property before commission is
5 due, and written instruments with transferees;
6 providing for enforcement of the lien by
7 lawsuit; requiring written demand to initiate
8 or file an answer to such lawsuit; providing
9 conditions for satisfaction or release of the
10 lien; providing for an alternative dispute
11 resolution process; providing for assessment of
12 costs, fees, and interest; declaring any waiver
13 of lien rights void; providing priority of
14 other recorded liens, mortgages, and
15 encumbrances; providing for escrow of disputed
16 amounts; amending s. 475.42, F.S.; providing
17 that brokers may place liens on property as
18 provided by law; providing an effective date.

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