

Bill No. CS for SB 1788

Amendment No. \_\_\_\_ Barcode 964342

CHAMBER ACTION

Senate

House

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Senator Posey 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 "Commercial 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)(a) "Commercial real estate" means any real estate other than:

1. Real estate containing one to four residential units; or

2. Real estate on which no building or structure is located and which is zoned for single-family residential use.

(b) "Commercial real estate" does not include

Bill No. CS for SB 1788

Amendment No. \_\_\_\_ Barcode 964342

1 single-family residential units such as condominiums,  
2 townhouses, or homes in a subdivision when sold, leased, or  
3 otherwise conveyed on a unit-by-unit basis, even though these  
4 units may be a part of a larger building or parcel or real  
5 estate containing more than four residential units.

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

10 (4) "Future commission" means any additional  
11 commission that may be due a broker as a result of future  
12 actions, including, but not limited to, the exercise of an  
13 option to expand the leased premises, to renew or extend a  
14 lease, or to purchase the property.

15 (5) "Real estate" has the same meaning as in s.  
16 475.01.

17 (6) "Transferee" means a person purchasing or  
18 otherwise receiving any interest in commercial real estate,  
19 except a sublessee or assignee of a lease.

20 (7) "Transferor" means the person selling or otherwise  
21 conveying any interest in commercial real estate, except a  
22 sublessor or assignor of a lease.

23 714.005 Broker's lien.--

24 (1) WRITTEN INSTRUMENT.--A broker shall have a lien  
25 upon commercial real estate or any interest in that commercial  
26 real estate which is the subject of a purchase, lease, or  
27 other conveyance to a buyer or tenant of an interest in the  
28 commercial real estate, in the amount that the broker is due  
29 for licensed services, including, but not limited to,  
30 brokerage fees, consulting fees, and management fees, under a  
31 valid and enforceable written instrument signed by a

Bill No. CS for SB 1788

Amendment No. \_\_\_\_ Barcode 964342

1 transferor or the transferor's duly authorized agent or by a  
2 prospective transferee or the transferee's duly authorized  
3 agent. The lien shall be available to the broker named in the  
4 signed instrument, and not to any employee or independent  
5 contractor of the broker.

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

7 (a) A lien under this chapter shall attach to the  
8 commercial real estate or any interest in the commercial real  
9 estate if the broker:

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

12 2. Except as otherwise provided in subsections  
13 (4)-(7), records a notice of lien in the office of the clerk  
14 of the circuit court of the county in which the property is  
15 located prior to the actual conveyance or transfer of the  
16 commercial real estate against which the broker is claiming  
17 the lien.

18 (b) The lien shall attach as of the date of the  
19 recording of the notice of lien and shall not relate back to  
20 the date of the written instrument.

21 (c) A broker shall not have the right under this act  
22 to a lien for commission or other compensation owed to that  
23 broker pursuant to a sublease or assignment of lease. The  
24 provisions of this subsection do not limit or otherwise affect  
25 the claims or defenses a broker or any other party may have on  
26 any other basis, in law or in equity.

27 (3) CONTENTS OF NOTICE OF LIEN.--A notice of lien  
28 shall state the name of the claimant, the name of the owner of  
29 record of the commercial real estate, a description of the  
30 property upon which the lien is being claimed, the amount for  
31 which the lien is claimed, and the real estate license number

Bill No. CS for SB 1788

Amendment No. \_\_\_\_ Barcode 964342

1 of the broker. The notice of lien shall recite that the  
2 information contained in the notice is true and accurate to  
3 the knowledge of the signator. The notice of lien must be  
4 signed by the broker or a person authorized to sign on behalf  
5 of the broker and must be notarized.

6       (4) COMMISSION DUE IN INSTALLMENTS.--Except as  
7 otherwise provided in subsections (5)-(7), when payment to a  
8 broker is due in installments, a portion of which is due only  
9 after the conveyance or transfer of the commercial real  
10 estate, any notice of lien for those payments due after the  
11 conveyance or transfer may be recorded at any time subsequent  
12 to the conveyance or transfer of the commercial real estate  
13 but not later than 90 days after the date the payment is due.  
14 A notice of lien recorded prior to conveyance or transfer of  
15 the commercial real estate claiming all moneys due under an  
16 installment payment agreement or for future commissions as  
17 described in subsection (6) shall be valid and enforceable  
18 only to the extent it pertains to payments due from the  
19 transferee to the transferor after the conveyance or transfer.  
20 As payments or partial payments of commission are received, a  
21 broker shall provide partial releases therefor, thereby  
22 reducing the amount due the broker under the broker's notice  
23 of lien.

24       (5) LEASE OF COMMERCIAL REAL ESTATE.--In the case of a  
25 lease, a notice of lien must be recorded no later than 90 days  
26 after the transferee takes possession of the leased premises.  
27 However, if a transferor personally serves written notice of  
28 the intended execution of the lease on a broker entitled to  
29 claim a lien, at least 10 days prior to the date of the  
30 intended execution of the lease, a notice of lien must be  
31 recorded before the date indicated in such notice for the

Bill No. CS for SB 1788

Amendment No.      Barcode 964342

1 execution of the lease. The lien shall attach as of the date  
2 of the recording of the notice of lien and shall not relate  
3 back to the date of the written instrument.

4 (6) FUTURE COMMISSION.--If a broker may be due future  
5 commissions pursuant to a written instrument signed by the  
6 then transferor or transferee, the broker may record a notice  
7 of lien at any time after execution of the lease or other  
8 written instrument which contains such option or options, but  
9 may not record the notice of lien later than 90 days after the  
10 event or occurrence on which the claimed future commission  
11 occurs. Notwithstanding subsection (10), an action to enforce  
12 a lien under this subsection must be commenced within 2 years  
13 after the occurrence or transaction on which the future  
14 commission is claimed.

15 (7) REAL ESTATE SOLD BEFORE COMMISSION DUE.--In the  
16 event that the commercial real estate is sold or otherwise  
17 conveyed prior to the date on which either a future commission  
18 or an unpaid installment of a commission is due, if the broker  
19 has recorded a valid notice of lien prior to the sale or other  
20 conveyance of the real estate, then the purchaser or  
21 transferee shall be deemed to have notice of and shall take  
22 title to the real estate subject to the lien. However, if a  
23 broker claiming a future commission fails to record a notice  
24 of lien for future commission prior to the recording of a deed  
25 conveying legal title to the real estate to the transferee,  
26 then such broker may not claim a lien on the real estate. The  
27 provisions of this subsection do not limit or otherwise affect  
28 claims or defenses a broker or any other party may have on any  
29 other basis, in law or in equity.

30 (8) WRITTEN INSTRUMENT WITH TRANSFEREE.--If a  
31 transferee has executed a written instrument in accordance

Bill No. CS for SB 1788

Amendment No.      Barcode 964342

1 with subsection (1), then a lien shall attach to the  
2 transferee's interest upon the transferee purchasing or  
3 otherwise accepting conveyance or transfer of the commercial  
4 real estate and the recording of a notice of lien by the  
5 broker in the office of the clerk of the circuit court of the  
6 county in which the property is located, within 90 days after  
7 the purchase or other conveyance or transfer to the  
8 transferee. The lien shall attach as of the date of the  
9 recording of the notice of lien and shall not relate back to  
10 the date of the written instrument.

11 (9) SERVICE OF NOTICE OF LIEN.--A broker shall, within  
12 10 days after recording a notice of lien, personally deliver  
13 or mail, by registered or certified mail, a copy of the notice  
14 of lien to the owner of record of the commercial real estate  
15 or the duly authorized agent of the owner of record at the  
16 address of the owner of record as stated in the written  
17 instrument on which the claim for lien is based or, if no such  
18 address is given, to the address of the property on which the  
19 claim of lien is based. Mailing of the copy of the notice of  
20 lien is effective when deposited in the United States mail  
21 with postage prepaid. A broker's lien on commercial real  
22 estate shall be unenforceable if delivery or mailing of the  
23 copy of notice of lien does not occur within the time period  
24 and in the manner required by this subsection.

25 (10) LAWSUIT TO ENFORCE LIEN.--

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

30 (b) A broker claiming a lien on commercial real estate  
31 shall, within 2 years after recording the notice of lien,

Bill No. CS for SB 1788

Amendment No.      Barcode 964342

1 commence proceedings by filing a complaint. Failure to  
2 commence proceedings within 2 years after recording the notice  
3 of lien shall extinguish the lien. No subsequent notice of  
4 lien may be given for the same claim, nor may that claim be  
5 asserted in any proceedings under this chapter.

6 (c) A broker claiming a lien on commercial real estate  
7 based upon an option or other right to purchase or lease  
8 shall, within 2 years after the conveyance or transfer of the  
9 real estate under the exercise of the option to purchase or  
10 lease, commence proceedings by filing a complaint. Failure to  
11 commence proceedings within this time period shall extinguish  
12 the lien. No subsequent notice of lien may be given for the  
13 same claim, nor may that claim be asserted in any proceedings  
14 under this chapter.

15 (d) A complaint under this section shall contain a  
16 brief statement of the contract or instrument on which the  
17 lien is based as well as its effective date, a description of  
18 the services performed, the amount due and unpaid, a  
19 description of the property that is subject to the lien, and  
20 other facts necessary for a full understanding of the rights  
21 of the parties. The plaintiff shall make all interested  
22 parties of whose interest the plaintiff is notified or has  
23 knowledge defendants to the action and shall issue summons and  
24 provide service as in other civil actions filed in this state.  
25 When any defendant resides or has gone out of the state, or on  
26 inquiry cannot be found, or is concealed within the state so  
27 that process cannot be served on the defendant, the plaintiff  
28 shall cause a notice to be given to the defendant or cause a  
29 copy of the complaint to be served on the defendant in the  
30 manner and on the same conditions as in other civil actions  
31 filed in this state. Failure of the plaintiff to provide

Bill No. CS for SB 1788

Amendment No.      Barcode 964342

1 proper summons or notice to the defendant as required by this  
2 paragraph shall be grounds for judgment against the plaintiff  
3 and in favor of the defendant with prejudice. All liens  
4 claimed under this chapter shall be foreclosed in the manner  
5 of foreclosing a mortgage under the provisions of chapter 702.

6       (11) DEMAND TO INITIATE OR FILE ANSWER TO  
7 LAWSUIT.--Upon written demand of the owner of record or a  
8 lienee of the commercial real estate, or a duly authorized  
9 agent of the owner or lienee, served on the broker claiming  
10 the lien to require suit to be commenced to enforce the lien  
11 or an answer to be filed in a pending suit to enforce the  
12 lien, the suit must be commenced or the answer filed within 30  
13 days thereafter or the lien shall be extinguished. Service of  
14 such written demand may be made by registered or certified  
15 mail, return receipt requested, or by personal service.

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

17       (a) Whenever a notice of lien on commercial real  
18 estate has been recorded with the clerk of the circuit court  
19 and the claimed commission has been paid to a broker claiming  
20 a lien on the property, or when there is a failure to initiate  
21 a suit to enforce the lien within the time period provided by  
22 this section, the broker shall acknowledge satisfaction or  
23 release of the lien in writing, upon written demand of the  
24 owner of the commercial real estate, within 5 days after  
25 payment of the amount claimed or within 5 days after  
26 expiration of the time period in which the complaint to  
27 initiate the lawsuit was to be filed.

28       (b) Whenever a notice of lien on commercial real  
29 estate has been recorded with the clerk of the circuit court  
30 and a condition occurs that would preclude a broker from  
31 receiving compensation under the terms of the written



Bill No. CS for SB 1788

Amendment No. \_\_\_\_ Barcode 964342

1 agreement on which the lien is based, the broker shall provide  
2 to the owner of record, within 10 days following written  
3 demand by the owner of record, a written release or  
4 satisfaction of the lien.

5       (13) ALTERNATIVE DISPUTE RESOLUTION.--If the broker  
6 and the party or parties from whom the commission is claimed  
7 agree to alternative dispute resolution, the claim shall be  
8 heard and resolved in the forum on which these parties have  
9 agreed. The court before which the action to enforce the lien  
10 is brought shall retain jurisdiction to enter judgment on the  
11 award or other result made or reached in alternative dispute  
12 resolution on all parties to the action to enforce the lien.  
13 The broker's notice of lien shall remain of record and the  
14 action to enforce the lien shall be stayed during the pendency  
15 of the alternative dispute resolution process.

16       (14) ASSESSMENT OF COSTS, FEES, AND INTEREST.--The  
17 cost of proceedings brought under this section, including  
18 reasonable attorney's fees, costs, and prejudgment interest  
19 due to the prevailing party, shall be borne by the  
20 nonprevailing party or parties. When more than one party is  
21 responsible for costs, fees, and prejudgment interest, the  
22 costs, fees, and prejudgment interest shall be equitably  
23 apportioned by the court or alternative dispute resolution  
24 tribunal among the responsible parties.

25       (15) WAIVER OF LIEN RIGHTS VOID.--Except for a  
26 satisfaction or release of lien provided in consideration of  
27 payment of the fee or commission claimed by a broker or other  
28 consideration acceptable to broker or pursuant to subsection  
29 (12), any waiver of a broker's right to a lien on commercial  
30 real estate under this section and any other waiver or release  
31 of such a lien is void.

Bill No. CS for SB 1788

Amendment No. \_\_\_\_ Barcode 964342

1           714.007 Priority of other recorded liens, mortgages,  
2 and encumbrances.--Valid prior recorded liens, mortgages, and  
3 other encumbrances shall have priority over a broker's lien  
4 under this chapter. Such prior recorded liens, mortgages, and  
5 encumbrances shall include, without limitation:

6           (1) Any valid mechanic's lien claim that is recorded  
7 subsequent to the broker's notice of lien but which relates  
8 back to a date prior to the recording date of the broker's  
9 notice of lien.

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

12           714.009 Escrow of disputed amounts.--Except as  
13 otherwise provided in this chapter, whenever a notice of lien  
14 on commercial real estate has been filed with the clerk of the  
15 circuit court that would prevent the closing of a transaction  
16 or conveyance, an escrow account shall be established from the  
17 proceeds from the transaction or conveyance, or other  
18 collateral or security, in an amount sufficient to release the  
19 lien. The requirement to establish an escrow account as  
20 provided in this section shall not be cause for any party to  
21 refuse to close the transaction or conveyance. The moneys or  
22 other collateral or security required to be held in escrow  
23 under this section shall be held until the rights of the  
24 parties to the escrowed moneys or other collateral or security  
25 have been determined by written agreement of the parties, by a  
26 court of law, or by any other process that may be agreed to by  
27 the parties for resolution of their dispute. Upon the escrow  
28 of funds or other collateral or security in the amount claimed  
29 in the lien, the lien and notice of lien shall be  
30 automatically dissolved. Upon release of the lien by the  
31 broker, the broker shall be deemed to have an equitable lien

Bill No. CS for SB 1788

Amendment No. \_\_\_\_ Barcode 964342

1 on the escrow funds or other collateral or security, pending a  
2 resolution of the broker's claim, and the escrow shall not be  
3 released until a resolution is reached and agreed to by all  
4 necessary parties or ordered by a court. The parties are not  
5 required to follow the escrow procedure in this section if  
6 alternative procedures that would allow the transaction to  
7 close are available and are acceptable to the transferee in  
8 the transaction. If the proceeds from the transaction are  
9 insufficient to release all liens claimed against the  
10 commercial real estate, including the broker's lien, then the  
11 parties are not required to follow the escrow procedure in  
12 this section.

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

15           475.42 Violations and penalties.--

16           (1) VIOLATIONS.--

17           (j) A broker or sales associate may not place, or  
18 cause to be placed, upon the public records of any county, any  
19 contract, assignment, deed, will, mortgage, affidavit, or  
20 other writing which purports to affect the title of, or  
21 encumber, any real property if the same is known to her or him  
22 to be false, void, or not authorized to be placed of record,  
23 or not executed in the form entitling it to be recorded, or  
24 the execution or recording whereof has not been authorized by  
25 the owner of the property, maliciously or for the purpose of  
26 collecting a commission, or to coerce the payment of money to  
27 the broker or sales associate or other person, or for any  
28 unlawful purpose. However, nothing in this paragraph shall be  
29 construed to prohibit a broker or a sales associate from  
30 recording a judgment rendered by a court of this state or to  
31 prohibit a broker from placing a lien on a property where

Bill No. CS for SB 1788

Amendment No. \_\_\_\_ Barcode 964342

1 expressly permitted by contractual agreement or otherwise  
2 allowed by law.

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

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5

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

7 And the title is amended as follows:

8 Delete everything before the enacting clause

9

10 and insert:

11 A bill to be entitled  
12 An act relating to liens on commercial real  
13 estate; creating ch. 714, F.S., the "Commercial  
14 Real Estate Lien Act"; providing definitions;  
15 specifying conditions under which a broker is  
16 entitled to a lien on commercial real estate;  
17 requiring a written instrument; requiring the  
18 recording of a notice of lien; providing for  
19 the contents and service of such notice;  
20 providing requirements with respect to  
21 installment and future commissions, leases,  
22 sales of property before commission is due, and  
23 written instruments with transferees; providing  
24 for enforcement of the lien by lawsuit;  
25 requiring written demand to initiate or file an  
26 answer to such lawsuit; providing conditions  
27 for satisfaction or release of the lien;  
28 providing for an alternative dispute resolution  
29 process; providing for assessment of costs,  
30 fees, and interest; declaring any waiver of  
31 lien rights void; providing priority of other

Bill No. CS for SB 1788

Amendment No. \_\_\_\_ Barcode 964342

1 recorded liens, mortgages, and encumbrances;  
2 providing for escrow of disputed amounts;  
3 amending s. 475.42, F.S.; providing that  
4 brokers may place liens on property as provided  
5 by law; providing an effective date.  
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