

By Senator Posey

24-1469-04

See HB 461

1 A bill to be entitled

2 An act relating to liens on commercial real

3 estate; creating ch. 714, F.S., the "Commercial

4 Real Estate Lien Act"; providing definitions;

5 specifying conditions under which a broker is

6 entitled to a lien on commercial real estate;

7 requiring a written instrument; requiring the

8 recording of a notice of lien; providing for

9 the contents and service of such notice;

10 providing requirements with respect to

11 installment and future commissions, leases,

12 sales of property before commission is due, and

13 written instruments with transferees; providing

14 for enforcement of the lien by lawsuit;

15 requiring written demand to initiate or file an

16 answer to such lawsuit; providing conditions

17 for satisfaction or release of the lien;

18 providing for an alternative dispute resolution

19 process; providing for assessment of costs,

20 fees, and interest; declaring any waiver of

21 lien rights void; providing priority of other

22 recorded liens, mortgages, and encumbrances;

23 providing for escrow of disputed amounts;

24 amending s. 475.42, F.S.; providing that

25 brokers may place liens on property as provided

26 by law; providing an effective date.

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

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

4 714.001 Popular name.--This chapter may be referred to
5 by the popular name the "Commercial Real Estate Lien Act."

6 714.003 Definitions.--As used in this chapter, the
7 term:

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

9 (2)(a) "Commercial real estate" means any real estate
10 other than:

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

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

15 (b) "Commercial real estate" does not include
16 single-family residential units such as condominiums,
17 townhouses, or homes in a subdivision when sold, leased, or
18 otherwise conveyed on a unit-by-unit basis, even though these
19 units may be a part of a larger building or parcel or real
20 estate containing more than four residential units.

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

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

30 (5) "Real estate" has the same meaning as in s.
31 475.01.

1 (6) "Transferee" means a person purchasing or
2 otherwise receiving any interest in commercial real estate.

3 (7) "Transferor" means the person selling or otherwise
4 conveying any interest in commercial real estate.

5 714.005 Broker's lien.--

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

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

19 (a) A lien under this chapter shall attach to the
20 commercial real estate or any interest in the commercial real
21 estate if the broker:

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

24 2. Except as otherwise provided in subsections
25 (4)-(7), records a notice of lien in the office of the clerk
26 of the circuit court of the county in which the property is
27 located prior to the actual conveyance or transfer of the
28 commercial real estate against which the broker is claiming
29 the lien.

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

4 (3) CONTENTS OF NOTICE OF LIEN.--A notice of lien
5 shall state the name of the claimant, the name of the owner of
6 record of the commercial real estate, a description of the
7 property upon which the lien is being claimed, the amount for
8 which the lien is claimed, and the real estate license number
9 of the broker. The notice of lien shall recite that the
10 information contained in the notice is true and accurate to
11 the knowledge of the signator. The notice of lien must be
12 signed by the broker or a person authorized to sign on behalf
13 of the broker and must be notarized.

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

30 (5) LEASE OF COMMERCIAL REAL ESTATE.--In the case of a
31 lease, sublease, or assignment of lease, a notice of lien must

1 be recorded no later than 90 days after the transferee takes
2 possession of the leased premises. However, if a transferor
3 personally serves written notice of the intended execution of
4 the lease on a broker entitled to claim a lien, at least 10
5 days prior to the date of the intended execution of the lease,
6 a notice of lien must be recorded before the date indicated in
7 such notice for the execution of the lease. The lien shall
8 attach as of the date of the recording of the notice of lien
9 and shall not relate back to the date of the written
10 instrument.

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

22 (7) REAL ESTATE SOLD BEFORE COMMISSION DUE.--In the
23 event that the commercial real estate is sold or otherwise
24 conveyed prior to the date on which either a future commission
25 or an unpaid installment of a commission is due, if the broker
26 has recorded a valid notice of lien prior to the sale or other
27 conveyance of the real estate, then the purchaser or
28 transferee shall be deemed to have notice of and shall take
29 title to the real estate subject to the lien. However, if a
30 broker claiming a future commission fails to record a notice
31 of lien for future commission prior to the recording of a deed

1 conveying legal title to the real estate to the transferee,
2 then such broker may not claim a lien on the real estate. The
3 provisions of this subsection do not limit or otherwise affect
4 claims or defenses a broker or any other party may have on any
5 other basis, in law or in equity.

6 (8) WRITTEN INSTRUMENT WITH TRANSFEREE.--If a
7 transferee has executed a written instrument in accordance
8 with subsection (1), then a lien shall attach to the
9 transferee's interest upon the transferee purchasing or
10 otherwise accepting conveyance or transfer of the commercial
11 real estate and the recording of a notice of lien by the
12 broker in the office of the clerk of the circuit court of the
13 county in which the property is located, within 90 days after
14 the purchase or other conveyance or transfer to the
15 transferee. The lien shall attach as of the date of the
16 recording of the notice of lien and shall not relate back to
17 the date of the written instrument.

18 (9) SERVICE OF NOTICE OF LIEN.--A broker shall, within
19 10 days after recording a notice of lien, personally deliver
20 or mail, by registered or certified mail, a copy of the notice
21 of lien to the owner of record of the commercial real estate
22 or the duly authorized agent of the owner of record at the
23 address of the owner of record as stated in the written
24 instrument on which the claim for lien is based or, if no such
25 address is given, to the address of the property on which the
26 claim of lien is based. If a notice of lien is recorded within
27 10 days prior to closing, a broker is not required to
28 personally deliver or mail a copy of the notice of lien.
29 Mailing of the copy of the notice of lien is effective when
30 deposited in the United States mail with postage prepaid. A
31 broker's lien on commercial real estate shall be unenforceable

1 if delivery or mailing of the copy of notice of lien does not
2 occur within the time period and in the manner required by
3 this subsection.

4 (10) LAWSUIT TO ENFORCE LIEN.--

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

9 (b) A broker claiming a lien on commercial real estate
10 shall, within 2 years after recording the notice of lien,
11 commence proceedings by filing a complaint. Failure to
12 commence proceedings within 2 years after recording the notice
13 of lien shall extinguish the lien. No subsequent notice of
14 lien may be given for the same claim, nor may that claim be
15 asserted in any proceedings under this chapter.

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

25 (d) A complaint under this section shall contain a
26 brief statement of the contract or instrument on which the
27 lien is based as well as its effective date, a description of
28 the services performed, the amount due and unpaid, a
29 description of the property that is subject to the lien, and
30 other facts necessary for a full understanding of the rights
31 of the parties. The plaintiff shall make all interested

1 parties of whose interest the plaintiff is notified or has
2 knowledge defendants to the action and shall issue summons and
3 provide service as in other civil actions filed in this state.
4 When any defendant resides or has gone out of the state, or on
5 inquiry cannot be found, or is concealed within the state so
6 that process cannot be served on the defendant, the plaintiff
7 shall cause a notice to be given to the defendant or cause a
8 copy of the complaint to be served on the defendant in the
9 manner and on the same conditions as in other civil actions
10 filed in this state. Failure of the plaintiff to provide
11 proper summons or notice to the defendant as required by this
12 paragraph shall be grounds for judgment against the plaintiff
13 and in favor of the defendant with prejudice. All liens
14 claimed under this chapter shall be foreclosed in the manner
15 of foreclosing a mortgage under the provisions of chapter 702.

16 (11) DEMAND TO INITIATE OR FILE ANSWER TO
17 LAWSUIT.--Upon written demand of the owner of record or a
18 lienee of the commercial real estate, or a duly authorized
19 agent of the owner or lienee, served on the broker claiming
20 the lien to require suit to be commenced to enforce the lien
21 or an answer to be filed in a pending suit to enforce the
22 lien, the suit must be commenced or the answer filed within 30
23 days thereafter or the lien shall be extinguished. Service of
24 such written demand may be made by registered or certified
25 mail, return receipt requested, or by personal service.

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

27 (a) Whenever a notice of lien on commercial real
28 estate has been recorded with the clerk of the circuit court
29 and the claimed commission has been paid to a broker claiming
30 a lien on the property, or when there is a failure to initiate
31 a suit to enforce the lien within the time period provided by

1 this section, the broker shall acknowledge satisfaction or
2 release of the lien in writing, upon written demand of the
3 owner of the commercial real estate, within 5 days after
4 payment of the amount claimed or within 5 days after
5 expiration of the time period in which the complaint to
6 initiate the lawsuit was to be filed.

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

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

26 (14) ASSESSMENT OF COSTS, FEES, AND INTEREST.--The
27 cost of proceedings brought under this section, including
28 reasonable attorney's fees, costs, and prejudgment interest
29 due to the prevailing party, shall be borne by the
30 nonprevailing party or parties. When more than one party is
31 responsible for costs, fees, and prejudgment interest, the

1 costs, fees, and prejudgment interest shall be equitably
2 apportioned by the court or alternative dispute resolution
3 tribunal among the responsible parties.

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

10 714.007 Priority of other recorded liens, mortgages,
11 and encumbrances.--Valid prior recorded liens, mortgages, and
12 other encumbrances shall have priority over a broker's lien
13 under this chapter. Such prior recorded liens, mortgages, and
14 encumbrances shall include, without limitation:

15 (1) Any valid mechanic's lien claim that is recorded
16 subsequent to the broker's notice of lien but which relates
17 back to a date prior to the recording date of the broker's
18 notice of lien.

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

21 714.009 Escrow of disputed amounts.--Except as
22 otherwise provided in this chapter, whenever a notice of lien
23 on commercial real estate has been filed with the clerk of the
24 circuit court that would prevent the closing of a transaction
25 or conveyance, an escrow account shall be established from the
26 proceeds from the transaction or conveyance in an amount
27 sufficient to release the lien. The requirement to establish
28 an escrow account as provided in this section shall not be
29 cause for any party to refuse to close the transaction or
30 conveyance. The moneys required to be held in escrow under
31 this section shall be held until the rights of the parties to

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

19 Section 2. Paragraph (j) of subsection (1) of section
20 475.42, Florida Statutes, is amended to read:

21 475.42 Violations and penalties.--

22 (1) VIOLATIONS.--

23 (j) A broker or sales associate may not place, or
24 cause to be placed, upon the public records of any county, any
25 contract, assignment, deed, will, mortgage, affidavit, or
26 other writing which purports to affect the title of, or
27 encumber, any real property if the same is known to her or him
28 to be false, void, or not authorized to be placed of record,
29 or not executed in the form entitling it to be recorded, or
30 the execution or recording whereof has not been authorized by
31 the owner of the property, maliciously or for the purpose of

1 collecting a commission, or to coerce the payment of money to
2 the broker or sales associate or other person, or for any
3 unlawful purpose. However, nothing in this paragraph shall be
4 construed to prohibit a broker or a sales associate from
5 recording a judgment rendered by a court of this state or to
6 prohibit a broker from placing a lien on a property where
7 expressly permitted by contractual agreement or otherwise
8 allowed by law.

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

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