

By the Committee on Judiciary; and Senator Posey

308-2508-04

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.
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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 valid and enforceable written instrument signed by a
14 transferor or the transferor's duly authorized agent or by a
15 prospective transferee or the transferee's duly authorized
16 agent. The lien shall be available to the broker named in the
17 signed instrument, and not to any employee or independent
18 contractor of the broker.

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

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

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

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

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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 or for future commissions as
25 described in subsection (6) shall be valid and enforceable
26 only to the extent it pertains to payments due from the
27 transferee to the transferor after the conveyance or transfer.
28 As payments or partial payments of commission are received, a
29 broker shall provide partial releases therefor, thereby
30 reducing the amount due the broker under the broker's notice
31 of lien.

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

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

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

1 broker claiming a future commission fails to record a notice
2 of lien for future commission prior to the recording of a deed
3 conveying legal title to the real estate to the transferee,
4 then such broker may not claim a lien on the real estate. The
5 provisions of this subsection do not limit or otherwise affect
6 claims or defenses a broker or any other party may have on any
7 other basis, in law or in equity.

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

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

1 deposited in the United States mail with postage prepaid. A
2 broker's lien on commercial real estate shall be unenforceable
3 if delivery or mailing of the copy of notice of lien does not
4 occur within the time period and in the manner required by
5 this subsection.

6 (10) LAWSUIT TO ENFORCE LIEN.--

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

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

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

27 (d) A complaint under this section shall contain a
28 brief statement of the contract or instrument on which the
29 lien is based as well as its effective date, a description of
30 the services performed, the amount due and unpaid, a
31 description of the property that is subject to the lien, and

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

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

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

29 (a) Whenever a notice of lien on commercial real
30 estate has been recorded with the clerk of the circuit court
31 and the claimed commission has been paid to a broker claiming

1 a lien on the property, or when there is a failure to initiate
2 a suit to enforce the lien within the time period provided by
3 this section, the broker shall acknowledge satisfaction or
4 release of the lien in writing, upon written demand of the
5 owner of the commercial real estate, within 5 days after
6 payment of the amount claimed or within 5 days after
7 expiration of the time period in which the complaint to
8 initiate the lawsuit was to be filed.

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

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

28 (14) ASSESSMENT OF COSTS, FEES, AND INTEREST.--The
29 cost of proceedings brought under this section, including
30 reasonable attorney's fees, costs, and prejudgment interest
31 due to the prevailing party, shall be borne by the

1 nonprevailing party or parties. When more than one party is
2 responsible for costs, fees, and prejudgment interest, the
3 costs, fees, and prejudgment interest shall be equitably
4 apportioned by the court or alternative dispute resolution
5 tribunal among the responsible parties.

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

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

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

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

24 714.009 Escrow of disputed amounts.--Except as
25 otherwise provided in this chapter, whenever a notice of lien
26 on commercial real estate has been filed with the clerk of the
27 circuit court that would prevent the closing of a transaction
28 or conveyance, an escrow account shall be established from the
29 proceeds from the transaction or conveyance, or other
30 collateral or security in an amount sufficient to release the
31 lien. The requirement to establish an escrow account as

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

22 Section 2. Paragraph (j) of subsection (1) of section
23 475.42, Florida Statutes, is amended to read:

24 475.42 Violations and penalties.--

25 (1) VIOLATIONS.--

26 (j) A broker or sales associate may not place, or
27 cause to be placed, upon the public records of any county, any
28 contract, assignment, deed, will, mortgage, affidavit, or
29 other writing which purports to affect the title of, or
30 encumber, any real property if the same is known to her or him
31 to be false, void, or not authorized to be placed of record,

1 or not executed in the form entitling it to be recorded, or
2 the execution or recording whereof has not been authorized by
3 the owner of the property, maliciously or for the purpose of
4 collecting a commission, or to coerce the payment of money to
5 the broker or sales associate or other person, or for any
6 unlawful purpose. However, nothing in this paragraph shall be
7 construed to prohibit a broker or a sales associate from
8 recording a judgment rendered by a court of this state or to
9 prohibit a broker from placing a lien on a property where
10 expressly permitted by contractual agreement or otherwise
11 allowed by law.

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

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14 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
15 COMMITTEE SUBSTITUTE FOR
16 Senate Bill 1788

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18 This CS provides the following:

19

- Clarifies that a broker shall have a lien when there is a
written instrument that is valid and enforceable.

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- Includes future commissions as a type of installment
payment agreement, for purposes of lien notice.

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- Regarding a waiver of lien rights, authorizes other forms
of consideration acceptable to a broker besides payment
of the fee or commission.

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- Provides that other collateral or security is to be
included in an escrow account upon the filing of a notice
of lien.

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