

1 A bill to be entitled
2 An act relating to liens on real estate;
3 creating ch. 714, F.S., the "Real Estate Lien
4 Act"; providing definitions; specifying
5 conditions under which a broker is entitled to
6 a lien on real estate; requiring a written
7 instrument; requiring the recording of a notice
8 of lien; providing for the contents and service
9 of such notice; providing requirements with
10 respect to installment and future commissions,
11 leases, sales of property before commission is
12 due, and written instruments with transferees;
13 providing for enforcement of the lien by
14 lawsuit; requiring written demand to initiate
15 or file an answer to such lawsuit; providing
16 conditions for satisfaction or release of the
17 lien; providing for an alternative dispute
18 resolution process; providing for assessment of
19 costs, fees, and interest; declaring any waiver
20 of lien rights void; providing priority of
21 other recorded liens, mortgages, and
22 encumbrances; providing for escrow of disputed
23 amounts; amending s. 475.42, F.S.; providing
24 that brokers may place liens on property as
25 provided by law; providing an effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:

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

1 714.001 Popular name.--This chapter may be referred to
2 by the popular name the "Real Estate Lien Act."

3 714.003 Definitions.--As used in this chapter, the
4 term:

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

6 (2) "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 (3) "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 (4) "Real estate" has the same meaning as in s.
16 475.01. For the purposes of ss. 714.001-714.009, the term
17 "real estate" does not include homestead property.

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

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

24 714.005 Broker's lien.--

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

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

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

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

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

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

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

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

25 (3) CONTENTS OF NOTICE OF LIEN.--A notice of lien
26 shall state the name of the claimant, the name of the owner of
27 record of the real estate, a description of the property upon
28 which the lien is being claimed, the amount for which the lien
29 is claimed, and the real estate license number of the broker.
30 The notice of lien shall recite that the information contained
31 in the notice is true and accurate to the knowledge of the

1 signator. The notice of lien must be signed by the broker or a
2 person authorized to sign on behalf of the broker and must be
3 notarized.

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

21 (5) LEASE OF REAL ESTATE.--In the case of a lease, a
22 notice of lien must be recorded no later than 90 days after
23 the transferee takes possession of the leased premises.
24 However, if a transferor personally serves written notice of
25 the intended execution of the lease on a broker entitled to
26 claim a lien, at least 10 days prior to the date of the
27 intended execution of the lease, a notice of lien must be
28 recorded before the date indicated in such notice for the
29 execution of the lease. The lien shall attach as of the date
30 of the recording of the notice of lien and shall not relate
31 back to the date of the written instrument.

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

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

27 (8) WRITTEN INSTRUMENT WITH TRANSFEREE.--If a
28 transferee has executed a written instrument in accordance
29 with subsection (1), then a lien shall attach to the
30 transferee's interest upon the transferee purchasing or
31 otherwise accepting conveyance or transfer of the real estate

1 and the recording of a notice of lien by the broker in the
2 office of the clerk of the circuit court of the county in
3 which the property is located, within 90 days after the
4 purchase or other conveyance or transfer to the transferee.
5 The lien shall attach as of the date of the recording of the
6 notice of lien and shall not relate back to the date of the
7 written instrument.

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

22 (10) LAWSUIT TO ENFORCE LIEN.--

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

27 (b) A broker claiming a lien on real estate shall,
28 within 2 years after recording the notice of lien, commence
29 proceedings by filing a complaint. Failure to commence
30 proceedings within 2 years after recording the notice of lien
31 shall extinguish the lien. No subsequent notice of lien may be

1 given for the same claim, nor may that claim be asserted in
2 any proceedings under this chapter.

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

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

1 claimed under this chapter shall be foreclosed in the manner
2 of foreclosing a mortgage under the provisions of chapter 702.

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

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

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

25 (b) Whenever a notice of lien on real estate has been
26 recorded with the clerk of the circuit court and a condition
27 occurs that would preclude a broker from receiving
28 compensation under the terms of the written agreement on which
29 the lien is based, the broker shall provide to the owner of
30 record, within 10 days following written demand by the owner
31 of record, a written release or satisfaction of the lien.

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

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

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

28 714.007 Priority of other recorded liens, mortgages,
29 and encumbrances.--Valid prior recorded liens, mortgages, and
30 other encumbrances shall have priority over a broker's lien
31

1 under this chapter. Such prior recorded liens, mortgages, and
2 encumbrances shall include, without limitation:

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

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

9 714.009 Escrow of disputed amounts.--Except as
10 otherwise provided in this chapter, whenever a notice of lien
11 on real estate has been filed with the clerk of the circuit
12 court that would prevent the closing of a transaction or
13 conveyance, an escrow account shall be established from the
14 proceeds from the transaction or conveyance, or other
15 collateral or security in an amount sufficient to release the
16 lien. The requirement to establish an escrow account as
17 provided in this section shall not be cause for any party to
18 refuse to close the transaction or conveyance. The moneys or
19 other collateral or security required to be held in escrow
20 under this section shall be held until the rights of the
21 parties to the escrowed moneys or other collateral or security
22 have been determined by written agreement of the parties, by a
23 court of law, or by any other process that may be agreed to by
24 the parties for resolution of their dispute. Upon the escrow
25 of funds or other collateral or security in the amount claimed
26 in the lien, the lien and notice of lien shall be
27 automatically dissolved. Upon release of the lien by the
28 broker, the broker shall be deemed to have an equitable lien
29 on the escrow funds or other collateral or security, pending a
30 resolution of the broker's claim, and the escrow shall not be
31 released until a resolution is reached and agreed to by all

1 necessary parties or ordered by a court. The parties are not
2 required to follow the escrow procedure in this section if
3 alternative procedures that would allow the transaction to
4 close are available and are acceptable to the transferee in
5 the transaction. If the proceeds from the transaction are
6 insufficient to release all liens claimed against the real
7 estate, including the broker's lien, then the parties are not
8 required to follow the escrow procedure in this section.

9 Section 2. Paragraph (j) of subsection (1) of section
10 475.42, Florida Statutes, is amended to read:

11 475.42 Violations and penalties.--

12 (1) VIOLATIONS.--

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

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