

Bill No. CS for CS for SB 2722

Amendment No. ____ Barcode 904580

CHAMBER ACTION

Senate

House

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Senator Posey moved the following amendment:

Senate Amendment (with title amendment)

On page 10, line 26,

insert:

Section 1. Effective July 1, 2004, 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

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

21 714.005 Broker's lien.--

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

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1 agent. The lien shall be available to the broker named in the
2 signed instrument, and not to any employee or independent
3 contractor of the broker.

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

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

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

10 2. Except as otherwise provided in subsections
11 (4)-(7), records a notice of lien in the office of the clerk
12 of the circuit court of the county in which the property is
13 located prior to the actual conveyance or transfer of the
14 commercial real estate against which the broker is claiming
15 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 (3) CONTENTS OF NOTICE OF LIEN.--A notice of lien
20 shall state the name of the claimant, the name of the owner of
21 record of the commercial real estate, a description of the
22 property upon which the lien is being claimed, the amount for
23 which the lien is claimed, and the real estate license number
24 of the broker. The notice of lien shall recite that the
25 information contained in the notice is true and accurate to
26 the knowledge of the signator. The notice of lien must be
27 signed by the broker or a person authorized to sign on behalf
28 of the broker and must be notarized.

29 (4) COMMISSION DUE IN INSTALLMENTS.--Except as
30 otherwise provided in subsections (5)-(7), when payment to a
31 broker is due in installments, a portion of which is due only

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

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

28 (6) FUTURE COMMISSION.--If a broker may be due future
29 commissions pursuant to a written instrument signed by the
30 then transferor or transferee, the broker may record a notice
31 of lien at any time after execution of the lease or other

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1 written instrument which contains such option or options, but
 2 may not record the notice of lien later than 90 days after the
 3 event or occurrence on which the claimed future commission
 4 occurs. Notwithstanding subsection (10), an action to enforce
 5 a lien under this subsection must be commenced within 2 years
 6 after the occurrence or transaction on which the future
 7 commission is claimed.

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

23 (8) WRITTEN INSTRUMENT WITH TRANSFEREE.--If a
 24 transferee has executed a written instrument in accordance
 25 with subsection (1), then a lien shall attach to the
 26 transferee's interest upon the transferee purchasing or
 27 otherwise accepting conveyance or transfer of the commercial
 28 real estate and the recording of a notice of lien by the
 29 broker in the office of the clerk of the circuit court of the
 30 county in which the property is located, within 90 days after
 31 the purchase or other conveyance or transfer to the

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1 transferee. 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 (9) SERVICE OF NOTICE OF LIEN.--A broker shall, within
5 10 days after recording a notice of lien, personally deliver
6 or mail, by registered or certified mail, a copy of the notice
7 of lien to the owner of record of the commercial real estate
8 or the duly authorized agent of the owner of record at the
9 address of the owner of record as stated in the written
10 instrument on which the claim for lien is based or, if no such
11 address is given, to the address of the property on which the
12 claim of lien is based. If a notice of lien is recorded within
13 10 days prior to closing, a broker is not required to
14 personally deliver or mail a copy of the notice of lien.
15 Mailing of the copy of the notice of lien is effective when
16 deposited in the United States mail with postage prepaid. A
17 broker's lien on commercial real estate shall be unenforceable
18 if delivery or mailing of the copy of notice of lien does not
19 occur within the time period and in the manner required by
20 this subsection.

21 (10) LAWSUIT TO ENFORCE LIEN.--

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

26 (b) A broker claiming a lien on commercial real estate
27 shall, within 2 years after recording the notice of lien,
28 commence proceedings by filing a complaint. Failure to
29 commence proceedings within 2 years after recording the notice
30 of lien shall extinguish the lien. No subsequent notice of
31 lien may be given for the same claim, nor may that claim be

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1 asserted in any proceedings under this chapter.

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

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

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1 of foreclosing a mortgage under the provisions of chapter 702.

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

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

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

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

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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 waiver
22 or release of lien provided in consideration of payment of the
23 fee or commission claimed by a broker or other consideration
24 acceptable to broker or pursuant to subsection (12), any
25 waiver of a broker's right to a lien on commercial 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 under this chapter. Such prior recorded liens, mortgages, and

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1 encumbrances shall include, without limitation:

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

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

8 714.009 Escrow of disputed amounts.--Except as
9 otherwise provided in this chapter, whenever a notice of lien
10 on commercial real estate has been filed with the clerk of the
11 circuit court that would prevent the closing of a transaction
12 or conveyance, an escrow account shall be established from the
13 proceeds from the transaction or conveyance, or other
14 collateral or security in an amount sufficient to release the
15 lien. The requirement to establish an escrow account as
16 provided in this section shall not be cause for any party to
17 refuse to close the transaction or conveyance. The moneys
18 required to be held in escrow under this section shall be held
19 until the rights of the parties to the escrowed moneys have
20 been determined by written agreement of the parties, by a
21 court of law, or by any other process that may be agreed to by
22 the parties for resolution of their dispute. Upon the escrow
23 of funds in the amount claimed in the lien, the lien and
24 notice of lien shall be automatically dissolved. Upon release
25 of the lien by the broker, the broker shall be deemed to have
26 an equitable lien on the escrow funds, pending a resolution of
27 the broker's claim, and the escrow shall not be released until
28 a resolution is reached and agreed to by all necessary parties
29 or ordered by a court. The parties are not required to follow
30 the escrow procedure in this section if alternative procedures
31 that would allow the transaction to close are available and

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1 are acceptable to the transferee in the transaction. If the
2 proceeds from the transaction are insufficient to release all
3 liens claimed against the commercial real estate, including
4 the broker's lien, then the parties are not required to follow
5 the escrow procedure in this section.

6 Section 2. Effective July 1, 2004, paragraph (j) of
7 subsection (1) of section 475.42, Florida Statutes, is amended
8 to read:

9 475.42 Violations and penalties.--

10 (1) VIOLATIONS.--

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

28
29 (Redesignate subsequent sections.)

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

2 And the title is amended as follows:

3 On page 1, line 2, delete that line

4

5 and insert:

6 An act relating to financial matters; creating
7 ch. 714, F.S., the "Commercial Real Estate Lien
8 Act"; providing definitions; specifying
9 conditions under which a broker is entitled to
10 a lien on commercial real estate; requiring a
11 written instrument; requiring the recording of
12 a notice of lien; providing for the contents
13 and service of such notice; providing
14 requirements with respect to installment and
15 future commissions, leases, sales of property
16 before commission is due, and written
17 instruments with transferees; providing for
18 enforcement of the lien by lawsuit; requiring
19 written demand to initiate or file an answer to
20 such lawsuit; providing conditions for
21 satisfaction or release of the lien; providing
22 for an alternative dispute resolution process;
23 providing for assessment of costs, fees, and
24 interest; declaring any waiver of lien rights
25 void; providing priority of other recorded
26 liens, mortgages, and encumbrances; providing
27 for escrow of disputed amounts; amending s.
28 475.42, F.S.; providing that brokers may place
29 liens on property as provided by law; amending
30 s. 255.248, F.S.;

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