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A bill to be entitled

An act relating to liens on commercial real estate; creating ch. 714, F.S., the "Commercial Real Estate Lien Act"; providing definitions; specifying conditions under which a broker is entitled to a lien on commercial real estate; requiring a written instrument; requiring the recording of a notice of lien; providing for the contents and service of such notice; providing requirements with respect to installment and future commissions, leases, sales of property before commission is due, and written instruments with transferees; providing for enforcement of the lien by lawsuit; requiring written demand to initiate or file an answer to such lawsuit; providing conditions for satisfaction or release of the lien; providing for an alternative dispute resolution process; providing for assessment of costs, fees, and interest; declaring any waiver of lien rights void; providing priority of other recorded liens, mortgages, and encumbrances; providing for escrow of disputed amounts; amending s. 475.42, F.S.; providing that brokers may place liens on property as provided by law; providing an effective date.

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

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."

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30 714.003 Definitions.--As used in this chapter, the term:

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

32 (2)(a) "Commercial real estate" means any real estate
 33 other than:

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

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

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

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

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

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

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

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

57 714.005 Broker's lien.--

58 (1) WRITTEN INSTRUMENT.--A broker shall have a lien upon

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59 commercial real estate or any interest in that commercial real
 60 estate which is the subject of a purchase, lease, or other
 61 conveyance to a buyer or tenant of an interest in the commercial
 62 real estate, in the amount that the broker is due for licensed
 63 services, including, but not limited to, brokerage fees,
 64 consulting fees, and management fees, under a written instrument
 65 signed by a transferor or the transferor's duly authorized agent
 66 or by a prospective transferee or the transferee's duly
 67 authorized agent. The lien shall be available to the broker
 68 named in the signed instrument, and not to any employee or
 69 independent contractor of the broker.

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

71 (a) A lien under this chapter shall attach to the
 72 commercial real estate or any interest in the commercial real
 73 estate if the broker:

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

76 2. Except as otherwise provided in subsections (4)-(7),
 77 records a notice of lien in the office of the clerk of the
 78 circuit court of the county in which the property is located
 79 prior to the actual conveyance or transfer of the commercial
 80 real estate against which the broker is claiming the lien.

81 (b) The lien shall attach as of the date of the recording
 82 of the notice of lien and shall not relate back to the date of
 83 the written instrument.

84 (3) CONTENTS OF NOTICE OF LIEN.--A notice of lien shall
 85 state the name of the claimant, the name of the owner of record
 86 of the commercial real estate, a description of the property
 87 upon which the lien is being claimed, the amount for which the

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88 lien is claimed, and the real estate license number of the
 89 broker. The notice of lien shall recite that the information
 90 contained in the notice is true and accurate to the knowledge of
 91 the signator. The notice of lien must be signed by the broker or
 92 a person authorized to sign on behalf of the broker and must be
 93 notarized.

94 (4) COMMISSION DUE IN INSTALLMENTS.--Except as otherwise
 95 provided in subsections (5)-(7), when payment to a broker is due
 96 in installments, a portion of which is due only after the
 97 conveyance or transfer of the commercial real estate, any notice
 98 of lien for those payments due after the conveyance or transfer
 99 may be recorded at any time subsequent to the conveyance or
 100 transfer of the commercial real estate but not later than 90
 101 days after the date the payment is due. A notice of lien
 102 recorded prior to conveyance or transfer of the commercial real
 103 estate claiming all moneys due under an installment payment
 104 agreement shall be valid and enforceable to the extent it
 105 pertains to payments due after the conveyance or transfer. As
 106 payments or partial payments of commission are received, a
 107 broker shall provide partial releases therefor, thereby reducing
 108 the amount due the broker under the broker's notice of lien.

109 (5) LEASE OF COMMERCIAL REAL ESTATE.--In the case of a
 110 lease, sublease, or assignment of lease, a notice of lien must
 111 be recorded no later than 90 days after the transferee takes
 112 possession of the leased premises. However, if a transferor
 113 personally serves written notice of the intended execution of
 114 the lease on a broker entitled to claim a lien, at least 10 days
 115 prior to the date of the intended execution of the lease, a
 116 notice of lien must be recorded before the date indicated in

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117 such notice for the execution of the lease. The lien shall
 118 attach as of the date of the recording of the notice of lien and
 119 shall not relate back to the date of the written instrument.

120 (6) FUTURE COMMISSION.--If a broker may be due future
 121 commissions pursuant to a written instrument signed by the then
 122 transferor or transferee, the broker may record a notice of lien
 123 at any time after execution of the lease or other written
 124 instrument which contains such option or options, but may not
 125 record the notice of lien later than 90 days after the event or
 126 occurrence on which the claimed future commission occurs.
 127 Notwithstanding subsection (10), an action to enforce a lien
 128 under this subsection must be commenced within 2 years after the
 129 occurrence or transaction on which the future commission is
 130 claimed.

131 (7) REAL ESTATE SOLD BEFORE COMMISSION DUE.--In the event
 132 that the commercial real estate is sold or otherwise conveyed
 133 prior to the date on which either a future commission or an
 134 unpaid installment of a commission is due, if the broker has
 135 recorded a valid notice of lien prior to the sale or other
 136 conveyance of the real estate, then the purchaser or transferee
 137 shall be deemed to have notice of and shall take title to the
 138 real estate subject to the lien. However, if a broker claiming a
 139 future commission fails to record a notice of lien for future
 140 commission prior to the recording of a deed conveying legal
 141 title to the real estate to the transferee, then such broker may
 142 not claim a lien on the real estate. The provisions of this
 143 subsection do not limit or otherwise affect claims or defenses a
 144 broker or any other party may have on any other basis, in law or
 145 in equity.

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146 (8) WRITTEN INSTRUMENT WITH TRANSFEREE.--If a transferee
147 has executed a written instrument in accordance with subsection
148 (1), then a lien shall attach to the transferee's interest upon
149 the transferee purchasing or otherwise accepting conveyance or
150 transfer of the commercial real estate and the recording of a
151 notice of lien by the broker in the office of the clerk of the
152 circuit court of the county in which the property is located,
153 within 90 days after the purchase or other conveyance or
154 transfer to the transferee. The lien shall attach as of the date
155 of the recording of the notice of lien and shall not relate back
156 to the date of the written instrument.

157 (9) SERVICE OF NOTICE OF LIEN.--A broker shall, within 10
158 days after recording a notice of lien, personally deliver or
159 mail, by registered or certified mail, a copy of the notice of
160 lien to the owner of record of the commercial real estate or the
161 duly authorized agent of the owner of record at the address of
162 the owner of record as stated in the written instrument on which
163 the claim for lien is based or, if no such address is given, to
164 the address of the property on which the claim of lien is based.
165 If a notice of lien is recorded within 10 days prior to closing,
166 a broker is not required to personally deliver or mail a copy of
167 the notice of lien. Mailing of the copy of the notice of lien is
168 effective when deposited in the United States mail with postage
169 prepaid. A broker's lien on commercial real estate shall be
170 unenforceable if delivery or mailing of the copy of notice of
171 lien does not occur within the time period and in the manner
172 required by this subsection.

173 (10) LAWSUIT TO ENFORCE LIEN.--

174 (a) A broker may bring suit to enforce a lien on

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175 commercial real estate in the circuit court in the county in
 176 which the property is located by filing a complaint and sworn
 177 affidavit that the notice of lien has been recorded.

178 (b) A broker claiming a lien on commercial real estate
 179 shall, within 2 years after recording the notice of lien,
 180 commence proceedings by filing a complaint. Failure to commence
 181 proceedings within 2 years after recording the notice of lien
 182 shall extinguish the lien. No subsequent notice of lien may be
 183 given for the same claim, nor may that claim be asserted in any
 184 proceedings under this chapter.

185 (c) A broker claiming a lien on commercial real estate
 186 based upon an option or other right to purchase or lease shall,
 187 within 2 years after the conveyance or transfer of the real
 188 estate under the exercise of the option to purchase or lease,
 189 commence proceedings by filing a complaint. Failure to commence
 190 proceedings within this time period shall extinguish the lien.
 191 No subsequent notice of lien may be given for the same claim,
 192 nor may that claim be asserted in any proceedings under this
 193 chapter.

194 (d) A complaint under this section shall contain a brief
 195 statement of the contract or instrument on which the lien is
 196 based as well as its effective date, a description of the
 197 services performed, the amount due and unpaid, a description of
 198 the property that is subject to the lien, and other facts
 199 necessary for a full understanding of the rights of the parties.
 200 The plaintiff shall make all interested parties of whose
 201 interest the plaintiff is notified or has knowledge defendants
 202 to the action and shall issue summons and provide service as in
 203 other civil actions filed in this state. When any defendant

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204 resides or has gone out of the state, or on inquiry cannot be
 205 found, or is concealed within the state so that process cannot
 206 be served on the defendant, the plaintiff shall cause a notice
 207 to be given to the defendant or cause a copy of the complaint to
 208 be served on the defendant in the manner and on the same
 209 conditions as in other civil actions filed in this state.
 210 Failure of the plaintiff to provide proper summons or notice to
 211 the defendant as required by this paragraph shall be grounds for
 212 judgment against the plaintiff and in favor of the defendant
 213 with prejudice. All liens claimed under this chapter shall be
 214 foreclosed in the manner of foreclosing a mortgage under the
 215 provisions of chapter 702.

216 (11) DEMAND TO INITIATE OR FILE ANSWER TO LAWSUIT.--Upon
 217 written demand of the owner of record or a lienee of the
 218 commercial real estate, or a duly authorized agent of the owner
 219 or lienee, served on the broker claiming the lien to require
 220 suit to be commenced to enforce the lien or an answer to be
 221 filed in a pending suit to enforce the lien, the suit must be
 222 commenced or the answer filed within 30 days thereafter or the
 223 lien shall be extinguished. Service of such written demand may
 224 be made by registered or certified mail, return receipt
 225 requested, or by personal service.

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

227 (a) Whenever a notice of lien on commercial real estate
 228 has been recorded with the clerk of the circuit court and the
 229 claimed commission has been paid to a broker claiming a lien on
 230 the property, or when there is a failure to initiate a suit to
 231 enforce the lien within the time period provided by this
 232 section, the broker shall acknowledge satisfaction or release of

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233 the lien in writing, upon written demand of the owner of the
 234 commercial real estate, within 5 days after payment of the
 235 amount claimed or within 5 days after expiration of the time
 236 period in which the complaint to initiate the lawsuit was to be
 237 filed.

238 (b) Whenever a notice of lien on commercial real estate
 239 has been recorded with the clerk of the circuit court and a
 240 condition occurs that would preclude a broker from receiving
 241 compensation under the terms of the written agreement on which
 242 the lien is based, the broker shall provide to the owner of
 243 record, within 10 days following written demand by the owner of
 244 record, a written release or satisfaction of the lien.

245 (13) ALTERNATIVE DISPUTE RESOLUTION.--If the broker and
 246 the party or parties from whom the commission is claimed agree
 247 to alternative dispute resolution, the claim shall be heard and
 248 resolved in the forum on which these parties have agreed. The
 249 court before which the action to enforce the lien is brought
 250 shall retain jurisdiction to enter judgment on the award or
 251 other result made or reached in alternative dispute resolution
 252 on all parties to the action to enforce the lien. The broker's
 253 notice of lien shall remain of record and the action to enforce
 254 the lien shall be stayed during the pendency of the alternative
 255 dispute resolution process.

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

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262 interest shall be equitably apportioned by the court or
 263 alternative dispute resolution tribunal among the responsible
 264 parties.

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

271 714.007 Priority of other recorded liens, mortgages, and
 272 encumbrances.--Valid prior recorded liens, mortgages, and other
 273 encumbrances shall have priority over a broker's lien under this
 274 chapter. Such prior recorded liens, mortgages, and encumbrances
 275 shall include, without limitation:

276 (1) Any valid mechanic's lien claim that is recorded
 277 subsequent to the broker's notice of lien but which relates back
 278 to a date prior to the recording date of the broker's notice of
 279 lien.

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

282 714.009 Escrow of disputed amounts.--Except as otherwise
 283 provided in this chapter, whenever a notice of lien on
 284 commercial real estate has been filed with the clerk of the
 285 circuit court that would prevent the closing of a transaction or
 286 conveyance, an escrow account shall be established from the
 287 proceeds from the transaction or conveyance in an amount
 288 sufficient to release the lien. The requirement to establish an
 289 escrow account as provided in this section shall not be cause
 290 for any party to refuse to close the transaction or conveyance.

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291 The moneys required to be held in escrow under this section
 292 shall be held until the rights of the parties to the escrowed
 293 moneys have been determined by written agreement of the parties,
 294 by a court of law, or by any other process that may be agreed to
 295 by the parties for resolution of their dispute. Upon the escrow
 296 of funds in the amount claimed in the lien, the lien and notice
 297 of lien shall be automatically dissolved. Upon release of the
 298 lien by the broker, the broker shall be deemed to have an
 299 equitable lien on the escrow funds, pending a resolution of the
 300 broker's claim, and the escrow shall not be released until a
 301 resolution is reached and agreed to by all necessary parties or
 302 ordered by a court. The parties are not required to follow the
 303 escrow procedure in this section if alternative procedures that
 304 would allow the transaction to close are available and are
 305 acceptable to the transferee in the transaction. If the proceeds
 306 from the transaction are insufficient to release all liens
 307 claimed against the commercial real estate, including the
 308 broker's lien, then the parties are not required to follow the
 309 escrow procedure in this section.

310 Section 2. Paragraph (j) of subsection (1) of section
 311 475.42, Florida Statutes, is amended to read:

312 475.42 Violations and penalties.--

313 (1) VIOLATIONS.--

314 (j) A broker or sales associate may not place, or cause to
 315 be placed, upon the public records of any county, any contract,
 316 assignment, deed, will, mortgage, affidavit, or other writing
 317 which purports to affect the title of, or encumber, any real
 318 property if the same is known to her or him to be false, void,
 319 or not authorized to be placed of record, or not executed in the

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320 form entitling it to be recorded, or the execution or recording
321 whereof has not been authorized by the owner of the property,
322 maliciously or for the purpose of collecting a commission, or to
323 coerce the payment of money to the broker or sales associate or
324 other person, or for any unlawful purpose. However, nothing in
325 this paragraph shall be construed to prohibit a broker or a
326 sales associate from recording a judgment rendered by a court of
327 this state or to prohibit a broker from placing a lien on a
328 property where expressly permitted by contractual agreement or
329 otherwise allowed by law.

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