

CHAMBER ACTION

1 The Committee on Business Regulation recommends the following:

2
3 **Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

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

HB 461

2004
CS

24 providing 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:

28

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

32 714.001 Popular name.--This chapter may be referred to by
33 the popular name the "Commercial Real Estate Lien Act."

34 714.003 Definitions.--As used in this chapter, the term:

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

36 (2)(a) "Commercial real estate" means any real estate
37 other than:

38 1. Real estate containing one to four residential units;

39 or

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

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

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

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

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

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

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

61 714.005 Broker's lien.--

62 (1) WRITTEN INSTRUMENT.--A broker shall have a lien upon
 63 commercial real estate or any interest in that commercial real
 64 estate which is the subject of a purchase, lease, or other
 65 conveyance to a buyer or tenant of an interest in the commercial
 66 real estate, in the amount that the broker is due for licensed
 67 services, including, but not limited to, brokerage fees,
 68 consulting fees, and management fees, under a valid and
 69 enforceable written instrument signed by a transferor or the
 70 transferor's duly authorized agent or by a prospective
 71 transferee or the transferee's duly authorized agent. The lien
 72 shall be available to the broker named in the signed instrument,
 73 and not to any employee or independent contractor of the broker.

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

75 (a) A lien under this chapter shall attach to the
 76 commercial real estate or any interest in the commercial real
 77 estate if the broker:

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

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

85 (b) The lien shall attach as of the date of the recording
 86 of the notice of lien and shall not relate back to the date of
 87 the written instrument.

88 (3) CONTENTS OF NOTICE OF LIEN.--A notice of lien shall
 89 state the name of the claimant, the name of the owner of record
 90 of the commercial real estate, a description of the property
 91 upon which the lien is being claimed, the amount for which the
 92 lien is claimed, and the real estate license number of the
 93 broker. The notice of lien shall recite that the information
 94 contained in the notice is true and accurate to the knowledge of
 95 the signator. The notice of lien must be signed by the broker or
 96 a person authorized to sign on behalf of the broker and must be
 97 notarized.

98 (4) COMMISSION DUE IN INSTALLMENTS.--Except as otherwise
 99 provided in subsections (5)-(7), when payment to a broker is due
 100 in installments, a portion of which is due only after the
 101 conveyance or transfer of the commercial real estate, any notice
 102 of lien for those payments due after the conveyance or transfer
 103 may be recorded at any time subsequent to the conveyance or
 104 transfer of the commercial real estate but not later than 90
 105 days after the date the payment is due. A notice of lien

106 recorded prior to conveyance or transfer of the commercial real
 107 estate claiming all moneys due under an installment payment
 108 agreement or for future commissions as described in subsection
 109 (6) shall be valid and enforceable only to the extent it
 110 pertains to payments due from the transferee to the transferor
 111 after conveyance or transfer. As payments or partial payments of
 112 commission are received, a broker shall provide partial releases
 113 therefor, thereby reducing the amount due the broker under the
 114 broker's notice of lien.

115 (5) LEASE OF COMMERCIAL REAL ESTATE.--In the case of a
 116 lease, sublease, or assignment of lease, a notice of lien must
 117 be recorded no later than 90 days after the transferee takes
 118 possession of the leased premises. However, if a transferor
 119 personally serves written notice of the intended execution of
 120 the lease on a broker entitled to claim a lien, at least 10 days
 121 prior to the date of the intended execution of the lease, a
 122 notice of lien must be recorded before the date indicated in
 123 such notice for the execution of the lease. The lien shall
 124 attach as of the date of the recording of the notice of lien and
 125 shall not relate back to the date of the written instrument.

126 (6) FUTURE COMMISSION.--If a broker may be due future
 127 commissions pursuant to a written instrument signed by the then
 128 transferor or transferee, the broker may record a notice of lien
 129 at any time after execution of the lease or other written
 130 instrument which contains such option or options, but may not
 131 record the notice of lien later than 90 days after the event or
 132 occurrence on which the claimed future commission occurs.
 133 Notwithstanding subsection (10), an action to enforce a lien

HB 461

2004
CS

134 under this subsection must be commenced within 2 years after the
 135 occurrence or transaction on which the future commission is
 136 claimed.

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

152 (8) WRITTEN INSTRUMENT WITH TRANSFEREE.--If a transferee
 153 has executed a written instrument in accordance with subsection
 154 (1), then a lien shall attach to the transferee's interest upon
 155 the transferee purchasing or otherwise accepting conveyance or
 156 transfer of the commercial real estate and the recording of a
 157 notice of lien by the broker in the office of the clerk of the
 158 circuit court of the county in which the property is located,
 159 within 90 days after the purchase or other conveyance or
 160 transfer to the transferee. The lien shall attach as of the date

HB 461

2004
CS

161 of the recording of the notice of lien and shall not relate back
 162 to the date of the written instrument.

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

179 (10) LAWSUIT TO ENFORCE LIEN.--

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

184 (b) A broker claiming a lien on commercial real estate
 185 shall, within 2 years after recording the notice of lien,
 186 commence proceedings by filing a complaint. Failure to commence
 187 proceedings within 2 years after recording the notice of lien
 188 shall extinguish the lien. No subsequent notice of lien may be

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

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

200 (d) A complaint under this section shall contain a brief
 201 statement of the contract or instrument on which the lien is
 202 based as well as its effective date, a description of the
 203 services performed, the amount due and unpaid, a description of
 204 the property that is subject to the lien, and other facts
 205 necessary for a full understanding of the rights of the parties.
 206 The plaintiff shall make all interested parties of whose
 207 interest the plaintiff is notified or has knowledge defendants
 208 to the action and shall issue summons and provide service as in
 209 other civil actions filed in this state. When any defendant
 210 resides or has gone out of the state, or on inquiry cannot be
 211 found, or is concealed within the state so that process cannot
 212 be served on the defendant, the plaintiff shall cause a notice
 213 to be given to the defendant or cause a copy of the complaint to
 214 be served on the defendant in the manner and on the same
 215 conditions as in other civil actions filed in this state.
 216 Failure of the plaintiff to provide proper summons or notice to

HB 461

2004
CS

217 the defendant as required by this paragraph shall be grounds for
 218 judgment against the plaintiff and in favor of the defendant
 219 with prejudice. All liens claimed under this chapter shall be
 220 foreclosed in the manner of foreclosing a mortgage under the
 221 provisions of chapter 702.

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

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

233 (a) Whenever a notice of lien on commercial real estate
 234 has been recorded with the clerk of the circuit court and the
 235 claimed commission has been paid to a broker claiming a lien on
 236 the property, or when there is a failure to initiate a suit to
 237 enforce the lien within the time period provided by this
 238 section, the broker shall acknowledge satisfaction or release of
 239 the lien in writing, upon written demand of the owner of the
 240 commercial real estate, within 5 days after payment of the
 241 amount claimed or within 5 days after expiration of the time
 242 period in which the complaint to initiate the lawsuit was to be
 243 filed.

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

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

262 (14) ASSESSMENT OF COSTS, FEES, AND INTEREST.--The cost of
 263 proceedings brought under this section, including reasonable
 264 attorney's fees, costs, and prejudgment interest due to the
 265 prevailing party, shall be borne by the nonprevailing party or
 266 parties. When more than one party is responsible for costs,
 267 fees, and prejudgment interest, the costs, fees, and prejudgment
 268 interest shall be equitably apportioned by the court or
 269 alternative dispute resolution tribunal among the responsible
 270 parties.

271 (15) WAIVER OF LIEN RIGHTS VOID.--Except for a waiver or
 272 release of lien provided in consideration of payment of the fee
 273 or commission claimed by a broker or other consideration
 274 acceptable to the broker or pursuant to subsection (12), any
 275 waiver of a broker's right to a lien on commercial real estate
 276 under this section and any other waiver or release of such a
 277 lien is void.

278 714.007 Priority of other recorded liens, mortgages, and
 279 encumbrances.--Valid prior recorded liens, mortgages, and other
 280 encumbrances shall have priority over a broker's lien under this
 281 chapter. Such prior recorded liens, mortgages, and encumbrances
 282 shall include, without limitation:

283 (1) Any valid mechanic's lien claim that is recorded
 284 subsequent to the broker's notice of lien but which relates back
 285 to a date prior to the recording date of the broker's notice of
 286 lien.

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

289 714.009 Escrow of disputed amounts.--Except as otherwise
 290 provided in this chapter, whenever a notice of lien on
 291 commercial real estate has been filed with the clerk of the
 292 circuit court that would prevent the closing of a transaction or
 293 conveyance, an escrow account shall be established from the
 294 proceeds from the transaction or conveyance, or other collateral
 295 or security, in an amount sufficient to release the lien. The
 296 requirement to establish an escrow account as provided in this
 297 section shall not be cause for any party to refuse to close the
 298 transaction or conveyance. The moneys required to be held in

HB 461

2004
CS

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

317 Section 2. Paragraph (j) of subsection (1) of section
 318 475.42, Florida Statutes, is amended to read:

319 475.42 Violations and penalties.--

320 (1) VIOLATIONS.--

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

HB 461

2004
CS

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

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