

CHAMBER ACTION

1 The Committee on Appropriations 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.;

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, except a
 59 sublessee or assignee of a lease.

60 (7) "Transferor" means the person selling or otherwise
 61 conveying any interest in commercial real estate, except a
 62 sublessor or assignor of a lease.

63 714.005 Broker's lien.--

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

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

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

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

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

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

90 | (c) A broker shall not have the right under this chapter
 91 | to a lien for commission or other compensation owed to that
 92 | broker pursuant to a sublease or assignment of lease. The
 93 | provisions of this paragraph do not limit or otherwise affect
 94 | the claims or defenses a broker or any other party may have on
 95 | any other basis, in law or in equity.

96 | (3) CONTENTS OF NOTICE OF LIEN.--A notice of lien shall
 97 | state the name of the claimant, the name of the owner of record
 98 | of the commercial real estate, a description of the property
 99 | upon which the lien is being claimed, the amount for which the
 100 | lien is claimed, and the real estate license number of the
 101 | broker. The notice of lien shall recite that the information
 102 | contained in the notice is true and accurate to the knowledge of
 103 | the signator. The notice of lien must be signed by the broker or

104 | a person authorized to sign on behalf of the broker and must be
 105 | notarized.

106 | (4) COMMISSION DUE IN INSTALLMENTS.--Except as otherwise
 107 | provided in subsections (5)-(7), when payment to a broker is due
 108 | in installments, a portion of which is due only after the
 109 | conveyance or transfer of the commercial real estate, any notice
 110 | of lien for those payments due after the conveyance or transfer
 111 | may be recorded at any time subsequent to the conveyance or
 112 | transfer of the commercial real estate but not later than 90
 113 | days after the date the payment is due. A notice of lien
 114 | recorded prior to conveyance or transfer of the commercial real
 115 | estate claiming all moneys due under an installment payment
 116 | agreement or for future commissions as described in subsection
 117 | (6) shall be valid and enforceable only to the extent it
 118 | pertains to payments due from the transferee to the transferor
 119 | after conveyance or transfer. As payments or partial payments of
 120 | commission are received, a broker shall provide partial releases
 121 | therefor, thereby reducing the amount due the broker under the
 122 | broker's notice of lien.

123 | (5) LEASE OF COMMERCIAL REAL ESTATE.--In the case of a
 124 | lease, a notice of lien must be recorded no later than 90 days
 125 | after the transferee takes possession of the leased premises.
 126 | However, if a transferor personally serves written notice of the
 127 | intended execution of the lease on a broker entitled to claim a
 128 | lien, at least 10 days prior to the date of the intended
 129 | execution of the lease, a notice of lien must be recorded before
 130 | the date indicated in such notice for the execution of the
 131 | lease. The lien shall attach as of the date of the recording of

132 the notice of lien and shall not relate back to the date of the
 133 written instrument.

134 (6) FUTURE COMMISSION.--If a broker may be due future
 135 commissions pursuant to a written instrument signed by the then
 136 transferor or transferee, the broker may record a notice of lien
 137 at any time after execution of the lease or other written
 138 instrument which contains such option or options, but may not
 139 record the notice of lien later than 90 days after the event or
 140 occurrence on which the claimed future commission occurs.
 141 Notwithstanding subsection (10), an action to enforce a lien
 142 under this subsection must be commenced within 2 years after the
 143 occurrence or transaction on which the future commission is
 144 claimed.

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

160 (8) WRITTEN INSTRUMENT WITH TRANSFEREE.--If a transferee
 161 has executed a written instrument in accordance with subsection
 162 (1), then a lien shall attach to the transferee's interest upon
 163 the transferee purchasing or otherwise accepting conveyance or
 164 transfer of the commercial real estate and the recording of a
 165 notice of lien by the broker in the office of the clerk of the
 166 circuit court of the county in which the property is located,
 167 within 90 days after the purchase or other conveyance or
 168 transfer to the transferee. The lien shall attach as of the date
 169 of the recording of the notice of lien and shall not relate back
 170 to the date of the written instrument.

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

185 (10) LAWSUIT TO ENFORCE LIEN.--

186 (a) A broker may bring suit to enforce a lien on
 187 commercial real estate in the circuit court in the county in

188 which the property is located by filing a complaint and sworn
 189 affidavit that the notice of lien has been recorded.

190 (b) A broker claiming a lien on commercial real estate
 191 shall, within 2 years after recording the notice of lien,
 192 commence proceedings by filing a complaint. Failure to commence
 193 proceedings within 2 years after recording the notice of lien
 194 shall extinguish the lien. No subsequent notice of lien may be
 195 given for the same claim, nor may that claim be asserted in any
 196 proceedings under this chapter.

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

206 (d) A complaint under this section shall contain a brief
 207 statement of the contract or instrument on which the lien is
 208 based as well as its effective date, a description of the
 209 services performed, the amount due and unpaid, a description of
 210 the property that is subject to the lien, and other facts
 211 necessary for a full understanding of the rights of the parties.
 212 The plaintiff shall make all interested parties of whose
 213 interest the plaintiff is notified or has knowledge defendants
 214 to the action and shall issue summons and provide service as in
 215 other civil actions filed in this state. When any defendant

216 resides or has gone out of the state, or on inquiry cannot be
 217 found, or is concealed within the state so that process cannot
 218 be served on the defendant, the plaintiff shall cause a notice
 219 to be given to the defendant or cause a copy of the complaint to
 220 be served on the defendant in the manner and on the same
 221 conditions as in other civil actions filed in this state.
 222 Failure of the plaintiff to provide proper summons or notice to
 223 the defendant as required by this paragraph shall be grounds for
 224 judgment against the plaintiff and in favor of the defendant
 225 with prejudice. All liens claimed under this chapter shall be
 226 foreclosed in the manner of foreclosing a mortgage under the
 227 provisions of chapter 702.

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

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

239 (a) Whenever a notice of lien on commercial real estate
 240 has been recorded with the clerk of the circuit court and the
 241 claimed commission has been paid to a broker claiming a lien on
 242 the property, or when there is a failure to initiate a suit to
 243 enforce the lien within the time period provided by this

244 section, the broker shall acknowledge satisfaction or release of
 245 the lien in writing, upon written demand of the owner of the
 246 commercial real estate, within 5 days after payment of the
 247 amount claimed or within 5 days after expiration of the time
 248 period in which the complaint to initiate the lawsuit was to be
 249 filed.

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

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

268 (14) ASSESSMENT OF COSTS, FEES, AND INTEREST.--The cost of
 269 proceedings brought under this section, including reasonable
 270 attorney's fees, costs, and prejudgment interest due to the
 271 prevailing party, shall be borne by the nonprevailing party or

272 parties. When more than one party is responsible for costs,
 273 fees, and prejudgment interest, the costs, fees, and prejudgment
 274 interest shall be equitably apportioned by the court or
 275 alternative dispute resolution tribunal among the responsible
 276 parties.

277 (15) WAIVER OF LIEN RIGHTS VOID.--Except for a
 278 satisfaction or release of lien provided in consideration of
 279 payment of the fee or commission claimed by a broker or other
 280 consideration acceptable to the broker or pursuant to subsection
 281 (12), any waiver of a broker's right to a lien on commercial
 282 real estate under this section and any other waiver or release
 283 of such a lien is void.

284 714.007 Priority of other recorded liens, mortgages, and
 285 encumbrances.--Valid prior recorded liens, mortgages, and other
 286 encumbrances shall have priority over a broker's lien under this
 287 chapter. Such prior recorded liens, mortgages, and encumbrances
 288 shall include, without limitation:

289 (1) Any valid mechanic's lien claim that is recorded
 290 subsequent to the broker's notice of lien but which relates back
 291 to a date prior to the recording date of the broker's notice of
 292 lien.

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

295 714.009 Escrow of disputed amounts.--Except as otherwise
 296 provided in this chapter, whenever a notice of lien on
 297 commercial real estate has been filed with the clerk of the
 298 circuit court that would prevent the closing of a transaction or
 299 conveyance, an escrow account shall be established from the

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

326 Section 2. Paragraph (j) of subsection (1) of section
 327 475.42, Florida Statutes, is amended to read:

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328 475.42 Violations and penalties.--

329 (1) VIOLATIONS.--

330 (j) A broker or sales associate may not place, or cause to
 331 be placed, upon the public records of any county, any contract,
 332 assignment, deed, will, mortgage, affidavit, or other writing
 333 which purports to affect the title of, or encumber, any real
 334 property if the same is known to her or him to be false, void,
 335 or not authorized to be placed of record, or not executed in the
 336 form entitling it to be recorded, or the execution or recording
 337 whereof has not been authorized by the owner of the property,
 338 maliciously or for the purpose of collecting a commission, or to
 339 coerce the payment of money to the broker or sales associate or
 340 other person, or for any unlawful purpose. However, nothing in
 341 this paragraph shall be construed to prohibit a broker or a
 342 sales associate from recording a judgment rendered by a court of
 343 this state or to prohibit a broker from placing a lien on a
 344 property where expressly permitted by contractual agreement or
 345 otherwise allowed by law.

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