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2004 Legislature

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:

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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 single-family residential units such as condominiums, townhouses, or homes in a subdivision when sold, leased, or otherwise conveyed on a unit-by-unit basis, even though these units may be a part of a larger building or parcel or real estate containing more than four residential units.

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

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

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

(6) "Transferee" means a person purchasing or otherwise receiving any interest in commercial real estate, except a sublessee or assignee of a lease.

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

714.005 Broker's lien.--

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

(2) ENTITLEMENT OF BROKER TO LIEN.--

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

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

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

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

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

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

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

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

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

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

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occurrence or transaction on which the future commission is claimed.

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

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

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

(10) LAWSUIT TO ENFORCE LIEN.--

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

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

(c) A broker claiming a lien on commercial real estate based upon an option or other right to purchase or lease shall,

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within 2 years after the conveyance or transfer of the real estate under the exercise of the option to purchase or lease, commence proceedings by filing a complaint. Failure to commence proceedings within this time period shall extinguish the lien. No subsequent notice of lien may be given for the same claim, nor may that claim be asserted in any proceedings under this chapter.

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

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foreclosed in the manner of foreclosing a mortgage under the provisions of chapter 702.

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

(12) SATISFACTION OR RELEASE OF LIEN.--

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

(b) Whenever a notice of lien on commercial real estate has been recorded with the clerk of the circuit court and a condition occurs that would preclude a broker from receiving compensation under the terms of the written agreement on which

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the lien is based, the broker shall provide to the owner of record, within 10 days following written demand by the owner of record, a written release or satisfaction of the lien.

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

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

(15) WAIVER OF LIEN RIGHTS VOID.--Except for a satisfaction or release of lien provided in consideration of payment of the fee or commission claimed by a broker or other consideration acceptable to the broker or pursuant to subsection (12), any waiver of a broker's right to a lien on commercial

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real estate under this section and any other waiver or release of such a lien is void.

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

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

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

714.009 Escrow of disputed amounts.--Except as otherwise provided in this chapter, whenever a notice of lien on commercial real estate has been filed with the clerk of the circuit court that would prevent the closing of a transaction or conveyance, an escrow account shall be established from the proceeds from the transaction or conveyance, or other collateral or security, in an amount sufficient to release the lien. The requirement to establish an escrow account as provided in this section shall not be cause for any party to refuse to close the transaction or conveyance. The moneys or other collateral or security required to be held in escrow under this section shall be held until the rights of the parties to the escrowed moneys or other collateral or security have been determined by written agreement of the parties, by a court of law, or by any other process that may be agreed to by the parties for resolution of

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their dispute. Upon the escrow of funds or other collateral or security in the amount claimed in the lien, the lien and notice of lien shall be automatically dissolved. Upon release of the lien by the broker, the broker shall be deemed to have an equitable lien on the escrow funds or other collateral or security pending a resolution of the broker's claim, and the escrow shall not be released until a resolution is reached and agreed to by all necessary parties or ordered by a court. The parties are not required to follow the escrow procedure in this section if alternative procedures that would allow the transaction to close are available and are acceptable to the transferee in the transaction. If the proceeds from the transaction are insufficient to release all liens claimed against the commercial real estate, including the broker's lien, then the parties are not required to follow the escrow procedure in this section.

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

475.42 Violations and penalties.--

(1) VIOLATIONS.--

(j) A broker or sales associate may not place, or cause to be placed, upon the public records of any county, any contract, assignment, deed, will, mortgage, affidavit, or other writing which purports to affect the title of, or encumber, any real property if the same is known to her or him to be false, void, or not authorized to be placed of record, or not executed in the form entitling it to be recorded, or the execution or recording whereof has not been authorized by the owner of the property,

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maliciously or for the purpose of collecting a commission, or to coerce the payment of money to the broker or sales associate or other person, or for any unlawful purpose. However, nothing in this paragraph shall be construed to prohibit a broker or a sales associate from recording a judgment rendered by a court of this state or to prohibit a broker from placing a lien on a property where expressly permitted by contractual agreement or otherwise allowed by law.

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