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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 cited as the

29 "Commercial Real Estate Lien Act."
 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 that 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, except a
 55 sublessee or assignee of a lease.
 56 (7) "Transferor" means the person selling or otherwise

57 conveying any interest in commercial real estate, except a
 58 sublessor or assignor of a lease.

59 714.005 Broker's lien.--

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

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

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

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

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

83 (b) The lien shall attach as of the date of the recording
 84 of the notice of lien and shall not relate back to the date of

85 the written instrument.

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

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

102 (4) COMMISSION DUE IN INSTALLMENTS.--Except as otherwise
 103 provided in subsections (5)-(7), when payment to a broker is due
 104 in installments, a portion of which is due only after the
 105 conveyance or transfer of the commercial real estate, any notice
 106 of lien for those payments due after the conveyance or transfer
 107 may be recorded at any time subsequent to the conveyance or
 108 transfer of the commercial real estate but not later than 90
 109 days after the date the payment is due. A notice of lien
 110 recorded prior to conveyance or transfer of the commercial real
 111 estate claiming all moneys due under an installment payment
 112 agreement or for future commissions as described in subsection

113 (6) shall be valid and enforceable only to the extent it
 114 pertains to payments due from the transferee to the transferor
 115 after conveyance or transfer. As payments or partial payments of
 116 commission are received, a broker shall provide partial releases
 117 therefor, thereby reducing the amount due the broker under the
 118 broker's notice of lien.

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

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

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

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

167 (9) SERVICE OF NOTICE OF LIEN.--A broker shall, within 10
168 days after recording a notice of lien, personally deliver or

169 mail, by registered or certified mail, a copy of the notice of
170 lien to the owner of record of the commercial real estate or the
171 duly authorized agent of the owner of record at the address of
172 the owner of record as stated in the written instrument on which
173 the claim for lien is based or, if no such address is given, to
174 the address of the property on which the claim of lien is based.
175 Mailing of the copy of the notice of lien is effective when
176 deposited in the United States mail with postage prepaid. A
177 broker's lien on commercial real estate shall be unenforceable
178 if delivery or mailing of the copy of notice of lien does not
179 occur within the time period and in the manner required by this
180 subsection.

181 (10) LAWSUIT TO ENFORCE LIEN.--

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

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

193 (c) A broker claiming a lien on commercial real estate
194 based upon an option or other right to purchase or lease shall,
195 within 2 years after the conveyance or transfer of the real
196 estate under the exercise of the option to purchase or lease,

197 commence proceedings by filing a complaint. Failure to commence
 198 proceedings within this time period shall extinguish the lien.
 199 No subsequent notice of lien may be given for the same claim,
 200 nor may that claim be asserted in any proceedings under this
 201 chapter.

202 (d) A complaint under this section shall contain a brief
 203 statement of the contract or instrument on which the lien is
 204 based as well as its effective date, a description of the
 205 services performed, the amount due and unpaid, a description of
 206 the property that is subject to the lien, and other facts
 207 necessary for a full understanding of the rights of the parties.
 208 The plaintiff shall make all interested parties of whose
 209 interest the plaintiff is notified or has knowledge defendants
 210 to the action and shall issue summons and provide service as in
 211 other civil actions filed in this state. When any defendant
 212 resides or has gone out of the state, or on inquiry cannot be
 213 found, or is concealed within the state so that process cannot
 214 be served on the defendant, the plaintiff shall cause a notice
 215 to be given to the defendant or cause a copy of the complaint to
 216 be served on the defendant in the manner and on the same
 217 conditions as in other civil actions filed in this state.
 218 Failure of the plaintiff to provide proper summons or notice to
 219 the defendant as required by this paragraph shall be grounds for
 220 judgment against the plaintiff and in favor of the defendant
 221 with prejudice. All liens claimed under this chapter shall be
 222 foreclosed in the manner of foreclosing a mortgage under the
 223 provisions of chapter 702.

224 (11) DEMAND TO INITIATE OR FILE ANSWER TO LAWSUIT.--Upon

225 written demand of the owner of record or a lienee of the
 226 commercial real estate, or a duly authorized agent of the owner
 227 or lienee, served on the broker claiming the lien to require
 228 suit to be commenced to enforce the lien or an answer to be
 229 filed in a pending suit to enforce the lien, the suit must be
 230 commenced or the answer filed within 30 days thereafter or the
 231 lien shall be extinguished. Service of such written demand may
 232 be made by registered or certified mail, return receipt
 233 requested, or by personal service.

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

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

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

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

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

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

280 714.007 Priority of other recorded liens, mortgages, and

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

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

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

291 714.009 Escrow of disputed amounts.--Except as otherwise
 292 provided in this chapter, whenever a notice of lien on
 293 commercial real estate has been filed with the clerk of the
 294 circuit court that would prevent the closing of a transaction or
 295 conveyance, an escrow account shall be established from the
 296 proceeds from the transaction or conveyance, or other collateral
 297 or security, in an amount sufficient to release the lien. The
 298 requirement to establish an escrow account as provided in this
 299 section shall not be cause for any party to refuse to close the
 300 transaction or conveyance. The moneys or other collateral or
 301 security required to be held in escrow under this section shall
 302 be held until the rights of the parties to the escrowed moneys
 303 or other collateral or security have been determined by written
 304 agreement of the parties, by a court of law, or by any other
 305 process that may be agreed to by the parties for resolution of
 306 their dispute. Upon the escrow of funds or other collateral or
 307 security in the amount claimed in the lien, the lien and notice
 308 of lien shall be automatically dissolved. Upon release of the

309 lien by the broker, the broker shall be deemed to have an
 310 equitable lien on the escrow funds or other collateral or
 311 security pending a resolution of the broker's claim, and the
 312 escrow shall not be released until a resolution is reached and
 313 agreed to by all necessary parties or ordered by a court. The
 314 parties are not required to follow the escrow procedure in this
 315 section if alternative procedures that would allow the
 316 transaction to close are available and are acceptable to the
 317 transferee in the transaction. If the proceeds from the
 318 transaction are insufficient to release all liens claimed
 319 against the commercial real estate, including the broker's lien,
 320 then the parties are not required to follow the escrow procedure
 321 in this section.

322 Section 2. Paragraph (j) of subsection (1) of section
 323 475.42, Florida Statutes, is amended to read:

324 475.42 Violations and penalties.--

325 (1) VIOLATIONS.--

326 (j) A broker or sales associate may not place, or cause to
 327 be placed, upon the public records of any county, any contract,
 328 assignment, deed, will, mortgage, affidavit, or other writing
 329 which purports to affect the title of, or encumber, any real
 330 property if the same is known to her or him to be false, void,
 331 or not authorized to be placed of record, or not executed in the
 332 form entitling it to be recorded, or the execution or recording
 333 whereof has not been authorized by the owner of the property,
 334 maliciously or for the purpose of collecting a commission, or to
 335 coerce the payment of money to the broker or sales associate or
 336 other person, or for any unlawful purpose. However, nothing in

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337 | this paragraph shall be construed to prohibit a broker or a
338 | sales associate from recording a judgment rendered by a court of
339 | this state or to prohibit a broker from placing a lien on a
340 | property where expressly permitted by contractual agreement or
341 | otherwise allowed by law.

342 | Section 3. This act shall take effect July 1, 2005.